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

Members of the Virginia Code Commission: **Joseph V. Gartlan, Jr.**, Chairman; **W. Tayloe Murphy, Jr.**, Vice Chairman; **Robert L. Calhoun;** **Bernard S. Cohen;** **Jay W. DeBoer;** **Frank S. Ferguson;** **J. Randy Forbes;** **James E. Kulp;** **E.M. Miller, Jr.;** **James B. Wilkinson.**

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## October 1999 through September 2000

<u>Volume:Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
16:2	September 22, 1999	October 11, 1999
16:3	October 6, 1999	October 25, 1999
16:4	October 20, 1999	November 8, 1999
16:5	November 3, 1999	November 22, 1999
16:6	November 16, 1999 <b>(Tuesday)</b>	December 6, 1999
16:7	December 1, 1999	December 20, 1999
<b>INDEX 1 - Volume 16</b>		<b>January 2000</b>
16:8	December 14, 1999 <b>(Tuesday)</b>	January 3, 2000
16:9	December 28, 1999 <b>(Tuesday)</b>	January 17, 2000
16:10	January 12, 2000	January 31, 2000
16:11	January 26, 2000	February 14, 2000
16:12	February 9, 2000	February 28, 2000
16:13	February 23, 2000	March 13, 2000
16:14	March 8, 2000	March 27, 2000
<b>INDEX 2 - Volume 16</b>		<b>April 2000</b>
16:15	March 22, 2000	April 10, 2000
16:16	April 5, 2000	April 24, 2000
16:17	April 19, 2000	May 8, 2000
16:18	May 3, 2000	May 22, 2000
16:19	May 17, 2000	June 5, 2000
16:20	May 31, 2000	June 19, 2000
<b>INDEX 3 - Volume 16</b>		<b>July 2000</b>
16:21	June 14, 2000	July 3, 2000
16:22	June 28, 2000	July 17, 2000
16:23	July 12, 2000	July 31, 2000
16:24	July 26, 2000	August 14, 2000
16:25	August 9, 2000	August 28, 2000
16:26	August 23, 2000	September 11, 2000
<b>FINAL INDEX - Volume 16</b>		<b>October 2000</b>

\*Filing deadlines are Wednesdays unless otherwise specified.

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The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 1999 VAC Supplement includes final regulations published through *Virginia Register* Volume 15, Issue 10, dated February 1, 1999). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 2. Agriculture</b>			
2 VAC 15-20-70	Amended	15:26 VA.R. 3436	Pending
2 VAC 15-20-80	Amended	15:26 VA.R. 3445	8/17/99
2 VAC 15-20-80	Repealed	15:26 VA.R. 3438	Pending
2 VAC 15-20-81	Added	15:26 VA.R. 3442	Pending
2 VAC 20-50-10 et seq.	Repealed	15:11 VA.R. 1692	3/17/99
2 VAC 20-51-10 through 2 VAC 20-51-210	Added	15:11 VA.R. 1693-1700	3/17/99
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-10-70 emer	Amended	15:23 VA.R. 3040	7/13/99-6/30/00
3 VAC 5-10-240 emer	Amended	15:23 VA.R. 3040	7/13/99-6/30/00
3 VAC 5-70-170 emer	Amended	15:23 VA.R. 3041	7/13/99-6/30/00
3 VAC 5-70-210 emer	Added	15:23 VA.R. 3041	7/13/99-6/30/00
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 15-40-240	Amended	15:19 VA.R. 2454	7/7/99
4 VAC 15-40-280	Amended	15:19 VA.R. 2454	7/7/99
4 VAC 15-40-281	Added	15:19 VA.R. 2454	7/7/99
4 VAC 15-50-120	Amended	15:19 VA.R. 2455	7/7/99
4 VAC 15-90-20	Amended	15:20 VA.R. 2586	7/7/99
4 VAC 15-90-70	Amended	15:20 VA.R. 2586	7/7/99
4 VAC 15-90-80	Amended	15:20 VA.R. 2587	7/7/99
4 VAC 15-90-90	Amended	15:20 VA.R. 2588	7/7/99
4 VAC 15-90-100	Amended	15:20 VA.R. 2588	7/7/99
4 VAC 15-90-110	Amended	15:20 VA.R. 2588	7/7/99
4 VAC 15-90-120	Amended	15:20 VA.R. 2588	7/7/99
4 VAC 15-90-130	Repealed	15:20 VA.R. 2589	7/7/99
4 VAC 15-90-141	Added	15:20 VA.R. 2589	7/7/99
4 VAC 15-90-160	Amended	15:20 VA.R. 2589	7/7/99
4 VAC 15-90-170	Amended	15:20 VA.R. 2589	7/7/99
4 VAC 15-90-190	Amended	15:20 VA.R. 2589	7/7/99
4 VAC 15-90-195	Amended	15:20 VA.R. 2589	7/7/99
4 VAC 15-90-200	Amended	15:20 VA.R. 2590	7/7/99
4 VAC 15-90-210	Amended	15:20 VA.R. 2590	7/7/99
4 VAC 15-90-220	Amended	15:20 VA.R. 2590	7/7/99
4 VAC 15-90-250	Repealed	15:20 VA.R. 2590	7/7/99
4 VAC 15-110-30	Amended	15:19 VA.R. 2455	7/7/99
4 VAC 15-110-60	Amended	15:19 VA.R. 2455	7/7/99
4 VAC 15-240-10	Amended	15:19 VA.R. 2455	7/7/99
4 VAC 15-240-20	Amended	15:19 VA.R. 2455	7/7/99
4 VAC 15-240-31	Added	15:19 VA.R. 2455	7/7/99
4 VAC 15-240-40	Amended	15:19 VA.R. 2455	7/7/99
4 VAC 15-240-50	Amended	15:19 VA.R. 2455	7/7/99
4 VAC 15-240-70	Amended	15:19 VA.R. 2455	7/7/99
4 VAC 15-270-60	Amended	15:19 VA.R. 2466	7/7/99
4 VAC 20-20-35	Amended	15:14 VA.R. 2044	3/1/99
4 VAC 20-80-20	Amended	15:22 VA.R. 2871	7/1/99

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-80-30	Amended	15:22 VA.R. 2871	7/1/99
4 VAC 20-150-70	Amended	15:19 VA.R. 2456	5/4/99
4 VAC 20-252-60	Amended	15:18 VA.R. 2392	5/1/99
4 VAC 20-252-80	Amended	15:18 VA.R. 2392	5/1/99
4 VAC 20-252-120	Amended	15:18 VA.R. 2393	5/1/99
4 VAC 20-252-130	Amended	15:18 VA.R. 2393	5/1/99
4 VAC 20-252-140	Amended	15:18 VA.R. 2393	5/1/99
4 VAC 20-252-150	Amended	15:18 VA.R. 2394	5/1/99
4 VAC 20-252-160	Amended	15:18 VA.R. 2394	5/1/99
4 VAC 20-333-10 through 4 VAC 20-333-40	Added	15:24 VA.R. 3035-3037	7/6/99
4 VAC 20-430-15	Added	15:19 VA.R. 2456	5/5/99
4 VAC 20-430-60	Amended	15:19 VA.R. 2456	5/5/99
4 VAC 20-595-10 emer	Added	15:25 VA.R. 3366	8/15/99-8/31/99
4 VAC 20-595-20 emer	Added	15:25 VA.R. 3366	8/15/99-8/31/99
4 VAC 20-620-50	Amended	15:14 VA.R. 2044	3/1/99
4 VAC 20-620-70	Amended	15:14 VA.R. 2045	3/1/99
4 VAC 20-720-40	Amended	15:20 VA.R. 2590	6/1/99
4 VAC 20-720-45 emer	Added	15:19 VA.R. 2474	5/5/99-5/31/99
4 VAC 20-720-50	Amended	15:20 VA.R. 2590	6/1/99
4 VAC 20-720-80	Amended	15:12 VA.R. 1790	2/1/99
4 VAC 20-720-90	Amended	15:19 VA.R. 2457	5/10/99
4 VAC 20-720-106 emer	Added	15:12 VA.R. 1845	2/1/99-2/12/99
4 VAC 20-751-20	Amended	15:18 VA.R. 2395	5/1/99
4 VAC 20-880-10	Amended	15:20 VA.R. 2591	5/26/99
4 VAC 20-880-40	Repealed	15:20 VA.R. 2591	5/26/99
4 VAC 20-880-50	Repealed	15:20 VA.R. 2592	5/26/99
4 VAC 20-900-10	Amended	15:14 VA.R. 2045	3/1/99
4 VAC 20-900-10	Amended	15:19 VA.R. 2457	5/4/99
4 VAC 20-900-20	Amended	15:19 VA.R. 2457	5/4/99
4 VAC 20-900-25	Added	15:14 VA.R. 2045	3/1/99
4 VAC 20-900-25	Amended	15:19 VA.R. 2457	5/4/99
4 VAC 20-900-35	Added	15:14 VA.R. 2045	3/1/99
4 VAC 20-910-45	Amended	15:22 VA.R. 2931	6/24/99-7/21/99
4 VAC 20-995-20	Amended	15:18 VA.R. 2395	5/1/99
4 VAC 20-995-30	Amended	15:18 VA.R. 2395	5/1/99
4 VAC 20-1020-10 through 4 VAC 20-1020-40	Added	15:12 VA.R. 1790	2/2/99
4 VAC 20-1030-10 through 4 VAC 20-1030-40	Added	15:15 VA.R. 2126-2135	3/15/99
4 VAC 20-1040-10 through 4 VAC 20-1040-40	Added	15:20 VA.R. 2592-2593	5/26/99
4 VAC 25-20 (Forms)	Amended	15:21 VA.R. 2728	--
4 VAC 25-35 (Forms)	Amended	15:14 VA.R. 2075-2077	--
4 VAC 25-35 (Forms)	Amended	15:21 VA.R. 2728	--
4 VAC 25-40 (Forms)	Amended	15:21 VA.R. 2728	--
4 VAC 25-60-10	Amended	15:22 VA.R. 2871	8/18/99
4 VAC 25-60-20	Amended	15:22 VA.R. 2872	8/18/99
4 VAC 25-60-40	Amended	15:22 VA.R. 2872	8/18/99
4 VAC 25-60-70	Amended	15:22 VA.R. 2872	8/18/99
4 VAC 25-70-10	Amended	15:22 VA.R. 2873	8/18/99
4 VAC 25-80-10	Repealed	15:22 VA.R. 2874	8/18/99
4 VAC 25-110-10	Amended	15:22 VA.R. 2874	8/18/99
4 VAC 25-110-20	Amended	15:22 VA.R. 2875	8/18/99
4 VAC 25-110-60	Repealed	15:22 VA.R. 2875	8/18/99
4 VAC 25-110-130	Repealed	15:22 VA.R. 2876	8/18/99
4 VAC 25-110-170	Repealed	15:22 VA.R. 2877	8/18/99
4 VAC 25-110-200	Amended	15:22 VA.R. 2877	8/18/99
4 VAC 25-110-210	Amended	15:22 VA.R. 2878	8/18/99
4 VAC 25-110-320 through 4 VAC 25-110-390	Repealed	15:22 VA.R. 2879-2880	8/18/99

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 25-120-10	Amended	15:22 VA.R. 2880	8/18/99
4 VAC 25-130 (Forms)	Amended	15:11 VA.R. 1736	--
4 VAC 25-130 (Forms)	Amended	15:21 VA.R. 2728	--
4 VAC 25-150 (Forms)	Amended	15:14 VA.R. 2077-2078	--
<b>Title 7. Economic Development</b>			
7 VAC 10-20-10	Amended	15:25 VA.R. 3348	9/29/99
7 VAC 10-20-30	Amended	15:25 VA.R. 3350	9/29/99
7 VAC 10-20-50	Amended	15:25 VA.R. 3350	9/29/99
<b>Title 8. Education</b>			
8 VAC 35-30-30	Amended	15:11 VA.R. 1706	1/18/99
8 VAC 35-30-50	Amended	15:11 VA.R. 1707	1/18/99
8 VAC 35-30-160	Amended	15:11 VA.R. 1707	1/18/99
8 VAC 35-30-200	Amended	15:11 VA.R. 1707	1/18/99
8 VAC 35-30-210	Amended	15:11 VA.R. 1707	1/18/99
8 VAC 35-30-220	Amended	15:11 VA.R. 1708	1/18/99
8 VAC 35-30-230	Amended	15:11 VA.R. 1708	1/18/99
8 VAC 35-30-240	Amended	15:11 VA.R. 1709	1/18/99
<b>Title 9. Environment</b>			
9 VAC 5-20-21	Amended	15:12 VA.R. 1799	4/1/99
9 VAC 5-20-21	Amended	15:21 VA.R. 2667	8/4/99
9 VAC 5-30-20	Repealed	15:12 VA.R. 1791	4/1/99
9 VAC 5-40-880	Amended	15:12 VA.R. 1794	4/1/99
9 VAC 5-40-890	Amended	15:12 VA.R. 1794	4/1/99
9 VAC 5-40-900	Amended	15:12 VA.R. 1795	4/1/99
9 VAC 5-40-940	Amended	15:12 VA.R. 1795	4/1/99
9 VAC 5-40-1040	Amended	15:12 VA.R. 1796	4/1/99
9 VAC 5-40-1660	Amended	15:12 VA.R. 1796	4/1/99
9 VAC 5-40-1670	Amended	15:12 VA.R. 1796	4/1/99
9 VAC 5-40-1690	Amended	15:12 VA.R. 1797	4/1/99
9 VAC 5-40-1750	Amended	15:12 VA.R. 1798	4/1/99
9 VAC 5-40-1770	Amended	15:12 VA.R. 1798	4/1/99
9 VAC 5-40-1780	Amended	15:12 VA.R. 1798	4/1/99
9 VAC 5-40-1810	Amended	15:12 VA.R. 1799	4/1/99
9 VAC 5-40-5350 through 9 VAC 5-40-5480	Repealed	15:12 VA.R. 1793-1794	4/1/99
9 VAC 5-40-5800	Amended	15:12 VA.R. 1801	4/1/99
9 VAC 5-40-5810	Amended	15:12 VA.R. 1802	4/1/99
9 VAC 5-40-5820	Amended	15:12 VA.R. 1804	4/1/99
9 VAC 5-40-5822	Added	15:12 VA.R. 1806	4/1/99
9 VAC 5-40-5824	Added	15:12 VA.R. 1807	4/1/99
9 VAC 5-40-5850	Amended	15:12 VA.R. 1808	4/1/99
9 VAC 5-40-5855	Added	15:12 VA.R. 1811	4/1/99
9 VAC 5-40-5860	Amended	15:12 VA.R. 1812	4/1/99
9 VAC 5-40-5870	Amended	15:12 VA.R. 1815	4/1/99
9 VAC 5-40-5880	Amended	15:12 VA.R. 1816	4/1/99
9 VAC 5-40-5890	Amended	15:12 VA.R. 1820	4/1/99
9 VAC 5-40-5920	Amended	15:12 VA.R. 1822	4/1/99
9 VAC 5-40-5930	Repealed	15:12 VA.R. 1822	4/1/99
9 VAC 5-40-7950 through 9 VAC 5-40-8190	Added	15:21 VA.R. 2669-2690	8/4/99
9 VAC 5-50-400	Amended	15:12 VA.R. 1822	4/1/99
9 VAC 5-50-400	Amended	15:13 VA.R. 1918	4/14/99
9 VAC 5-50-410	Amended	15:12 VA.R. 1823	4/1/99
9 VAC 5-50-410	Amended	15:13 VA.R. 1918	4/14/99
9 VAC 5-50-420	Amended	15:12 VA.R. 1828	4/1/99
9 VAC 5-50-420	Amended	15:13 VA.R. 1924	4/14/99
9 VAC 5-60-60	Amended	15:13 VA.R. 1924	4/14/99
9 VAC 5-60-70	Amended	15:13 VA.R. 1925	4/14/99

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-60-80	Amended	15:13 VA.R. 1926	4/14/99
9 VAC 5-60-90	Amended	15:13 VA.R. 1927	4/14/99
9 VAC 5-60-100	Amended	15:13 VA.R. 1927	4/14/99
9 VAC 5-70-40	Amended	15:12 VA.R. 1791	4/1/99
9 VAC 5-80-30	Repealed	15:11 VA.R. 1717	4/1/99
9 VAC 5-80-2000 through 9 VAC 5-80-2190	Added	15:11 VA.R. 1717-1728	4/1/99
9 VAC 5-80-2010	Erratum	15:13 VA.R. 1955	--
9 VAC 5-200-10	Added	15:13 VA.R. 1931	4/14/99
9 VAC 5-200-20	Added	15:13 VA.R. 1931	4/14/99
9 VAC 5-200-30	Added	15:13 VA.R. 1931	4/14/99
9 VAC 25-151 (Forms)	Amended	15:24 VA.R. 3251	--
9 VAC 25-190-10	Amended	15:16 VA.R. 2187	6/30/99
9 VAC 25-190-20	Amended	15:16 VA.R. 2188	6/30/99
9 VAC 25-190-30	Repealed	15:16 VA.R. 2189	6/30/99
9 VAC 25-190-40	Repealed	15:16 VA.R. 2189	6/30/99
9 VAC 25-190-50	Amended	15:16 VA.R. 2189	6/30/99
9 VAC 25-190-60	Amended	15:16 VA.R. 2189	6/30/99
9 VAC 25-190-70	Amended	15:16 VA.R. 2191	6/30/99
9 VAC 25-192 (Forms)	Amended	15:12 VA.R. 1854	--
9 VAC 25-260-430	Amended	15:21 VA.R. 2691	8/4/99
9 VAC 25-610 (Forms)	Amended	15:21 VA.R. 2728	--
<b>Title 11. Gaming</b>			
11 VAC 10-130-10	Amended	15:26 VA.R. 3449	8/25/99
11 VAC 10-130-20	Amended	15:26 VA.R. 3449	8/25/99
11 VAC 10-130-40	Amended	15:26 VA.R. 3451	8/25/99
11 VAC 10-130-51	Amended	15:26 VA.R. 3451	8/25/99
11 VAC 10-130-60	Amended	15:26 VA.R. 3452	8/25/99
11 VAC 10-130-76	Amended	15:26 VA.R. 3452	8/25/99
11 VAC 10-130-77	Amended	15:26 VA.R. 3452	8/25/99
<b>Title 12. Health</b>			
12 VAC 5-100-10 et seq.	Repealed	15:18 VA.R. 2396	6/23/99
12 VAC 5-405-10 through 12 VAC 5-405-120	Amended	15:20 VA.R. 2593-2597	7/21/99
12 VAC 5-470-10 et seq.	Repealed	15:20 VA.R. 2597	7/21/99
12 VAC 5-600-50	Amended	15:20 VA.R. 2598	7/21/99
12 VAC 5-600-60	Amended	15:20 VA.R. 2598	7/21/99
12 VAC 5-610-10	Repealed	15:24 VA.R. 3188	10/1/99
12 VAC 5-610-20	Amended	15:24 VA.R. 3188	10/1/99
12 VAC 5-610-30	Amended	15:24 VA.R. 3188	10/1/99
12 VAC 5-610-40	Amended	15:24 VA.R. 3188	10/1/99
12 VAC 5-610-50	Amended	15:24 VA.R. 3188	10/1/99
12 VAC 5-610-70	Amended	15:24 VA.R. 3189	10/1/99
12 VAC 5-610-75	Added	15:24 VA.R. 3190	10/1/99
12 VAC 5-610-80	Amended	15:24 VA.R. 3190	10/1/99
12 VAC 5-610-90	Repealed	15:24 VA.R. 3190	10/1/99
12 VAC 5-610-100	Amended	15:24 VA.R. 3190	10/1/99
12 VAC 5-610-110	Repealed	15:24 VA.R. 3190	10/1/99
12 VAC 5-610-120	Amended	15:24 VA.R. 3190	10/1/99
12 VAC 5-610-130	Amended	15:24 VA.R. 3192	10/1/99
12 VAC 5-610-140	Repealed	15:24 VA.R. 3192	10/1/99
12 VAC 5-610-150	Repealed	15:24 VA.R. 3192	10/1/99
12 VAC 5-610-170	Amended	15:24 VA.R. 3192	10/1/99
12 VAC 5-610-180	Repealed	15:24 VA.R. 3193	10/1/99
12 VAC 5-610-190	Amended	15:24 VA.R. 3193	10/1/99
12 VAC 5-610-200	Amended	15:24 VA.R. 3194	10/1/99
12 VAC 5-610-230	Amended	15:24 VA.R. 3195	10/1/99
12 VAC 5-610-250	Amended	15:24 VA.R. 3195	10/1/99



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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-610-255	Added	15:24 VA.R. 3198	10/1/99
12 VAC 5-610-260	Amended	15:24 VA.R. 3198	10/1/99
12 VAC 5-610-270	Amended	15:24 VA.R. 3198	10/1/99
12 VAC 5-610-280	Amended	15:24 VA.R. 3198	10/1/99
12 VAC 5-610-290	Amended	15:24 VA.R. 3199	10/1/99
12 VAC 5-610-300	Amended	15:24 VA.R. 3199	10/1/99
12 VAC 5-610-330	Amended	15:24 VA.R. 3199	10/1/99
12 VAC 5-610-340	Amended	15:24 VA.R. 3199	10/1/99
12 VAC 5-610-360	Amended	15:24 VA.R. 3200	10/1/99
12 VAC 5-610-370	Repealed	15:24 VA.R. 3200	10/1/99
12 VAC 5-610-380	Amended	15:24 VA.R. 3201	10/1/99
12 VAC 5-610-430	Amended	15:24 VA.R. 3202	10/1/99
12 VAC 5-610-440	Amended	15:24 VA.R. 3202	10/1/99
12 VAC 5-610-441 through 12 VAC 5-610-449	Added	15:24 VA.R. 3202-3210	10/1/99
12 VAC 5-610-449.1	Added	15:24 VA.R. 3211	10/1/99
12 VAC 5-610-450	Amended	15:24 VA.R. 3212	10/1/99
12 VAC 5-610-470	Amended	15:24 VA.R. 3212	10/1/99
12 VAC 5-610-480	Amended	15:24 VA.R. 3214	10/1/99
12 VAC 5-610-490	Amended	15:24 VA.R. 3214	10/1/99
12 VAC 5-610-500	Amended	15:24 VA.R. 3215	10/1/99
12 VAC 5-610-510 through 12 VAC 5-610-550	Repealed	15:24 VA.R. 3215-3216	10/1/99
12 VAC 5-610-560	Amended	15:24 VA.R. 3216	10/1/99
12 VAC 5-610-570	Repealed	15:24 VA.R. 3216	10/1/99
12 VAC 5-610-580	Amended	15:24 VA.R. 3217	10/1/99
12 VAC 5-610-591 through 12 VAC 5-610-594	Added	15:24 VA.R. 3217-3218	10/1/99
12 VAC 5-610-596 through 12 VAC 5-610-599	Added	15:24 VA.R. 3218-3222	10/1/99
12 VAC 5-610-599.1 through 12 VAC 5-610-599.4	Added	15:24 VA.R. 3222-3223	10/1/99
12 VAC 5-610-620	Amended	15:24 VA.R. 3223	10/1/99
12 VAC 5-610-650	Amended	15:24 VA.R. 3223	10/1/99
12 VAC 5-610-670	Amended	15:24 VA.R. 3223	10/1/99
12 VAC 5-610-690	Amended	15:24 VA.R. 3223	10/1/99
12 VAC 5-610-700	Amended	15:24 VA.R. 3224	10/1/99
12 VAC 5-610-800	Amended	15:24 VA.R. 3226	10/1/99
12 VAC 5-610-810	Amended	15:24 VA.R. 3226	10/1/99
12 VAC 5-610-815	Added	15:24 VA.R. 3226	10/1/99
12 VAC 5-610-817	Added	15:24 VA.R. 3227	10/1/99
12 VAC 5-610-820	Amended	15:24 VA.R. 3227	10/1/99
12 VAC 5-610-830	Repealed	15:24 VA.R. 3227	10/1/99
12 VAC 5-610-840	Repealed	15:24 VA.R. 3227	10/1/99
12 VAC 5-610-880	Amended	15:24 VA.R. 3227	10/1/99
12 VAC 5-610-890	Amended	15:24 VA.R. 3229	10/1/99
12 VAC 5-610-930	Amended	15:24 VA.R. 3229	10/1/99
12 VAC 5-610-940	Amended	15:24 VA.R. 3232	10/1/99
12 VAC 5-610-950	Amended	15:24 VA.R. 3233	10/1/99
12 VAC 5-610-960	Amended	15:24 VA.R. 3235	10/1/99
12 VAC 5-610-965	Added	15:24 VA.R. 3236	10/1/99
12 VAC 5-610-980	Amended	15:24 VA.R. 3237	10/1/99
12 VAC 5-610-1080	Amended	15:24 VA.R. 3238	10/1/99
12 VAC 5-610-1140	Amended	15:24 VA.R. 3240	10/1/99
12 VAC 5-610-1150	Repealed	15:24 VA.R. 3240	10/1/99
12 VAC 30-10-140 emer	Amended	15:13 VA.R. 1942	7/1/99-6/30/00
12 VAC 30-10-150 emer	Amended	15:13 VA.R. 1943	7/1/99-6/30/00
12 VAC 30-10-441	Added	15:26 VA.R. 3454	10/13/99
12 VAC 30-10-490	Amended	15:26 VA.R. 3454	10/13/99
12 VAC 30-10-680	Amended	15:26 VA.R. 3454	10/13/99
12 VAC 30-40-290	Amended	15:18 VA.R. 2396	7/1/99

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-50-30 emer	Amended	15:13 VA.R. 1943	7/1/99-6/30/00
12 VAC 30-50-70 emer	Amended	15:13 VA.R. 1944	7/1/99-6/30/00
12 VAC 30-50-100	Amended	15:24 VA.R. 3243	9/15/99
12 VAC 30-50-105	Amended	15:24 VA.R. 3245	9/15/99
12 VAC 30-50-140	Amended	15:24 VA.R. 3247	9/15/99
12 VAC 30-50-210	Amended	15:23 VA.R. 3037	9/1/99
12 VAC 30-50-220	Amended	15:25 VA.R. 3362	10/1/99
12 VAC 30-50-229.1	Amended	15:17 VA.R. 2326	6/9/99
12 VAC 30-50-229.1	Erratum	15:18 VA.R. 2411	--
12 VAC 30-50-320 emer	Added	15:13 VA.R. 1944	7/1/99-6/30/00
12 VAC 30-50-520	Amended	15:23 VA.R. 3039	9/1/99
12 VAC 30-50-570	Amended	15:18 VA.R. 2398	7/1/99
12 VAC 30-80-170	Amended	15:18 VA.R. 2399	7/1/99
12 VAC 30-90-340 emer	Added	15:22 VA.R. 2931	7/1/99-6/30/00
12 VAC 30-120-61 through 12 VAC 30-120-69 emer	Added	15:13 VA.R. 1944-1947	7/1/99-6/30/00
12 VAC 30-120-360	Amended	15:18 VA.R. 2400	7/1/99
12 VAC 30-120-370	Amended	15:18 VA.R. 2401	7/1/99
12 VAC 30-120-370	Erratum	15:19 VA.R. 2502	--
12 VAC 30-140-10 through 12 VAC 30-140-570	Added	15:26 VA.R. 3456-3465	10/13/99
<b>Title 13. Housing</b>			
13 VAC 5-51-20 emer	Amended	15:14 VA.R. 2069	3/10/99-3/9/00
13 VAC 5-51-130 emer	Amended	15:14 VA.R. 2070	3/10/99-3/9/00
13 VAC 5-51-135 emer	Added	15:14 VA.R. 2070	3/10/99-3/9/00
13 VAC 5-51-136 emer	Added	15:14 VA.R. 2070	3/10/99-3/9/00
13 VAC 5-61-40	Amended	15:22 VA.R. 2881	8/18/99
13 VAC 5-61-200 emer	Amended	15:14 VA.R. 2071	3/10/99-3/9/00
13 VAC 5-61-440 emer	Amended	15:14 VA.R. 2072	3/10/99-3/9/00
13 VAC 10-40-20	Amended	15:12 VA.R. 1829	1/28/99
13 VAC 10-40-130	Amended	15:12 VA.R. 1832	1/28/99
13 VAC 10-40-160	Amended	15:12 VA.R. 1834	1/28/99
13 VAC 10-40-210	Amended	15:12 VA.R. 1835	1/28/99
13 VAC 10-40-220	Amended	15:12 VA.R. 1835	1/28/99
13 VAC 10-40-230	Amended	15:12 VA.R. 1835	1/28/99
13 VAC 10-60-10 et seq.	Repealed	15:18 VA.R. 2403	5/1/99
13 VAC 10-100-10 et seq.	Repealed	15:18 VA.R. 2403	5/1/99
13 VAC 10-110-10 et seq.	Repealed	15:18 VA.R. 2403	5/1/99
13 VAC 10-170-10 et seq.	Repealed	15:18 VA.R. 2404	5/1/99
13 VAC 10-180-10	Amended	15:14 VA.R. 2050	3/10/99
13 VAC 10-180-50	Amended	15:14 VA.R. 2051	3/10/99
13 VAC 10-180-60	Amended	15:14 VA.R. 2053	3/10/99
13 VAC 10-180-70	Amended	15:14 VA.R. 2061	3/10/99
13 VAC 10-180-90	Amended	15:14 VA.R. 2063	3/10/99
<b>Title 14. Insurance</b>			
14 VAC 5-170-20	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-30	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-40	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-50	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-60	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-70	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-80	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-90	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-100	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-105	Added	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-110	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-120	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-130	Amended	15:15 VA.R. 2136	4/26/99

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14 VAC 5-170-140	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-150	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-160	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-170	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170-180	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170 Appendix A	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170 Appendix B	Amended	15:15 VA.R. 2136	4/26/99
14 VAC 5-170 Appendix C	Amended	15:15 VA.R. 2136	4/26/99
<b>Title 16. Labor and Employment</b>			
16 VAC 15-20-10 et seq.	Repealed	15:17 VA.R. 2330	6/15/99
16 VAC 15-21-10 through 16 VAC 15-21-30	Added	15:17 VA.R. 2330	6/15/99
16 VAC 25-90-1910.6	Amended	15:21 VA.R. 2702	8/15/99
16 VAC 25-90-1910.16	Amended	15:21 VA.R. 2709	8/15/99
16 VAC 25-90-1910.94	Amended	15:21 VA.R. 2705	8/15/99
16 VAC 25-90-1910.108	Repealed	15:21 VA.R. 2705	8/15/99
16 VAC 25-90-1910.122	Added	15:21 VA.R. 2702	8/15/99
16 VAC 25-90-1910.123	Added	15:21 VA.R. 2702	8/15/99
16 VAC 25-90-1910.124	Added	15:21 VA.R. 2702	8/15/99
16 VAC 25-90-1910.125	Added	15:21 VA.R. 2702	8/15/99
16 VAC 25-90-1910.126	Added	15:21 VA.R. 2702	8/15/99
16 VAC 25-90-1910.146	Amended	15:21 VA.R. 2707	8/15/99
16 VAC 25-90-1910.178	Amended	15:21 VA.R. 2709	8/15/99
16 VAC 25-100-1915.120	Added	15:21 VA.R. 2709	8/15/99
16 VAC 25-120-1917.1	Amended	15:21 VA.R. 2709	8/15/99
16 VAC 25-130-1918.1	Amended	15:21 VA.R. 2709	8/15/99
16 VAC 25-175-1926.602	Amended	15:21 VA.R. 2709	8/15/99
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 10-20-90	Amended	15:24 VA.R. 3248	10/1/99
18 VAC 10-20-170	Amended	15:24 VA.R. 3248	10/1/99
18 VAC 10-20-280	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-400	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-470	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-520	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-580	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-630	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 25-21-70	Amended	15:26 VA.R. 3468	11/1/99
18 VAC 50-22-100	Amended	15:12 VA.R. 1837	5/1/99
18 VAC 50-22-140	Amended	15:12 VA.R. 1837	5/1/99
18 VAC 50-30-10	Amended	15:19 VA.R. 2458	7/9/99
18 VAC 50-30-20	Amended	15:19 VA.R. 2460	7/9/99
18 VAC 50-30-30	Amended	15:19 VA.R. 2460	7/9/99
18 VAC 50-30-40	Amended	15:19 VA.R. 2461	7/9/99
18 VAC 50-30-50	Amended	15:19 VA.R. 2461	7/9/99
18 VAC 50-30-60	Amended	15:19 VA.R. 2462	7/9/99
18 VAC 50-30-70	Amended	15:19 VA.R. 2463	7/9/99
18 VAC 50-30-80	Amended	15:19 VA.R. 2463	7/9/99
18 VAC 50-30-90	Amended	15:12 VA.R. 1838	5/1/99
18 VAC 50-30-90	Amended	15:19 VA.R. 2463	7/9/99
18 VAC 50-30-100	Amended	15:19 VA.R. 2464	7/9/99
18 VAC 50-30-120	Amended	15:19 VA.R. 2464	7/9/99
18 VAC 50-30-130	Amended	15:19 VA.R. 2464	7/9/99
18 VAC 50-30-140	Amended	15:19 VA.R. 2465	7/9/99
18 VAC 50-30-150	Amended	15:19 VA.R. 2465	7/9/99
18 VAC 50-30-170	Amended	15:19 VA.R. 2465	7/9/99
18 VAC 50-30-190	Amended	15:19 VA.R. 2465	7/9/99
18 VAC 50-30-200	Amended	15:19 VA.R. 2466	7/9/99

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 55-22-310	Amended	15:26 VA.R. 3476	11/1/99
18 VAC 60-20-20 emer	Amended	15:11 VA.R. 1729	1/21/99-1/20/00
18 VAC 60-20-20	Amended	15:21 VA.R. 2712	8/5/99
18 VAC 60-20-30 emer	Amended	15:11 VA.R. 1729	1/21/99-1/20/00
18 VAC 65-20-70 emer	Amended	15:12 VA.R. 1846	2/2/99-2/1/00
18 VAC 65-20-120 emer	Amended	15:12 VA.R. 1846	2/2/99-2/1/00
18 VAC 65-20-130 emer	Amended	15:12 VA.R. 1846	2/2/99-2/1/00
18 VAC 65-20-435 emer	Added	15:12 VA.R. 1846	2/2/99-2/1/00
18 VAC 70-20-30	Amended	15:18 VA.R. 2404	7/1/99
18 VAC 75-20-10	Amended	15:18 VA.R. 2405	6/23/99
18 VAC 75-20-30	Repealed	15:18 VA.R. 2405	6/23/99
18 VAC 75-20-40	Repealed	15:18 VA.R. 2405	6/23/99
18 VAC 75-20-50	Repealed	15:18 VA.R. 2405	6/23/99
18 VAC 75-20-60	Amended	15:18 VA.R. 2405	6/23/99
18 VAC 75-20-70	Amended	15:18 VA.R. 2406	6/23/99
18 VAC 75-20-90	Amended	15:18 VA.R. 2406	6/23/99
18 VAC 76-10-30	Amended	15:17 VA.R. 2331	4/15/99
18 VAC 85-40-10 emer	Amended	15:11 VA.R. 1730	1/21/99-1/20/00
18 VAC 85-40-25 emer	Added	15:11 VA.R. 1731	1/21/99-1/20/00
18 VAC 85-40-40 emer	Amended	15:11 VA.R. 1731	1/21/99-1/20/00
18 VAC 85-40-45 emer	Added	15:11 VA.R. 1731	1/21/99-1/20/00
18 VAC 85-40-50 emer	Amended	15:11 VA.R. 1731	1/21/99-1/20/00
18 VAC 85-40-60 emer	Amended	15:11 VA.R. 1731	1/21/99-1/20/00
18 VAC 85-40-65 emer	Added	15:11 VA.R. 1731	1/21/99-1/20/00
18 VAC 85-40-70 emer	Amended	15:11 VA.R. 1731	1/21/99-1/20/00
18 VAC 85-40-80 emer	Amended	15:11 VA.R. 1732	1/21/99-1/20/00
18 VAC 85-80-10 emer	Amended	15:12 VA.R. 1847	1/29/99-1/28/00
18 VAC 85-80-11 emer	Added	15:12 VA.R. 1848	1/29/99-1/28/00
18 VAC 85-80-12 emer	Added	15:12 VA.R. 1848	1/29/99-1/28/00
18 VAC 85-80-35 emer	Added	15:12 VA.R. 1848	1/29/99-1/28/00
18 VAC 85-80-40 through 18 VAC 85-80-90 emer	Amended	15:12 VA.R. 1848-1849	1/29/99-1/28/00
18 VAC 85-110-100	Amended	15:21 VA.R. 2713	8/5/99
18 VAC 85-110-110	Amended	15:21 VA.R. 2713	8/5/99
18 VAC 85-110-130	Amended	15:21 VA.R. 2713	8/5/99
18 VAC 90-20-300 emer	Amended	15:11 VA.R. 1733	1/26/99-1/25/00
18 VAC 90-20-330	Amended	15:19 VA.R. 2467	7/7/99
18 VAC 90-20-420 through 18 VAC 90-20-460 emer	Added	15:11 VA.R. 1733-1735	1/26/99-1/25/00
18 VAC 100-20-10	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-40	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-50	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-60	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-70	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 105-30-10	Amended	15:12 VA.R. 1839	3/31/99
18 VAC 105-30-20	Amended	15:12 VA.R. 1839	3/31/99
18 VAC 105-30-30	Amended	15:12 VA.R. 1839	3/31/99
18 VAC 105-30-35	Added	15:12 VA.R. 1839	3/31/99
18 VAC 105-30-40	Amended	15:12 VA.R. 1840	3/31/99
18 VAC 105-30-50	Repealed	15:12 VA.R. 1840	3/31/99
18 VAC 105-30-60	Amended	15:12 VA.R. 1840	3/31/99
18 VAC 105-30-70	Amended	15:12 VA.R. 1840	3/31/99
18 VAC 105-30-90	Amended	15:12 VA.R. 1841	3/31/99
18 VAC 105-30-100	Amended	15:12 VA.R. 1841	3/31/99
18 VAC 105-30-110	Repealed	15:12 VA.R. 1841	3/31/99
18 VAC 105-30-120	Amended	15:12 VA.R. 1841	3/31/99
18 VAC 110-20-10	Amended	15:26 VA.R. 3482	10/13/99
18 VAC 110-20-135	Added	15:26 VA.R. 3484	10/13/99

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 110-20-140	Amended	15:26 VA.R. 3484	10/13/99
18 VAC 110-20-690	Added	15:26 VA.R. 3485	10/13/99
18 VAC 110-20-700	Added	15:26 VA.R. 3485	10/13/99
18 VAC 110-20-710	Added	15:26 VA.R. 3485	10/13/99
18 VAC 110-20-720	Added	15:26 VA.R. 3486	10/13/99
18 VAC 110-20-130	Erratum	15:12 VA.R. 1865	--
18 VAC 110-20-490	Amended	15:21 VA.R. 2713	8/4/99
18 VAC 120-30-100	Amended	15:26 VA.R. 3487	11/1/99
18 VAC 120-40-10 through 18 VAC 120-40-430	Added	15:21 VA.R. 2715-2727	8/5/99
18 VAC 130-20-130	Amended	15:14 VA.R. 2066	5/1/99
18 VAC 135-20-80	Amended	15:18 VA.R. 2408	7/1/99
18 VAC 135-20-120	Amended	15:18 VA.R. 2408	7/1/99
18 VAC 135-20-140	Amended	15:18 VA.R. 2408	7/1/99
18 VAC 135-20-370	Amended	15:18 VA.R. 2408	7/1/99
18 VAC 155-20-40	Amended	15:13 VA.R. 1938	5/1/99
18 VAC 160-20-40	Amended	15:24 VA.R. 3490	11/1/99
<b>Title 19. Public Safety</b>			
19 VAC 30-20 (Forms)	Added	15:14 VA.R. 2078-2079	--
19 VAC 30-70 Appendix A	Amended	15:25 VA.R. 3364	7/29/99
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-400-151	Added	15:19 VA.R. 2473	10/1/99
20 VAC 5-400-151	Erratum	15:21 VA.R. 2732	--
<b>Title 21. Securities and Retail Franchising</b>			
21 VAC 5-10-20	Amended	15:22 VA.R. 2883	7/1/99
21 VAC 5-10-40	Amended	15:22 VA.R. 2883	7/1/99
21 VAC 5-20-10	Amended	15:22 VA.R. 2884	7/1/99
21 VAC 5-20-70	Amended	15:22 VA.R. 2884	7/1/99
21 VAC 5-20-90	Amended	15:22 VA.R. 2884	7/1/99
21 VAC 5-20-150	Amended	15:22 VA.R. 2885	7/1/99
21 VAC 5-20-160	Amended	15:22 VA.R. 2885	7/1/99
21 VAC 5-20-220	Amended	15:22 VA.R. 2885	7/1/99
21 VAC 5-20-280	Amended	15:22 VA.R. 2886	7/1/99
21 VAC 5-20-300	Amended	15:22 VA.R. 2892	7/1/99
21 VAC 5-20-330	Added	15:22 VA.R. 2893	7/1/99
21 VAC 5-30-40	Amended	15:22 VA.R. 2894	7/1/99
21 VAC 5-30-90	Added	15:22 VA.R. 2894	7/1/99
21 VAC 5-40-50	Amended	15:22 VA.R. 2895	7/1/99
21 VAC 5-40-100	Amended	15:22 VA.R. 2895	7/1/99
21 VAC 5-40-130	Added	15:22 VA.R. 2897	7/1/99
21 VAC 5-40-140	Added	15:22 VA.R. 2897	7/1/99
21 VAC 5-40-150	Added	15:22 VA.R. 2898	7/1/99
21 VAC 5-80-30	Amended	15:22 VA.R. 2898	7/1/99
21 VAC 5-80-60	Amended	15:22 VA.R. 2899	7/1/99
21 VAC 5-80-70	Amended	15:22 VA.R. 2899	7/1/99
21 VAC 5-80-90	Amended	15:22 VA.R. 2899	7/1/99
21 VAC 5-80-100	Amended	15:22 VA.R. 2899	7/1/99
21 VAC 5-80-110	Amended	15:22 VA.R. 2899	7/1/99
21 VAC 5-80-130	Amended	15:22 VA.R. 2899	7/1/99
21 VAC 5-80-160	Amended	15:22 VA.R. 2900	7/1/99
21 VAC 5-80-180	Amended	15:22 VA.R. 2905	7/1/99
21 VAC 5-80-200	Amended	15:22 VA.R. 2905	7/1/99
21 VAC 5-80-210	Amended	15:22 VA.R. 2907	7/1/99
21 VAC 5-80-220	Amended	15:22 VA.R. 2908	7/1/99
21 VAC 5-85-10 (Forms)	Repealed	15:22 VA.R. 2909	7/1/99
21 VAC 5-100-10	Amended	15:22 VA.R. 2910	7/1/99
21 VAC 5-110-20	Amended	15:22 VA.R. 2918	7/1/99

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
21 VAC 5-110-30	Amended	15:22 VA.R. 2918	7/1/99
21 VAC 5-110-40	Amended	15:22 VA.R. 2918	7/1/99
21 VAC 5-110-50	Amended	15:22 VA.R. 2919	7/1/99
21 VAC 5-110-60	Amended	15:22 VA.R. 2919	7/1/99
21 VAC 5-110-70	Amended	15:22 VA.R. 2919	7/1/99
21 VAC 5-110-85	Added	15:22 VA.R. 2919	7/1/99
21 VAC 5-120 (Forms)	Amended	15:17 VA.R. 2333-2334	--
21 VAC 5-120-30	Amended	15:22 VA.R. 2911	7/1/99
21 VAC 5-120-110	Repealed	15:22 VA.R. 2911	7/1/99
<b>Title 22. Social Services</b>			
22 VAC 40-35-10 emer	Amended	15:19 VA.R. 2474	5/19/99-5/18/00
22 VAC 40-35-126 emer	Added	15:19 VA.R. 2477	5/19/99-5/18/00
22 VAC 40-35-127 emer	Added	15:19 VA.R. 2477	5/19/99-5/18/00
22 VAC 40-35-128 emer	Added	15:19 VA.R. 2477	5/19/99-5/18/00
22 VAC 40-50-10 et seq.	Repealed	15:24 VA.R. 3250	9/15/99
22 VAC 40-110 (Forms)	Amended	15:23 VA.R. 3043	--
22 VAC 40-180 (Forms)	Amended	15:23 VA.R. 3043	--
22 VAC 40-190-10 emer	Amended	15:19 VA.R. 2480	5/19/99-5/18/00
22 VAC 40-190-20 emer	Amended	15:19 VA.R. 2482	5/19/99-5/18/00
22 VAC 40-190-25 emer	Added	15:19 VA.R. 2482	5/19/99-5/18/00
22 VAC 40-190-30 emer	Amended	15:19 VA.R. 2483	5/19/99-5/18/00
22 VAC 40-190-40 emer	Amended	15:19 VA.R. 2483	5/19/99-5/18/00
22 VAC 40-190-50 emer	Amended	15:19 VA.R. 2484	5/19/99-5/18/00
22 VAC 40-190-60 emer	Amended	15:19 VA.R. 2485	5/19/99-5/18/00
22 VAC 40-190-70 emer	Amended	15:19 VA.R. 2485	5/19/99-5/18/00
22 VAC 40-190-80 emer	Added	15:19 VA.R. 2486	5/19/99-5/18/00
22 VAC 40-190-90 emer	Added	15:19 VA.R. 2487	5/19/99-5/18/00
22 VAC 40-190-100 emer	Added	15:19 VA.R. 2487	5/19/99-5/18/00
22 VAC 40-190-110 emer	Added	15:19 VA.R. 2487	5/19/99-5/18/00
22 VAC 40-190-120 emer	Added	15:19 VA.R. 2488	5/19/99-5/18/00
22 VAC 40-190-130 emer	Added	15:19 VA.R. 2488	5/19/99-5/18/00
22 VAC 40-190-140 emer	Added	15:19 VA.R. 2489	5/19/99-5/18/00
22 VAC 40-190-150 emer	Added	15:19 VA.R. 2489	5/19/99-5/18/00
22 VAC 40-325-10 and 22 VAC 40-325-20 emer	Added	15:12 VA.R. 1849-1850	4/1/99-3/31/00
22 VAC 40-680-65	Repealed	15:17 VA.R. 2331	6/9/99
22 VAC 40-680-66	Repealed	15:17 VA.R. 2332	6/9/99
22 VAC 40-830-10 et seq.	Repealed	15:22 VA.R. 2929	8/18/99
22 VAC 40-840-10 et seq.	Repealed	15:22 VA.R. 2929	8/18/99
22 VAC 40-850-10 et seq.	Repealed	15:22 VA.R. 2929	8/18/99
22 VAC 40-860-10 et seq.	Repealed	15:22 VA.R. 2929	8/18/99
22 VAC 40-870-10 et seq.	Repealed	15:22 VA.R. 2930	8/18/99
<b>Title 23. Taxation</b>			
23 VAC 10-110-225 through 23 VAC 10-110-229 emer	Added	15:12 VA.R. 1851-1853	2/4/99-2/3/00
23 VAC 10-110-228	Erratum	15:14 VA.R. 2081	--
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-250-10	Amended	15:21 VA.R. 2727	6/14/99
24 VAC 30-350-10	Amended	15:13 VA.R. 1939	2/22/99
24 VAC 30-550-10	Amended	15:22 VA.R. 2930	6/22/99

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

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

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to consider amending regulations entitled: **8 VAC 20-110-10 et seq. Regulations Governing Pupil Accounting Records.** The purpose of the proposed action is to permit local school divisions to use "off-the-shelf" software for recording pupil enrollment and attendance and to clarify the authority of local school boards to count pupils "present" when participating in activities and events approved by local boards. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 22.1-259 of the Code of Virginia.

Public comments may be submitted until October 29, 1999.

**Contact:** Gerald H. Mathews, Principal Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2950, FAX (804) 371-8978 or e-mail [jmathews@mail.vak12ed.edu](mailto:jmathews@mail.vak12ed.edu).

VA.R. Doc. No. R00-7; Filed September 8, 1999, 11:08 a.m.



## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **Intravenous Infusion Therapy: 12 VAC 30-50-10 et seq. Amount, Duration and Scope of Medical and Remedial Care Services and 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of the proposed action is to propose a consistent service coverage methodology and payment methodology for all intravenous infusion therapy services, without regard to patients' places of residence. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until October 27, 1999, to Marianne Rollings, R.Ph., Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VA.R. Doc. No. R00-1; Filed August 27, 1999, 1:37 p.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **DRG Payment Methodology: 12 VAC 30-50-10 et seq. Methods and Standards for Establishing Payment Rates-Inpatient Hospital Care; and 12 VAC 30-70-10 et seq. Amount, Duration and Scope of Medical and Remedial Care Services.** The purpose of the proposed action is to revise the permanent inpatient hospital reimbursement and covered services regulations to fully implement the DRG payment methodology and the prior authorization and medical necessity requirements. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until November 10, 1999, to Stan Fields, Director of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VA.R. Doc. No. R00-16; Filed September 22, 1999, 11:48 a.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL REGULATION

### BOARD OF PHARMACY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled: **18 VAC 110-20-10 et seq. Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to respond to a petition for rulemaking regarding the use of robotic technology in health care delivery systems. The agency intends to hold a public hearing on the proposed regulation after publication.

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# Notices of Intended Regulatory Action

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Statutory Authority: § 54.1-2400 and Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until October 27, 1999.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911 or FAX (804) 662-9943.

VA.R. Doc. No. R00-3; Filed August 31, 1999, 11:37 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled: **18 VAC 110-30-10 et seq. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.** The purpose of the proposed action is to consider amendments to regulations governing physicians who are authorized to sell drugs from their practices in order to bring them into compliance with current law and technology. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until October 27, 1999.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911 or FAX (804) 662-9943.

VA.R. Doc. No. R00-4; Filed August 31, 1999, 11:37 a.m.

## BOARD OF SOCIAL WORK

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Work intends to consider amending regulations entitled: **18 VAC 140-20-10 et seq. Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to establish requirements for continuing education in compliance with a statutory mandate and to establish an inactive licensure status for licensees who are not practicing in Virginia. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-3708 of the Code of Virginia.

Public comments may be submitted until October 27, 1999.

**Contact:** Janet Delorme, Deputy Executive Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TTY ☎.

VA.R. Doc. No. R00-2; Filed August 31, 1999, 11:37 a.m.

## TITLE 19. PUBLIC SAFETY

### DEPARTMENT OF STATE POLICE

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to consider amending regulations entitled: **19 VAC 30-40-10 et seq. Standards and Specifications for the Stickers or Decals Used by Cities, Counties and Towns in Lieu of License Plates.** The purpose of the proposed action is to amend the regulation to conform to legislative changes to § 46.2-1052 of the Code of Virginia. The agency does not intend to hold a public hearing on the proposed action after publication.

Statutory Authority: § 46.2-1052 of the Code of Virginia.

Public comments may be submitted until December 1, 1999.

**Contact:** Captain W. Steven Flaherty, Safety Officer, Department of State Police, Safety Division, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 378-3472 or FAX (804) 378-3487.

VA.R. Doc. No. R00-10; Filed September 20, 1999, 11:26 a.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to consider promulgating regulations entitled: **19 VAC 30-65-10 et seq. Regulations Relating to Safety Inspector Certification.** The purpose of the proposed regulation is to ensure that the safety equipment on motor vehicles is not defective, thus reducing motor vehicle crashes caused by defective equipment. The regulation will describe the process and testing procedures that a mechanic must complete before being certified as a safety inspector. The agency does not intend to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 46.2-1163 and 46.2-1166 of the Code of Virginia.

Public comments may be submitted until December 1, 1999.

**Contact:** Captain W. Steven Flaherty, Safety Officer, Department of State Police, Safety Division, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 378-3472 or FAX (804) 378-3487.

VA.R. Doc. No. R00-9; Filed September 20, 1999, 11:26 a.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to consider promulgating regulations entitled: **19 VAC 30-66-10 et seq. Regulations Relating to Official Inspection Station Appointment.** The purpose of the proposed action is to establish the standards that garages must meet before



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# Notices of Intended Regulatory Action

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being appointed as official inspection stations. The agency does not intend to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 46.2-1163 and 46.2-1166 of the Code of Virginia.

Public comments may be submitted until December 1, 1999.

**Contact:** Captain W. Steven Flaherty, Safety Officer, Department of State Police, Safety Division, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 378-3472 or FAX (804) 378-3487.

VA.R. Doc. No. R00-11; Filed September 20, 1999, 11:26 a.m.

## † Withdrawal of Notices of Intended Regulatory Action

Notice is hereby given that the Department of State Police has WITHDRAWN the Notices of Intended Regulatory Action for **19 VAC 30-150-10 et seq., Standards and Specifications for Over-Dimensional Warning Lights**, and **19 VAC 30-160-10 et seq., Standards and Specifications for Farm Tractors in Excess of 108 Inches in Width**, which were published in 12:1 VA.R. 7 October 2, 1995.

**Contact:** Captain W. Steven Flaherty, Safety Officer, Department of State Police, Safety Division, P. O. Box 27472, Richmond, VA 23261-7472, telephone (804) 378-3472 or FAX (804) 378-3487.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to consider amending regulations entitled: **19 VAC 30-150-10 et seq. Regulations Relating to Standards and Specifications for Overdimensional Warning Lights**. The purpose of the proposed action is to make the regulation more consistent with the Society of Automotive Engineers' (SAE) standards and to make minor technical and administrative changes. The agency does not intend to hold a public hearing on the proposed action after publication.

Statutory Authority: § 46.2-1026 of the Code of Virginia.

Public comments may be submitted until October 27, 1999.

**Contact:** Captain W. Steven Flaherty, Safety Officer, Department of State Police, Safety Division, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 378-3472 or FAX (804) 378-3487.

VA.R. Doc. No. R00-6; Filed September 3, 1999, 2:42 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to consider amending regulations entitled: **19 VAC 30-160-10 et seq. Regulations Relating to Standards and Specifications for Safety Lights for Farm Tractors in Excess of 108 Inches in Width**. The purpose of the proposed action is to make the regulation more consistent

with the Society of Automotive Engineers' (SAE) standards and to make minor technical and administrative changes. The agency does not intend to hold a public hearing on the proposed action after publication.

Statutory Authority: § 46.2-1102 of the Code of Virginia.

Public comments may be submitted until October 27, 1999.

**Contact:** Captain W. Steven Flaherty, Safety Officer, Department of State Police, Safety Division, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 378-3472 or FAX (804) 378-3487.

VA.R. Doc. No. R00-5; Filed September 3, 1999, 2:42 p.m.

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## TITLE 22. SOCIAL SERVICES

### DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Deaf and Hard-of-Hearing intends to consider amending regulations entitled: **22 VAC 20-30-10 et seq. Regulations Governing Interpreter Services for the Deaf and Hard-of-Hearing**. The purpose of the proposed action is to (i) make general language changes to improve clarity and reduce redundancy with the Code of Virginia, (ii) include a clear statement of fees, (iii) clarify confidentiality provisions, (iv) replace VQAS Level 1 with a Novice Interpreter Designation, and (v) add a provision for customer input/grievance. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 63.1-85.4:1 of the Code of Virginia.

Public comments may be submitted until November 12, 1999.

**Contact:** Leslie G. Hutcheson, Regulatory Coordinator, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229-5012, telephone (804) 662-9703 V/TTY, FAX (804) 662-9718 or toll-free 1-800-552-7917/TTY ☎

VA.R. Doc. No. R00-12; Filed September 22, 1999, 8:28 a.m.

## STATE BOARD OF SOCIAL SERVICES

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to consider repealing regulations entitled: **22 VAC 40-900-10 et seq. Community Services Block Grant Guidelines**. The purpose of the proposed action is to repeal outdated and excessive regulation. This regulation will be replaced by new regulations which are the minimum required

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## Notices of Intended Regulatory Action

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

Statutory Authority: § 2.1-587 et seq. of the Code of Virginia.

Public comments may be submitted until November 10, 1999.

**Contact:** Phyl Parrish, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1895.

VA.R. Doc. No. R00-14; Filed September 22, 1999, 10:21 a.m.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to consider promulgating regulations entitled: **22 VAC 40-901-10 et seq. Community Services Block Grant Program.** The purpose of the proposed regulation is to provide the minimum regulation required by the Code of Virginia for the Community Services Block Grant Program and that which is necessary for the effective and efficient administration of the program. The agency does not intend to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 2.1-587 et seq. of the Code of Virginia.

Public comments may be submitted until November 10, 1999.

**Contact:** Phyl Parrish, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1895.

VA.R. Doc. No. R00-13; Filed September 22, 1999, 10:21 a.m.



# PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



## PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

This section gives notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

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

## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

**November 17, 1999 – 10 a.m.** – Public Hearing  
Main Street Centre, 600 East Main Street, Lower Level,  
Conference Room, Richmond, Virginia.

**December 10, 1999** – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution; Special Provisions for Existing Sources, New and Modified Sources, and Hazardous Air Pollutant Sources (Rev. D97): 9 VAC 5-10-10 et seq. General Definitions; 9 VAC 5-20-10 et seq. General Provisions; 9 VAC 5-40-10 et seq. Existing Stationary Sources; 9 VAC 5-50-10 et seq. New and Modified Stationary Sources; and 9 VAC 5-60-10 et seq. Hazardous Air Pollutant Sources.** Special Provisions for Existing Stationary Sources, New and Modified Stationary Sources, and Hazardous Air Pollutant Sources which are in Chapters 40, 50 and 60 of the board's regulations address issues such as: applicability, compliance, emission testing, monitoring, notification, records and reporting. The proposed amendments update certain requirements in the provisions to be consistent with new federal requirements and EPA policy and address concerns identified pursuant to the review of existing regulations mandated by Executive Order 15 (94) as well as changes made to federal regulations since that review.

**Request for Comments:** The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

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

**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

regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation 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 Air Regulatory Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
3019 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 562-6700

Lynchburg Satellite Office  
Department of Environmental Quality  
7705 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
4411 Early Road  
Harrisonburg, Virginia 22801  
Ph: (540) 574-7800

Fredericksburg Satellite Office  
Department of Environmental Quality  
806 Westwood Office Park  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Northern Regional Office  
Department of Environmental Quality  
13901 Crown Court  
Woodbridge, Virginia  
Ph: (703) 583-3800

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road

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# Public Comment Periods - Proposed Regulations

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Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
5636 Southern Boulevard  
Virginia Beach, Virginia  
Ph: (757) 518-2000

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

Public comments may be submitted until 4:30 p.m. December 10, 1999, to the Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Mary E. Major, Environmental Program Manager, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TTY ☎

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

**December 10, 1999** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **12 VAC 5-165-10 et seq. Regulations for the Repacking of Crab Meat.** These regulations establish criteria by which the Virginia crab industry can safely repack both domestic and foreign crab meat. Repacking involves the removal of crab meat picked and packed at another location and placing it in another container bearing the name of the packer.

Statutory Authority: §§ 28.2-801 and 28.2-803 of the Code of Virginia.

**Contact:** Keith Skiles, Program Manager, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-7937 or FAX (804) 786-5567.

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## TITLE 16. LABOR AND EMPLOYMENT

### VIRGINIA WORKERS' COMPENSATION COMMISSION

**December 14, 1999** - 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 Workers' Compensation Commission intends to adopt regulations entitled: **16 VAC 30-11-10 et seq. Public Participation**

**Guidelines.** The purpose of the proposed regulation is to define the Workers' Compensation Commission's process for soliciting input of interested parties in the formation and development of regulations.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

**Contact:** Sam Lupica, Staff Attorney, Virginia Workers' Compensation Commission, 1000 DMV Dr., Richmond, VA 23220, telephone (804) 367-0438, FAX (804) 367-9740, toll-free 1-877-664-2566, or (804) 367-8600/TTY ☎

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL REGULATION

### CEMETERY BOARD

**October 20, 1999 - 1 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

**December 10, 1999** - 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 Cemetery Board intends to adopt regulations entitled: **18 VAC 47-10-10 et seq. Public Participation Guidelines.** The purpose of these regulations are to assure that the public is provided adequate notice concerning each opportunity for participation in the development, promulgation, and review of regulations affecting the operation of licensed cemeteries in the Commonwealth of Virginia.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

**Contact:** Eric Olson, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8510, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

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**October 20, 1999 - 1 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

**December 10, 1999** - 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 Cemetery Board intends to adopt regulations entitled: **18 VAC 47-20-10 et seq. Cemetery Board Rules and Regulations.** The purpose of the proposed regulations is to outline requirements placed on cemetery companies and their sales personnel concerning their licensing reporting and enforcement of the regulations and the Cemetery Act (Chapter 23.1 of Title 54.1 of the Code of Virginia).

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## Public Comment Periods - Proposed Regulations

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Statutory Authority: §§ 54.1-201 and 54.1-2313 of the Code of Virginia.

**Contact:** Eric Olson, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8510, FAX (804) 367-2475 or (804) 367-9753/TTY ☎



### TITLE 22. SOCIAL SERVICES

#### DEPARTMENT OF REHABILITATIVE SERVICES

**December 19, 1999** - 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 Rehabilitative Services intends to adopt regulations entitled: **22 VAC 30-40-10 et seq. Protection of Participants in Human Research.** The purpose of the proposed regulation is to establish a human research review committee and requirements for obtaining participant voluntary informed consent in human research conducted or authorized by the department, Woodrow Wilson Rehabilitation Center, centers for independent living, and sheltered workshops.

Statutory Authority: §§ 51.5-5.1 and 51.5-14 of the Code of Virginia.

**Contact:** Elizabeth Smith, Policy and Planning Manager, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K300, Richmond, VA 23288-0300, telephone (804) 662-7071, FAX (804) 662-7696, toll-free 1-800-552-5019 or 1-800-464-9950/TTY ☎



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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see Information Page.

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## Symbol Key

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

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **Regulations for the Control and Abatement of Air Pollution: Special Provisions for Existing Sources, New and Modified Sources, and Hazardous Air Pollutant Sources (Rev. D97).**

**9 VAC 5-10-10 et seq. General Definitions (amending 9 VAC 5-10-20).**

**9 VAC 5-20-10 et seq. General Provisions (amending 9 VAC 5-20-180).**

**9 VAC 5-40-10 et seq. Existing Stationary Sources (amending 9 VAC 5-40-10, 9 VAC 5-40-20, 9 VAC 5-40-30, 9 VAC 5-40-40, and 9 VAC 5-40-50).**

**9 VAC 5-50-10 et seq. New and Modified Stationary Sources (amending 9 VAC 5-50-10, 9 VAC 5-50-20, 9 VAC 5-50-30, 9 VAC 5-50-40, and 9 VAC 5-50-50).**

**9 VAC 5-60-10 et seq. Hazardous Air Pollutant Sources (amending 9 VAC 5-60-10, 9 VAC 5-60-20, and 9 VAC 5-60-30).**

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

Public Hearing Date: November 17, 1999 - 10 a.m.

Public comments may be submitted until December 10, 1999.

(See Calendar of Events section for additional information)

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (Chapter 13 of Title 10.1 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Purpose: The purpose of the regulation is ensure compliance with emissions standards and other requirements by stationary sources in order to protect public health and welfare by establishing the protocols and provisions which address applicability, compliance, emission testing, monitoring, and recordkeeping and reporting for existing sources, new and modified sources, and sources of hazardous air pollutants. The proposed amendments are being made to update certain requirements in the provisions cited above to be consistent with federal requirements and other changes identified pursuant to the review of existing regulations mandated by Executive Order 15 (94).

Substance: The major provisions of the proposal are summarized below. The changes are accompanied with citations to the appropriate sections of the regulation, including cross-referenced citations when the proposed regulation is intended to replace an existing regulation.

1. The term "malfunction" has been changed to clarify that failure of air pollution control equipment caused by

poor maintenance or careless operation will not be considered a "malfunction." (9 VAC 5-10-20)

2. The term "reference method" has been modified to include a reference to Appendix M of the Code of Federal Regulations. This appendix includes new test methods approved by EPA for inclusion into the state implementation plan. (9 VAC 5-10-20)

3. The term "volatile organic compound" has been modified to conform to the EPA definition with regard to substances exempted from being identified as a volatile organic compound (VOC). (9 VAC 5-10-20)

4. Changes have been made to some other definitions to make them consistent with recent amendments to other regulations of the board. (9 VAC 5-10-20)

5. Provisions have been changed to be consistent with recommendations made pursuant to the review of existing regulations mandated by Executive Order 15 (94). (9 VAC 5-20-180 B, C, D, G)

6. Provisions pertaining to malfunctions for hazardous air pollution sources have been revised because they are not consistent with requirements pertaining to sources which meet federal NESHAPS and MACT standards for hazardous air pollutants. (9 VAC 5-20-180 F)

7. Provisions for compliance have been changed to allow the use of alternative equivalent methods to determine compliance with federal requirements only when approved by the Administrator of EPA. (9 VAC 5-40-20 A 2)

8. Provisions governing compliance with opacity standards by existing stationary sources have been changed to require the following:

a. Opacity observations will be conducted concurrently with the initial emission test following certain criteria and conditions. (9 VAC 5-40-20 A 3, G 1)

b. Opacity observations will be reported to the board. (9 VAC 5-40-20 G 2)

c. A continuous opacity monitor may be used provided specific protocols are followed. (9 VAC 5-40-20 G 4, 5)

d. A waiver may be granted by the board to a source that fails to meet any applicable opacity standard provided that specific conditions are met. (9 VAC 5-40-20 G 6, 7, 8)

9. Provisions have been added to allow the use of any credible evidence or information for determining compliance certifications or violations. (9 VAC 5-40-20 J)

10. Provisions have been added specifying that appropriate reference test methods will be used for

emission testing unless the board, in advance, deems otherwise using criteria specified in the regulation. (9 VAC 5-40-30 A)

11. Provisions have been added specifying excess emissions during periods of startup, shutdown or malfunction will not be considered a violation during emission testing unless otherwise specified in the applicable standard. (9 VAC 5-40-30 C)

12. Provisions have been added requiring that sampling ports will be adequate for applicable test methods. (9 VAC 5-40-30 F 1)

13. Provisions have been added that require continuous monitoring systems meet the performance specifications specified in 40 CFR Part 60. (9 VAC 5-40-40 A)

14. Provisions have been added that require continuous opacity monitoring systems to be subject to a performance evaluation and conform to EPA performance specifications. (9 VAC 5-40-40 D)

15. Provisions have been modified to require that the board have no less than a 30-day notification for opacity compliance observations. (9 VAC 5-40-50 A 3,4)

16. Provisions have been added that require semiannual reporting for owners that install a continuous monitoring system unless more frequent reporting is required by a specific emission standard or the board determines that more frequent reporting is required. (9 VAC 5-40-50 C)

17. Provisions have been added providing that certain general provisions of 40 CFR Part 60 are to be implemented under the authority of this part. (9 VAC 5-50-10 E)

18. Provisions for compliance have been changed to allow the use of alternative equivalent methods to determine compliance with federal requirements only when approved by the Administrator of EPA. (9 VAC 5-50-20 A 2)

19. Provisions governing compliance with opacity standards by new and modified stationary sources have been changed to require the following:

a. Opacity observations shall be conducted concurrently with the initial emission test following certain criteria and conditions. (9 VAC 5-50-20 A 3,G 1)

b. Opacity observations shall be reported to the board. (9 VAC 5-50-20 G 2)

c. A continuous opacity monitor may be used provided specific protocols are followed. (9 VAC 5-50-20 G 4,5)

d. A waiver may be granted by the board to a source that fails to meet any applicable opacity standard provided that specific conditions are met. (9 VAC 5-50-20 G 6,7,8)

20. Provisions have been added to allow the use of any credible evidence or information for determining compliance certifications or violations. (9 VAC 5-50-20 I)

21. Provisions have been added specifying that appropriate reference test methods will be used for performance testing unless the board, in advance, deems otherwise using criteria specified in the regulation. (9 VAC 5-50-30 A)

22. Provisions have been added specifying excess emissions during periods of startup, shutdown or malfunction will not be considered a violation during emission testing unless otherwise specified in the applicable standard. (9 VAC 5-50-30 C)

23. Provisions have been added requiring that sampling ports will be adequate for applicable test methods. (9 VAC 5-50-30 F 1)

24. Provisions have been added that require continuous monitoring systems meet the performance specifications specified in 40 CFR Part 60. (9 VAC 5-50-40 A)

25. Provisions have been added that require continuous opacity monitoring systems to be subject to a performance evaluation and conform to EPA performance specifications. (9 VAC 5-50-40 D)

26. Provisions have been modified to require that the board have no less than a 30-day notification for opacity compliance observations. (9 VAC 5-50-50 A 6,7)

27. Provisions have been added that require semiannual reporting for owners that install a continuous monitoring system unless more frequent reporting is required by a specific emission standard or the board determines that more frequent reporting is required. (9 VAC 5-50-50 C)

28. Provisions have been added providing that certain general provisions of 40 CFR Part 61 and 40 CFR Part 63 are to be implemented under the authority of this part. (9 VAC 5-60-10 B,C)

29. Provisions for compliance have been changed to allow the use of alternative equivalent methods to determine compliance with federal requirements only when approved by the Administrator of EPA. (9 VAC 5-60-20 A 2)

30. Provisions have been added to allow the use of any credible evidence or information for determining compliance certifications or violations. (9 VAC 5-60-20 E)

31. Provisions have been added specifying that appropriate reference test methods shall be used for emission testing unless the board, in advance, deems otherwise using criteria specified in the regulation. (9 VAC 5-60-30 A)

32. Provisions have been added specifying excess emissions during periods of startup, shutdown or malfunction shall not be considered a violation during emission testing unless otherwise specified in the applicable standard. (9 VAC 5-60-30 C)

33. Provisions have been added requiring that sampling ports shall be adequate for applicable test methods. (9 VAC 5-60-30 E 1)

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# Proposed Regulations

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**Issues:** The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are discussed below.

1. Public: The primary advantage to the general public, including affected sources, is that public health and welfare will be protected with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. In addition, the sources will have clearly specified test methods and procedures for determining compliance with the emissions standards. There are no disadvantages to the public.

2. Department: The advantages for the department are three-fold. First, the regulation will provide a clear enforcement basis for determining compliance with the emission standards and other applicable requirements. Second, the regulation provides procedures for continuous or process parameter monitoring of emissions for determining compliance with the emission standards and, third, the use of stack height of the facility or any other dispersion technique as a method to avoid compliance with emission limits has been prohibited. There are no disadvantages to the department.

## Department of Planning and Budget's Economic Impact

**Analysis:** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation updates certain requirements in the affected chapters in order to make those chapters consistent with federal requirements and to make changes identified pursuant to the review of existing regulations under Executive Order 15 (1994).

Among the changes are revisions to definitions of some terms, including "malfunction," "reference method," and "volatile organic compound." Provisions pertaining to malfunctions of hazardous air pollution sources have been revised. Also, provisions pertaining to compliance with opacity standards for existing and new sources have been changed, while some have been retained despite differences with federal regulations. Also, certain enforcement provisions have also been changed or added.

Estimated economic impact. There are primarily three economic effects arising from this revision to the air pollution regulations that need to be examined. The first concerns the effect of the change of the definition of volatile organic compounds (VOC). The second concerns the changes to opacity monitoring requirements for new sources, and the

continuation of prior requirements for existing sources. The third effect concerns enforcement of violations of opacity standards.

This revision adds a number of compounds to the list of chemicals that are not regulated as VOC. According to federal tests, these compounds "have been determined to have negligible photochemical reactivity" (9 VAC 5-10-10). Included in the additions to this list are acetone, perchloroethylene, 1,1,1,2-tetrafluoroethane (HFC-134a), and a number of other chemicals which have been added in this revision.

There are some very significant consequences of adding compounds to this list. If a chemical is on this list, businesses using that chemical would not have to count emissions of that chemical in its measurements of VOC emissions. As a result, consider a business that is having difficulties in controlling its VOC emissions because of a problem with emissions of a certain chemical. If this list contained a possible substitute chemical, the business could then alter its processes to use the listed chemical rather than one that is not listed. For instance, if a business is having difficulties because measured VOC emissions from some solvent were too large, the business could consider substituting acetone as the solvent for its processes. Because emissions from acetone do not count toward measured VOC emissions, this business might then be able to achieve compliance with VOC emissions standards. This list then provides significant opportunities to enable businesses to achieve compliance by substituting chemicals that are not included in measured VOC emissions for chemicals that are included.

Thus, this list of chemicals which are not considered as VOC will result in some process changes by businesses using substitutable chemicals. These process changes will enable these businesses to achieve compliance with VOC emissions standards. Because the chemicals on this list are understood to have negligible photochemical reactivity, these process changes also should not lead to detrimental health consequences. The inclusion of new chemicals to this list should thus save businesses compliance costs, while not causing harmful health effects. This inclusion should therefore have positive economic benefits for the Commonwealth.

The second effect concerns opacity monitoring requirements. In general, the purpose of this revision to the air pollution regulations is to adapt the current regulation to changes in federal regulations that have occurred since the current regulation was adopted. Two of the changes to federal regulations concern opacity monitoring requirements. One change concerns the frequency of sampling, analyzing, and data recording, and the other concerns the number of data points used to calculate six-minute opacity averages.

The current regulation requires continuous monitoring systems to sample and analyze data once every 15 seconds, and to record data once every six minutes (9 VAC 5-10-20, Appendix J, subsection II C 1). The new federal regulation requires sampling, analyzing, and recording once every 10 seconds (40 DFR Part 51, Appendix P, § 3.4.1). Meanwhile, the current regulation requires that six-minute opacity averages be calculated from 24 or more data points (9 VAC



5-10-20, Appendix J, subsection II F), while the new federal regulation requires averages to be calculated from 36 or more data points (40 CFR 60.13(h)).

Representatives of several existing sources expressed their concern that adoption of the new federal requirement would be very costly. DEQ then discussed the matter with the EPA. EPA frequently gives states some flexibility to regulate existing sources, and this is what happened here (Conversation with Mary E. Major, DEQ, 3-25-99). DEQ suggested that because the current requirements were adopted in the State Implementation Plan, which had been approved by the EPA, that these requirements would supplant the federal mandate.

While this was allowed for existing sources, the EPA did require that DEQ include these new federal regulations into the revisions to the air pollution regulations for new sources. These changes were implemented in 9 VAC 5-50-10 E.

Certain effects will arise from the differing treatment of existing sources and new sources. Because the federal requirements are stricter, air pollution due to emissions from existing sources may be increased by not applying these requirements to existing sources. However, the differences between the requirements are considered to be very small, so the magnitude of this effect should also be very small (Conversation with Mary E. Major).

Meanwhile, it might also be thought that new sources might have a barrier to entry because they would be required to comply with the stricter federal requirements while existing sources would only have to comply with the less-strict current requirements. However, to determine whether this is actually a barrier-to-entry, we should ask whether new sources would be better off if they were subject instead to the less-strict current requirements. The primary cost component affected by this difference would be the cost to purchase the continuous monitoring equipment that performs these measurements and recordings. The equipment that is currently for sale for new sources is designed to comply with the tighter federal requirements. New sources would not be able to save money by purchasing equipment designed to meet the less strict standard, because any equipment currently for sale that met the current state requirements would also meet the tighter federal requirements. Thus, new sources would gain no benefit by not being held to the tighter federal requirement. As a result, the differential opacity monitoring requirements for existing and new sources would not present a barrier-to-entry for new sources.

The primary economic impact of these differential monitoring requirements concerns the avoidance of reprogramming costs that existing sources would have to undertake if they were forced to comply with the tighter federal requirements. A large proportion of existing sources have continuous monitoring equipment that was designed to comply with the current monitoring requirements, rather than the new federal requirements. Adjusting this equipment to comply with the tighter federal requirements would require considerable reprogramming. This reprogramming and other associated changes would be very costly to these sources. As discussed above, we would expect little reduction in air pollution from these adjustments, and this reduction would come at a high

cost. Because of this, and also because there does not seem to be any barrier-to-entry consequence, it, therefore, seems beneficial for the Commonwealth to allow existing sources to continue to be subject to the less stringent current opacity monitoring requirements.

The third effect concerns enforcement of these air pollution regulations. Under these regulations, a facility whose actual emissions exceed its permitted emissions is not always penalized for this excess. These revisions provide two specific exceptions for facilities that exceed allowable emissions. In one (9 VAC 5-40-20 G 6, 7, 8), sources that fail opacity standards may be granted a waiver if certain conditions are met. These conditions include a showing that the air pollution control equipment was being operated correctly, and that the equipment could not have been adjusted to meet the applicable opacity standard (9 VAC 5-40-20 G 7). Another revision specifies that excess emissions will not be considered a violation if they occur during periods of startup, shutdown, or malfunction (9 VAC 5-40-30 C). For a case to be considered a malfunction, the failure of the pollution control equipment must not have been caused by poor maintenance or careless operation (9 VAC 5-10-20). These two revisions suggest that a facility should not be penalized when they are found to be not at fault for the excess emissions.

These two revisions are consistent to the approach generally used in enforcing air pollution regulations. Under this approach, which I will label as a "fault-based" enforcement system, a typical enforcement response to an episode where a facility has excessive emissions is to send a "notice-of-violation" (NOV) letter to the facility. The facility then has to demonstrate that they are doing all they can to remedy their excess, and to get emissions back under the standard within a reasonable time period. Under this approach, enforcement efforts also can serve an educational purpose, as DEQ staff aid the facility in its attempt to correct its emissions levels. Financial penalties are infrequently used as an enforcement device.

The result of this enforcement system is that as long as facilities can demonstrate they are not at fault for excess emissions, they will not be subject to significant financial penalties. These penalties may be waived, or the excess may not even be considered a violation.

In contrast, under a "no-fault-based" enforcement system, an episode of excess emissions would automatically lead to some financial penalty. The question of whether a facility was at fault for the excess would become irrelevant, because the facility would be charged the penalty whether or not it was at fault. It must be noted that such a no-fault system would not be consistent with EPA regulations (Conversation with Mario Jorquera, Chief of Stationary Source Enforcement, EPA, 3-26-99).

Would a no-fault-based enforcement system be more efficient than a fault-based system? Three factors suggest that a no-fault based system would be more efficient. One factor is the notion that under a fault-based system, facilities do not have the proper incentive to take steps to initially prevent and quickly respond to episodes of violations. Consider a facility adding a piece of new pollution control equipment. It might be

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very costly for the facility to ensure that the piece is initialized properly, so that it operates correctly when it is started up. Under the fault-based system, excess emissions during startup are not considered a violation, so the facility would not have any incentive to ensure that the piece of equipment was initially operating correctly. Under a no-fault-based system, this facility would have to pay a penalty for excess emissions during startup, so there would be a strong incentive to ensure that the piece of equipment is operated correctly during startup.

After the startup period, there would be less of an incentive for the facility to quickly adjust the piece of equipment under the fault-based system. Under the fault-based system, as long as the facility would make the adjustments within a reasonable time-frame, it would not be financially penalized. Under a no-fault system, the facility would be financially penalized until the adjustments were made. The facility, therefore, has a strong incentive to make the adjustments as quickly as possible.

In a similar manner, consider a facility with an existing piece of equipment that was originally operating correctly, but then begins to generate excess emissions. Under the fault-based system, the facility would again have to make reasonable efforts to correct the problem within a reasonable amount of time. If it could do so, the facility would not be penalized. Under a no-fault system, the facility again would be financially penalized until the adjustments were made. The facility, therefore, again has a strong incentive to make the adjustments as quickly as possible.

A second factor would be the difference between the cost for the Commonwealth to enforce a fault-based system, versus the cost of enforcing a no-fault-based system. When enforcing a fault-based system, DEQ must analyze the particular procedures in practice at a violating facility. DEQ must then compare those procedures with accepted procedures to determine whether the facility was at fault for the excess emissions. If the facility is not at fault, DEQ then needs to work with the facility to ensure that emissions return to their proper level. This can be a very long and costly process. In contrast, under a no-fault-based system, when a facility had excess emissions, that facility would then be penalized, without any direct enforcement action by DEQ. Enforcement costs under this system would be focused on guaranteeing the accuracy of the monitoring of emissions.

The significance of the third factor is more subtle. This factor is the notion that, even with a perfectly functioning fault-based system (where the above two effects were not present), a fault-based system still leads to inefficiencies because it will lead to over-production of output from facilities whose emissions are more difficult to control. This notion is similar to the argument made by Professor Steven Shavell of Harvard Law School when he discusses the advantages of a strict liability system (a no-fault-based system) over a negligence system (a fault-based system) for accidents (see Steven Shavell, "Strict Liability versus Negligence," *Journal of Legal Studies*, vol. 9, beginning at page 1 (1980)).

Consider an accident where a car strikes a pedestrian, and the only damage that results is physical pain to the pedestrian. Further assume that the more miles a car is

driven by a driver, then the higher the likelihood that the driver will strike some pedestrian. Under a fault-based system, as long as the driver is taking reasonable precautions, the driver will not be penalized for this accident. Because the driver does not bear any cost from this accident then, he will tend to drive more miles and increase the likelihood that some accident will occur. Under a no-fault-based system, the driver will pay for the cost of the accident regardless of whether he was at fault. He will then reduce the number of miles he drives to reduce the likelihood that he will have to pay the no-fault penalty. Because he reduces the number of miles he drives, the likelihood of an accident is also reduced.

In a similar manner, consider two different facilities generating air emissions. In one facility, emissions control is very precise: the chance of equipment malfunctioning during one year is only 0.0001% (one-ten-thousandth of a percent). In the other facility, emissions control is very imprecise: the chance of a malfunction is 50%. Under a fault based system, with both facilities taking appropriate precautions, neither facility will have to pay a penalty, even though it is very likely that the second facility will have a malfunction, which will lead to excess emissions at that facility. Under a no-fault system, a facility will pay a penalty whenever a malfunction occurs, whether or not they were at fault. In this system then, the first facility will rarely pay a penalty, while the second facility will pay a penalty 50% of the time. These differences can lead to significant differences in production patterns.

To understand this, consider a business that is trying to decide whether to build a facility of the first type or of the second type. Assume that when an equipment malfunction occurs, it causes \$1,000,000 of damage to the environment. We will assume that once the facility is built, it will be run as well as possible, but that a facility of the first type still will have a malfunction with a 0.0001% chance, while a facility of the second type still will have a malfunction with a 50% chance. Before considering any emissions penalties, the business will make a profit of \$900,000 per year on the first type of facility, and a profit of \$1,000,000 on the second type.

Under a fault-based system, the business will assume that it will take appropriate precautions to prevent malfunctions. As a result, the business will not expect to ever face a penalty whether it chooses a facility of the first type or the second. If it faces no penalties, it will choose to build the facility of the second type because it offers more profits.

However, this decision will have detrimental effects on the environment and on social welfare. The second type of facility is much more likely to have a malfunction, so it will be much more likely that the environment will be harmed. Also, society as a whole will be harmed. To consider the effects on society as a whole, we should subtract the expected harm to the environment from the profits made by the business. For the first type of facility, the expected harm to the environment is one dollar ( $\$1=0.0001\%*\$1,000,000$ ), while the expected harm of the second facility is \$500,000 ( $=50\%*\$1,000,000$ ). When we subtract these from the profits associated with each type of facility, we see that social welfare from the first type of facility is \$899,999 while for the second type of facility, social welfare is \$500,000 [See chart below]. This means that society would be much better off building the first type of

facility rather than the second. However, the incentives created by a fault-based system would lead the business to instead choose to build a facility of the second type.

Facility Type	Likelihood of malfunction (causing \$1,000,000 harm)	Expected Harm to Environment	Profits to Business	Social Welfare (= Profits - Expected Harm)
Type 1	0.0001%	\$1	\$900,000	\$899,999
Type 2	50%	\$500,000	\$1,000,000	\$500,000

Under a no-fault-based system, we will assume that a facility that causes some harm to the environment will be penalized an amount equal to the value of that harm. Consequently, the expected penalty if a facility of the first type is built would be \$1, and the expected penalty for the second type would be \$500,000. Faced with these expected penalties, the business would instead choose to build a facility of the first type, and this decision is consistent with what is good for the environment and for society as a whole.

This example is exaggerated and simplified. However, it does clarify the notion that under a fault-based system, we will end up building and using too many facilities where it is more likely that we will encounter malfunctions. This factor and the other two discussed above, the inadequate incentives to prevent and quickly respond to violations and the higher costs of enforcing a fault-based system, suggest that the Commonwealth might achieve some efficiency gains by moving from a fault-based enforcement system to a no-fault-based system.

On the other hand, in addition to its prohibition by federal regulations, a no-fault-based enforcement system would face other obstacles. Existing businesses would certainly feel that moving to such a system, where they would be charged financial penalties, would place undue burdens on them. Also, determining socially optimal penalties can be difficult. Nonetheless, the advantages of a no-fault-based enforcement system does suggest that further discussion could be useful.

Businesses and entities affected. Affected businesses include all stationary sources subject to regulations within the Commonwealth. According to the Department of Environmental quality, there are currently 2,239 regulated sources. Of these, 500 are designated as "major" sources. Major sources are more likely than other sources to be affected by these changes.

Localities particularly affected. Stationary sources are located throughout the Commonwealth although their concentration is higher in the metropolitan areas of Northern Virginia, Richmond, and Norfolk/Virginia Beach.

Projected impact on employment. There should not be any particular effect on employment.

Effects on the use and value of private property. As noted above, this regulation does enable facilities to reduce compliance costs by substituting alternative chemicals that are not considered VOC. Other changes due to this regulation include increased flexibility in the use of alternative equivalent methods to determine compliance and emission

testing. These changes should also reduce costs of compliance for facilities subject to these air pollution regulations.

Summary of analysis. In general, these revisions to the air pollution control regulations have been drafted in order to update certain requirements and definitions to coincide with recent federal regulations. There are three central economic impacts that arise from these revisions. One is that many businesses will adjust their processes so that they can utilize chemicals that are not considered as VOC. In doing so, these businesses will reduce their compliance costs, without generating negative health effects. Also, these revisions add stricter opacity monitoring requirements for new sources, but keep the old requirements for existing sources. Keeping the old requirements will save existing sources substantial resources, and this should not cause significant reductions in air quality. These effects suggest that this regulation will have positive economic benefits for the Commonwealth.

The third effect concerns changes that further the fault-based character of the enforcement system for air pollution control. While existing federal regulations would prohibit the implementation of a no-fault-based enforcement system, the considerable advantages of a no-fault-based system suggest that further discussion about the effectiveness and efficiency of the current fault-based enforcement system would be appropriate.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget prepared an economic impact analysis for the proposal as required by § 9-6.14:7.1 G of the Administrative Process Act. The Department of Environmental Quality takes no issue with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*Special Provisions for Existing Stationary Sources, New and Modified Stationary Sources, and Hazardous Air Pollutant Sources which are in Chapters 40, 50 and 60 of the board's regulations address issues such as: applicability, compliance, emission testing, monitoring, notification, records and reporting. The proposed amendments update certain requirements in the provisions to be consistent with new federal requirements and EPA policy and address concerns identified pursuant to the review of existing regulations mandated by Executive Order 15 (94) as well as changes made to federal regulations since that review.*

CHAPTER 10.  
GENERAL DEFINITIONS.

**9 VAC 5-10-20. Terms defined.**

"Actual emissions rate" means the actual rate of emissions of a pollutant from an emissions unit. In general actual emissions shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the most recent two-year period or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of

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normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

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

*"Affected facility"* means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated. *The term affected facility includes any affected source.*

*"Air pollution"* means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

*"Air quality"* means the specific measurement in the ambient air of a particular air pollutant at any given time.

*"Air quality control region"* means any area designated as such in 9 VAC 5-20-200.

~~*"Air quality maintenance area"* means any area which, due to current air quality or projected growth rate or both, may have the potential for exceeding any ambient air quality standard set forth in 9 VAC 5 Chapter 30 (9 VAC 5-30-10 et seq.) within a subsequent 10-year period and designated as such in 9 VAC 5-20-203.~~

*"Alternative method"* means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

*"Ambient air"* means that portion of the atmosphere, external to buildings, to which the general public has access.

*"Ambient air quality standard"* means any primary or secondary standard designated as such in 9 VAC 5 Chapter 30 (9 VAC 5-30-10 et seq.).

*"Board"* means the State Air Pollution Control Board or its designated representative.

*"Class I area"* means any prevention of significant deterioration area (i) in which virtually any deterioration of existing air quality is considered significant and (ii) designated as such in 9 VAC 5-20-205.

*"Class II area"* means any prevention of significant deterioration area (i) in which any deterioration of existing air quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in 9 VAC 5-20-205.

*"Class III area"* means any prevention of significant deterioration area (i) in which deterioration of existing air

quality to the levels of the ambient air quality standards is permitted and (ii) designated as such in 9 VAC 5-20-205.

*"Continuous monitoring system"* means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

*"Control program"* means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.
2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.
3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.
4. The date by which final compliance is to be achieved.

*"Criteria pollutant"* means any pollutant for which an ambient air quality standard is established under 9 VAC 5 Chapter 30 (9 VAC 5-30-10 et seq.)

*"Day"* means a 24-hour period beginning at midnight.

*"Delayed compliance order"* means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to comply with any requirement contained in the applicable State Implementation Plan.

*"Department"* means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

*"Director"* or *"executive director"* means the director of the Virginia Department of Environmental Quality or a designated representative.

*"Dispersion technique"*

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:
  - a. Using that portion of a stack which exceeds good engineering practice stack height;
  - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. The preceding sentence does not include:

a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

b. The merging of exhaust gas streams where:

(1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

c. Smoke management in agricultural or silvicultural prescribed burning programs;

d. Episodic restrictions on residential woodburning and open burning; or

e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

*"Emergency"* means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

*"Emission limitation"* means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any

requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

*"Emission standard"* means any provision of 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) or 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.) which prescribes an emission limitation, or other requirements that control air pollution emissions.

*"Emissions unit"* means any part of a stationary source which emits or would have the potential to emit any air pollutant.

*"Equivalent method"* means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

*"Excess emissions"* means emissions of air pollutant in excess of an emission standard.

*"Excessive concentration"* is defined for the purpose of determining good engineering practice (GEP) stack height under subdivision 3 of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of 9 VAC 5-80-20, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable state

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implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

3. For sources seeking credit after January 12, 1979, for a stack height determined under subdivision 2 of the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subdivision 2 of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Existing source" means any stationary source other than a new source or modified source.

"Facility" means something that is built, installed or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means 42 USC § 7401 et seq., 91 Stat 685.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, ~~including and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator.~~ Federally enforceable limitations and conditions include, but are not limited to, the following:

~~1. Any requirement approved by the administrator pursuant to the provisions of § 111 or § 112 of the federal Clean Air Act;~~

~~2. Any applicable source-specific or source-category emission limit or requirement in an implementation plan;~~

~~3. Any permit requirements established pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.), with the exception of terms and conditions established to address applicable state requirements; and~~

~~4. Any other applicable federal requirement.~~

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to

emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP).

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that EPA has legal authority to create.

"Good engineering practice" or "GEP," with reference to the height of the stack, means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;

2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.),

$$Hg = 2.5H,$$

provided the owner produces evidence that this equation was actually relied on in establishing an emission limitation;

b. For all other stacks,

$$Hg = H + 1.5L,$$

where:

Hg = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

*"Hazardous air pollutant"* means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

*"Implementation plan"* means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

*"Isokinetic sampling"* means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

*"Locality"* means a city, town, county or other public body created by or pursuant to state law.

*"Maintenance area"* means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan and designated as such in 9 VAC 5-20-203.

*"Malfunction"* means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person. *Failures that are caused in part by poor maintenance or careless operation are not malfunctions.*

*"Metropolitan statistical area"* means any area designated as such in 9 VAC 5-20-202.

*"Monitoring device"* means the total equipment used to measure and record (if applicable) process parameters.

*"Nearby"* as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

2. For conducting demonstrations under subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed two miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

*"Nitrogen oxides"* means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

*"Nonattainment area"* means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in 9 VAC 5-20-204.

*"One hour"* means any period of 60 consecutive minutes.

*"One-hour period"* means any period of 60 consecutive minutes commencing on the hour.

*"Organic compound"* means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic disulfide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

*"Owner"* means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

*"Particulate matter"* means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

*"Particulate matter emissions"* means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

*"PM<sub>10</sub>"* means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

*"PM<sub>10</sub> emissions"* means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

*"Performance test"* means a test for determining emissions from new or modified sources.

*"Person"* means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

*"Pollutant"* means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

*"Potential to emit"* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted,

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stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

*"Prevention of significant deterioration area"* means any area not designated as a nonattainment area in 9 VAC 5-20-204 for a particular pollutant and designated as such in 9 VAC 5-20-205.

*"Proportional sampling"* means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

*"Public hearing"* means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

*"Reference method"* means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9 VAC 5 Chapter 30 (9 VAC 5-30-10 et seq.): The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.
2. For emission standards in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) and 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.): *Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60.*
3. For emission standards in 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.): *Appendix B of 40 CFR Part 61.*

*"Regional director"* means the regional director of an administrative region of the Department of Environmental Quality or a designated representative.

*"Regulation of the board"* means any regulation adopted by the State Air Pollution Control Board under any provision of the Code of Virginia.

*"Regulations for the Control and Abatement of Air Pollution"* means 9 VAC 5 Chapters 10 (9 VAC 5-10-10 et seq.) through 80 (9 VAC 5-80-10 et seq.).

*"Reid vapor pressure"* means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials, Standard D323-82, Test Method for Vapor Pressure of Petroleum Products (Reid Method) (see 9 VAC 5-10-21).

*"Run"* means the net period of time during which an emission sampling is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

*"Shutdown"* means the cessation of operation of an affected facility for any purpose.

*"Source"* means any one or combination of the following: buildings, structures, facilities, installations, articles,

machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

*"Stack"* means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

*"Stack in existence"* means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or
2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

*"Standard conditions"* means a temperature of 20°C (68°F) and a pressure of 760 mm of Hg (29.92 inches of Hg).

*"Standard of performance"* means any provision of 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) which prescribes an emission limitation or other requirements that control air pollution emissions.

*"Startup"* means the setting in operation of an affected facility for any purpose.

*"State enforceable"* means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to 9 VAC 5-20-110; requirements within any applicable regulation, order, consent agreement or variance; and any permit requirements established pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.)

*"State Implementation Plan"* means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

*"Stationary source"* means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9 VAC 5-10-21).

*"These regulations"* means 9 VAC 5 Chapters 10 (9 VAC 5-10-10 et seq.) through 80 (9 VAC 5-80-10 et seq.).

*"Total suspended particulate (TSP)"* means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.



"*True vapor pressure*" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) Publication 2517, Evaporation Loss from External Floating-Roof Tanks (see 9 VAC 5-10-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

"*Urban area*" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in 9 VAC 5-20-201.

"*Vapor pressure*," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in API Publication 2517, Evaporation Loss from External Floating-Roof Tanks (see 9 VAC 5-10-21).

"*Virginia Air Pollution Control Law*" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"*Volatile organic compound*" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following:

- a. Methane;
- b. Ethane;
- c. Methylene chloride (dichloromethane);
- d. 1,1,1-trichloroethane (methyl chloroform);
- e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
- f. Trichlorofluoromethane (CFC-11);
- g. Dichlorodifluoromethane (CFC-12);
- h. Chlorodifluoromethane (H CFC-22);
- i. Trifluoromethane (H FC-23);
- j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);
- k. Chloropentafluoroethane (CFC-115);
- l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
- m. 1,1,1,2-tetrafluoroethane (HFC-134a);
- n. 1,1-dichloro 1-fluoroethane (HCFC-141b);
- o. 1-chloro 1,1-difluoroethane (HCFC-142b);
- p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
- q. Pentafluoroethane (HFC-125);
- r. 1,1,2,2-tetrafluoroethane (HFC-134);
- s. 1,1,1-trifluoroethane (HFC-143a);
- t. 1,1-difluoroethane (HFC-152a);

- u. Parachlorobenzotrifluoride (PCBTF);
  - v. Cyclic, branched, or linear completely methylated siloxanes;
  - w. Acetone;
  - x. Perchloroethylene (tetrachloroethylene; and
  - y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
  - z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
  - aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
  - bb. Difluoromethane (HFC-32);
  - cc. Ethylfluoride (HFC-161);
  - dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
  - ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);
  - ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);
  - gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);
  - hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);
  - ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
  - jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);
  - kk. Chlorofluoromethane (HCFC-31);
  - ll. 1 chloro-1-fluoroethane (HCFC-151a);
  - mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
  - nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>);
  - oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OCH<sub>3</sub>);
  - pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>);
  - qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>);
  - rr. Methyl acetate and perfluorocarbon compounds which fall into these classes:
    - (1) Cyclic, branched, or linear, completely fluorinated alkanes;
    - (2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
    - (3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
    - (4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured by the appropriate reference method in

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accordance with the provisions of 9 VAC 5-40-30 or 9 VAC 5-50-30, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

3. As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the board may require an owner to provide monitoring or testing methods and results demonstrating, to the satisfaction of the board, the amount of negligibly-reactive compounds in the emissions of the source.

4. Exclusion of the above compounds in this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

## CHAPTER 20. GENERAL PROVISIONS.

### **9 VAC 5-20-180. Facility and control equipment maintenance or malfunction.**

A. At all times, including periods of startup, shutdown and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment or monitoring equipment, in a manner consistent with good air pollution control practice of minimizing emissions.

B. In case of shutdown or bypassing, or both, of air pollution control equipment for necessary scheduled maintenance which results in excess emissions for more than one hour, the intent to shut down such equipment shall be reported to the board and local air pollution control agency, if any, at least 24 hours prior to the planned shutdown. Such prior notice shall include, but is not limited to, the following:

1. Identification of the specific facility to be taken out of service as well as its location and permit or registration number;
2. The expected length of time that the air pollution control equipment will be out of service;
3. The nature and quantity of emissions of air pollutants likely to occur during the shutdown period; and

4. Measures that will be taken to minimize the length of the shutdown ~~or~~ *and* to negate the effect of the outage of the air pollution control equipment.

C. In the event that any affected facility or related air pollution control equipment fails or malfunctions in such a manner that may cause excess emissions for more than one hour, the owner shall, as soon as practicable but no later than ~~four~~ *six* daytime business hours *after the malfunction is discovered*, notify the board by facsimile transmission, telephone or telegraph of such failure or malfunction and shall within two weeks provide a written statement giving all pertinent facts, including the estimated duration of the breakdown. Owners subject to the requirements of 9 VAC 5-40-50 C and 9 VAC 5-50-50 C are not required to provide the written statement prescribed in this ~~paragraph~~ *subsection* for facilities subject to the monitoring requirements of 9 VAC 5-40-40 and 9 VAC 5-50-40. When the condition causing the failure or malfunction has been corrected and the *facility or control* equipment is again in operation, the owner shall notify the board.

D. In the event that the breakdown period cited in subsection C of this section exists or is expected to exist for 30 days or more, the owner shall, ~~within 30 days of~~ *expeditiously as possible but no later than 30 days after* the failure or malfunction and semi-monthly thereafter until the failure or malfunction is corrected, submit to the board a written report containing the following:

1. Identification of the specific facility that is affected as well as its location and permit or registration number;
2. The expected length of time that the air pollution control equipment will be out of service;
3. The nature and quantity of air pollutant emissions likely to occur during the breakdown period;
4. Measures to be taken to reduce emissions to the lowest amount practicable during the breakdown period;
5. A statement as to why the owner was unable to obtain repair parts or perform repairs which would allow compliance with the provisions of these regulations within 30 days of the malfunction or failure;
6. An estimate, with reasons given, of the duration of the shortage of repairs or repair parts which would allow compliance with the provisions of these regulations; and
7. Any other pertinent information as may be requested by the board.

E. The provisions of subsection D of this section shall not apply beyond three months of the date of the malfunction or failure. Should the breakdown period exist past the three-month period, the owner may apply for a variance in accordance with 9 VAC 5-20-50 A.

~~F. The following special provisions govern facilities which are subject to the provisions of Article 3 (9 VAC 5-40-160 et seq.) of 9 VAC 5 Chapter 40, Article 3 (9 VAC 5-50-160 et seq.) of 9 VAC 5 Chapter 50, or Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60: For sources subject to the applicable subparts listed in 9 VAC 5-60-100, the provisions of~~

40 CFR 63.6 governing malfunctions shall be implemented through this section. In cases where there are differences between the provisions of this section and the provisions of 40 CFR Part 63, the more restrictive provisions shall apply.

~~1. Nothing in this section shall be understood to allow any such facility to operate in violation of applicable emission standards, except that all such facilities shall be subject to the reporting and notification procedures in this section.~~

~~2. Any facility which is subject to the provisions of Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60 shall shut down immediately if it is unable to meet the applicable emission standards, and it shall not return to operation until it is able to operate in compliance with the applicable emission standards.~~

~~3. Regardless of any other provision of this section, any facility which is subject to the provisions of Article 3 (9 VAC 5-40-160 et seq.) of 9 VAC 5 Chapter 40 or Article 3 (9 VAC 5-50-160 et seq.) of 9 VAC 5 Chapter 50 shall shut down immediately upon request of the board if its emissions increase in any amount because of a bypass, malfunction, shutdown or failure of the facility or its associated air pollution control equipment; and such facility shall not return to operation until it and the associated air pollution control equipment are able to operate in a proper manner.~~

G. No violation of applicable emission standards or monitoring requirements shall be judged to have taken place if the excess emissions or cessation of monitoring activities is due to a malfunction, provided that:

1. The procedural requirements of this section are met or the owner has submitted an acceptable application for a variance, which is subsequently granted;
2. The owner has taken ~~expedient~~ *expeditious* and reasonable measures to minimize emissions during the breakdown period;
3. The owner has taken ~~expedient~~ *expeditious* and reasonable measures to correct the malfunction and return the facility to a normal operation; and
4. The source is in compliance at least 90% of the operating time over the most recent 12-month period.

H. Nothing in this section shall be construed as giving an owner the right to increase temporarily the emission of pollutants or to circumvent the emission standards or monitoring requirements otherwise provided in these regulations.

I. Regardless of any other provision of this section, the owner of any facility subject to the provisions of these regulations shall, upon request of the board, reduce the level of operation at the facility if the board determines that this is necessary to prevent a violation of any primary ambient air quality standard. Under worst case conditions, the board may order that the owner shut down the facility, if there is no other method of operation to avoid a violation of the primary ambient air quality standard. The board reserves the right to prescribe the method of determining if a facility will cause

such a violation. In such cases, the facility shall not be returned to operation until it and the associated air pollution control equipment are able to operate without violation of any primary ambient air quality standard.

J. Any owner of an affected facility subject to the provisions of this section shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown or failure of the facility or its associated air pollution control equipment that results in excess emissions for more than one hour. The records shall be maintained in a form suitable for inspection and maintained for at least two years following the date of the occurrence.

CHAPTER 40.  
EXISTING STATIONARY SOURCES.

**9 VAC 5-40-10. Applicability.**

A. The provisions of this chapter, unless specified otherwise, shall apply to existing sources for which emission standards are prescribed under this chapter, ~~mobile sources and open burning.~~

B. The provisions of this chapter shall not apply to sources specified below except in cases where the provisions of this chapter are more restrictive than the provisions of 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.), 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.), or any permit issued pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.); however, such sources shall be subject to the provisions of 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).

1. Any stationary source (or portion of it), the construction, modification or relocation of which commenced on or after March 17, 1972.
2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

C. If a facility becomes subject to any requirement in ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution* because it exceeds an exemption level, the facility shall continue to be subject to all applicable requirements even if future conditions cause the facility to fall below the exemption level.

**9 VAC 5-40-20. Compliance.**

A. Ninety days after the effective date of any emission standard prescribed under this chapter, no owner or other person shall operate any existing source in violation of such standard.

1. Compliance with standards in this chapter, other than opacity standards, shall be determined by emission tests established by 9 VAC 5-40-30, unless specified otherwise in the applicable standard.

2. *Compliance with federal requirements in this chapter may be determined by alternative or equivalent methods only if approved by the administrator. For purposes of this subsection, federal requirements consist of the following:*

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a. *New source performance standards established pursuant to § 111 of the federal Clean Air Act.*

b. *All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.*

c. *Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP).*

d. *Limitations and conditions that are part of an approved State Designated Pollutant Plan or a Federal Designated Pollutant Plan.*

e. *Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.*

f. *Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.*

3. Compliance with opacity standards in this chapter shall be determined by conducting observations in accordance with Reference Method 9 (~~see 9 VAC 5-20-21~~) or any alternative method, or as provided in subdivision G 5 of this section. For purposes of determining initial compliance, the minimum total time of observations shall be three hours (30 six-minute averages) for the emission test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. ~~The results of continuous monitoring by transmissometer (which indicate that the opacity at the time visual observations were made was not in excess of the standard) are probative, but not conclusive evidence, of the actual opacity of an emission. In such cases, the owner must prove that, at the time of the alleged violation, the instrument used met Performance Specification 1 of Appendix B of 40 CFR Part 60, and had been properly maintained and calibrated, and that the resulting data has not been tampered with in any way.~~

3. 4. The opacity standards prescribed under this chapter shall apply at all times except during periods of startup, shutdown, malfunction, and as otherwise provided in the applicable standard.

B. No owner of an existing source subject to the provisions of this chapter shall fail to conduct emission tests as required under this chapter.

C. No owner of an existing source subject to the provisions of this chapter shall fail to install, calibrate, maintain and operate equipment for continuously monitoring and recording

emissions or process parameters or both as required under this chapter.

D. No owner of an existing source subject to the provisions of this chapter shall fail to provide notifications and reports, revise reports, maintain records or report emission test or monitoring results as required under this chapter.

E. At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

F. At all times the disposal of volatile organic compounds shall be accomplished by taking measures, to the extent practicable, consistent with air pollution control practices for minimizing emissions. Volatile organic compounds shall not be intentionally spilled, discarded in sewers which are not connected to a treatment plant, or stored in open containers or handled in any other manner that would result in evaporation beyond that consistent with air pollution control practices for minimizing emissions.

G. ~~Reserved.~~ *The following provisions apply with respect to demonstrating compliance with opacity standards.*

1. *For the purpose of demonstrating initial compliance, opacity observations shall be conducted concurrently with the initial emission test required in 9 VAC 5-40-30 unless one of the following conditions apply.*

a. *If no emission test under 9 VAC 5-40-30 is required, then opacity observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial startup of the facility.*

b. *If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial emission test required under 9 VAC 5-40-30, the owner shall reschedule the opacity observations as soon after the initial emission test as possible, but not later than 30 days thereafter, and shall advise the board of the rescheduled date. In these cases, the 30-day prior notification to the board required by 9 VAC 5-40-50 A 3 shall be waived. The rescheduled opacity observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial emission test conducted under 9 VAC 5-40-30. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial emission test in accordance with procedures contained in Reference Method 9.*

*Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity*

standards. The owner of an affected facility shall make available, upon request by the board, such records as may be necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification. Except as provided in subdivision 5 of this subsection, the results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided the source meets the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B of 40 CFR Part 60 and has been properly maintained and (at the time of the alleged violation) that the resulting data have not been altered in any way.

2. Except as provided in subdivision 3 of this subsection, the owner of an affected facility to which an opacity standard in this chapter applies shall conduct opacity observations in accordance with subdivision A 2 of this section, shall record the opacity of emissions, and shall report to the board the opacity results along with the results of the initial emission test required under 9 VAC 5-40-30. The inability of an owner to secure a visible emissions observer shall not be considered a reason for not conducting the opacity observations concurrent with the initial emission test.

3. The owner of an affected facility to which an opacity standard in this chapter applies may request the board to determine and to record the opacity of emissions from the affected facility during the initial emission test and at such times as may be required. The owner of the affected facility shall report the opacity results. Any request to the board to determine and to record the opacity of emissions from an affected facility shall be included in the notification required in 9 VAC 5-40-50 A 3. If, for some reason, the board cannot determine and record the opacity of emissions from the affected facility during the emission test, then the provisions of subdivision 1 of this subsection shall apply.

4. An owner of an affected facility using a continuous opacity monitor (transmissometer) shall record the monitoring data produced during the initial emission test required by 9 VAC 5-40-30 and shall furnish the board a written report of the monitoring results along with Reference Method 9 and 9 VAC 5-40-30 emission test results.

5. An owner of an affected facility subject to an opacity standard may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any emission test required under 9 VAC 5-40-30 in lieu of Reference Method 9 observation data. If an owner elects to submit COMS data for compliance with the opacity standard, he shall notify the board of that decision, in writing, at least 30 days before any emission test required under 9 VAC 5-40-30 is conducted. Once the owner of an affected facility has notified the board to that effect, the COMS data results

will be used to determine opacity compliance during subsequent tests required under 9 VAC 5-40-30 until the owner notifies the board, in writing, to the contrary. For the purpose of determining compliance with the opacity standard during a emission test required under 9 VAC 5-40-30 using COMS data, the minimum total time of COMS data collection shall be averages of all six-minute continuous periods within the duration of the mass emission test. Results of the COMS opacity determinations shall be submitted along with the results of the emission test required under 9 VAC 5-40-30. The owner of an affected facility using a COMS for compliance purposes is responsible for demonstrating that the COMS meets the requirements specified in 9 VAC 5-40-40 E, that the COMS has been properly maintained and operated, and that the resulting data have not been altered in any way. If COMS data results are submitted for compliance with the opacity standard for a period of time during which Reference Method 9 data indicates noncompliance, the Reference Method 9 data will be used to determine opacity compliance.

6. Upon receipt from an owner of the written reports of the results of the emission tests required by 9 VAC 5-40-30, the opacity observation results and observer certification required by subdivision 1 of this subsection, and the COMS results, if applicable, the board will make a finding concerning compliance with opacity and other applicable standards. If COMS data results are used to comply with an opacity standard, only those results are required to be submitted along with the emission test results required by 9 VAC 5-40-30. If the board finds that an affected facility is in compliance with all applicable standards for which emission tests are conducted in accordance with 9 VAC 5-40-30 but during the time such emission tests are being conducted fails to meet any applicable opacity standard, the board shall notify the owner and advise him that he may request a waiver from the board within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility in accordance with 9 VAC 5-40-120.

7. The board will grant such a petition upon a demonstration by the owner that the affected facility and associated air pollution control equipment was operated and maintained in a manner to minimize the opacity of emissions during the emission tests, that the emission tests were performed under the conditions established by the board, that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard, and that the provisions of 9 VAC 5-40-120 are met.

8. The board will establish an opacity standard for the affected facility meeting the above requirements at a level at which the source will be able, as indicated by the emission and opacity tests, to meet the opacity standard at all times during which the source is meeting the mass or concentration emission standard.

H. The following provisions apply with respect to new or more stringent emission standards.

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1. *The following provisions apply with respect to emission standards for volatile organic compounds.*

a. In the case of any emission standard for volatile organic compounds adopted by the board which is more stringent than the emission standard for the source in effect prior to such adoption, if any, or where there was no emission standard, the source shall not be considered in violation of the newly adopted emission standard provided that the owner accomplishes the following:

- (1) Complies with the emission standard as expeditiously as possible but in no case later than one year after the effective date of the emission standard.
- (2) Within one month of achieving compliance, notifies the board of same.
- (3) Within six months of achieving compliance, demonstrates to the satisfaction of the board compliance with the emission standard.

b. The reprieve provided by subdivision H 1 a of this ~~section~~ *subsection* shall only apply in cases where it is necessary for the owner to:

- (1) Install emission control equipment or other equipment that alters the facility in order to comply with the emission standard; or
- (2) Switch fuel or raw materials or both in order to comply with the emission standard.

c. Owners of sources not in compliance with the newly adopted emission standard, but in compliance with the provisions of subdivision H 1 a of this ~~section~~ *subsection* shall not be subject to any penalties for violation of the newly adopted emission standard that may be required by the Virginia Air Pollution Control Law.

d. Any reprieve from the sanctions of any provision of the Virginia Air Pollution Control Law pursuant to subdivision H 1 a of this ~~section~~ *subsection* shall not extend beyond the date by which compliance is to be achieved.

e. Nothing in subdivision H 1 a of this ~~section~~ *subsection* shall prevent the board from promulgating a separate compliance schedule for any source if the board finds that it is technologically infeasible or it is infeasible due to the nonavailability of necessary equipment or materials or other circumstances beyond the owner's control for the source to achieve compliance within one year of the effective date of an emission standard.

f. All compliance schedules proposed or prescribed under this section shall provide for compliance with the applicable emission standards as expeditiously as practicable.

g. Any compliance schedule approved under this subsection may be revoked at any time if the source owner does not meet the stipulated increments of

progress, and if the failure to meet an increment is likely to result in failure to meet the date for final compliance, and the failure to meet the increment is due to causes within the owner's control.

2. *The following provisions apply with respect to emission standards for pollutants other than volatile organic compounds.*

a. In the case of any emission standard adopted by the board which is more stringent than the emission standard for the source in effect prior to such adoption, if any, or where there was no emission standard, the source shall not be considered in violation of the newly adopted emission standard provided that the owner accomplishes the following:

(1) Submits in a form and manner satisfactory to the board, a control program showing how compliance shall be achieved within the time frame in the applicable compliance schedule prescribed under 9 VAC 5-40-21; or, where no applicable compliance schedule is prescribed under 9 VAC 5-40-21, how compliance shall be achieved as expeditiously as possible; but in no case later than three years after the effective date of such emission standard.

(2) Receives approval of the board of such control program.

(3) Complies with all provisions, terms and conditions of the control program including the increments of progress.

b. The reprieve provided by subdivision H 2 a of this ~~section~~ *subsection* shall only apply in cases where it is necessary for the owner to:

(1) Install emission control equipment or other equipment that alters the facility in order to comply with the emission standard; or

(2) Switch fuel or raw materials or both in order to comply with the emission standard.

c. Owners of sources not in compliance with the newly adopted emission standard, but in compliance with the provisions of subdivision H 2 a of this ~~section~~ *subsection* shall not be subject to any penalties for violation of the newly adapted emission standard that may be required by the Virginia Air Pollution Control Law.

d. Any reprieve from the sanctions of any provision of the Virginia Air Pollution Control Law pursuant to subdivision H 2 a of this ~~section~~ *subsection* shall not extend beyond the date, specified in the emission standard or approved control program, by which compliance is to be achieved.

e. Control programs submitted under the provisions of subdivision H 2 a of this ~~section~~ *subsection* shall be processed in accordance with the provisions of 9 VAC 5-20-170. However, if the control program contains a compliance schedule which conforms to the applicable

schedule prescribed in 9 VAC 5-40-21, the public hearing provision of 9 VAC 5-20-170 shall not apply.

f. Nothing in this section shall prevent the board from promulgating a separate compliance schedule for any source if the board finds that the application of a compliance schedule in 9 VAC 5-40-21 is technologically infeasible, or if the board finds that the application of a compliance schedule in 9 VAC 5-40-21 is infeasible due to the nonavailability of necessary equipment or materials or other circumstances beyond the owner's control.

g. Nothing in this section shall prevent the owner of a source subject to a compliance schedule in 9 VAC 5-40-21 from submitting to the board a proposed alternative compliance schedule provided the following conditions are met:

(1) The proposed alternative compliance schedule is submitted within six months of the effective date of the emission standard;

(2) The final control plans for achieving compliance with the applicable emission standard are submitted simultaneously;

(3) The alternative compliance schedule contains the same increments of progress as the schedule for which it is proposed as an alternative; and

(4) Sufficient documentation is submitted by the owner of the source to justify the alternative dates proposed for the increments of progress.

h. All compliance schedules proposed or prescribed under this section shall provide for compliance with the applicable emission standards as expeditiously as practicable.

i. Any compliance schedule approved under this subsection may be revoked at any time if the source owner does not meet the stipulated increments of progress, and if the failure to meet an increment is likely to result in failure to meet the date for final compliance, and the failure to meet the increment is due to causes within the owner's control.

j. The provisions of 9 VAC 5-40-21 shall not apply to owners of sources which are in compliance with the applicable emission standard and for which the owners have determined and certified compliance to the satisfaction of the board within 12 months of the effective date of the applicable emission standard.

l. *The following provisions apply with respect to stack heights.*

1. The degree of emission limitation required of any source owner for control of any air pollutant shall not be affected in any manner by:

a. So much of the stack height of any source as exceeds good engineering practice, or

b. Any other dispersion technique.

2. The provisions of subdivision 1 of this subsection shall not apply to:

a. Stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in ~~Section~~ § 111(a)(3) of the federal Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in Article 8 (9 VAC 5-80-1700 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of Part II of 9 VAC 5 Chapter 80, were carried out after December 31, 1970; or

b. Coal-fired steam electric generating units subject to the provisions of ~~Section~~ § 118 of the federal Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

3. Prior to the adoption of a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by subdivision 1 or 2 of the GEP definition, the board must notify the public of the availability of the demonstration study and must provide the opportunity for public hearing on it.

4. For purposes of subsection l of this section, such height shall not exceed the height allowed by subdivision 1 or 2 of the GEP definition unless the owner demonstrates to the satisfaction of the board, after 30 days notice to the public and opportunity for public hearing, that a greater height is necessary as provided under subdivision 3 of the GEP definition.

5. In no event may the board prohibit any increase in any stack height or restrict in any manner the maximum stack height of any source.

6. Compliance with emission standards in this chapter shall not be affected in any manner by the stack height of any source or any other dispersion technique.

*J. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this chapter, nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate emission or compliance test or procedure had been performed.*

#### **9 VAC 5-40-30. Emission testing.**

A. Emission tests for existing sources shall be conducted and reported, and data shall be reduced as set forth in this chapter and in the appropriate reference methods; ~~if not appropriate, then equivalent or alternative methods shall be used unless the board (i) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (ii) approves the use of an equivalent method; (iii) approves the use of an alternative method the results of which the board has determined to be adequate for indicating whether a specific source is in compliance; (iv) waives the requirement~~

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for emission tests because the owner of a source has demonstrated by other means to the board's satisfaction that the affected facility is in compliance with the standard; or (v) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. In cases where no appropriate reference method exists for an existing source subject to an emission standard for volatile organic compounds, the applicable test method in 9 VAC 5-20-121 may be considered appropriate.

B. Emission testing for existing sources shall be subject to testing guidelines approved by the board. Procedures may be adjusted or changed by the board to suit specific sampling conditions or needs based upon good practice, judgement and experience. When such tests are adjusted, consideration shall be given to the effect of such change on established emission standards. Tests shall be performed under the direction of persons whose qualifications are acceptable to the board.

C. Emission tests for existing sources shall be conducted under conditions which the board shall specify to the owner, based on representative performance of the source. The owner shall make available to the board such records as may be necessary to determine the conditions of the emission tests. Operations during periods of startup, shutdown and malfunction shall not constitute representative conditions of ~~emission tests for the purpose of an emission test nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.~~

D. An owner may request that the board determine the opacity of emissions from an existing source during the emission tests required by this section.

E. Each emission test for an existing source shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions acceptable to the board. For the purpose of determining compliance with an applicable standard, the arithmetic mean of the results of the three runs shall apply. In the event that a sample is accidentally lost, or if conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions or other circumstances beyond the owner's control, compliance may, upon the approval of the board, be determined using the arithmetic mean of the results of the two other runs.

F. The board may test emissions of air pollutants from any existing source. Upon request of the board the owner shall provide, or cause to be provided, emission testing facilities as follows:

1. Sampling ports adequate for test methods applicable to such source. *This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct free of cyclonic flow during emission tests, as demonstrated by applicable test methods and procedures.*

2. Safe sampling platforms.

3. Safe access to sampling platforms.

4. Utilities for sampling and testing equipment.

G. Upon request of the board the owner of any existing source subject to the provisions of this chapter shall conduct emission tests in accordance with procedures approved by the board.

## **9 VAC 5-40-40. Monitoring.**

A. Unless otherwise approved by the board, owners of existing sources specified in the applicable emission standard shall install, calibrate, maintain and operate systems for continuously monitoring and recording emissions of specified pollutants. *For the purposes of this section, all continuous monitoring systems required under the applicable emission standard shall be subject to the provisions of the performance specifications for continuous monitoring systems under Appendix B of 40 CFR Part 60 and, if the continuous monitoring system is used to demonstrate compliance with emission limits on a continuous basis, Appendix F of 40 CFR Part 60, unless otherwise specified in this part, in an applicable standard or by the board.* However, nothing in this chapter shall exempt any owner from complying with subsection F G of this section.

B. All continuous monitoring systems and monitoring devices shall be installed and operational by July 5, 1983. Verification of operational status shall, as a minimum, consist of the completion of the conditioning period specified by applicable requirements in Appendix B of 40 CFR Part 60.

C. Within 30 days after the date set forth in subsection B of this section and at such other times as may be requested by the board, the owner of any existing source shall conduct continuous monitoring system performance evaluations and furnish the board within 60 days of them two or, upon request, more copies of a written report of the results of such tests.

D. *If the owner of an affected facility elects to submit continuous opacity monitoring system (COMS) data for compliance with the opacity standard as provided under 9 VAC 5-40-20 G 5, he shall conduct a performance evaluation of the COMS as specified in Performance Specification 1 in Appendix B of 40 CFR Part 60 before the emission test required under 9 VAC 5-40-30 is conducted. Otherwise, the owner of an affected facility shall conduct a performance evaluation of the COMS or continuous emission monitoring system (CEMS) during any emission test required under 9 VAC 5-40-30 or within 30 days thereafter in accordance with the applicable performance specification in Appendix B of 40 CFR Part 60. The owner of an affected facility shall conduct COMS or CEMS performance evaluations at such other times as may be required by the board.*

1. *The owner of an affected facility using a COMS to determine opacity compliance during any emission test required under 9 VAC 5-40-30 and as described in 9 VAC 5-40-20 G 5 shall furnish the board two or, upon request, more copies of a written report of the results of the COMS performance evaluation described in this subsection at least 10 days before the emission test required under 9 VAC 5-40-30 is conducted.*



2. *Except as provided in subdivision 1 of this subsection, the owner of an affected facility shall furnish the board within 60 days of completion two or, upon request, more copies of a written report of the results of the performance evaluation.*

E. Unless otherwise approved by the board, all continuous monitoring systems required by subsection A of this section shall be installed, calibrated, maintained and operated in accordance with applicable requirements in this section, 9 VAC 5-40-41, and the applicable emission standard.

E. F. After receipt and consideration of written application, the board may approve alternatives to any monitoring procedures or requirements of this chapter including, but not limited to, the following:

1. Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by this chapter would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases;
2. Alternative monitoring requirements when the source is infrequently operated;
3. Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions;
4. Alternative locations for installing continuous monitoring systems or monitoring devices when the owner can demonstrate the installation at alternate locations will enable accurate and representative measurements;
5. Alternative methods of converting pollutant concentration measurements to units of the standards;
6. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period);
7. Alternative monitoring requirements when the effluent from a single source or the combined effluent from two or more sources are released to the atmosphere through more than one point;
8. Alternative procedures for performing calibration checks;
9. Alternative monitoring requirements when the requirements of this section would impose an extreme economic burden on the owner;
10. Alternative monitoring requirements when the continuous monitoring systems cannot be installed due to physical limitations at the source; and
11. Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1 of Appendix B of 40 CFR Part 60, but which adequately demonstrate a definite and consistent relationship between its measurements and

the measurements of opacity by a system complying with the requirements in Performance Specification 1 of Appendix B of 40 CFR Part 60. The board may require that such demonstration be performed for each source.

F. G. Upon request of the board, the owner of an existing source subject to the provisions of this chapter shall install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions or process parameters or both in accordance with methods and procedures acceptable to the board.

## **9 VAC 5-40-50. Notification, records and reporting.**

A. Any owner of an existing source subject to the provisions of this chapter shall provide written notifications to the board of the following:

1. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9 VAC 5-40-40 C. Notification shall be postmarked not less than 30 days prior to such date.

2. The date of any emission test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked not less than 30 days prior to such date.

3. *The anticipated date for conducting the opacity observations required by 9 VAC 5-40-20 G 1. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during an emission test. The notification shall be postmarked not less than 30 days prior to such date.*

4. *That continuous opacity monitoring system data results will be used to determine compliance with the applicable opacity standard during an emission test required by 9 VAC 5-40-30 in lieu of Reference Method 9 observation data as allowed by 9 VAC 5-40-20 G 5. This notification shall be postmarked not less than 30 days prior to the date of the emission test.*

B. Any owner of an existing source subject to the provisions of 9 VAC 5-40-40 A shall maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of such source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. Each owner required to install a continuous monitoring system (CMS) or monitoring device shall submit a written report of excess emissions (as defined in the applicable emission standard) and monitoring systems performance report or a summary report form, or both, to the board ~~for every calendar quarter~~ semiannually, except when (i) more frequent reporting is specifically required by an applicable emission standard; (ii) the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or (iii) the board, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. The summary report and form shall meet the requirements of 40 CFR 60.7(d). The frequency of reporting requirements may be reduced as provided in 40 CFR 60.7(e). All quarterly reports shall be postmarked by the 30th day following the end of each

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calendar ~~quarter and half~~ (or quarter, as appropriate). Written reports of excess emissions shall include the following information:

1. The magnitude of excess emissions computed in accordance with 9 VAC 5-40-41 B 6, any conversion factors used, and the date and time of commencement and completion of each period of excess emissions; *The process operating time during the reporting period.*
2. Specific identification of each period of excess emissions that occurs during startups, shutdowns and malfunctions of the source. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted;
3. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments; ~~and.~~
4. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired or adjusted, such information shall be stated in the report.

D. Any owner of an existing source subject to the provisions of this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and emission testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent form suitable for inspection. The file shall be retained for at least two years following the date of such measurements, maintenance, reports and records.

E. Any data or information required by ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution*, any permit or order of the board, or which the owner wishes the board to consider, to determine compliance with an emission standard must be recorded or maintained in a time frame consistent with the averaging period of the standard.

F. The owner of a stationary source shall keep records as may be necessary to determine its emissions. Any owner claiming that a facility is exempt from the provisions of ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution* shall keep records as may be necessary to demonstrate to the satisfaction of the board its continued exempt status.

G. The owner of an existing source subject to any emission standard in Article 26 (9 VAC 5-40-3560 et seq.) through Article 36 (9 VAC 5-40-5060 et seq.) of 9 VAC 5 Chapter 40 shall maintain records in accordance with the applicable procedure in 9 VAC 5-20-121.

H. Upon request of the board, the owner of an existing source subject to the provisions of this chapter shall provide notifications and report, revise reports, maintain records or report emission test or monitoring result in a manner and form and using procedures acceptable to board.

## CHAPTER 50. NEW AND MODIFIED STATIONARY SOURCES.

### 9 VAC 5-50-10. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply to new and modified sources.

B. The provisions of this chapter shall apply to sources specified below:

1. Any stationary source (or portion of it), the construction, modification or relocation of which commenced on or after March 17, 1972.
2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

C. If a facility becomes subject to any requirement in ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution* because it exceeds an exemption level, the facility shall continue to be subject to all applicable requirements even if future conditions cause the facility to fall below the exemption level.

D. The provisions of 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), unless specified otherwise, shall apply to new and modified sources to the extent that those provisions thereof are more restrictive than the provisions of this chapter, 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.), or any permit issued pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.).

E. *For sources subject to the applicable subparts listed in 9 VAC 5-50-410, the provisions of 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 and 40 CFR 60.13 shall be implemented through this part. In cases where there are differences between the provisions of this part and the provisions of 40 CFR Part 60, the more restrictive provisions shall apply.*

### 9 VAC 5-50-20. Compliance.

A. Sixty days after achieving the maximum production rate, but not later than 180 days after initial startup, no owner or other person shall operate any new or modified source in violation of any standard of performance prescribed under this chapter.

1. Compliance with standards in this chapter, other than opacity standards, shall be determined by performance tests established by 9 VAC 5-50-30, unless specified otherwise in the applicable standard.

2. *Compliance with federal requirements in this chapter may be determined by alternative or equivalent methods only if approved by the administrator. For purposes of this subsection, federal requirements consist of the following:*

a. *New source performance standards established pursuant to § 111 of the federal Clean Air Act.*

b. *All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.*

c. Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP).

d. Limitations and conditions that are part of an approved State Designated Pollutant Plan or a Federal Designated Pollutant Plan.

e. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

f. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

3. Compliance with opacity standards in this chapter shall be determined by conducting observations in accordance with Reference Method 9 or any alternative method, if specified in the permit granted pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.) , or as provided in subdivision G 5 of this section. For purposes of determining initial compliance, the minimum total time of observations shall be three hours (30 six-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. ~~The results of continuous monitoring by transmissometer which indicated that the opacity at the time observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission. In such cases, the owner must prove that, at the time of the alleged violation, the instrument used met Performance Specification 1 of Appendix B of 40 CFR 60, and had been properly maintained and calibrated, and that the resulting data had not been tampered with in any way.~~

~~3.~~ 4. The opacity standards prescribed under this chapter shall apply at all times except during periods of startup, shutdown, malfunction and as otherwise provided in the applicable standard.

~~4.~~ 5. Variation from a specified standard may be granted by the board for a definite period for testing and adjustment.

B. No owner of a new or modified source subject to the provisions of this chapter shall fail to conduct performance tests as required under this chapter.

C. No owner of a new or modified source subject to the provisions of this chapter shall fail to install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions or process parameters or both as required under this chapter.

D. No owner of a new or modified source subject to the provisions of this chapter shall fail to provide notifications and reports, revise reports, maintain records or report performance test or monitoring results as required under this chapter.

E. At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

F. At all times the disposal of volatile organic compounds shall be accomplished by taking measures, to the extent practicable, consistent with air pollution control practices for minimizing emissions. Volatile organic compounds shall not be intentionally spilled, discarded in sewers which are not connected to a treatment plant, or stored in open containers or handled in any other manner that would result in evaporation beyond that consistent with air pollution control practices for minimizing emissions.

G. ~~Reserved.~~ The following provisions apply with respect to compliance with opacity standards.

1. For the purpose of demonstrating initial compliance, opacity observations shall be conducted concurrently with the initial performance test required in 9 VAC 5-50-30 unless one of the following conditions apply.

a. If no performance test under 9 VAC 5-50-30 is required, then opacity observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial startup of the facility.

b. If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial performance test required under 9 VAC 5-50-30, the owner shall reschedule the opacity observations as soon after the initial performance test as possible, but not later than 30 days thereafter, and shall advise the board of the rescheduled date. In these cases, the 30-day prior notification to the board required by 9 VAC 5-50-50 A 6 shall be waived. The rescheduled opacity observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under 9 VAC 5-50-30. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial performance test in accordance with procedures contained in Reference Method 9.

Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The owner of an affected facility shall make

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available, upon request by the board, such records as may be necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification. Except as provided in subdivision 5 of this subsection, the results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided the source meets the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B of 40 CFR Part 60 and has been properly maintained and (at the time of the alleged violation) that the resulting data have not been altered in any way.

2. Except as provided in subdivision 3 of this subsection, the owner of an affected facility to which an opacity standard in this chapter applies shall conduct opacity observations in accordance with subdivision A 2 of this section, shall record the opacity of emissions, and shall report to the board the opacity results along with the results of the initial performance test required under 9 VAC 5-50-30. The inability of an owner to secure a visible emissions observer shall not be considered a reason for not conducting the opacity observations concurrent with the initial performance test.

3. The owner of an affected facility to which an opacity standard in this chapter applies may request the board to determine and to record the opacity of emissions from the affected facility during the initial performance test and at such times as may be required. The owner of the affected facility shall report the opacity results. Any request to the board to determine and to record the opacity of emissions from an affected facility shall be included in the notification required in 9 VAC 5-50-50 A 6. If, for some reason, the board cannot determine and record the opacity of emissions from the affected facility during the performance test, then the provisions of subdivision 1 of this subsection shall apply.

4. An owner of an affected facility using a continuous opacity monitor (transmissometer) shall record the monitoring data produced during the initial performance test required by 9 VAC 5-50-30 and shall furnish the board a written report of the monitoring results along with Reference Method 9 and 9 VAC 5-50-30 performance test results.

5. An owner of an affected facility subject to an opacity standard may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any performance test required under 9 VAC 5-50-30 in lieu of Reference Method 9 observation data. If an owner elects to submit COMS data for compliance with the opacity standard, he shall notify the board of that decision, in writing, at least 30 days before any performance test required under 9 VAC 5-50-30 is conducted. Once the owner of an affected facility has notified the board to that effect, the COMS data results will be used to determine opacity compliance during subsequent tests required under 9 VAC 5-50-30 until the owner notifies the board, in writing, to the contrary. For the purpose of determining compliance

with the opacity standard during a performance test required under 9 VAC 5-50-30 using COMS data, the minimum total time of COMS data collection shall be averages of all six-minute continuous periods within the duration of the mass emission performance test. Results of the COMS opacity determinations shall be submitted along with the results of the performance test required under 9 VAC 5-50-30. The owner of an affected facility using a COMS for compliance purposes is responsible for demonstrating that the COMS meets the requirements specified in 9 VAC 5-50-40 E, that the COMS has been properly maintained and operated, and that the resulting data have not been altered in any way. If COMS data results are submitted for compliance with the opacity standard for a period of time during which Reference Method 9 data indicates noncompliance, the Reference Method 9 data will be used to determine opacity compliance.

6. Upon receipt from an owner of the written reports of the results of the performance tests required by 9 VAC 5-50-30, the opacity observation results and observer certification required by subdivision 1 of this subsection, and the COMS results, if applicable, the board will make a finding concerning compliance with opacity and other applicable standards. If COMS data results are used to comply with an opacity standard, only those results are required to be submitted along with the performance test results required by 9 VAC 5-50-30. If the board finds that an affected facility is in compliance with all applicable standards for which performance tests are conducted in accordance with 9 VAC 5-50-30 but during the time such performance tests are being conducted fails to meet any applicable opacity standard, the board shall notify the owner and advise him that he may request a waiver from the board within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility in accordance with 9 VAC 5-50-120.

7. The board will grant such a petition upon a demonstration by the owner that the affected facility and associated air pollution control equipment was operated and maintained in a manner to minimize the opacity of emissions during the performance tests, that the performance tests were performed under the conditions established by the board, that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard, and that the provisions of 9 VAC 5-50-120 are met.

8. The board will establish an opacity standard for the affected facility meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity standard at all times during which the source is meeting the mass or concentration emission standard.

H. The following provisions apply with respect to stack heights.

1. The degree of emission limitation required of any source owner for control of any air pollutant shall not be affected in any manner by:

- a. So much of the stack height of any source as exceeds good engineering practice, or
  - b. Any other dispersion technique.
2. The provisions of subdivision H 1 of this subsection shall not apply to:
- a. Stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section § 111(a)(3) of the federal Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in 9 VAC 5-30-20 and 9 VAC 5-30-30, were carried out after December 31, 1970; or
  - b. Coal-fired steam electric generating units subject to the provisions of Section § 118 of the federal Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.
3. Prior to the adoption of a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by paragraphs subdivisions 1 or 2 of the GEP definition, the board must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it.
4. For purposes of this subsection H of this section, such height shall not exceed the height allowed by paragraphs subdivisions 1 or 2 of the GEP definition unless the owner demonstrates to the satisfaction of the board, after 30 days notice to the public and opportunity for public hearing, that a greater height is necessary as provided under paragraph subdivision 3 of the GEP definition.
5. In no event may the board prohibit any increase in any stack height or restrict in any manner the maximum stack height of any source.
6. Compliance with standards of performance in this chapter shall not be affected in any manner by the stack height of any source or any other dispersion technique.

*1. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this chapter, nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.*

**9 VAC 5-50-30. Performance testing.**

A. Performance tests for new or modified sources shall be conducted and reported and data shall be reduced as set forth in this chapter and the test methods and procedures contained in each applicable subpart listed in 9 VAC 5-50-410 unless the board (i) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

*(ii) approves the use of an equivalent method; (iii) approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance; (iv) waives the requirement for performance tests because the owner of a source has demonstrated by other means to the board's satisfaction that the affected facility is in compliance with the standard; or (v) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Any new or modified source, for which no standards of performance are set forth in Article 5 (9 VAC 5-50-400 et seq.) of this chapter part, shall be performance tested by appropriate reference methods; if not appropriate, then equivalent or alternative methods shall be used unless the board (i) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (ii) approves the use of an equivalent method; (iii) approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance; (iv) waives the requirement for performance tests because the owner of a source has demonstrated by other means to the board's satisfaction that the affected facility is in compliance with the standard; or (v) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. In cases where no appropriate reference method exists for a new or modified source subject to a standard of performance for volatile organic compounds, the test methods in 9 VAC 5-20-121 may be considered appropriate.*

B. Performance testing for new or modified sources shall be subject to testing guidelines approved by the board. Procedures may be adjusted or changed by the board to suit specific sampling conditions or needs based upon good practice, judgment and experience. When such tests are adjusted, consideration shall be given to the effect of such change on established standards. Tests shall be performed under the direction of persons whose qualifications are acceptable to the board.

C. Performance tests for new or modified sources shall be conducted under conditions which the board shall specify to the owner based on representative performance of the source. The owner shall make available to the board such records as may be necessary to determine the conditions of the performance tests. Operation during periods of startup, shutdown and malfunction shall not constitute representative conditions of performance tests for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

D. An owner may request that the board determine the opacity of emissions from a new or modified source during the performance tests required by this section.

E. Unless specified otherwise in the applicable standard, each performance test for a new or modified source shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the

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purpose of determining compliance with an applicable standard the arithmetic mean of the results of the three runs shall apply. In the event that a sample is accidentally lost or if conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions or other circumstances beyond the owner's control, compliance may, upon the approval of the board, be determined using the arithmetic mean of the results of the two other runs.

F. The board may test emissions of air pollutants from any new or modified source. Upon request of the board the owner shall provide, or cause to be provided, performance testing facilities as follows:

1. Sampling ports adequate for test methods applicable to such source;. *This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures.*
2. Safe sampling platforms;.
3. Safe access to sampling platforms;.
4. Utilities for sampling and testing equipment.

G. Upon request of the board, the owner of any new or modified source subject to the provisions of this chapter shall conduct performance tests in accordance with procedures approved by the board.

## **9 VAC 5-50-40. Monitoring.**

A. Unless otherwise approved by the board or specified in applicable subparts listed in 9 VAC 5-50-410, the requirements of this section shall apply to all continuous monitoring systems required for affected facilities in accordance with applicable subparts listed in 9 VAC 5-50-410. *For the purposes of this section, all continuous monitoring systems required under applicable subparts listed in 9 VAC 5-50-410 shall be subject to the provisions of this section upon promulgation of performance specifications for continuous monitoring systems under Appendix B of 40 CFR Part 60 and, if the continuous monitoring system is used to demonstrate compliance with emission limits on a continuous basis, Appendix F of 40 CFR Part 60, unless otherwise specified in an applicable subpart listed in 9 VAC 5-50-410 or by the board.* However, nothing in this chapter shall exempt any owner from complying with subsection ~~F~~ G of this section.

B. All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting performance tests under 9 VAC 5-50-30. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation and calibration of the device.

C. During any performance tests required under 9 VAC 5-50-30 or within 30 days thereafter and at such other times as may be requested by the board, the owner of any affected facility shall conduct continuous monitoring system

performance evaluations and furnish the board within 60 days of them two or, upon request, more copies of a written report of the results of such tests. These continuous monitoring system performance evaluations shall be conducted in accordance with the requirements and procedures contained in the applicable performance specification of Appendix B of 40 CFR Part 60.

D. *If the owner of an affected facility elects to submit continuous opacity monitoring system (COMS) data for compliance with the opacity standard as provided under 9 VAC 5-50-20 G 5, he shall conduct a performance evaluation of the COMS as specified in Performance Specification 1 in Appendix B of 40 CFR Part 60 before the performance test required under 9 VAC 5-50-30 is conducted. Otherwise, the owner of an affected facility shall conduct a performance evaluation of the COMS or continuous emission monitoring system (CEMS) during any performance test required under 9 VAC 5-50-30 or within 30 days thereafter in accordance with the applicable performance specification in Appendix B of 40 CFR Part 60. The owner of an affected facility shall conduct COMS or CEMS performance evaluations at such other times as may be required by the board.*

1. *The owner of an affected facility using a COMS to determine opacity compliance during any performance test required under 9 VAC 5-50-30 and as described in 9 VAC 5-50-20 G 5 shall furnish the board two or, upon request, more copies of a written report of the results of the COMS performance evaluation described in this subsection at least 10 days before the performance test required under 9 VAC 5-50-30 is conducted.*

2. *Except as provided in subdivision 1 of this subsection, the owner of an affected facility shall furnish the board within 60 days of completion two or, upon request, more copies of a written report of the results of the performance evaluation.*

E. Unless otherwise approved by the board, all continuous monitoring systems required by subsection A of this section shall be installed, calibrated, maintained and operated in accordance with applicable requirements in this section, 40 CFR 60.13 and the applicable subpart listed in 9 VAC 5-50-410.

~~E~~- F. After receipt and consideration of written application, the board may approve alternatives to any monitoring procedures or requirements of this chapter including, but not limited to, the following:

1. Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by this chapter would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases;.
2. Alternative monitoring requirements when the affected facility is infrequently operated;.
3. Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions;.

4. Alternative locations for installing continuous monitoring systems or monitoring devices when the owner can demonstrate that installation at alternate locations will enable accurate and representative measurements;

5. Alternative methods of converting pollutant concentration measurements to units of the applicable standards;

6. Alternative procedures for performing daily checks or zero and span drift that do not involve use of span gases or test cells;

7. Alternatives to the ASTM test methods or sampling procedures specified by any subpart listed in 9 VAC 5-50-410;

8. Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1 ~~or~~ of Appendix B of 40 CFR Part 60, but adequately demonstrate a definite and consistent relationship between its measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1 of Appendix B of 40 CFR Part 60. The board may require that demonstration be performed for each affected facility; ~~and~~.

9. Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two or more affected facilities are released to the atmosphere through more than one point.

F. G. Upon request of the board, the owner of a new or modified source subject to the provisions of this chapter shall install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions or process parameters or both in accordance with methods and procedures acceptable to the board.

### 9 VAC 5-50-50. Notification, records and reporting.

A. Any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board of the following:

1. The date of commencement of construction, reconstruction or modification of a new or modified source postmarked no later than 30 days after such date;

2. The anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor less than 30 days prior to such date;

3. The actual date of initial startup of a new or modified source postmarked within 15 days after such date;

4. The date of any performance test required by 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.) and any other performance test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked not less than 30 days prior to such date; ~~and~~.

5. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9 VAC 5-50-40 C. Notification shall be postmarked not less than 30 days prior to such date.

6. *The anticipated date for conducting the opacity observations required by 9 VAC 5-50-20 G 1. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during a performance test. The notification shall be postmarked not less than 30 days prior to such date.*

7. *That continuous opacity monitoring system data results will be used to determine compliance with the applicable opacity standard during a performance test required by 9 VAC 5-50-30 in lieu of Reference Method 9 observation data as allowed by 9 VAC 5-50-20 G 5. This notification shall be postmarked not less than 30 days prior to the date of the performance test.*

B. Any owner of a new or modified source subject to the provisions of 9 VAC 5-50-40 A shall maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of such source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. Each owner required to install a continuous monitoring system (CMS) or monitoring device shall submit a written report of excess emissions (as defined in the applicable subpart in 9 VAC 5-50-410) and monitoring systems performance report and/or a summary report form to the board ~~for every calendar quarter semiannually, except when (i) more frequent reporting is specifically required by an applicable subpart listed in 9 VAC 5-50-410; (ii) the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or (iii) the board, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. The summary report and form shall meet the requirements of 40 CFR 60.7(d). The frequency of reporting requirements may be reduced as provided in 40 CFR 60.7(e). All quarterly reports shall be postmarked by the 30th day following the end of each calendar quarter and half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:~~

1. The magnitude of excess emissions computed in accordance with 40 CFR 60.13(h), any conversion factors used, and the date and time of commencement and completion of each period of excess emissions. *The process operating time during the reporting period.*

2. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the source. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted;

3. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments; ~~and~~.

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4. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired or adjusted, such information shall be stated in the report.

D. Any owner of a new or modified source subject to the provisions of this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent form suitable for inspection. The file shall be retained for at least two years following the date of such measurements, maintenance, reports and records.

E. Any data or information required by ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution*, any permit or order of the board, or which the owner wishes the board to consider, to determine compliance with an emission standard must be recorded or maintained in a time frame consistent with the averaging period of the standard.

F. The owner of a stationary source shall keep records as necessary to determine its emissions. Any owner claiming that a facility is exempt from the provisions of ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution* shall keep records to demonstrate its continued exempt status.

G. The owner of a new or modified source subject to any volatile organic compound emission standard for a coating operation or printing process shall maintain records in accordance with the applicable procedure in 9 VAC 5-20-121.

H. Upon request of the board, the owner of a new or modified source subject to the provisions of this chapter shall provide notifications and reports, maintain records or report performance test or monitoring results in a manner and form and using procedures acceptable to the board.

## CHAPTER 60.

### HAZARDOUS AIR POLLUTANT SOURCES.

#### 9 VAC 5-60-10. Applicability.

A. The provisions of this chapter shall apply to all existing, new and modified hazardous air pollutant sources for which emission standards are prescribed under this chapter.

B. For sources subject to the applicable subparts listed in 9 VAC 5-60-70, the provisions of 40 CFR 61.09, 40 CFR 61.10, 40 CFR 61.12, 40 CFR 61.13, and 40 CFR 61.14 shall be implemented through this part. In cases where there are differences between the provisions of this part and the provisions of 40 CFR Part 61, the more restrictive provisions shall apply.

C. For sources subject to the applicable subparts listed in 9 VAC 5-60-100, the provisions of 40 CFR 63.6, 40 CFR 63.7, 40 CFR 63.8, 40 CFR 63.9, 40 CFR 63.10 and 40 CFR 63.11 shall be implemented through this part. In cases where there are differences between the provisions of this part and the

*provisions of 40 CFR Part 63, the more restrictive provisions shall apply.*

#### 9 VAC 5-60-20. Compliance.

A. Ninety days after the effective date of any emission standard prescribed under this chapter no owner or other person shall operate any existing hazardous air pollutant source in violation of such standard. After the effective date of any emission standard prescribed under this chapter no owner or other person shall operate any new or modified hazardous air pollutant source in violation of such standard.

1. Compliance with standards in this chapter, ~~other than visible emission standards~~ shall be determined by emission tests established by 9 VAC 5-60-30, unless specified otherwise in the applicable standard.

2. ~~The visible emission standards prescribed under this chapter shall apply at all times.~~ *Compliance with federal requirements in this chapter may be determined by alternative or equivalent methods only if approved by the administrator. For purposes of this subsection, federal requirements consist of the following:*

a. *Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.*

b. *Emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.*

c. *All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.*

d. *Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP).*

e. *Limitations and conditions that are part of an approved State Designated Pollutant Plan or a Federal Designated Pollutant Plan.*

f. *Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.*

g. *Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.*

h. *Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.*



B. No owner of a hazardous air pollutant source subject to the provisions of this chapter shall fail to conduct emission tests as required under this chapter.

C. No owner of a hazardous air pollutant source subject to the provisions of this chapter shall fail to install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions, process parameters or air quality, or both, as required in this chapter.

D. No owner of a hazardous air pollutant source subject to the provisions of this chapter shall fail to provide notifications and reports, revise reports, maintain records or report emission test or monitoring results, or both, as required under this chapter.

*E. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this chapter, nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.*

## **9 VAC 5-60-30. Emission testing.**

A. Emission tests for hazardous air pollutant sources shall be conducted and reported and data shall be reduced as set forth in this chapter and in the appropriate reference methods; ~~if not appropriate, then equivalent or alternative methods shall be used unless the board (i) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (ii) approves the use of an equivalent method; (iii) approves the use of an alternative method the results of which the board has determined to be adequate for indicating whether a specific source is in compliance; (iv) waives the requirement for emission tests because the owner of a source has demonstrated by other means to the board's satisfaction that the affected facility is in compliance with the standard; or (v) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.~~

B. Emission testing for hazardous air pollutant sources shall be subject to testing guidelines approved by the board. Procedures may be adjusted or changed by the board to suit specific sampling conditions or needs based upon good practice, judgement and experience. When such tests are adjusted, consideration shall be given to the effect of such change on established emission standards. Tests shall be performed under the direction of persons whose qualifications are acceptable to the board.

C. Emission tests for hazardous air pollutant sources shall be conducted under conditions which the board shall specify to the owner based on representative performance of the source. The owner shall make available to the board such records as may be necessary to determine the conditions of the emission tests. Operations during periods of startup, shutdown and malfunction shall not constitute representative conditions ~~of emission tests for the purpose of an emission test nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.~~

~~D. Any owner may request that the board determine the visible emissions from a hazardous air pollutant source during the emission tests required by this section.~~

~~E. D.~~ Each emission test for a hazardous air pollutant source shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard the arithmetic mean of the results of the three runs shall apply. In the event that a sample is accidentally lost or if conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of the sample train, extreme meteorological conditions or other circumstances beyond the owner's control, compliance may, upon the approval of the board, be determined using the arithmetic mean of the results of the two other runs.

~~F. E.~~ The board may test emissions of air pollutants from any hazardous air pollutant source. Upon request of the board the owner shall provide, or cause to be provided, emission testing facilities as follows:

1. Sampling ports adequate for test methods applicable to such source; ~~This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures.~~
2. Safe sampling platforms;
3. Safe access to sampling platforms; and
4. Utilities for sampling and testing equipment.

~~G. Methods 101, 101A, 102 and 104 of Appendix B of 40 CFR 61 shall be used for all hazardous air pollutant source tests required under this chapter unless an equivalent method or an alternative method has been approved by the board.~~

~~H. Method 103 of Appendix B of 40 CFR 61 is hereby approved as an alternative method for sources subject to 40 CFR 61.32(a) and 40 CFR 61.42(b).~~

~~I. Method 105 of Appendix B of 40 CFR 61 is hereby approved as an alternative method for sources subject to 40 CFR 61.52(b).~~

~~J. The board may, after notice to the owner, withdraw approval of an alternative method granted under subsections H and I of this section. Where the test results using an alternative method do not adequately indicate whether a source is in compliance with a standard, the board may require the use of the reference method or its equivalent.~~

~~K. F.~~ Upon request of the board, the owner of any hazardous air pollutant source subject to the provisions of this chapter shall conduct emission tests in accordance with procedures approved by the board.

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# Proposed Regulations

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

**Title of Regulation:** 12 VAC 5-165-10 et seq. Regulations for the Repacking of Crab Meat.

**Statutory Authority:** §§ 28.2-801, 28.2-803 and 28.2-806 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until December 10, 1999.

(See Calendar of Events section for additional information)

**Basis:** Chapter 8 (§ 28.2-801 et seq.) of Title 28.2 of the Code of Virginia provides that the State Board of Health has the duty to protect the public health and to ensure that all shellfish, crustacea (crab meat) and finfish destined for public consumption be safe and wholesome. Section 28.2-801 provides that the State Board of Health may promulgate regulations necessary to carry out the provisions of the chapter and that the State Health Commissioner shall enforce those provisions. Section 28.2-803 authorizes the commissioner to "conduct an examination or analysis of crustacea, finfish and shellfish, whether on the planting grounds, in an establishment, or in any other place in this Commonwealth, from which the products are to be taken or sold for food purposes." This section requires that the commissioner examine the establishments in which crustacea are handled "and the sanitary conditions surrounding the establishment." Section 28.2-806 authorizes the commissioner to establish and change standards, which control the marketing of crustacea from a health standpoint.

**Purpose:** The purpose of these regulations is to establish criteria by which crab processors can safely repack both domestic and imported crab meat. The department has a standard forbidding the repacking of crab meat, but this standard does not carry the force of law. While the Commissioner of Health has been issuing variances to this standard, the department has become aware that unscrupulous packers may be ignoring this standard, and there is little that the department can do to stop the practice.

The repacking of crab meat poses significant public health concerns since crab meat is a good growth medium for pathogenic bacteria, and it is often eaten without further cooking. When crab meat is repacked, certain procedures that will prevent contamination of the product and prevent the growth of pathogenic bacteria must be followed. Furthermore, foreign crab meat is being widely imported into the United States from developing countries where such diseases as hepatitis and cholera are common and are easily spread via the contamination of food. This foreign crab meat is being repacked in domestic containers without any indication of the country from which the meat originates. Unless the department can control the situation, in the event of an outbreak due to foreign crab meat, there would likely be no way to trace where the meat came from or where it was shipped.

**Substance:** These new regulations will allow a crab processor to be certified to repack both domestic and imported crab meat. Currently the department does not have a regulation concerning this practice, though it does have an unenforceable standard forbidding the practice.

Repackers shall have and maintain an approved Hazard Analysis Critical Control Point (HACCP) plan. A HACCP plan is a procedure that the repacker develops and follows to ensure that he produces a safe food product. The repacker conducts a hazard analysis to determine whether his repacking process entails any steps that could cause the food to be hazardous, and then determines the control points in his process that are critical to protecting the crab meat. The repacker is responsible for monitoring these critical control points and for maintaining records to show that proper procedures have been followed. For example, the repacker would likely indicate that temperature control is critical, and would monitor the temperature of the crab meat coolers for either proper temperature control or the presence of ice on the crab meat containers. These HACCP plans are currently required by the U.S. Food and Drug Administration, and this regulation would not exceed the federal requirement.

If repacked crab meat must be recalled from markets, normally the entire production lot would have to be recalled unless the repacker can use another reliable mechanism for distinguishing potentially hazardous product from safe product. This will be a new regulation but not a new practice because whenever product is found to be unsafe and must be recalled an attempt is made to recall all product that was produced during the time period of concern. For example, occasionally pasteurized crab meat containers are found to be defective and, when this happens, the entire production lot of meat processed is recalled or embargoed and checked to be sure there is no threat of botulism poisoning.

Crab meat for repacking will have to come from a facility that has been inspected by a public health authority. All crab meat producing states in the United States have an inspection and certification program for crab meat packers, so this would impose no difficulty for finding sources of domestic crab meat. The department believes that crab meat from foreign countries for repacking should also originate from a facility inspected by the foreign country's public health authority.

The following new regulations will apply when imported crab meat is used:

1. The repacker will obtain a letter from the foreign processor and from the foreign government or a recognized seafood safety authority stating that the crab meat has been produced under a HACCP plan equivalent to that required by the U.S. Food and Drug Administration (FDA). This is an FDA regulation and does not exceed federal requirements.
2. The repacker will provide a record of international transport temperature conditions. Temperature abuse during international transport is a major concern since containers of crab meat can sit out on docks for long periods of time.
3. The repacker shall take a minimum of five samples from each shipment and analyze them for decomposition

and certain microbiological contaminants. If any sample is found to contravene a guideline, the repacker shall contact the department for guidance concerning the lot.

4. If pasteurized crab meat is used, the repacker will obtain a letter from the foreign producer stating that the meat was pasteurized to the degree conducted in Virginia. Crab meat pasteurized along the U.S. East and Gulf Coasts are all processed in a manner to provide essentially the same amount of public health protection. The department believes that crab meat pasteurized in a foreign country should receive the same minimal amount of thermal processing.

5. The crab meat will be pasteurized either in the foreign country or by the repacker. Pasteurization is the one process that will ensure that such disease causing organisms as hepatitis and cholera are not alive in crab meat imported from developing countries.

6. All containers of repacked meat shall be labeled with the country of origin.

All crab meat repacking will be conducted separately in time or space from other operations, and the tables will be cleaned and sanitized prior to and after processing. This requirement is proposed because crab meat, when brought into a plant, may contain pathogenic organisms that were not present in the plant to begin with. By cleaning up before and after repacking, one can be sure that no pathogens from one lot are transferred to another lot, and if an outbreak should be traced to a specific lot, then only that lot would need to be recalled.

No portion of the crab meat will exceed 50°F during repacking. Most pathogenic organisms of concern will not substantially grow at or below 50°F.

Containers of repacked crab meat will be labeled with a lot number. The addition of a lot number to the container would allow public health officials to differentiate crab meat containers of concern during an outbreak from those not of concern.

Issues: The public would enjoy two primary benefits if these regulations were adopted. The public could continue to expect to receive a safe product, whether it came from a foreign country or not. When purchasing crab meat, the consumer would be much more likely to know whether the meat originated from a foreign country or not.

If these regulations were adopted, the Virginia crab meat industry would enjoy the ability to compete on a "level playing field." Currently, some unscrupulous crab meat dealers are repacking inexpensive foreign crab meat and are representing it as domestic crab meat when they sell it at a lower price than the true domestic product. This places the domestic crab meat packer at an economic disadvantage. There are no disadvantages to the public.

The disadvantages to the honest crab meat repackers are minor since they have been following most of these practices for the repacking of domestic crab meat for years. The disadvantages for the repackers of imported crab meat are that they will have increased recordkeeping responsibilities and minimal increased costs.

The advantage to the agency is that promulgation of these regulations would provide the regulatory capability to enforce those standards necessary to ensure the safety of repacked crab meat. There are no anticipated disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulations set forth the criteria by which Virginia crab processors can safely repack both domestic and imported crab meat.

Background. Repacking of crab meat involves the removal of crab meat picked and packed at another location and placing it in another container bearing the name of the local packer or distributor. The Virginia Department of Health (VDH) currently has a standard forbidding this practice, but the standard does not carry the force of law. VDH (through the Commissioner of Health) has been issuing variances to this standard, which are permits allowing the bearer to repack crab meat. These variances are not legally required; rather they are "requested." VDH has issued approximately 6 to 10 variances each year to repackers of domestic crabmeat and has issued one variance for the repacking of foreign crabmeat.

VDH offers several justifications for the establishment of the proposed regulations. First, crab meat is a ready-to-eat, high hazard food and therefore oversight of its processing is essential. Pathogenic bacteria are easily inoculated into crab meat where they can readily grow into harmful concentrations. In addition, large quantities of foreign crab meat are being imported into the U.S. from developing countries that have major public health problems such as cholera and hepatitis. This foreign product is being repacked without any labeling to indicate the country of origin, and if an outbreak were to occur, public health officials would not be able to track where such crab meat had come from or where it had been shipped. Secondly, VDH cites the Attorney General's opinion on variances, which is that they should be reserved for limited situations only. If the practice is allowed in all cases, it should be written into regulation. Variances are also very paperwork intensive.

The proposed regulations are primarily precautionary. Virginia has not experienced any outbreaks in recent years. Recently, however, there have been indications that some imported meat, specifically from China, may be suspect, but no illnesses have been traced to the meat. VDH believes two

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circumstances will increase compliance with the proposed regulations:

1. Food scientists will soon be able to identify foreign crab meat using DNA techniques. This will eliminate the ability of foreign-meat repackers to operate “anonymously.”
2. The threat of legal action (decertification or prosecution) will encourage repackers to comply. Decertification is the only avenue available now and it is not a very solid threat since there is no legal backing for the standard prohibiting repacking.

## Estimated economic impact.

**General Provisions.** Sections 10-30 contain definitions of terms used throughout the regulation and provisions dealing with general administrative matters. Section 40 requires a certification of inspection prior to operating a crab meat repacking establishment. All seafood processors are already legally required to obtain a VDH Certification of Inspection, which attests to the safe and sanitary conditions of the operations. This certification is free and is required and recognized by all states. There is no anticipated economic impact since this provision is already required and enforced. Section 50 states that repackers must have and maintain an approved Hazard Analysis Critical Control Point (HACCP) plan. A HACCP plan is a procedure that the repacker develops and follows to ensure that he produces a safe food product. It is a requirement that the process be analyzed, but does not set specific safety measures. This is a Federal Drug Administration (FDA) requirement for all seafood processors, so both repackers of foreign and domestic meat should be complying with this provision now. Since the regulation language does not exceed the federal requirements, there are no anticipated economic effects. Section 60 sets forth the procedures for a recall or an embargo of repacked foreign crab meat and is intended to restate the practices that VDH currently uses. Section 70 provides oversight for conditions not specifically mentioned in the regulations.

**Sources of Crab Meat for Repacking.** Sections 80-130 address sources of crab meat for repacking and are intended to ensure that imported meat is safe and wholesome. Section 80 states that all crab meat for repacking must come from a facility that has been inspected by a public health authority. All crab meat producing states in the U.S. have inspection and certification programs for crab meat packers, so this provision is trivial for repackers of domestic meat. It is the opinion of VDH that foreign meat should also originate from an inspected facility. This requirement may force some repackers of foreign meat to change suppliers and could possibly reduce the supply of imported crab meat. Although it is unknown at this time what the exact outcomes will be, there is some possibility that this provision could raise the price of imported crab meat. Section 90 requires repackers of foreign meat to provide verification of HACCP for imported crab meat. This is a FDA requirement and as such should have no economic consequences since the regulation does not exceed the federal requirements. Section 100 requires a record of international transport temperature conditions for each shipment and may result in increased recordkeeping and monitoring costs for some repackers.

**Sampling and Pasteurization.** Section 110 requires a minimum of five samples to be taken from each shipment and analyzed for decomposition and certain microbiological contaminants. Domestic meat is not subject to any similar requirement. According to the VDH Shellfish Sanitation Department, this is because VDH has more information about the domestic production (i.e., they are familiar with the inspection programs in all crab producing states). In fact, they noted that similar sampling of meat is routinely conducted during inspections of domestic crabmeat processing facilities. Although repackers of foreign crab meat are required to provide written assurances as to the quality of the imported meat (e.g., documentation that the meat has come from a facility inspected by a public health authority), VDH believes the sampling requirement is a reasonable measure to increase confidence in the safety and wholesomeness of the foreign meat. The estimated cost of the sampling requirement is \$150 per sample (\$750 per shipment).<sup>1</sup> Since this cost is small relative to the value of a crab meat shipment,<sup>2</sup> this regulation is unlikely to have any significant protectionist implications, such as restricting the importation of crab meat or significantly increasing its costs relative to domestic crab meat.

Section 120 addresses pasteurization of crabmeat for meat pasteurized outside the U.S. In these cases, the repacker must obtain verification that the meat was pasteurized to the degree conducted in Virginia. Crab meat pasteurized along the East Coast and Gulf Coasts are all processed in a standardized manner to provide consistent public health protection. This provision is intended to ensure that imported meat provides the same minimal level of protection and may require additional recordkeeping by some repackers.

**Processing Requirements.** Sections 140-200 address the processing of crab meat during repacking. Sections 140 and 150 require crab meat repacking to take place separately from other operations and that the tables be cleaned and sanitized prior to and after processing. This is intended to prevent contamination from one lot to another and is a requirement for obtaining a Certificate of Inspection, therefore no economic effects are expected. Sections 160-190 set maximum temperature requirements and procedures for disposal of used containers. Again, these provisions are intended to prevent contamination of the meat during the repacking process. Most pathogenic organisms of concern will not grow below the prescribed temperatures. These requirements are conditions of certification but the regulation, which carries the force of law, will likely increase compliance.

Section 200 requires that imported crabmeat, not pasteurized in the originating country, be pasteurized by the repacker and that the pasteurization process must be reviewed and confirmed by Virginia Tech or another approved authority.

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<sup>1</sup> Estimate provided by Bob Croonenberghs, Director, Division of Shellfish Sanitation, Virginia Department of Health. A shipment is defined as a maximum of one shipping container load.

<sup>2</sup> A full shipment container would hold approximately 40,000 pounds of crabmeat. The retail value of this product could range from \$6.50 to \$11 per pound for a total shipment value of \$260,000 to \$440,000. Assuming the crabmeat was packed in a full container, the sampling requirement would add approximately \$0.02 per pound to the cost of the crabmeat.

This is a one-time requirement and would only need to be repeated if the repacker changed their process (different units, sizes, etc.). This requirement will increase production costs for foreign crab meat by an estimated 50 cents per pound.<sup>3</sup>

**Labeling and Recordkeeping.** Sections 210-220 require certification and lot numbers to be on all containers. This will help identify crab meat of concern during an outbreak. While this is a new requirement, many repackers, usually large ones, may implement this procedure already for internal tracking. Section 230 requires imported crab meat to be clearly labeled with the country of origin. This is a U.S. Customs requirement although, currently, it is not universally followed. Compliance by all repackers with this requirement will provide additional information to consumers and may cause the price of domestic meat to rise, as it will be able to be marketed as a premium product. Producers will not be able to disguise imported meat as domestic product and may have to reduce its price. Since these changes in price reflect better information and a better reflection of consumer preferences, they indicate a potential for improved economic efficiency. Sections 240-290 set the requirements for maintenance of records. These provisions are intended to provide quick access to information of repacked crab meat to aid in the implementation of a recall if one became necessary.

**Summary of analysis.** The proposed requirements address general administrative matters, sources of crab meat for repacking to ensure that imported meat is safe and wholesome, processing of the crab meat during the repacking operation, labeling, and recordkeeping. These requirements can be expected to produce several significant economic consequences. The Department of Health's Division of Shellfish Sanitation will have some additional oversight responsibilities, though they expect to be able to handle the additional duties within their current staffing levels.

Repackers of domestic crab meat have been following most of the proposed requirements for years and, therefore, should not face any substantial increase in costs. They may, however, be able to raise prices now that they can differentiate their product as "premium." This increased price indicates a net economic benefit because it reflects a combination of greater valuation by consumers in addition to increased producer profits.

Some repackers of foreign crabmeat may be forced to use different or fewer suppliers (if current ones do not meet proposed criteria). The proposed requirements may also increase their processing costs and could affect the price of imported crab meat. The public (i.e., consumers of crab meat) will benefit from the additional information offered from clearly labeled packages indicating the country of origin and, potentially, from an increase in the quality of crab meat (if unwholesome meat is being sold now).

The exact magnitude of the increase in compliance costs for repackers is unknown at this time, however, based on the estimates provided by VDH, they are not likely to outweigh

the benefits resulting from increased assurance in the quality of crab meat sold and consumed in Virginia and reducing the risk of serious public health problems/outbreaks. The economic benefits of these regulations are based on the assumption that they will be effectively enforced. If they are not, none of the anticipated improvements in consumer benefits are likely to be realized.

**Businesses and entities affected.** The proposed regulation will affect repackers of crab meat. VDH estimates that of the 45 to 50 establishments that are issued a Certificate of Inspection each year, approximately one third (15-18) are interested in the repacking of crab meat.

**Localities particularly affected.** Currently, all known repackers of crab meat are located in the Tidewater area.

**Projected impact on employment.** If the proposed regulations succeed in raising the assurance of the quality of crab meat available in Virginia, the demand for both domestic and foreign crab meat may rise and could, if the supply of crab meat was available, increase employment in Virginia crabbing and repacking industries.

**Effects on the use and value of private property.** The proposed regulations are not expected to have any significant effects on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has no comments in response to the Department of Planning and Budget's economic impact analysis.

### Summary:

*The proposed regulation establishes criteria by which the Virginia crab industry can safely repack both domestic and imported crab meat. The regulation (i) provides for certification of inspection prior to operating a crab meat repacking establishment; (ii) provides that repackers have and maintain an approved Hazard Analysis Critical Control Point plan, which is a procedure that the repacker develops and follows to ensure that he produces a safe food product; (iii) addresses sources of crab meat for repacking; (iv) addresses sampling and pasteurization; (v) sets forth processing requirements; and (vi) establishes labeling and recordkeeping requirements.*

### CHAPTER 165.

### REGULATIONS FOR THE REPACKING OF CRAB MEAT.

### PART I.

### GENERAL PROVISIONS.

### 12 VAC 5-165-10. Definitions.

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

*"Action level" means the limit established for a deleterious substance present in a product or the environment, above which level prescribed actions by the division may be required to protect public health.*

*"Agency" means the Virginia Department of Health.*

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<sup>3</sup> Estimate provided by Bob Croonenberghs, Director, Division of Shellfish Sanitation, Virginia Department of Health.

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“Certificate of Inspection” means a numbered certificate issued by the division to a shipper after an inspection confirms compliance with applicable regulations and standards.

“Certification number” means a unique number assigned to each shipper upon issuance of a Certificate of Inspection.

“Certified laboratory” means a laboratory certified by the U.S. Food and Drug Administration for analysis of food products.

“Critical Control Point (CCP)” means a point, step or procedure in a food process at which control can be applied, and a food safety hazard can, as a result, be prevented, eliminated or reduced to acceptable numbers.

“Critical limit” means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.

“Department” means the Virginia Department of Health.

“Division” means the Division of Shellfish Sanitation.

“Establishment” means any vehicle, vessel, property, or premises where crustacea, finfish or shellfish are transported, held, stored, processed, packed, repacked or pasteurized in preparation for marketing.

“HACCP plan” means a written document that delineates the formal procedures that a dealer follows to implement a Hazard Analysis Critical Control Point methodology to assure food safety.

“Hazard analysis” means a process used to determine whether there are food safety hazards that are reasonably likely to occur while repacking crab meat and to identify the preventive measures that the repacker can apply to control those hazards.

“Lot” means repacked crab meat that bears the same repack date and source code.

“Preventive measure” means actions taken to prevent or control a food safety hazard.

“Repacker” means a person who operates an establishment that transfers crab meat from a container originally packed by another establishment to another container.

“Repacking operation” means a process of transferring crab meat from the original shipper’s packing container to a different packing container, including all steps beginning with the removal of the original containers of meat from the repacker’s refrigeration and ending with the repacked crab meat in properly identified containers placed into refrigeration.

“Shipper” means a person who operates an establishment for the cooking, picking, repacking or pasteurizing of crab meat.

“Source code” means a code designated by the repacker which represents the crab processing facility where crab meat was obtained.

## **12 VAC 5-165-20. Compliance with the Administrative Process Act.**

The provisions of the Virginia Administrative Process Act (§ 9-6.14:1 et. seq. of the Code of Virginia) shall govern the promulgation and administration of these regulations and shall be applicable to the appeal of any case decision based upon this chapter.

## **12 VAC 5-165-30. Powers and procedures of regulations not exclusive.**

The commissioner may enforce this chapter through any means lawfully available.

## **12 VAC 5-165-40. Certificate of Inspection required.**

No person, firm or corporation shall operate an establishment for the repacking or relabeling of crab meat until the establishment first obtains the approval of the State Health Commissioner in the form of a Certificate of Inspection. Application for a Certificate of Inspection shall be submitted to the appropriate field office or central office.

## **12 VAC 5-165-50. Hazard Analysis Critical Control Point (HACCP) plan.**

An establishment for the repacking or relabeling of crab meat shall have and maintain an approved Hazard Analysis Critical Control Point (HACCP) plan to include, at a minimum, the following:

1. A hazard analysis;
2. The identification of preventive measures;
3. The identification of critical control points;
4. The establishment of critical limits for each critical control point;
5. The monitoring records of each critical control point;
6. The establishment of corrective action when a critical limit deviation occurs;
7. The establishment and maintenance of a recordkeeping system; and
8. The establishment of verification procedures.

## **12 VAC 5-165-60. Scope of embargo.**

In the event of a recall or embargo of repacked crab meat, the entire production bearing the lot number will normally be recalled or embargoed, unless a verifiable subplot coding system has been used.

## **12 VAC 5-165-70. Oversight for safety of product.**

Any condition that may compromise the safety of the final product shall be identified by the repacker and the division shall be contacted for appropriate disposition of the product.

### **PART II.**

### **SOURCES OF CRAB MEAT FOR REPACKING.**

## **12 VAC 5-165-80. Source facility requirements.**

Crab meat for repacking shall be picked and packed by a crab processing establishment which is currently licensed,

permitted or certified and inspected by either a state public health authority or by a foreign government public health authority, and shall operate under a HACCP plan approved by the state or a foreign government public health authority, or the U.S. Food and Drug Administration.

**12 VAC 5-165-90. Verification of HACCP for imported crab meat.**

When imported crab meat is used as a source for repacking, the repacker shall obtain a letter from the foreign crab meat producer and foreign government public health authority or recognized seafood safety authority stating that the crab meat has been produced under a HACCP plan equivalent to the United States Food and Drug Administration Seafood HACCP Rule, 21 CFR Part 123.

**12 VAC 5-165-100. Verification of shipping temperatures for imported crab meat.**

When imported crab meat is used as a source for repacking, the repacker shall provide a record of international transport temperature conditions for each shipment. Temperature recording may be by maximum temperature recording, continuous temperature recording, or other device approved by the Division of Shellfish Sanitation. The processor shall include the transport temperature conditions as a part of the receiving CCP in its HACCP plan.

**12 VAC 5-165-110. Sampling and analysis requirements for imported crab meat.**

A. When imported crab meat is used as a source for repacking, the repacker shall take a minimum of five samples from every shipment prior to any processing or pasteurization to be analyzed by a certified laboratory for the following:

1. Aerobic plate count; action level of >100,000/g.
2. Fecal coliforms; action level of >93/100g.
3. *Escherichia coli*; action level of >93/100g.
4. *Salmonella sp.*; FDA guideline of zero per gram.
5. *Listeria monocytogenes*; action level of zero per gram.
6. *Staphylococcus aureus* enterotoxin; FDA guideline of no detectable toxin. Product shall be rejected if any sample is found to contain *staphylococcus aureus* enterotoxin.

B. When imported crab meat is used as a source for repacking, the repacker shall take a minimum of five samples from every shipment to be tested for decomposition by organoleptic sensing technique. These analyses shall be conducted only by a designated person trained in organoleptic sensing technique either by Virginia Polytechnic Institute and State University (Virginia Tech), the United States Food and Drug Administration (FDA), or by another source approved by the division. The repacker shall submit to the division a copy of the certificate of training or other documentation denoting successful completion of the training from the trainer for each individual conducting the analysis, and shall maintain a copy in his records.

C. If any sample is found to exceed an action level or guideline, or is found to show evidence of decomposition, the

repacker shall stop processing the lot sampled and contact the division before proceeding with processing to determine the disposition of that lot.

D. All records of sample analyses shall be kept on file at the repacker and shall be available for review by the division. These records shall be maintained for a period of one year from the date of processing for products packaged for fresh distribution, and two years for products packaged for frozen or pasteurized distribution.

**12 VAC 5-165-120. Verification of pasteurization for imported crab meat.**

If the crab meat for repacking was pasteurized in an establishment outside the United States, the repacker shall obtain a letter from the foreign crab meat producer stating that the crab meat has received a pasteurization process equivalent of  $F_{185}^{16} = 31$  minutes and was processed utilizing HACCP controls.

**12 VAC 5-165-130. Verification of container integrity for imported, pasteurized crab meat.**

The repacker shall evaluate the container integrity of all imported, pasteurized crab meat products. These evaluations shall also be conducted after any pasteurization by the repacker. This evaluation shall at a minimum include visual inspection of all containers for evidence of leaks.

PART III.  
OPERATIONAL REQUIREMENTS.

Article 1.  
Processing.

**12 VAC 5-165-140. Separation of operations.**

All crab meat repacking operations shall be conducted separately in time or space from other packing operations.

**12 VAC 5-165-150. Cleaning and sanitizing of tables.**

The repacking tables shall be cleaned and sanitized prior to and after each crab meat repacking operation.

**12 VAC 5-165-160. Pasteurized crab meat storage temperature.**

Containers of pasteurized crab meat destined for repacking shall be stored and transported in a refrigerated room or vehicle at a temperature of 36°F or less.

**12 VAC 5-165-170. Temperature of crab meat during repacking.**

No portion of the crab meat shall exceed 50°F during the repacking process.

**12 VAC 5-165-180. Cooling of crab meat after repacking.**

Immediately after repacking, containers of repacked crab meat shall be either placed into crushed or flaked ice or placed into refrigeration not to exceed 36°F, or both.

**12 VAC 5-165-190. Disposal of used containers.**

Empty containers from which crab meat has been repacked shall not be kept on premises for any type of reuse. After

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removing the crab meat, the empty containers shall be placed immediately into waste disposal receptacles.

## **12 VAC 5-165-200. Imported crab meat to be pasteurized.**

Prior to or after repacking, the repacker shall pasteurize all imported crab meat which has not been pasteurized in the country of origin. Pasteurization shall meet the National Blue Crab Industry Pasteurization and Alternative Thermal Processing Standards, revised November 8, 1993, with records of pasteurization to be kept as required in Article 3 (12 VAC 5-165-240 et seq.) of this part. The heat penetration in the crab meat during the pasteurization process for all container sizes and types shall be confirmed in writing by Virginia Tech or other authority approved by the division as meeting the aforementioned minimum requirements.

Article 2.  
Labeling.

## **12 VAC 5-165-210. Certification number to be on containers.**

Crab meat shall be repacked only into containers bearing the repacker's Virginia certification number.

## **12 VAC 5-165-220. Lot numbers.**

A. Containers of repacked crab meat shall be stamped or embossed with the lot number.

B. Lot numbers shall consist of a repack date and a code indicating the original source firm that picked the crab meat. All codes for lot numbers shall be logged in the processor records with an explanation of the code.

## **12 VAC 5-165-230. Country of origin for imported crab meat.**

Imported crab meat shall be packed into containers which bear a declaration of the country of origin of the repacked crab meat on the principal display panel of the container. If the repacked crab meat is a blend from more than one source, the container shall declare the country of origin for all sources, regardless of the percentage of crab meat that the source represents.

Article 3.  
Records and Recordkeeping.

## **12 VAC 5-165-240. Accessibility of records.**

All required records shall be (i) kept in logical order, (ii) maintained by the repacker, and (iii) readily accessible by the Division of Shellfish Sanitation staff for inspection.

## **12 VAC 5-165-250. Crab meat sources and source coding.**

The repacker shall maintain records clearly indicating the sources of crab meat used for repacking in relation to the source code identified on the containers of repacked crab meat.

## **12 VAC 5-165-260. Traceability of repacked crab meat.**

The individual lots of crab meat shall be easily traceable from their source through the repacking process to the buyer

and from the buyer back through the repacker to the particular lot source.

## **12 VAC 5-165-270. Minimum records to be kept.**

The repacker shall, at a minimum, maintain the following information on each lot of repacked crab meat: the source plant, quantity received from source, type of meat, date of repacking, buyers, and quantities of repacked lots sold. Additional clarifying records may be required if individual lots of product cannot easily be traced.

## **12 VAC 5-165-280. Records to be kept separate.**

Records for repacked imported crab meat shall be kept separate from other production records.

## **12 VAC 5-165-290. Traceability of blended crab meat.**

The repacker shall maintain traceability via recordkeeping and coding for imported crab meat which is mixed with domestic product. These records shall include the exact amounts and sources of all crab meat used in the production lot.

### DOCUMENT INCORPORATED BY REFERENCE

National Blue Crab Industry Pasteurization and Alternative Thermal Processing Standards, National Blue Crab Industry Association Grades and Cooking Standards Committee, revised November 8, 1993.

VA.R. Doc. No. R99-25; Filed September 9, 1999, 9:02 a.m.



## **TITLE 13. HOUSING**

### **VIRGINIA HOUSING DEVELOPMENT AUTHORITY**

<p><b>REGISTRAR'S NOTICE:</b> The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) pursuant to § 9-6.14:4.1 A 4; however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.</p>
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**Title of Regulation:** 13 VAC 10-180-10 et seq. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13 VAC 10-180-40, 13 VAC 10-180-50, 13 VAC 10-180-60, and 13 VAC 10-180-70).

**Statutory Authority:** § 36-55.30:3 of the Code of Virginia.

#### Summary:

The proposed amendments (i) prohibit existing tax credit developments from reapplying for additional credits during the 15-year compliance period; (ii) increase the minimum contractor costs for rehabilitation projects from \$5,000 to \$10,000; (iii) require nonprofits to receive all the developer's fee and limit the fees qualified nonprofits may pay to consultants in order to compete in the nonprofit pool; (iv) include Federal Home Loan Bank affordable housing funds and existing Section 8 and 236 financing in the types of fundings eligible for points for



*projects with subsidized local funding; (v) permit points for new construction in the Northern Virginia pool; (vi) reduce the points from 30 to 15 for special needs preference projects and for large family preference projects; (vii) delete the requirements for developer experience relating to number of low income housing units placed in service and reduce the points for developer experience to 10 points; (viii) delete the 10 points for material participation by a nonprofit with less than 51% ownership of the general partnership interest; (ix) reduce the minimum threshold score for all projects to 475 points; (x) increase the required compliance period to 30 years and provide additional points for a 40-year compliance period and a 50-year compliance period; (xi) increase the points for a right of first refusal to a qualified nonprofit or housing authority; and (xii) make other technical and clarification changes.*

**Agency Contact:** J. Judson McKellar, Jr., Regulatory Coordinator, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540.

**13 VAC 10-180-40. Adoption of allocation plan; solicitations of applications.**

The IRC requires that the authority adopt a qualified allocation plan which shall set forth the selection criteria to be used to determine housing priorities of the authority which are appropriate to local conditions and which shall give certain priority to and preference among developments in accordance with the IRC. The executive director from time to time may cause housing needs studies to be performed in order to develop the qualified allocation plan and, based upon any such housing needs study and any other available information and data, may direct and supervise the preparation of and approve the qualified allocation plan and any revisions and amendments thereof in accordance with the IRC. The IRC requires that the qualified allocation plan be subject to public approval in accordance with rules similar to those in § 147(f)(2) of the IRC. The executive director may include all or any portion of this chapter in the qualified allocation plan. However, the authority may amend the qualified allocation plan without public approval if required to do so by changes to the IRC.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications and the selection thereof as he shall consider necessary or appropriate.

*No application for credits will be accepted for any development that has previously claimed credits and is still subject to the compliance period for such credits.*

**13 VAC 10-180-50. Application.**

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments. When scoring the applications, the executive director will award points to those applications that submit the form within the deadlines established by the executive director and subtract points from those applications that fail to submit the form by such deadlines.

Application for a reservation of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

The application should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information, if applicable, needs to be included in the application to *determine the feasible credit amount*: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees, and other costs and fees. All applications seeking credits for rehabilitation of existing units must provide for *contractor* construction costs of at least ~~\$5,000~~ \$10,000 per unit.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does

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not constitute the requisite site control required in clause (iii) above. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development as described in the preceding sentence. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture, the site control document does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

Each application shall include, in a form or forms required by the executive director, a certification of previous participation listing all residential real estate developments in which the general partner(s) or their affiliates has or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, the applicant must indicate, for developments receiving an allocation of tax credits under § 42 of the IRC, whether any such development has ever been determined to be out of compliance with the requirements of the IRC by the appropriate state housing credit agency, and if so, an explanation of such noncompliance and whether it has been corrected. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the authority, the executive director determines that the general partner(s) do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant.

The application should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and

circumstances the applicant will be eligible for the amount of credits requested.

If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a ten-point scoring penalty per item.

After receipt of the applications, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

### **13 VAC 10-180-60. Review and selection of applications; reservation of credits.**

The executive director may divide the amount of credits into separate pools. The division of such pools may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

3. *The "qualified nonprofit organization" must receive all developer's fees and any fees paid by to third party development consultants may not exceed the lesser of 10% of the developer's fee or \$50,000.*

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in

the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools ("nonprofit pools") of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefor in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with

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respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$500,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from the U.S. Department of Housing and Urban Development (*HUD*) in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

## 1. Readiness.

a. Written evidence satisfactory to the authority of (i) preliminary approval by local authorities of the plan of development for the proposed development (30 points) or (ii) approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points)

b. Written evidence satisfactory to the authority (i) of approval by local authorities of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

c. Valid building permit(s) or letter dated within three months prior to the application deadline stating that all approvals are in place and building permits will be issued upon receipt of all fees. (20 points)

d. Submission of plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up. (20 points multiplied by the quotient calculated by dividing the percentage of completion of such plans and specifications or such work write-up by 75% not to exceed 20 points.)

## 2. Housing needs characteristics.

a. Submission of the letter in the form prescribed by the authority with the necessary attachments, addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (10 points; failure to make timely submission, minus 50 points)

b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation from the local authorities that the proposed development is located in a Qualified Census Tract (QCT) or such other locally identified revitalization area, or determination by the authority that the proposed development is located in a Difficult Development Area as defined by the U.S. Department of Housing and Urban Development *HUD* or in an Enterprise Zone designated by the state. (20 points)

d. Commitment by the applicant to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant, or (ii) on section 8 (as defined in 13 VAC 10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points)

e. Any of the following: (i) firm financing commitment(s) from the local government, housing authority, *Federal Home Loan Bank affordable housing funds*, or the Rural Development of the U.S. Department of Agriculture or (ii) a resolution passed by the locality in which the proposed development is to be located committing a grant or below-market rate loan to the development or (iii) evidence from *either* (x)

Rural Development that the development will remain subject to existing financing from Rural Development or (y) HUD that the development will remain subject to existing financing under its Section 8 or Section 236 programs. In the case of (iii) above, if the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause. (The amount of such financing will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

### 3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director.)

b. Rehabilitation of existing housing stock and adaptive reuse developments (points equal to (percentage of households at or below 60% of the Area Median Income (AMI) in the proposed development's census tract (not less than 10% and not to exceed 90%) times 100) minus 10). Increase of housing stock attributable to new construction in jurisdictions other than the jurisdictions listed in the Northern Virginia pools established by the executive director (points equal to 90 minus (percentage of households at or below 60% of the AMI in the proposed development's census tract (not less than 10% and not to exceed 90%) times 100)). Developments involving both rehabilitation and new construction will be scored on a weighted average of the point calculations above. Proposed new construction developments to be located in the jurisdictions listed ~~included~~ in the rural pool established by the executive director will receive an additional 20 points; however, no applicant will receive more than 80 points under this subdivision. Notwithstanding the above, the applicant shall receive the maximum 80 points in this subdivision if the applicant provides a letter signed by the chief executive officer of the locality in which the proposed development is located requesting the authority to override the point calculations and provide the maximum points under this subdivision.

c. Lower amount of credit request. (Fifty points multiplied by the percentage by which the total amount of the annual tax credits requested is less than \$1,000,000, including negative points using the percentage in which the total amount of annual credits requested is greater than \$1,000,000.)

d. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If all 2-bedroom units have 1.5 bathrooms and all 3-bedroom units have 2 bathrooms. (15 points)

(b) If all units have a washer and dryer. (7 points)

(c) If all units have a balcony or patio. (5 points)

(d) If all units have a washer and dryer hook-up only. (3 points)

(e) If all units have a dishwasher. (2 points)

(f) If all units have a garbage disposal. (1 point)

(g) If the development has a laundry room. (1 point)

(h) If a community/meeting room with a minimum of 800 square feet is provided. (5 points)

(i) If all units have a range hood above the stove. (1 point)

(j) If all metal windows have thermal breaks, and if insulating glass for windows and sliding glass doors have a 10-year warranty against breakage of the seal from date of delivery. (1 point)

(k) If all insulation complies with Virginia Power Energy Efficient Home Requirements, with a minimum R=30 insulation for roofs. (2 points)

(l) If all refrigerators are frost free, a minimum size of 14 cubic feet, and provide separate doors for freezer and refrigerator compartments. (1 point)

(m) If all exterior doors exposed to weather are metal. (1 point)

(n) Brick exterior walls. (15 points times the percentage of exterior walls covered by brick)

(2) The following points are available to applications electing to serve elderly and/or handicapped tenants as elected in subdivision 4 a of this section:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units are adaptable for the handicapped in buildings with elevators. (2 points)

(c) If all units have an emergency call system. (3 points)

(d) If all bathrooms have grab bars and slip-resistant bottoms for bathtubs. (1 point)

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(e) If all bathrooms have an independent or supplemental heat source. (1 point)

(f) If all corridors have a handrail on one side. (1 point)

(3) The following points are available to projects which rehabilitate or adaptively reuse an existing structure:

(a) If all bathrooms, including ones with windows, have exhaust fans ducted out. (1 point)

(b) If all existing, single-glazed windows in good condition have storm windows, and all windows in poor condition are replaced with new windows with integral storm sash or insulating glass. The insulating glass metal windows must have a thermal break. The insulated glass must have a 10-year warranty against breakage of the seal. (2 points)

(c) If all apartments have a minimum of one electric smoke detector with battery backup. (1 point)

(d) If all bathrooms have ground fault interrupter electrical receptacles. (1 point)

(e) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

(f) All buildings have a minimum insulation of R=30 for attics and R=19 for crawl spaces. (2 points)

(g) All public areas, such as community rooms, laundry rooms, and rental office are accessible to persons in wheelchairs. (1 point)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 d of this section is 30 points.

#### 4. Tenant population characteristics.

a. Commitment by the applicant to lease low-income housing units in the proposed development only to one or more of the following: (i) persons 55 years or older, (ii) homeless persons or families, or (iii) physically or mentally disabled persons. Applicants committing to serve physically disabled persons must meet the requirements of the federal Americans with Disabilities Act (42 USC § 12101 et seq.). Applicants receiving points under this subdivision a may not receive points under subdivision b below. (30 15 points)

b. Commitment by the applicant to creating a development in which 20% or more of the low-income units have three or more bedrooms. Applicants

receiving points under this subdivision b may not receive points under subdivision a above. (30 15 points)

c. Commitment by the applicant to provide relocation assistance to displaced households at such level required by the authority. (30 points)

#### 5. Sponsor characteristics.

a. Evidence that the development team for the proposed development has the demonstrated experience, qualifications and ability to perform. ~~In comparison with the proposed development, the controlling general partner or partners, or principals of the controlling general partner or partners acting in the capacity of controlling general partner or partners, has placed in service one or more developments which, in the aggregate, would result in the highest number of points under one of the following: (i) at least an equal number of low-income housing units (60 points); or (ii) two or more times as many low-income housing units (90 points). For purposes of this subdivision 5 a of this section, each low-income housing tax credit unit developed in Virginia, as evidenced by the issuance of IRS forms 8609, shall count as a full low-income housing unit; each low-income housing tax credit unit developed out of Virginia shall count as 75% of a low-income housing unit; any other developed residential units (either for sale or rental) shall count as 50% of a low-income unit. In implementing the scoring of this subdivision a, (i) only existing units will be counted, (ii) the units of the proposed development will not be counted, and (iii) the executive director may determine that multiple applications for which he deems to be a single development shall be considered a single application. The experience of the principals of the controlling partner may be drawn from two or more separate entities, provided that, the officers and directors of such separate entities are identical to each other. (10 points)~~

b. Participation by a qualified nonprofit organization authorized to do business in Virginia and substantially based or active in the community of the development that (i) acts as a managing general partner under the partnership agreement. (20 points); ~~or (ii) materially participates in the development and the operation of the development and owns at least a 10% ownership interest in the general partnership interest of the partnership (10 points). No staff member, officer or member of the board of directors of such qualified nonprofit organization may materially participate, directly or indirectly, in the proposed development as a for-profit entity. Points awarded under clause (ii) of this subdivision b may not be combined with any points awarded under clause (i).~~

#### 6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the

executive director for new construction units, adaptive reuse units and rehabilitation units, respectively, based upon the number of new construction units, adaptive reuse units and rehabilitation units in the proposed development. (If the per unit credit amount of the proposed development equals or exceeds the applicable standard per unit credit amount established by the executive director, the proposed development is assigned no points; if the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, the difference is calculated as a percentage of such standard per unit credit amount established by the executive director, and then multiplied by 120 points.)

b. The percentage by which the total of the amount of credits per bedroom in such low-income housing units (the "per bedroom credit amount") of the proposed development is less than the standard per ~~unit~~ *bedroom* credit amounts established by the executive director ~~per bedroom credit amount~~ for new construction units, adaptive reuse units and rehabilitation units, respectively, based upon the number of new construction units, adaptive reuse units and rehabilitation units in the proposed development. (If the per bedroom credit amount of the proposed development equals or exceeds the applicable standard per ~~unit~~ *bedroom* credit amount established by the executive director, the proposed development is assigned no points; if the per bedroom credit amount of the proposed development is less than the applicable standard per ~~unit~~ *bedroom* credit amount established by the executive director, the difference is calculated as a percentage of such standard per ~~unit~~ *bedroom* credit amount established by the executive director, and then multiplied by 120 points.)

c. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit ~~credit~~ *cost* amounts established by the executive director ~~per unit cost~~ for new construction units, adaptive reuse units and rehabilitation units, respectively, based upon the number of new construction units, adaptive reuse units and rehabilitation units in the proposed development. (If the per unit cost of the proposed development equals or exceeds the applicable standard per unit ~~credit~~ *cost* amount established by the executive director, the proposed development is assigned no points; if the per unit cost of the proposed development is less than the applicable standard per unit ~~credit~~ *cost* amount established by the executive director, the difference is calculated as a percentage of such standard per unit ~~credit~~ *cost* amount established by the executive director, and then multiplied by 55 points.)

d. The percentage by which the total of the cost per bedroom in such low-income housing units (the "per bedroom cost"), adjusted by the authority for location, of the proposed development is less than the standard

~~per unit credit~~ *bedroom cost* amounts established by the executive director ~~per bedroom cost~~ for new construction units, adaptive reuse units and rehabilitation units based upon the number of new construction units, adaptive reuse units and rehabilitation units in the proposed development. (If the per bedroom cost of the proposed development equals or exceeds the applicable standard per ~~unit~~ *credit* *bedroom cost* amount established by the executive director, the proposed development is assigned no points; if the per bedroom cost of the proposed development is less than the applicable standard per ~~unit~~ *credit* *bedroom cost* amount established by the executive director, the difference is calculated as a percentage of such standard per ~~unit~~ *credit* *bedroom cost* amount established by the executive director, and then multiplied by 55 points.)

For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount and per bedroom credit amount for any building documented by the applicant to be located in a qualified census tract or difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Notwithstanding any other provisions herein, any application which is assigned a total number of points less than a threshold amount of ~~525~~ 475 points shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

7. Bonus points. For each application to which the total number of points assigned is equal to or more than the above-described threshold amount of points, bonus points shall be assigned as follows:

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of low-income housing units restricted for occupancy to households at or below 50% of the area median gross income.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below

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those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points multiplied by (ii) the percentage of low-income units restricted to the rents required for occupancy to households at or below 50% of the area median gross income.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the ~~15-year compliance period as defined in the IRC; such commitment beyond the end of the 15-year compliance period and prior to the end of the 30-year extended use period (as defined in the IRC) being deemed to represent a waiver of the applicant's right under the IRC to cause a termination of the extended use period in the event the authority is unable to present during the period specified in the IRC a qualified contract (as defined in the IRC) for the acquisition of the building by any person who will continue to operate the low-income portion thereof as a qualified low-income building.~~ Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a ~~15-year~~ 10-year commitment beyond the ~~15-year compliance~~ 30-year extended use period or 50 points for a ~~25-year~~ 20-year commitment beyond the ~~15-year compliance~~ 30-year extended use period.)

d. Commitment by the applicant to sell the proposed development *by pursuant to an executed, recordable option or right of first refusal to a qualified nonprofit organization authorized to do business in Virginia and substantially based or active in the community of the development, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for profit entity. The applicant must record such option or right of first refusal as an exhibit to immediately after the low-income housing commitment described in 13 VAC 10-180-70 and give the qualified nonprofit veto power over any refinancings of the development.* Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (~~50~~ 60 points)

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and shall be ranked within such pool. Those applications assigned more points shall be ranked higher than those applications assigned fewer points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the state, and in the event that the amount of credits available for reservation to such applications is determined by the

executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the most bonus points as described above, and each application so selected shall receive (in order based upon the number of such bonus points, beginning with the application with the most bonus points) a reservation of credits in the lesser of the full amount determined by the executive director to be permissible hereunder or the amount of credits remaining therefor in such pool or, if none, in the Commonwealth. If two or more of the tied applications receive the same number of bonus points and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) the lesser of the full amount determined by the executive director to be permissible hereunder or the amount of credits remaining therefor in such pool or, if none, in the Commonwealth.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the



foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may (i) permit the applicant to modify such proposed development and his application so as to achieve financial feasibility based upon the amount of such available credits, provided that the applicant's modified development produces at least 75% of the units and bedrooms described in the application for the proposed development, or (ii) move the proposed development and the credits available to another pool. Any modifications shall be subject to the approval of the executive director; however, in no event shall such modifications result in a material reduction in the number of points assigned to the application pursuant to this section. If any credits remain in any pool after accepting any modifications to an applicant's proposed development or moving proposed developments and credits to another pool, the executive director may reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application. If necessary, the executive director may, for developments which meet the requirements of § 42(h)(1)(E) of the IRC only, reserve additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of

credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the executive director shall not reserve more than \$1.2 million of credits to any general partner(s) or principal(s) of such general partner(s), directly or indirectly, in any credit year.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. The executive director may, as a condition to the binding commitment, require each applicant to obtain a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall

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deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount. The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may terminate the reservation of such credits and draw on any good faith deposit. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether

before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

### **13 VAC 10-180-70. Allocation of credits.**

At such time as one or more of an applicant's buildings or an applicant's development which has received a reservation of credits is (i) placed in service or satisfies the requirements of § 42(h)(1)(E) of the IRC and (ii) meets all of the preallocation requirements of this chapter, the binding commitment and any other applicable contractual agreements between the applicant and the authority, the applicant shall so advise the authority, shall request the allocation of all of the credits so reserved or such portion thereof to which the applicant's buildings or development is then entitled under the IRC, this chapter, the binding commitment and the aforementioned contractual agreements, if any, and shall submit such application, certifications, legal and accounting opinions, evidence as to costs, a breakdown of sources and uses of funds, pro forma financial statements setting forth anticipated cash flows, and other documentation as the executive director shall require in order to determine that the applicant's buildings or development is entitled to such credits as described above. The applicant shall certify to the authority the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to the buildings or the development.

As of the date of allocation of credits to any building or development and as of the date such building or such development is placed in service, the executive director shall determine the amount of credits to be necessary for the

financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC. In making such determinations, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall then deem reasonable (or he may apply the criteria and assumptions he established pursuant to 13 VAC 10-180-60) for the purpose of making such determinations, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined in 13 VAC 10-180-60) at fixed interest rates, debt service on the proposed mortgage loan. The amount of credits allocated to the applicant shall in no event exceed such amount as so determined by the executive director by more than a de minimis amount of not more than \$100.

Prior to allocating credits to an applicant, the executive director shall require the applicant to execute and deliver to the authority a valid IRS Form 8821, Tax Information Authorization, naming the authority as the appointee to receive tax information. The Forms 8821 of all applicants will be forwarded to the IRS, which will authorize the IRS to furnish the authority with all IRS information pertaining.

Prior to allocating the credits to an applicant, the executive director shall require the applicant to execute, deliver and record among the land records of the appropriate jurisdiction or jurisdictions an extended low-income housing commitment in accordance with the requirements of the IRC. Such commitment shall require that the applicable fraction (as defined in the IRC) for the buildings for each taxable year in the extended use period (as defined in the IRC) will not be less than the applicable fraction specified in such commitment and which prohibits both (i) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of a low-income unit and (ii) any increase in the gross rent with respect to such unit not otherwise permitted under the IRC. The amount of credits allocated to any building shall not exceed the amount necessary to support such applicable fraction, including any increase thereto pursuant to § 42(f)(3) of the IRC reflected in an amendment to such commitment.

The commitment shall provide that the extended use period will end on the day 15 years after the close of the compliance period (as defined in the IRC) or on the last day of any longer period of time specified in the application during which low-income housing units in the development will be occupied by tenants with incomes not in excess of the applicable income limitations; provided, however, that the extended use period for any building shall be subject to termination, in accordance with the IRC, ~~(i) on the date the building is acquired by foreclosure or instrument in lieu thereof unless a determination is made pursuant to the IRC that such acquisition is part of an agreement with the current owner thereof, a purpose of which is to terminate such period or (ii) the last day of the one-year period following the written request by the applicant as specified in the IRC (such period in no event beginning earlier than the end of the fourteenth year of the compliance period) if the authority is unable to present during such one-year period a qualified contract (as defined in the IRC) for the acquisition of the building by any person who will continue to operate the low-income portion thereof as a qualified low-income building.~~ In addition, such termination shall not be construed to permit, prior to close of the three-year period following such termination, the eviction or termination of tenancy of any existing tenant of any low-income housing unit other than for good cause or any increase in the gross rents over the maximum rent levels then permitted by the IRC with respect to such low-income housing units. Such commitment shall also contain such other terms and conditions as the executive director may deem necessary or appropriate to assure that the applicant and the development conform to the representations, commitments and information in the application and comply with the requirements of the IRC and this chapter. Such commitment shall be a restrictive covenant on the buildings binding on all successors to the applicant and shall be enforceable in any state court of competent jurisdiction by individuals (whether prospective, present or former occupants) who meet the applicable income limitations under the IRC.

In accordance with the IRC, the executive director may, for any calendar year during the project period (as defined in the IRC), allocate credits to a development, as a whole, which contains more than one building. Such an allocation shall apply only to buildings placed in service during or prior to the end of the second calendar year after the calendar year in which such allocation is made, and the portion of such allocation allocated to any building shall be specified not later than the close of the calendar year in which such building is placed in service. Any such allocation shall be subject to satisfaction of all requirements under the IRC.

If the executive director determines that the buildings or development is so entitled to the credits, he shall allocate the credits (or such portion thereof to which he deems the buildings or the development to be entitled) to the applicant's qualified low-income buildings or to the applicant's development in accordance with the requirements of the IRC. If the executive director shall determine that the applicant's buildings or development is not so entitled to the credits, he shall not allocate the credits and shall so notify the applicant within a reasonable time after such determination is made. In the event that any such applicant shall not request an allocation of all of its reserved credits or whose buildings or

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development shall be deemed by the executive director not to be entitled to any or all of its reserved credits, the executive director may reserve or allocate, as applicable, such unallocated credits to the buildings or developments of other qualified applicants at such time or times and in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

The executive director may prescribe (i) such deadlines for submissions of requests for allocations of credits for any calendar year as he deems necessary or desirable to allow sufficient processing time for the authority to make such allocations within such calendar year and (ii) such deadlines for satisfaction of all preallocation requirements of the IRC the binding commitment, any contractual agreements between the authority and the applicant and this chapter as he deems necessary or desirable to allow the authority sufficient time to allocate to other eligible applicants any credits for which the applicants fail to satisfy such requirements.

The executive director may make the allocation of credits subject to such terms as he may deem necessary or appropriate to assure that the applicant and the development comply with the requirements of the IRC.

The executive director may also (to the extent not already required under 13 VAC 10-180-60) require that all applicants make such good faith deposits or execute such contractual agreements with the authority as the executive director may require with respect to the credits, (i) to ensure that the buildings or development are completed in accordance with the binding commitment, including all of the representations made in the application for which points were assigned pursuant to 13 VAC 10-180-60 and (ii) only in the case of any buildings or development which are to receive an allocation of credits hereunder and which are to be placed in service in any future year, to assure that the buildings or the development will be placed in service as a qualified low-income housing project (as defined in the IRC) in accordance with the IRC and that the applicant will otherwise comply with all of the requirements under the IRC.

In the event that the executive director determines that a development for which an allocation of credits is made shall not become a qualified low-income housing project (as defined in the IRC) within the time period required by the IRC or the terms of the allocation or any contractual agreements between the applicant and the authority, the executive director may terminate the allocation and rescind the credits in accordance with the IRC and, in addition, may draw on any good faith deposit and enforce any of the authority's rights and remedies under any contractual agreement. An allocation of credits to an applicant may also be cancelled with the mutual consent of such applicant and the executive director. Upon the termination or cancellation of any credits, the executive director may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

VA.R. Doc. No. R00-15; Filed September 22, 1999, 10:35 a.m.

## TITLE 16. LABOR AND EMPLOYMENT

### VIRGINIA WORKERS' COMPENSATION COMMISSION

Title of Regulation: 16 VAC 30-11-10 et seq. **Public Participation Guidelines.**

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until December 14, 1999.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Code of Virginia provides for promulgation of public participation guidelines (PPGs) by state administrative agencies. The regulations under consideration here are the commission's public participation guidelines drafted as authorized in the Administrative Process Act.

Purpose: The purpose of the PPGs is to establish methods for identification and notification of persons or groups who may have an interest in regulatory action the commission may take, and to provide means of obtaining input from those persons or groups. These regulations provide the primary means by which the public is to be made aware of the commission's regulatory actions, and to be given a meaningful opportunity to participate in those actions. Thus, the PPGs act in furtherance of the public welfare generally.

Substance: These regulations consist of three sections. The first section provides definitions for terms used recurrently in the PPGs. The second section sets out principles that apply generally with respect to operation of the PPGs.

The third section defines the procedures the commission will use in gathering input. This section includes a discussion of the methods the commission will use in providing notice of its regulatory proceedings. It describes lists the commission will maintain with the names and addresses of individuals it has identified as expressing an interest in the commission's proceedings in this regard. These lists will assist the commission in efficiently gathering data relevant to its regulatory decision making process. This section also describes the commission's authority to identify individuals or groups who might be interested in the proceeding, or who the commission otherwise believes may possess information helpful to the process. Finally, this section describes the circumstances under which the commission will or may hold public hearings as part of its information gathering process.

Issues: The primary advantage to the public of these PPGs is the fact that it will be given substantial notice of the commission's regulatory proceedings, and thus have a meaningful opportunity to participate in those proceedings. The commission is unable to find a disadvantage to the public. The primary advantage of these PPGs to the commission is that, by systematically identifying parties with an interest in pending regulatory proceedings and notifying them appropriately, the commission will have greater meaningful input into its regulatory decision making. The resulting increase in the commission's informational base will

assure informed decisions as to enactment, amendment and repeal of its regulations. The commission is unable to identify disadvantages either to itself or to the Commonwealth as a result of enactment of these PPGs.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation establishes procedures for notifying the public concerning opportunities for participation in the development and review of regulations promulgated by the Virginia Workers' Compensation Board.

Estimated economic impact. This regulation sets forth procedures for soliciting public input in the regulatory decision making process of the Virginia Workers' Compensation Board. The economic value of public participation is difficult to measure. However, the decision making process is improved if individuals, especially those who will be affected by the decision, are allowed to have input. The benefits, although small, should outweigh the cost of providing the forum for public participation.

Businesses and entities affected. The proposed regulation could potentially affect any individual interested in the regulatory actions of the Virginia Workers' Compensation Board. According to the board, those most likely to be affected are: (i) 489 insurance carriers writing workers' compensation coverage in the Commonwealth; (ii) 198 self-insured entities; and (iii) approximately 2,000 parties to commission proceedings.

Localities particularly affected. The proposed regulation will not affect any particular localities as it applies statewide.

Projected impact on employment. The proposed regulation is not expected to have any impact on employment in Virginia.

Effects on the use and value of private property. The proposed regulation is not expected to have any effects on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The commission concurs in DPB's Economic Impact Analysis. The commission has no corrections or comments to the EIA.

Summary:

*The proposed regulations outline the procedure which the Virginia Workers' Compensation Commission (the commission) will use as a means of seeking input from*

*interested persons or groups in connection with any action the commission may take in promulgating regulations related to its administration of the Virginia Workers' Compensation Act (§ 65.2-100 et seq. of the Code of Virginia), the Virginia Compensating Victims of Crime Act (§ 19.2-368.1 et seq. of the Code of Virginia), and the Virginia Birth-Related Neurological Injury Compensation Act (§ 38.2-5000 et seq. of the Code of Virginia).*

CHAPTER 11.

PUBLIC PARTICIPATION GUIDELINES.

**16 VAC 30-11-10. Definitions.**

*The following words and terms when used in these guidelines shall have the following meanings unless the context clearly indicates otherwise:*

*"Administrative Process Act" or "Act" means the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).*

*"Commission" means the Virginia Workers' Compensation Commission.*

*"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.*

**16 VAC 30-11-20. General.**

*A. The procedures in 16 VAC 30-11-30 shall be used for soliciting the input of interested persons in the formation and development, amendment or repeal of regulations subject to the Administrative Process Act. Except as specifically stated in these guidelines, these guidelines do not apply to actions of the commission exempted or excluded from the scope of the Administrative Process Act, by whatever authority.*

*B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation.*

**16 VAC 30-11-30. Public participation procedures.**

*A. The commission shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the commission. In addition, the commission, at its discretion, may add to this list any person it believes will be interested in participating in the relevant commission action. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or to be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization, or at the discretion of the commission when mail is returned as undeliverable. Appropriate persons on this list will be identified and notified as to commission actions in which they are likely to be interested.*

*B. Where the commission intends to take regulatory action subject to the Administrative Process Act, it shall hold a public hearing where such hearing would be required under that Act. Additionally, the commission may hold a public hearing, at its discretion, where it believes such hearing would be beneficial.*

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1. Where such public hearing is required by the Administrative Process Act, notice of such hearing shall be given in accordance with the Act. Where the commission elects to hold a hearing not required by the Administrative Process Act, notice shall be provided by publication of the date, time and location of such hearing in the Virginia Register of Regulations no later than in the calendar month immediately preceding the calendar month in which the hearing is to take place. In all cases where a public hearing is to be held, notice of such hearing may also be sent to all persons included in the list described in subsection A of this section.

2. Public hearings may be held in such locations as the commission determines most appropriate for facilitating the process of obtaining input from interested persons.

C. Where the commission does not intend to take regulatory action that would be subject to the Administrative Process Act, it may, in its discretion, conduct an informal information gathering process. This process may include solicitation of input from persons the commission identifies as possessing information useful to the commission in administering the provisions of the Virginia Workers' Compensation Act. Information gathered by the commission in these proceedings may be used by the commission in determining whether regulatory action under Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act would be appropriate. However, when taking regulatory action, the commission shall comply with the relevant provisions of the Administrative Process Act, and the informal information gathering process described in this subsection shall be in addition to the procedures provided in Article 2 of the Act.

D. In connection with any process under this section, the commission may, in its discretion, form and utilize standing or ad hoc advisory panels for the purpose of consultation. Additionally, the commission may, in its discretion, consult with groups and individuals registering an interest in the subject matter of the commission's action, or which the commission identifies as possessing knowledge, skill or expertise which would be beneficial to the commission in connection with the relevant commission action. These consultation procedures shall be used where the commission, in its discretion, concludes that the complexity of the issue under consideration so warrants.

VA.R. Doc. No. R99-198; Filed September 9, 1999, 9:12 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### CEMETERY BOARD

Title of Regulation: 18 VAC 47-10-10 et seq. **Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Public Hearing Date: October 20, 1999 - 1 p.m.

Public comments may be submitted until December 10, 1999.

(See Calendar of Events section for additional information)

Basis: Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia creates the statutory authority for the regulation of Cemetery Operators, Perpetual Care Trust Funds and Preneed Burial Contracts and gives the Cemetery Board certain powers and duties as found in § 54.1-201 of the Code of Virginia. These statutes mandate the Cemetery Board to promulgate regulations.

Additionally, the board is mandated by Chapter 1.1:1 of Title 9 of the Code of Virginia to promulgate public participation guidelines. The basis for this authority is found under §§ 54.1-201 and 54.1-2313 of the Code of Virginia.

Purpose: The purpose of these regulations are to assure that the public is provided adequate notice concerning each opportunity for participation in the development, promulgation, and review of regulations affecting the operation of licensed cemeteries in the Commonwealth of Virginia.

Substance: The proposed regulations outline requirements made on the Cemetery Board concerning proper notification of the public of certain regulatory actions, including the development and maintenance of a mailing list, establishment of public comment periods and public hearings, and the notice requirements of meetings.

These regulations are, in substance, nearly identical to the Public Participation Guidelines already in place for all other regulatory boards under the authority of the Department of Professional and Occupational Regulation. Additionally, these proposed regulations are original, and, subsequently, do not contain any changes or amendments to existing regulations.

Issues: The primary advantage to the public is a mechanism implemented by the agency that assures timely notification of changes or amendments to regulations. No disadvantages to the public or the agency have been identified.

The notification to the public of changes and amendments to regulations encourages public comment, providing the agency with a broader view of public opinions concerning regulatory issues. Increased public participation provides for the possibility of increased expertise from those not affiliated with the agency. No disadvantage to the agency has been identified.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private

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

Summary of the proposed regulation. The proposed regulation establishes procedures for notifying the public concerning opportunities for participation in the development, promulgation, and review of regulations affecting the operation of licensed cemeteries in the Commonwealth of Virginia.

Estimated economic impact. The 1998 General Assembly created the Cemetery Board and assigned its authority to the Department of Professional and Occupational Regulation (DPOR). This regulation sets forth procedures for soliciting public input in the decision making process of the Cemetery Board. The economic value of public participation is difficult to measure. However, the decision making process is improved if individuals, especially those who will be affected by the decision, are allowed to have input. The benefits, although small, should outweigh the cost of providing the forum for public participation.

Businesses and entities affected. The proposed regulation could potentially affect any individual interested in the regulation of licensed cemeteries in Virginia. The regulated population is likely to be most interested. DPOR has estimated this population will consist of 70 individual cemeteries with 112 sites, and 500 salespersons that can operate from different sites for an additional fee.

Localities particularly affected. The proposed regulation will not affect any particular localities as it applies statewide.

Projected impact on employment. The proposed regulation is not expected to have any impact on employment in Virginia.

Effects on the use and value of private property. The proposed regulation is not expected to have any effects on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Upon review of the Economic Impact Analysis from the Department of Planning and Budget of the Cemetery Board Public Participation Guidelines, the Department of Professional and Occupation Regulation concurs with the findings of the report.

Summary:

*The proposed regulations have been developed to assure that the public is provided adequate notice concerning each opportunity for participation in the development, promulgation, and review of regulations affecting the operation of licensed cemeteries and registered sales personnel in the Commonwealth of Virginia.*

*The proposed regulations outline requirements placed on the Cemetery Board concerning proper notification of the public of certain regulatory actions, including the development and maintenance of a mailing list, establishment of public comment periods and public hearings, and the notice requirements of meetings.*

## CHAPTER 10. PUBLIC PARTICIPATION GUIDELINES.

### **18 VAC 47-10-10. Definitions.**

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

*"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.*

*"Agency" means any authority, instrumentality, office, board, or other unit of state government empowered by the basic laws to make regulations or decide cases.*

*"Organization" means any one or more association, advisory council, committee, corporation, partnership, governmental body or legal entity.*

*"Person" means one or more individuals.*

### **18 VAC 47-10-20. Mailing list.**

*The agency will maintain a list of persons and organizations who will be mailed the following documents, as they become available:*

- 1. Notice of Intended Regulatory Action to promulgate, amend or repeal regulations.*
- 2. Notice of Comment Period and public hearings.*
- 3. Notice that the final regulations have been adopted.*

*Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.*

### **18 VAC 47-10-30. Placement on the mailing list; deletion.**

*Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency, at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in 18 VAC 47-10-20. Individuals and organizations periodically may be requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.*

### **18 VAC 47-10-40. Petition for rulemaking.**

*Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.*

### **18 VAC 47-10-50. Notice of intent.**

*At least 30 days prior to filing the Notice of Comment Period form and proposed regulations as required by § 9-6.14.7.1 of the Code of Virginia, the agency will publish a Notice of Intended Regulatory Action. This notice will provide*

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for at least a 30-day comment period and shall state whether the agency intends to hold a public hearing. The agency is required to hold a hearing on the proposed regulation upon request by (i) the Governor or (ii) 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register of Regulations.

## **18 VAC 47-10-60. Informational proceedings or public hearings for existing rules.**

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding, which may take the form of a public hearing, to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

## **18 VAC 47-10-70. Notice of formulation and adoption.**

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency receives requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

## **18 VAC 47-10-80. Advisory committees.**

The agency intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession;

2. Industry, professional and trade associations' mailing lists; and

3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

## **18 VAC 47-10-90. Applicability.**

18 VAC 47-10-20, 18 VAC 47-10-30, 18 VAC 47-10-40, 18 VAC 47-10-60, and 18 VAC 47-10-70 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R98-250; Filed September 10, 1999, 11:55 a.m.

\* \* \* \* \*

**Title of Regulation:** 18 VAC 47-20-10 et seq. Cemetery Board Rules and Regulations.

**Statutory Authority:** §§ 54.1-201 and 54.1-2313 of the Code of Virginia.

**Public Hearing Date:** October 20, 1999 - 1 p.m.

Public comments may be submitted until December 10, 1999.

(See Calendar of Events section for additional information)

**Basis:** Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia creates the statutory authority for the regulation of Cemetery Operators, Perpetual Care Trust Funds and Preneed Burial Contracts.

Specifically, § 54.1-2313 of the Code of Virginia mandates that the Cemetery Board adopt regulations that:

1. Regulate preneed burial contracts;
2. Regulate perpetual care trust fund accounts;
3. Prescribe preneed contract forms;
4. Prescribe disclosure requirements and disclosure forms and require reasonable bonds to ensure performance of preneed contracts;
5. Regulate and register sales personnel employed by a cemetery company;
6. Adopt a method for executing at-need, a preneed burial contract when the licensee has had his license to operate a cemetery revoked or suspended; and
7. Adopt consumer protections, which are consistent with those provisions of the Federal Trade Commission Funeral Rules.

**Purpose:** This is a new regulation to implement an Act of the 1998 Session of the General Assembly. The purpose of the proposed regulations is to create a regulatory framework to protect the public.

Currently, cemeteries are registered by the Department of Agriculture and Consumer Services under the authority of Article 3.2 (§ 57-35.11 et seq.) of Chapter 3 of Title 57 of the Code of Virginia. Effective July 1, 2000, the responsibility of



licensing cemetery operators and registering sales personnel working for cemetery companies will become the responsibility of the Cemetery Board at the Department of Professional and Occupational Regulation (DPOR).

These proposed regulations facilitate the change of the current registration program to a licensure/registration program as prescribed by law.

The proposed regulations implement the board's authority in a manner believed to be the least burdensome on the regulated industry while providing protection to the public against incompetent or unscrupulous persons engaging in the operation of a cemetery or maintaining the required trust funds.

**Substance:** The key provisions of the proposed regulations that make changes to the current status of law are identified and explained as follows:

**General:** Defines terms used throughout the regulations.

**Entry:** States the requirement of licensure/registration; establishes entry standards for licensure/registration for both cemetery companies and sales personnel; prohibits transfer of sales personnel registrations; outlines qualifications of preneed and perpetual care trustees; and, lists associated fees for entry.

**Renewal and Reinstatement:** Establishes standards and requirements for renewal and/or reinstatement of license/registration, including requirement for reinstatement, status of license/registration during reinstatement periods, board denial discretion and associated fees.

**Standards of Practice and Conduct:** Outlines grounds for disciplinary action, license/registration maintenance requirements, recordkeeping requirements, prohibited acts, trust fund requirements, bonding requirements, contract and price list requirements and the authority to appoint a receiver to execute preneed contracts at-need, in the case of a regulant whose license has been suspended or revoked (per § 54.1-2313 E 1 of the Code of Virginia).

**Issues:** While it can be argued that there are professional and occupational boards throughout the Commonwealth of Virginia whose regulant population has limited contact with the general population, very few individuals can go throughout their life without direct contact with a cemetery. Generally there are two types of contact the public has with a cemetery: at-need and preneed. At-need contact involves the involvement of the cemetery in the business of selling graves, entombment rights, or property (vaults, liners, urns, memorials, markers, etc.) used in connection with interring or disposing the remains of a deceased human being, where delivery of the property is not delayed by more than 120 days. The majority of at-need services are provided within days or weeks of the interment or disposition of the remains of the deceased.

Preneed contacts, however, concern the sale of the rights and property outlined above more than 120 days before their use. The sale of rights and property months or years before they are needed can be very lucrative to a cemetery company.

The public may choose to pay in full for the items or they may finance the contract. In either case the cemetery company has control of the funds paid by the public and are expected to deliver the property when needed, which could be years from the date of the sale. Current statutes require a certain percentage of the preneed sale be deposited into a preneed trust fund, which is established and maintained in accordance with Chapter 23.1 of Title 54.1 of the Code of Virginia. Funds are invested in accordance with Title 26 of the Code of Virginia.

The sale of the rights and property do not terminate the cemetery company's responsibility to the public. It is not unreasonable for individuals who have entrusted the care of their deceased to a cemetery to expect that the facilities of that cemetery be maintained to accepted standards. This "perpetual care" would include, but not be limited to, the keeping of the grounds, the maintenance of the roads, the appearance of markers and memorials, and other aesthetic areas. This maintenance comes at a cost to the cemetery operator and certain provisions are necessary to ensure that there are funds available to accomplish this task. Current statutes require a certain percentage of the sale of certain rights and/or property be deposited into a perpetual care trust fund, which is established and maintained in accordance with Chapter 23.1 of Title 54.1 of the Code of Virginia. Funds are invested in accordance with Title 26 of the Code of Virginia.

The costs of regulating cemetery companies and the sales personnel they employ are paid by the regulants. The licensees/registrants must pay a fee to the department to become licensed/registered and to renew their licenses/registrations. No regulatory costs are paid by the general tax revenues.

These regulations are the most efficient and cost beneficial way to meet the statutory requirements of regulation set forth by the General Assembly and are subsequently the most advantageous to the agency. No disadvantage to the agency is predicted by the promulgation to these regulations.

In summary, the public and those regulated benefit from the protections provided by the regulatory program. Absent these protections there would be no monitoring of trust funds to ensure that there are adequate funds to provide for the perpetual care of a cemetery or the funds available to ensure delivery of rights and property paid for in advance by members of the public. The disadvantage is the fee paid by regulants to become licensed/registered that are necessary to pay government costs to assure compliance with the statutes.

**Economic Impact:** The direct economic impact on those regulated is estimated to be \$49,694 per year to implement and enforce the proposed regulations.

All anticipated costs are expected to be on-going as no significant start-up costs, other than an initial \$458 in Attorney General fees to review the proposed regulations, has been identified.

The proposed regulations will directly affect all those cemetery companies required by the statutes to obtain a license and all those individuals employed by those companies as sales personnel, as defined in the statutes and regulations. It is estimated that the regulant population will

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# Proposed Regulations

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consist of 70 individual cemeteries with 112 sites and 500 sales personnel who can operate from different sites for an additional fee. They will be required to pay license/registration fees; furnish the appropriate bond, where required; and pay any required fees to add sites to their license/registration.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation promulgates rules and regulations for a newly formed regulatory board, the Cemetery Board. These rules and regulations specify licensing requirements for cemetery companies and their sales personnel, along with fee structures for these licenses. They also specify standards of practice and conduct for cemetery companies. In particular, they state certain requirements for the establishment of perpetual care and preneed trust funds. They also require the presentation of a price list of burial fees, and state requirements for preneed burial contracts.

Estimated economic impact. This segment of economic activity is one where regulation of some sort may be necessary. This is due to the nature of the transaction involving performance by one party at a time when the other party has deceased. This performance also occurs frequently far in the future, at a date not known precisely when an agreement is made. These circumstances make it difficult for one party to a contract to ensure performance by the other party to the contract. These regulations seek to reduce the likelihood of nonperformance on the part of cemetery companies, and thus improve the public perception (and, hence, the economic value) of the industry as a whole.

This regulation does not attempt to directly address the social issue of the sometimes high prices for cemetery services. However, some features of this regulation might provide mechanisms for the perpetuation of some high prices. The intention of these features is to increase the information provided to and protection of individuals purchasing cemetery contracts, but these features may also offer opportunities for coordination by cemetery companies.

This regulation achieves these goals at a relatively low administrative cost, which itself is financed through licensing fees. However, it is possible that the administration of this regulation may become more extensive, so these costs may increase.

The primary purpose of this regulation is to reduce the likelihood that cemetery companies will not perform their agreements. In economic activities where an exchange for goods or services is made on the spot, the parties themselves can enforce an agreement, and there is no need for regulation. In activities where the exchange occurs at a well-defined time in the future, parties can determine whether performance has occurred by the stated time, and then can use public complaints or civil litigation to induce performance by a nonperformer. This then lessens the need for regulation. In this case however, performance occurs after one party has deceased. This party then cannot determine performance themselves. Additionally, this performance may occur at some time far into the future.

These conditions then provide opportunities for nonperformance. Some individuals selling cemetery contracts might simply disappear before performance. While this is true for any activity where exchange occurs in the future, conditions in this case may increase these opportunities. With one party being deceased, it will be more difficult to definitively identify the other party. Also, because performance of these contracts may occur at a point very far into the future, an individual selling cemetery contracts has a longer period to increase the number of contracts he is obligated to before performance on any one is required. This large stock of future obligations creates a strong incentive to disappear before performance is required.

In a similar manner, some individuals selling cemetery contracts might be tempted by bankruptcy opportunities. Bankruptcy enables an individual to be released from existing obligations. Again, the fact that performance of these contracts may occur at a point far into the future enables a large stock of future obligations to be acquired by an individual selling cemetery contracts. Bankruptcy offers an opportunity for this individual to mismanage the revenues from selling these contracts, without having to perform their obligations under these contracts.

Because it is so difficult for the potential purchasers of these services to ensure performance, the economic value of these services may fall significantly below the value they would have if the contracts were seen as readily enforceable. One possible mechanism for recovering some of this lost economic value is to use regulations to provide the assurances that potential providers find it difficult to provide contractually.

Through its requirements for licensing of cemetery companies and their sales personnel, this regulation tries to reduce the likelihood of nonperformance. Under these licensing requirements, sales personnel and principals of cemetery companies must disclose information about criminal convictions, and about experiences with any other cemeteries, in particular whether any penalties or disciplinary actions had been imposed during those experiences. A similar requirement exists for trustees of funds set up by cemetery companies. These requirements should significantly lessen the likelihood that an individual selling cemetery contracts, or trustees of cemetery contract funds, will disappear before performing those contracts by steering

the public away from those individuals with records of nonperformance.

This regulation also specifies that trustees of funds set up by cemetery companies must disclose information about prior bankruptcies. Future revisions to this regulation might also consider extending this requirement to the principals of the cemetery companies themselves.

Section 54.1-2316 requires that before a cemetery company can sell a lot, parcel of land, burial or entombment right, this company must deposit at least \$25,000 into a perpetual care trust fund. Another requirement of the statute is that after selling property or services that are not to be delivered within 120 days, a cemetery company must deposit at least 40% of the receipts from that sale into a pre-need trust fund (§ 54.1-2325). These deposits will help ensure that the cemetery company will perform its future liabilities. This requirement of the statute itself further reduces the opportunities for nonperformance.

One issue with the cemetery industry is the high cost of cemetery services. This regulation does not address this issue directly. However, there are two features of this regulation that might help perpetuate these high prices. One is the requirement to distribute a "written general price list." The intention of this requirement is to inform purchasers of cemetery services of the costs of each item. Another possible intention is to better enable these purchasers to shop around for lower prices. However, the nature of the product being exchanged, where respectful appearances are expected, leads purchasers to not shop around or bargain over prices as they would perhaps for other large purchases, such as for an automobile. Instead, there might be some incentive to list very high prices in the hope that the individual purchaser would accept those without attempting to bargain them down. Future revisions to this regulation might consider the requirement that these price lists specify these prices as "Maximum Prices," or some other mechanism.

Another possible detrimental effect of these price lists is that they may facilitate coordination of high prices among cemetery companies. Published, non-negotiable prices provide a mechanism for price coordination that would be illegal if done explicitly by the firms. This is more of a potential problem in markets that are only served by a small number of providers, but coordination could occur in larger markets as well. The ability to coordinate through these price lists would be significantly reduced if more exchanges involved bargained-for reductions in the final contract price.

A further mechanism for coordination is provided by the requirement to deposit at least 40% of the sales price for pre-need burial contracts into a trust fund. The purpose of this requirement is to ensure that enough funds will be available to complete the contract in the future, as discussed above. This requirement provides a natural coordination point for cemetery companies. When the contract is ultimately performed, they then can withdraw their principal from the trust fund based upon itemized statement of its expenses (§ 54.1-2331). At this point, only 40% of the original contract price remains in the trust fund, and the cemetery company then has an incentive for its expenses to be exactly equal to

that 40%. This is true for all cemetery companies selling pre-need burial contracts.

If the cemetery companies face the same wholesale prices, this requirement provides an incentive for cemetery companies selling pre-need burial contracts to price these contracts with a 60% markup, where they then deposit their actual wholesale cost at 40% of the contract price into this trust fund. Because this is true for many companies and these companies face the same wholesale prices, this requirement then provides an opportunity for coordination among cemetery prices, leading to higher prices for consumers. Future revisions to this regulation may consider increasing the percentage that is required to be deposited.

Finally, the costs of administering this program seem to be fairly low. The projected cost of implementing this program per year is estimated at around \$50,000. This program is directed at maintaining quality of business practices for sales of cemetery plots and headstones and other items. A typical price of plots and headstones together runs from around \$1,000 to \$2,000 (Phone Conversation with McCoy Funeral Home, Blacksburg, VA, 5-14-99). Approximately 50,000 people die in Virginia each year (State Population Estimates and Demographic Components of Population Change: July 1, 1997 to July 1, 1998, Population Estimates Program, Population Division, U.S. Bureau of the Census, 12-31-98. The actual number for this period was 53,107), although not all of these purchase plots and headstones. Nevertheless, an expenditure of \$50,000 seems very reasonable to protect the public in the context of these purchases.

On the other hand, these administrative costs may rise. This program depends on the voluntary submission of information concerning criminal records and bankruptcy filings. Presently, it is expected that voluntary submission should be sufficient, because in prior experience with voluntary submission on other licensing applications, it has been an extremely rare occurrence that someone has lied on their application (Conversation with Eric Olson, Virginia Regulatory Boards Administrator, 5-5-99). Nonetheless, if abuse of the voluntary submission program became widespread, some steps would be necessary, and these additional steps would add to the administrative costs of this program.

Businesses and entities affected. This regulation will affect 70 cemetery companies with 112 sites. These companies employ approximately 500 sales personnel.

Localities particularly affected. Cemetery companies are located throughout the Commonwealth. No locality will be particularly affected.

Projected impact on employment. There should be no impact on employment from this regulation.

Effects on the use and value of private property. This regulation is designed to safeguard the interests of individuals purchasing cemetery services from cemetery companies. By protecting these interests, this regulation may increase the value of these services for these individuals and at the same time increase the value of the businesses providing these services.

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Summary of analysis. This proposed regulation promulgates rules and regulations for the newly formed Cemetery Board. It takes important steps to help guarantee the performance of cemetery services that are frequently agreed to and paid for by individuals at one point in time, with eventual performance at some uncertain point, far into the future. To reduce the likelihood of nonperformance, this regulation requires cemetery companies and their sales personnel to disclose information about prior criminal history and bankruptcies. Before selling plots, companies are also required to place a large sum into a trust fund. 40% of pre-need burial contract prices are also required to be placed into a trust fund. All of these requirements will greatly reduce the likelihood of nonperformance of future cemetery service contracts. This regulation thus significantly benefits the Commonwealth. It achieves these benefits at a relatively low administrative cost, although this cost may rise if the voluntary disclosure requirement is abused.

This regulation does not address the issue of the sometimes high prices of cemetery services. It does require the distribution of standard price lists to customers, and these lists may help cemetery companies coordinate the maintenance of high prices. The 40% trust fund deposit requirement may also suggest a coordination point for the establishment of high prices. Some simple adjustments might reduce these effects should they become a significant problem.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Upon review of the economic impact analysis from the Department of Planning and Budget of the Cemetery Board Rules and Regulations, the Department of Professional and Occupational Regulation concurs with the findings of the report.

## Summary:

*The proposed regulations outline requirements placed on cemetery companies and their sales personnel concerning their licensing, reporting and enforcement of the regulations and the Cemetery Act.*

*The regulations also specify licensing requirements for cemetery companies and their sales personnel, along with fee structures for these licenses. In addition, standards of practice and conduct for cemetery companies are specified, including certain requirements for the establishment of perpetual care and preneed trust funds, the presentation of a price list of burial fees, and requirements for preneed burial contracts.*

### CHAPTER 20.

#### CEMETERY BOARD RULES AND REGULATIONS.

##### PART I.

##### GENERAL PROVISIONS.

#### **18 VAC 47-20-10. Definitions.**

*The following words and terms when used in this chapter shall have the definitions ascribed to them in § 54.1-2310 of the Code of Virginia or shall have the following meanings, unless the context clearly indicates otherwise:*

*“Administration” means the cost to administer and maintain records required by Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia or any regulation of the board, including a percentage of compensation of employees, payment of insurance premiums, reasonable payments for employees’ pension and other benefit plans, and costs of maintaining cemetery company and sales personnel compliance with the board’s licensure and registration requirements.*

*“Change in ownership” means a change in 50% or more of the stockholders or partnership interest, or both, of a cemetery company.*

*“Licensee” means any person licensed by the board as a cemetery company.*

*“Outer burial container” means any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as vaults or grave liners.*

*“Perpetual care” means continuing care, maintenance, administration and embellishment of the cemetery.*

*“Preneed trust fund” means those moneys held in accordance with § 54.1-2325 of the Code of Virginia.*

*“Principal” means the following individuals:*

- 1. The sole proprietor of a sole proprietorship.*
- 2. The partners of a general partnership.*
- 3. The managing partners of a limited partnership.*
- 4. The officers of a corporation as registered with the State Corporation Commission.*
- 5. The managers of a limited liability company.*
- 6. The officers or directors of an association.*

*“Registrant” means any natural person registered with the board as sales personnel.*

*“Sales personnel” means any natural person employed by or affiliated as an independent contractor with a licensed cemetery company who deals with the public in the sale or offering for sale any property or services enumerated in the definition of “cemetery company” contained in § 54.1-2310 of the Code of Virginia.*

*“Services” means any act or activity by the cemetery company in relation to arranging, supervising, interring or disposing of the remains or commemorating the memory of deceased human beings.*

### PART II.

#### APPLICATION AND ENTRY REQUIREMENTS.

#### **18 VAC 47-20-20. Necessity for license and registration.**

*No person shall engage in the business of a cemetery company in the Commonwealth without first being issued a license by the board, unless exempt by Chapter 23.1 (§ 53.1-2310 et seq.) of Title 54.1 of the Code of Virginia. All sales personnel must be registered with the board.*

**18 VAC 47-20-30. Qualifications for cemetery company license.**

A. Every legal business entity applying for a cemetery company shall meet all of the requirements outlined in §§ 54.1-2311 and 54.1-2314 of the Code of Virginia as well as the additional qualifications of this section.

B. Each firm applying for a cemetery company license and the principals of that firm shall disclose, at the time the application is submitted, any current or previous cemeteries managed in Virginia or in other jurisdictions, and any disciplinary actions taken against those cemeteries, or the individuals managing them. This includes, but is not limited to, any monetary penalties, fines or disciplinary actions taken by any federal, state or local regulatory agencies.

C. In accordance with § 54.1-2314 of the Code of Virginia, each applicant shall disclose the following information about the cemetery company and any of the principals of the company:

1. A conviction in any jurisdiction of any felony or any crime of moral turpitude, there being no appeal pending therefrom or the time for appeal having elapsed.
2. A conviction in any jurisdiction of any misdemeanor within five years of the date the application is submitted.

Any plea of *nolo contendere* shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as *prima facie* evidence of a conviction or finding of guilt. The board, in its discretion, may deny approval of a cemetery application in accordance with § 54.1-204 of the Code of Virginia.

**18 VAC 47-20-40. Qualifications for registration of sales personnel.**

A. Cemetery company sales personnel shall submit an application on a form prescribed by the board and shall meet the requirements set forth in § 54.1-2314 of the Code of Virginia, as well as the additional qualifications of this section.

B. Every applicant to the board for registration as sales personnel shall provide his name, address, the license number of the cemetery company he will be employed by or affiliated with, and the address of each cemetery for which he will act as sales personnel.

C. Each applicant for registration as sales personnel shall disclose, at the time the application is submitted, any current or previous cemetery sales licenses/registrations from Virginia or other jurisdictions, and any disciplinary actions taken against those licenses/registrations. This includes, but is not limited to, any monetary penalties, fines or disciplinary actions taken by any federal, state or local regulatory agencies.

D. Each applicant for registration as sales personnel shall disclose, at the time the application is submitted, the following information:

1. A conviction in any jurisdiction of any felony or any crime of moral turpitude, there being no appeal pending therefrom or the time for appeal having elapsed.

2. A conviction in any jurisdiction of any misdemeanor within five years of the date the application is submitted.

Any plea of *nolo contendere* shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as *prima facie* evidence of a conviction or finding of guilt. The board, in its discretion, may refuse registration to a sales personnel application in accordance with § 54.1-2314 of the Code of Virginia.

**18 VAC 47-20-50. Transfer of sales personnel registration prohibited; concurrent registration permitted.**

A. A sales personnel registration may not be transferred from one licensed cemetery company to another. The registration is void if the registrant is no longer affiliated with the cemetery company indicated on the original application for registration.

B. Sales personnel may be employed by or affiliated with more than one cemetery company provided that a separate registration is obtained for each such employment or affiliation.

**18 VAC 47-20-60. Qualifications of trustees.**

A. The trustee of a perpetual care trust fund or a preneed trust fund, other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, must meet the requirements of this section and shall be governed by § 54.1-2318 of the Code of Virginia.

B. The trustee applicant shall be at least 18 years old and have a minimum of five years experience either as an individual trustee or as an agent for a firm responsible for the management of a trust.

C. Each trustee or trust firm, or both, shall provide information for the 10 years prior to the submission of the application on any outstanding judgments, outstanding tax obligations, and/or defaults on any bonds. If the trustee firm or its parent or predecessor organization has, during the previous 10 years, been adjudicated a bankrupt or has any proceeding for the relief of debtors, such fact or facts shall be stated. The trust firm and the principals of the firm shall submit information on any outstanding judgments or defaults on bonds directly related to the management of a trust.

D. Each trust firm and principals of the firm shall disclose, at the time the application is submitted, any current or previous trusts managed in Virginia or in other jurisdictions, and any disciplinary actions taken against these trusts, the trust company, or the individuals managing the trusts. This includes, but is not limited to, any monetary penalties, fines or disciplinary actions taken by any federal, state or local regulatory agencies.

E. The trustee must meet the bonding requirements set forth in §§ 54.1-2317 and 54.1-2326 of the Code of Virginia as applicable.

F. In accordance with §§ 54.1-2317 and 54.1-2326 of the Code of Virginia, each trustee shall disclose the following information about the trust firm or principals of the firm:

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# Proposed Regulations

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1. A conviction in any jurisdiction of any felony;
2. A conviction in any jurisdiction of any misdemeanor within five years of the date the application is submitted.

Any plea of *nolo contendere* shall be considered a conviction for the purposes of this chapter. The record of a conviction received from a court shall be accepted as *prima facie* evidence of a conviction or finding of guilt. The board, in its discretion, may deny approval of a trustee application in accordance with § 54.1-2317 or § 54.1-2326 of the Code of Virginia.

## 18 VAC 47-20-70. Application fees.

Application fees are nonrefundable.

Cemetery company license	\$600 per cemetery
Addition of cemetery	\$600 per cemetery
Sales personnel registration	\$50 per cemetery
Dishonored check fee	\$25

### PART III.

#### RENEWAL AND REINSTATEMENT OF LICENSE.

## 18 VAC 47-20-80. Renewal required.

Licenses and registrations issued under this chapter shall expire two years from the last day of the month in which they were issued, as indicated on the license or registration.

## 18 VAC 47-20-90. Qualifications for renewal.

All applicants for renewal of a license or registration must meet the renewal requirements set forth in § 54.1-2311 of the Code of Virginia, and pay the renewal fee specified in 18 VAC 47-20-140.

## 18 VAC 47-20-100. Procedures for renewal.

Renewal of licenses and registrations shall be on forms prescribed by the board. The Department of Professional and Occupational Regulation will mail a renewal application to the licensee or registrant. The renewal application will be sent to the last known address of record.

Failure to receive this application shall not relieve the licensee or regulant of the obligation to renew. The renewal application shall be completed in full prior to renewal of the license or registration.

## 18 VAC 47-20-110. Reinstatement required.

A. If the requirements for renewal of a license or registration, including receipt of the fee by the board, are not complete within 30 days of the license or registration expiration date, the licensee or registrant shall be required to reinstate the license or registration by meeting all renewal requirements and paying the reinstatement fee specified in 18 VAC 47-20-140.

B. A license or registration may be reinstated for up to one year following the expiration date with payment of the renewal and reinstatement fee. After one year, the license or registration may not be reinstated under any circumstances and the applicant must meet all current requirements and apply as a new applicant.

C. Any activity requiring a license or registration conducted subsequent to the expiration may constitute unlicensed or unregistered activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

## 18 VAC 47-20-120. Status of licensee or registrant during the period prior to reinstatement.

A. When a license or registration is reinstated, the license or registration shall continue to have the same number and shall be assigned an expiration date two years from the previous expiration date of the license or registration.

B. A licensee or registrant who reinstates his license or registration shall be regarded as having been continuously licensed or registered without interruption. Therefore, the licensee or registrant shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period.

C. A licensee or registrant who fails to reinstate his license or registration shall be regarded as unlicensed from the expiration date of the license or registration forward.

## 18 VAC 47-20-130. Board discretion to deny renewal or reinstatement.

A. The board may deny renewal or reinstatement of a license or registration for the same reasons as it may refuse initial licensure or registration or discipline a licensee or registrant.

B. The board may deny renewal or reinstatement of a license or registration if the applicant has not fully paid monetary penalties, satisfied sanctions and paid costs imposed by the board, plus any accrued interest.

## 18 VAC 47-20-140. Renewal and reinstatement fees.

All fees required by the board are nonrefundable. The date on which the fee is received by the department or its agent shall determine whether the licensee or registrant is eligible for renewal or reinstatement or must reapply as a new applicant.

Renewal of cemetery company License	\$600 per cemetery
Renewal of sales personnel registration	\$50 per cemetery
Reinstatement of cemetery company license	\$100 per cemetery
Reinstatement of sales personnel registration	\$50
Dishonored check fee	\$25

### PART IV.

#### STANDARDS OF PRACTICE AND CONDUCT.

## 18 VAC 47-20-150. Grounds for disciplinary action.

The board may suspend a license or registration for a stated period or indefinitely, revoke any license or registration, censure or reprimand any person licensed or registered by the board or place such person on probation for such time as

it may designate when any license or registrant has been found to have violated or cooperated with others in violating any provision of Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

**18 VAC 47-20-160. Maintenance of license and registration.**

A. Any change in the name and address of each cemetery in Virginia in which the cemetery company has a business interest, the name and address of all officers and directors of the cemetery company, the registered agent for the cemetery company, or the compliance agent must be reported to the board in writing within 30 days after the change as required by § 54.1-2311 of the Code of Virginia. A new license shall be required if there is a change in ownership of the cemetery company or whenever the legal business entity holding a cemetery company license is dissolved or altered to form a new business entity.

B. A cemetery company wishing to add a cemetery to its license shall complete a form provided by the board and submit the fee as prescribed in 18 VAC 47-20-70. Both the cemetery company and the cemetery being added to the registration must meet the requirements found in Chapter 23.1 of Title 54.1 of the Code of Virginia and 18 VAC 47-20-30. Sales personnel of the new cemetery will be required to register in accordance with 18 VAC 47-20-40.

C. Any change in the name and home address of any registrant must be reported to the board in writing within 30 days after the change.

D. The board shall not be responsible for the licensee's or registrant's failure to receive notices, communications and correspondence caused by the licensee's or registrant's failure to promptly notify the board of any change of address.

E. Sales personnel shall be issued a registration to the compliance agent at the place of business of the licensed cemetery company with which the registrant is affiliated or at which the registrant is employed. When any registrant is discharged or in any way terminates his employment or affiliation with a licensed cemetery company, or when the cemetery company's license is suspended or revoked, it shall be the duty of the compliance agent to return the registration to the board within 10 calendar days of the date of such discharge or termination.

**18 VAC 47-20-170. Display and verification of license or registration.**

Licenses and registrations must be visibly displayed at the place of business of the licensed cemetery company. All licensees and registrants must provide verification of licensure or registration upon request of the public.

**18 VAC 47-20-180. Records of interments.**

A permanent record shall be kept of every interment in the cemetery, showing the date of the interment, the name of the person interred, together with information identifying the specific location in which the interment was made.

**18 VAC 47-20-190. Prohibited activities.**

In addition to the acts set forth in §§ 54.1-2314, 54.1-2315 and 54.1-2316 of the Code of Virginia, the board may discipline a licensee or registrant for the following acts:

1. Employing or affiliating with by independent contract, sales personnel not registered with the board.
2. Failing to retain for a period of three years all records required by this chapter or Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia at the place of business in Virginia of the licensed cemetery company.
3. Failing to produce to the board or any of its agents, upon request, any document, book, or record required by this chapter or Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia.
4. Failing to respond to an inquiry by the board or any of its agents within 21 days.
5. Advertising in any name other than the name in which licensed or registered.
6. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or registration.
7. Allowing a cemetery company license or sales personnel registration to be used by an unlicensed cemetery company or unregistered sales personnel.
8. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.
9. Having failed to inform the board in writing, within 30 days, that the company, an officer, director or compliance agent, has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or any crime involving moral turpitude.
10. Having failed to inform the board in writing, within 30 days, of a disciplinary action in a jurisdiction where licensed, including suspension, revocation or surrender in connection with a disciplinary action.
11. Failing to reasonably maintain the buildings, grounds, and facilities of a cemetery licensed to a cemetery company.
12. Failing to file any report required by Chapter 23 of Title 54.1 of the Code of Virginia.
13. Engaging in negligent, improper, fraudulent, or dishonest conduct.

**18 VAC 47-20-200. Perpetual care trust fund and bonding requirement.**

A. Each licensed cemetery company shall establish a perpetual care trust fund in accordance with § 54.1-2316 of the Code of Virginia.

B. If the trustee for the perpetual care trust fund is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the

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Commonwealth, the trustee shall be approved by the board and shall deposit a fidelity bond in accordance with § 54.1-2317 of the Code of Virginia.

C. Deposits into the fund shall be made in accordance with §§ 54.1-2319 through 54.1-2321 of the Code of Virginia.

D. The income from the perpetual care trust fund shall be used in accordance with § 54.1-2322 of the Code of Virginia.

E. Each licensed cemetery company shall submit written financial reports regarding perpetual care trust funds to the board as prescribed by §§ 54.1-2323 and 54.1-2324 of the Code of Virginia.

F. Transfer of funds to another trustee shall be done in accordance with § 54.1-2337 of the Code of Virginia.

## **18 VAC 47-20-210. Preneed trust fund and bonding requirements.**

A. Each licensed cemetery company shall establish a preneed trust fund and make deposits in accordance with § 54.1-2315 of the Code of Virginia.

B. If the trustee for the preneed trust fund is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall be approved by the board and shall deposit a fidelity bond with the board in accordance with § 54.1-2326 of the Code of Virginia.

C. All funds shall be handled in accordance with §§ 54.1-2329 through 54.1-2331 of the Code of Virginia.

D. Each licensed cemetery company shall submit a written financial report regarding preneed trust accounts to the board as prescribed by § 54.1-2333 of the Code of Virginia.

E. Transfer of funds to another trustee shall be done in accordance with § 54.1-2337 of the Code of Virginia.

## **18 VAC 47-20-220. Itemized statement and general price list of burial fees to be furnished.**

Cemetery companies shall furnish a written general price list and a written itemized statement of goods and services they provide. This itemized statement shall include, but is not limited to, burial vaults and other burial receptacles, other merchandise, facilities used, and other professional services. Prices for merchandise may be stated as a range of values. Prices for services must be specific for each type of service, including any difference in prices based on the day or time the service is provided. This list shall be set forth in a clear and conspicuous manner.

The list shall be available to individuals inquiring in person about burial arrangements or the prices of property or services. In addition, upon beginning a discussion of burial arrangements or the selection of any property or services, the general price list shall be offered by the cemetery property.

## **18 VAC 47-20-230. Preneed burial contracts.**

A. All preneed burial contracts must be made on forms prescribed by the board in accordance with § 54.1-2328 of the Code of Virginia, and must contain the following disclosures:

1. Identifies the seller, seller's license number, contract buyer and person for whom the contract is purchased if other than the contract buyer;

2. Contains a complete description of the property or services purchased;

3. Clearly discloses whether the price of the property and services purchased are guaranteed;

4. States for funds required to be trusted pursuant to § 54.1-2325 of the Code of Virginia, the amount to be trusted and the name of the trustee;

5. Contains the name, address and telephone number of the board and lists the board as the regulatory agency which handles consumer complaints;

6. Provides that any purchaser who makes payment under the contract may terminate the agreement within three days of execution and that such purchaser shall be refunded all consideration paid or delivered, less amounts paid for any property or supplies that have been delivered;

7. Provides that if the particular property or services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish property or services similar in size and style and at least equal in quality of material and workmanship and that the representative of the deceased shall have the right to choose the property or services to be substituted, which shall be at least equal or reasonably equivalent in quality of material, workmanship, and cost;

8. Discloses any additional costs that the purchaser may be required to pay at-need, including the disclosure of the cost of opening and closing the grave;

9. Complies with all disclosure requirements imposed by the board;

10. Is executed in duplicate and a signed copy given to the buyer;

11. Provides that the contract buyer shall have the right to change the contract provider at any time prior to the furnishing of the property or services, excluding any mausoleum crypt or garden crypt, contracted for under the preneed burial contract. If the contract seller will not be furnishing the property and services to the purchaser, the contract seller shall attach to the preneed burial contract a copy of the seller's agreement with the provider.

B. Any preneed burial contract sold or offered by any cemetery company or agent with a trust fund deposit of less than 100% shall be required to include the following printed statement in capitalized letters, in 10-point, bold-faced type:

**THIS PRENEED BURIAL CONTRACT REQUIRES THE PLACEMENT IN TRUST OF A MINIMUM OF 40% OF THE FUNDS INCLUDED IN THIS CONTRACT. THE BALANCE OF FUNDS MAY BE USED FOR CARE AND MAINTENANCE OF**



**THE CEMETERY AND ARE NOT REQUIRED TO BE PLACED IN TRUST.**

C. Each seller of a preneed burial contract shall file with the board, upon request, a detailed account of all contracts and transactions regarding preneed burial contracts accordance with § 54.1-2332 of the Code of Virginia.

**18 VAC 47-20-240. Execution of contracts for licensees whose licenses have been suspended or revoked.**

In the event a license has been suspended or revoked and the licensee is a party to a preneed burial contract, which must be executed at-need, the board may file a petition for appointment of a receiver with any court of record having equity jurisdiction over the licensee. The petition shall be necessary to ensure execution of the contract including the appointment of a receiver. If a receiver is appointed, the licensee, as determined by the court, shall pay his expenses and a reasonable fee.

**NOTICE:** The forms used in administering 18 VAC 47-20-10 et seq., Cemetery Board Rules and Regulations, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

**FORMS**

Compliance Agent/Director/Officer Change Form, CCADOCHG (eff. 7/1/00).

Cemetery Addition Form, CCCADD (eff. 7/1/00).

Cemetery Company License Application, CCCLIC (eff. 7/1/00).

New Trustee/Transfer of Funds Notification Form, CCNEWTR (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report Instructions, CCPCTINS (eff. 7/1/00).

Perpetual Care Fidelity Bond Form, CCPCFBND (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report, CCPCTFR (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report - Schedule A (Statement of Receipts and Expenses), CCPCTFRA (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report - Schedule B (Statement of Required Deposits), CCPCTFRB (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report - Schedule C (Statement of Expenses Incurred for the General Care, Maintenance, Embellishment and Administration of Cemeteries), CCPCTFRC (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report - Schedule D (Statement of Investment Securities), CCPCTFRD (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report - Schedule E (Cemeteries Covered by Trust Fund), CCPCTFRE (eff. 7/1/00).

Preneed Trust Fund Financial Report Instructions, CCPTINS (eff. 7/1/00).

Preneed Fidelity Bond Form, CCPFBND (eff. 7/1/00).

Preneed Trust Fund Financial Report, CCPTFR (eff. 7/1/00).

Preneed Trust Fund Financial Report - Schedule A (Statement of Receipts and Expenses), CCPTFRA (eff. 7/1/00).

Preneed Trust Fund Financial Report - Schedule B (Statement of Financial Deposits), CCPTFRB (eff. 7/1/00).

Preneed Trust Fund Financial Report - Schedule C (Statement of Investment Securities), CCPTFRC (eff. 7/1/00).

Cemetery Company Renewal/Reinstatement Application, CCRENREI (eff. 7/1/00).

Sales Personnel Registration Form, CCCLSREG (eff. 7/1/00).

Perpetual Care Trust Fund Trustee Affidavit, CCTRAFF (eff. 7/1/00).

Trustee Approval Application, CCTRAPP (eff. 7/1/00).

Preneed Burial Contract, CCPCTRCT (eff. 7/1/00).

VA.R. Doc. No. R98-260; Filed September 10, 1999, 11:54 a.m.



**TITLE 22. SOCIAL SERVICES**

**DEPARTMENT OF REHABILITATIVE SERVICES**

**Title of Regulation:** 22 VAC 30-40-10 et seq. **Protection of Participants in Human Research.**

**Statutory Authority:** §§ 51.5-5.1 and 51.5-14 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until December 19, 1999.  
(See Calendar of Events section for additional information)

**Basis:** Section 51.5-5.1 of the Code of Virginia provides the statutory authority to the Board of Rehabilitative Services to promulgate regulations for protection of human participants in research to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research as defined in § 32.1-162.16. Section 51.5-14 of the Code of Virginia empowers the Commissioner of Rehabilitative Services to promulgate regulations necessary to carry out the provisions of the laws administered by the department.

**Purpose:** The contemplated regulation will establish protocols to approve research proposals involving customers of the department, Woodrow Wilson Rehabilitation Center, any employment services organizations (sheltered workshops) or Centers for Independent Living as mandated by state and federal law. These protocols will ensure the adequate

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safeguards for the rights and welfare of human participants and will ensure that such safeguards are consistent with the federal requirements and state law as described in § 32.1-162 et seq. of the Code of Virginia. The contemplated regulation will establish a human research review committee to implement these protocols. Researchers will be required to divulge their research plans to a committee in order to obtain approval for the research. Human participants will be provided with information regarding the action and known consequences of the research. Thus, no participant will be subjected to research against his will.

**Substance:** The proposed regulation establishes the policy (22 VAC 30-40-40) that no human research may be conducted without the voluntary informed consent of the participant or his legally authorized representative and that the informed consent must be documented in writing and supported by the signature of a witness not involved in the research. Human research is defined as any "systematic investigation which utilizes human participants who may be exposed to physical or psychological injury as a consequence of participation and which departs from the application of established and accepted therapeutic methods appropriate to meet the participant's needs" (22 VAC 30-40-10). Waiver provisions for voluntary informed consent exist in 22 VAC 30-40-100.

Each human research study shall be approved by a research review committee. Each institution may establish its own research review committee, may work with other institutions to establish a single committee, or may use the Department of Rehabilitative Services' established committee (22 VAC 30-40-40).

22 VAC 30-40-50 provides a certification process for institutions seeking to conduct or sponsor human research and the reporting requirements for any violation of the research protocol that leads the research review committee to suspend or terminate the research.

22 VAC 30-40-50 contains the composition of the research review committee(s), the definition of a committee quorum, and the requirement for the committee(s) and the institution(s) to establish procedures and rules for their operation.

The elements of the committee review is contained in 22 VAC 30-40-70. The elements include consideration to potential benefits and risks and the methodology of the research, the degree of risk for nontherapeutic research, the protection of the rights and welfare of participants, voluntary informed consent, competency of the research investigators, equitable selection criteria for research participants, adherence to other criteria as established by the Board for Rehabilitative Services, and whether appropriate studies in nonhuman systems have been conducted prior to the involvement of human participants. This proposed section also contains a 45-day timeline for consideration of a research proposal by a research review committee, the review notification process, the appeals process, and the reporting requirements.

22 VAC 30-40-80 provides the criteria by which kinds of research would be exempt from the research review committee review.

22 VAC 30-40-90 provides an expedited review process for certain kinds of research involving no more than a minimal risk. Under the expedited review process, the committee chairperson and one or more experienced reviewers designated by the chair from among the members of the committee may carry out the review.

The requirements for informed consent are in 22 VAC 30-40-100. This section also provides the requirements for the research review committee to waive the requirements to obtain some or all informed consent.

22 VAC 30-40-110 contains the requirements for the preparation and maintenance of adequate documentation of the research review committee activities, the retention period for these records, and access to the records for inspection and copying by authorized employees or agents of the department at reasonable times and in a reasonable manner.

22 VAC 30-40-120 requires each research review committee to submit to the Governor, the General Assembly, and the commissioner or his designee at least annually a report on the human research projects reviewed and approved by the committee, including any significant deviations from the proposals as approved.

The role of the department, commissioner, and the board is established in 22 VAC 30-40-130. The section requires the commissioner to establish and maintain records of institutional assurances, annual reports, and summary description of research projects to be reviewed by the board; to review communications from committees reporting violations of research protocols which led to suspension or termination of the research to ensure that appropriate steps have been taken for the protection of human research participants and keep the board informed of all reviews of violations of research protocol; and arrange for the printing and dissemination of copies of these regulations.

22 VAC 30-40-140 provides that nothing in this chapter shall be construed as limiting in any way the rights of participants in research under regulations promulgated by the board in response to § 37.1-84.1 of the Code of Virginia.

22 VAC 30-40-150 provides that human research at institutions which are subject to policies and procedures for the protection of human participants by any agency of the federal government shall be exempt from this chapter. Such institutions must notify the commissioner and the board annually of their compliance with the policies and regulations of federal agencies.

**Issues:** The advantage of this new regulatory provision is that it will ensure that a protocol is in place for protecting human participants of research studies. There should be no disadvantages to the public.

This same protocol will also provide guidelines for the persons conducting the research. The regulations will require that the researcher devote more time in attending to the rights, safety and welfare of human subjects. It will require more documentation on the part of the researcher and the agency. The protocol could result in certain investigative studies not being implemented due to concern about possible negative effects on the human participants. Therefore,

knowledge that could be gathered from these studies may not be available.

These regulatory protocols provide the agency with more control over the research. There is a guideline to follow to ensure that the rights of customers of the agency are protected. However, ensuring the implementation of these regulations will require the agency to assign additional duties to existing staff.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. This proposed regulation is intended to assure the protection of participants in human research conducted or authorized by the Department of Rehabilitative Services, the Woodrow Wilson Rehabilitation Center, and any center of independent living or sheltered workshop in Virginia. Specifically, the regulation requires that written informed consent be given by human subjects in research or by their legally authorized representative. Also, the proposed regulation requires that a research review committee approve each human research study.

Federal policies and regulations already govern research in Virginia that is funded by federal sources. This proposed regulation is intended to protect participants of human research at the above mentioned institutions when federal funding is not involved. The regulation is designed to provide protection for human research participants in roughly the same manner as the federal regulation.

Estimated economic impact. This proposed regulation will not have a significant economic impact on the Commonwealth. The vast preponderance of human research at institutions covered by this regulation takes place at the Woodrow Wilson Rehabilitation Center. Very little if any human research takes place at employment service organizations and centers for independence in the Commonwealth. The Woodrow Wilson Rehabilitation Center already requires written informed consent for every human research participant and research review committee approval for every human research study, regardless of funding source. Thus, current procedures will not require significant change to comply with this proposed regulation. The proposed regulation does provide some assurance that future human research will maintain safeguards for its subjects at the covered institutions.

Businesses and entities affected. The Woodrow Wilson Rehabilitation Center and its affiliates, 87 employment service

organizations (sheltered workshops), and the 12 centers for independence with their three satellite offices will now be required to obtain written informed consent from all human research participants and conduct research committee reviews for all proposed research involving humans, regardless of the funding source for the research. These policies have generally been followed without the regulation, so the effect of the proposed regulation on institutions will be minimal.

Localities particularly affected. The proposed regulation will not particularly affect any localities as it applies statewide.

Projected impact on employment. The proposed regulation is not anticipated to have any significant impact on employment in Virginia.

Effects on the use and value of private property. The proposed regulation is not anticipated to have any significant effects on the use and value of private property.

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

Summary:

*The proposed regulation establishes protocols to approve research proposals involving customers of the department, Woodrow Wilson Rehabilitation Center, any employment services organizations (sheltered workshops) or Centers for Independent Living as mandated by state and federal law. The regulation establishes a human research review committee to implement these protocols, requires researchers to divulge their research plans to a committee to obtain approval for the research, and provides that human participants will be provided with information regarding the action and known consequences of the research.*

**CHAPTER 40.**

**PROTECTION OF PARTICIPANTS IN HUMAN RESEARCH.**

**22 VAC 30-40-10. Definitions.**

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

*"Affiliated with the institution" means employed by the institution or a member of a household containing an employee of the institution.*

*"Board" means the Board of Rehabilitative Services for the Department of Rehabilitative Services.*

*"Commissioner" means the Commissioner of the Department of Rehabilitative Services.*

*"Department" means the Department of Rehabilitative Services.*

*"Human participant" means a living individual about whom an investigator (whether professional or student) conducting research obtains (i) data through intervention or interaction with the individual or (ii) identifiable private information.*

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"Human research" means any systematic investigation which utilizes human participants who may be exposed to physical or psychological injury as a consequence of participation and which departs from the application of established and accepted therapeutic methods appropriate to meet the participant's needs.

"Independent living center" means a consumer controlled, community based, cross disability, nonresidential private nonprofit agency that:

1. Is designed and operated within a local community by individuals with disabilities; and
2. Provides an array of independent living services.

"Institution" means the department, any center of independent living, sheltered workshop, Woodrow Wilson Rehabilitation Center, or any facility or program operated, funded, or licensed by the department.

"Interaction" includes communication or interpersonal contact between investigator and participant.

"Intervention" includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the participant or participant's environment that are performed for research purposes.

"Legally authorized representative" means the parent or parents having custody of a prospective participant, the legal guardian of a prospective participant, or any person or judicial or other body authorized by law or regulation to consent on behalf of a prospective participant to such person's participation in the particular human research. For the purposes of this definition, any person authorized by law or regulation to consent on behalf of a prospective participant to his participation in the particular human research shall include an attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney-in-fact shall not be employed by the person, institution or agency conducting the human research and shall not be authorized to consent to nontherapeutic medical research. No official or employee of the institution or agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the participant.

"Private information" includes information about the human participant's behavior that occurs when an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by the human participant which the participant can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the human participant is or may

readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human participants.

"Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to general knowledge. Activities which meet this definition constitute research for purposes of these chapters, whether or not they are supported or funded under a program which is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

"Research investigator" means the person, whether professional or student, who conducts the research.

"Sheltered workshop" means a facility-based community rehabilitation program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable them to maximize their opportunities for employment, including career advancement:

1. Medical, psychiatric, psychological, social, and vocational services that are provided under one management;
2. Testing, fitting, or training in the use of prosthetic and orthotic devices;
3. Recreational therapy;
4. Physical and occupational therapy;
5. Speech, language, and hearing therapy;
6. Psychiatric, psychological, and social services, including positive behavior management;
7. Assessment for determining eligibility and vocational rehabilitation needs;
8. Rehabilitation technology;
9. Job development, placement, and retention services;
10. Evaluation or control of specific disabilities;
11. Orientation and mobility services for individuals who are blind;
12. Extended employment;
13. Psycho-social rehabilitation services;
14. Supported employment services and extended services;
15. Services to family members when necessary to the vocational rehabilitation of the individual;
16. Personal assistance services; or
17. Services similar to the services described in subdivisions 1 through 16.

"Voluntary informed consent" means the knowing, written consent of an individual, or the individual's legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress or other form of constraint or

coercion. With regard to the conduct of human research, the basic elements of information necessary to such consent shall include in writing:

1. A statement that the study involves research, and a reasonable and comprehensible explanation to the human participant of the procedures that the researcher will follow and their purposes, including identification of any procedures which are experimental; the expected duration of the human participant's participation; a statement describing the extent, if any, to which confidentiality of records identifying the participant will be maintained; and if any data from this study are published, the individual will not be identified without his written permission;
2. A description of any attendant discomforts and risks to the human participant which may reasonably be expected and a statement that there may be other risks not yet identified;
3. A description of any benefits to the human participant or to others which may reasonably be expected;
4. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the human participant;
5. An offer to answer and answers to any inquiries by any individual concerning the procedure;
6. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the human participant is otherwise entitled, and the human participant may discontinue participation at any time without penalty or loss of benefits to which he is otherwise entitled;
7. An explanation of whom to contact for answers to pertinent questions about the research and human research participants' rights, and whom to contact in the event of a research related injury;
8. For research involving more than minimal risk, an explanation as to whether any compensation or medical care is available if injury occurs and, if so, what it consists of or where further information may be obtained; and
9. An explanation of any costs or compensation which may accrue to the person and, if applicable, the availability of third party reimbursement for the proposed procedures or protocols.

**22 VAC 30-40-20. (Reserved.)**

**22 VAC 30-40-30. Applicability.**

These regulations shall apply to the Department of Rehabilitative Services, Woodrow Wilson Rehabilitation Center, any sheltered workshop or independent living center, and any facility operated, funded or licensed by the department which conducts or which proposes to conduct or authorize research which uses human participants.

**22 VAC 30-40-40. Policy.**

A. No human research may be conducted without the voluntary informed consent of the participant or his legally authorized representative. The consent of the participant or his legally authorized representative to participate in the research must be documented in writing and supported by the signature of a witness not involved in the conduct of the research, except as provided for in 22 VAC 30-40-100 F. The research investigator shall sign and provide participants of a research study with a copy of the written, voluntary informed consent statement as defined in 22 VAC 30-40-10. The investigator shall make arrangements for those who need special assistance in understanding the consequences of participating in the research.

B. Each human research study shall be approved by a committee composed of representatives of varied backgrounds who shall assure the competent, complete, and professional review of human research activities. An institution may establish its own research review committee, it may work with other institutions to establish a single committee, or it may use the department's established committee.

C. Nontherapeutic research using institutionalized participants is prohibited unless the research review committee determines that such nontherapeutic research will not present greater than minimal risk to the human participant.

D. The research investigator shall be required to notify all human participants in research of the risks caused by the research which are discovered after the research has concluded.

**22 VAC 30-40-50. Certification process.**

A. Institutions seeking to conduct or sponsor human research are required to submit statements to the research review committee assuring that all human research activities will be reviewed and approved by a research review committee. Institutions shall report annually to the commissioner giving assurance that a committee exists and is functioning. These reports should include a list of committee members, their qualifications for service on the committee, their institutional affiliation and a copy of the minutes of committee meetings.

B. Prior to the initiation of a human research project, institutions shall also send to the commissioner a description of the research project to be undertaken, which shall include a statement of the criteria for inclusion of a participant in the research project, a description of what will be done to the human participants, and a copy of the informed consent statement.

C. The commissioner may inspect the records of the research committee.

D. The chairman of the research committee shall report as soon as possible to the head of the institution and to the commissioner any violation of the research protocol which led the committee to either suspend or terminate the research.

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### **22 VAC 30-40-60. Composition of research review committees.**

A. Each research committee shall have at least five members, appointed by the head of the institution or department, with varying backgrounds to provide complete and adequate review of activities commonly conducted by the institution. The committee shall be sufficiently qualified through the research experience, expertise, and diversity of its members, including consideration of race, gender and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. In addition to possessing the professional competence necessary to review specific activities, the committee must be able to ascertain the acceptability of applications and proposals in terms of institutional commitments and regulations, applicable law, standards of professional conduct and practice, and community attitudes. If a committee regularly reviews research that has an impact on an institutionalized or other vulnerable category of participants, including residents of mental health or mental retardation facilities, the committee shall have in its membership one or more individuals who are primarily concerned with the welfare of these participants and who have appropriate experience to serve in that capacity.

B. No committee shall consist entirely of men or entirely of women, or entirely of members of one profession.

C. Each committee shall include at least one of the following:

1. One member whose primary concerns are in nonscientific areas (e.g., lawyers, ethicists, members of the clergy);
2. One member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution;
3. One consumer; and
4. One member whose primary concerns are in the scientific areas.

D. No member of a committee shall participate in the committee's initial or continuing review of any project in which the member is directly involved or for which he has administrative approval authority, except to provide information requested by the committee. The committee has responsibility for determining whether a member has a conflict of interest with any study. The committee member shall be replaced in the case of a conflict of interest resulting in a decrease of the committee below five persons.

E. A committee may, at its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the committee. These individuals may not vote with the committee.

F. A quorum of the committee shall consist of a majority of its members including at least one member whose primary concerns are in nonscientific areas.

G. The committee and the institution shall establish procedures and rules of operation necessary to fulfill the requirements of these regulations.

### **22 VAC 30-40-70. Elements of each committee's review process.**

A. No human research shall be conducted or authorized by the Department of Rehabilitative Services, any independent living center, sheltered workshop, or Woodrow Wilson Rehabilitation Center unless the committee has reviewed and approved the proposed human research project giving consideration to:

1. The adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the research;
2. The degree of the risk, and, if the research is nontherapeutic, whether it presents greater than minimal risk;
3. Whether the rights and welfare of the participants are adequately protected;
4. Whether the risks to the participants are outweighed by the potential benefits to them;
5. Whether the voluntary informed consent is to be obtained by methods that adequately and appropriately fulfill the requirements of these regulations and whether the written consent form is adequate and appropriate in both content and language for the particular research and for the particular participants of the research;
6. Whether the research investigators proposing to supervise or conduct the particular human research are appropriately competent and qualified;
7. Whether criteria for selection of participants are equitable, especially in research regarding the future development of mental or physical illness;
8. Whether the research conforms with such other requirements as the board may establish; and
9. Whether appropriate studies in nonhuman systems have been conducted prior to the involvement of human participants.

B. The committee shall review, at least annually, approved projects to ensure conformity with the approved proposal.

C. Research must be approved by the committee which has jurisdiction over the participant. When cooperating institutions conduct some or all of the research involving some or all of the participants, each cooperating institution is responsible for safeguarding the rights and welfare of human participants and for complying with this chapter, except that in complying with this chapter institutions may enter into joint review, rely upon the review of another qualified committee, or make similar arrangements aimed at avoiding duplication of effort. The committee chairperson may make such arrangements with the approval of a majority of the members present at a meeting of the committee.

D. The committee shall consider research proposals within 45 days after submission to the committee's chairman. In

order for the research to be approved, it shall receive the approval of a majority of those members present at a meeting in which a quorum exists. A committee shall notify research investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure committee approval.

E. The committee shall develop a written description of the procedure to be followed by a human participant who has a complaint about a research project in which he is participating or has participated.

F. Any participant who has a complaint about a research project in which he is participating or has participated shall be referred to the chairperson of the committee who shall refer it to the committee to determine if there has been a violation of the protocol.

G. The committee shall require periodic reports. The frequency of such reports should reflect the nature and degree of risk of each research project.

### **22 VAC 30-40-80. Kinds of research exempt from committee review.**

Research activities in which the only involvement of human participants will be in one or more of the following categories are exempt from these regulations unless the research is covered by other sections of this chapter:

1. Research conducted in established or commonly accepted educational settings, involving commonly used educational practices, such as:

- a. Research on regular and special education instructional strategies; or
- b. Research on the effectiveness of or the comparison among instructional techniques, curriculum or classroom management methods.

2. Research involving solely the use and analysis of the results of standardized psychological, educational, diagnostic, aptitude, or achievement tests, if information taken from these sources is recorded in such a manner that participants cannot be reasonably identified, directly or through identifiers linked to the participants.

3. Research involving survey or interview procedures, unless responses are recorded in such a manner that participants can be identified, directly or through identifiers linked to the participants; and either:

- a. The participant's responses, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation; or
- b. The research deals with sensitive aspects of the participant's own behavior, such as sexual behavior, drug or alcohol use, illegal conduct, or family planning.

4. Research involving solely the observation (including observation by participants) of public behavior, unless observations are recorded in such a manner that

participants can be identified, directly or through identifiers linked to the participants, and either:

a. The observations recorded about the individual, if they became known outside the research, could reasonably place the human participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation; or

b. The research deals with sensitive aspects of the participant's own behavior such as illegal conduct, drug use, sexual behavior, or use of alcohol.

5. Research involving solely the collection or study of existing data, documents, records, or pathological or diagnostic specimens, if these sources are publicly available, or if the information taken from these sources is recorded in such a manner that participants cannot be identified, directly or through identifiers linked to the participants.

### **22 VAC 30-40-90. Expedited review procedures for certain kinds of research involving no more than minimal risk.**

A. The committee may conduct an expedited review of a human research project which involves no more than minimal risk to the participants if (i) another institution's or agency's human research review committee has reviewed and approved the project or (ii) the review involves only minor changes in previously approved research and the changes occur during the approved project period. Under an expedited review procedure, the committee chairperson and one or more experienced reviewers designated by the chairperson from among members of the committee may carry out the review. In reviewing the research, the reviewers may exercise all of the authorities of the committee except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited procedure set forth in 22 VAC 30-40-70.

B. Each committee which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the expedited review procedure.

C. Research activities involving no more than minimal risk and in which the only involvement of human participants will be in one or more of the categories referred to in 34 CFR 97.110.

### **22 VAC 30-40-100. Informed consent.**

A. No human research may be conducted in the department, any independent living center, any sheltered workshop, or Woodrow Wilson Rehabilitation Center or approved by the research committee in the absence of voluntary informed, written consent. If the participant is competent at the time the consent is required, then the consent must be subscribed to in writing by the participant and witnessed. If the participant is not competent at the time the consent is required, then the consent shall be subscribed to in writing by the participant's legally authorized representative and witnessed except as provided for in

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subsection F of this section. If the participant is a minor otherwise capable of rendering voluntary informed consent, the consent must be subscribed to in writing by both the minor and his legally authorized representative and witnessed. A research investigator shall seek such consent only under circumstances that provide the prospective participant or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the participant or the representative shall be in language understandable to the participant or the representative.

B. No individual shall participate in research unless this requirement is met for each individual. The giving of consent by a legally authorized representative shall be subject to the provisions of subsection C of this section. No voluntary informed consent shall include any language through which the participant waives or appears to waive any of his legal rights, including any release of any individual, institution or agency or any agents thereof from liability for negligence. Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in any human research. Each human participant shall be given a copy of the signed consent form required by 22 VAC 30-40-40 A, except as provided for in 22 VAC 30-40-100 F.

C. No legally authorized representative may consent to nontherapeutic research unless the committee determines that such nontherapeutic research will present no more than a minor increase over minimal risk to the participant. No nontherapeutic research shall be performed without the consent of the human participant.

D. The committee may approve a consent procedure which does not include, or which alters some or all of the elements of informed consent set forth in 22 VAC 30-40-10. The committee may waive the requirements to obtain some or all informed consent provided the committee finds and documents that:

1. The research involves no more than minimal risk to the human participants;
2. The waiver or alteration will not adversely affect the rights and welfare of the human participants;
3. The research could not practicably be carried out without the waiver or alteration; and
4. Whenever appropriate, the human participants will be provided with additional pertinent information after participation.

E. Except as provided in subsection F of this section, the consent form may be either of the following:

1. A written consent document that embodies the elements of informed consent required by 22 VAC 30-40-10. This form may be read to the participant or the participant's legally authorized representative, but in any event, the investigator shall give either the participant or the representative adequate opportunity to read it before it is signed; or

2. A short form written consent document stating that the elements of informed consent required by 22 VAC 30-40-10 have been presented orally to the participant or the participant's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the participant or the representative. Only the short form itself is to be signed by the participant or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the human participant or the representative, in addition to a copy of the short form.

F. The committee may waive the requirement for the research investigator to obtain a signed consent form for some or all participants if it finds that the only record linking the participant and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality and there is no greater than a minimal risk of physical or mental harm to the human participant. Each participant will be asked whether the participant wants documentation linking the participant with the research, and the participant's wishes will govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide participants with a written statement regarding the research.

## **22 VAC 30-40-110. Committee records.**

A. An institution, or when appropriate a committee, shall prepare and maintain adequate documentation of committee activities, including the following:

1. Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to participants;
2. Minutes of committee meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the committee; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution;
3. Records of continuing review activities;
4. Copies of all correspondence between the committee and the research investigators;
5. A list of all committee members;
6. Written procedures for the committee; and
7. Statements of significant new findings provided to participants.

B. The records required by this chapter shall be retained for at least three years, and records relating to research which is conducted shall be retained for at least three years after completion of the research. All records shall be accessible for inspection and copying by authorized employees or agents of



the department at reasonable times and in a reasonable manner.

**22 VAC 30-40-120. Mandatory reporting.**

Each research review committee shall submit to the Governor, the General Assembly, and the commissioner or his designee at least annually a report on the human research projects reviewed and approved by the committee, including any significant deviations from the proposals as approved.

**22 VAC 30-40-130. Role of the department, commissioner, and the board.**

A. The commissioner shall establish and maintain records of institutional assurances, annual reports, and summary descriptions of research projects to be reviewed by the board.

B. The commissioner shall review communications from committees reporting violations of research protocols which led to suspension or termination of the research to ensure that appropriate steps have been taken for the protection of the rights of human research participants. The board shall be kept informed of all reviews of violations of research protocol.

C. The commissioner shall arrange for the printing and dissemination of copies of these regulations.

**22 VAC 30-40-140. Applicability of state policies.**

Nothing in this chapter shall be construed as limiting in any way the rights of participants in research under regulations promulgated by the board in response to § 37.1-84.1 of the Code of Virginia.

**22 VAC 30-40-150. Applicability of federal policies.**

Human research at institutions which is subject to policies and regulations for the protection of human participants promulgated by any agency of the federal government shall be exempt from this chapter. Such institutions shall notify the commissioner and the board annually of their compliance with the policies and regulations of federal agencies.

VA.R. Doc. No. R99-19; Filed September 20, 1999, 4:14 p.m.



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# FINAL REGULATIONS

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For information concerning Final Regulations, see Information Page.

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## Symbol Key

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

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### SUSPENSION OF REGULATORY PROCESS

**Title of Regulation:** 12 VAC 5-610-10 et seq. Sewage Handling and Disposal Regulations.

The Department of Health is suspending the regulatory process on 12 VAC 5-610-10 et seq. Sewage Handling and Disposal Regulations, which was published as a final regulation in 15:24 VA.R. 3187-3243 August 16, 1999. Due to the suspension, the amendments as published in the August 16<sup>th</sup> issue of the *Virginia Register* will not become effective on October 1, 1999.

This suspension is in response to letters from individuals requesting an opportunity to submit additional comments on the final amendments. Therefore, pursuant to § 9-6.14:7.1 K of the Code of Virginia, the department has suspended the regulatory process for 30 days. Additional public comments will be received until November 10, 1999. The intended effective date for the final amendments is December 8, 1999.

**Agency Contact:** Public comments may be submitted until November 10, 1999, to Don Alexander, Director, Virginia Department of Health, Division of Onsite Sewage and Water Services, PO Box 2448, Room 115, Richmond, VA 23218, telephone (804) 786-1750.

VA.R. Doc. No. R96-337; Filed September 22, 1999, 10:25 a.m.

#### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**Title of Regulation:** Home Infusion Therapy/Bundling Services and Supplies.

**12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-160 and 12 VAC 30-50-210).**

**12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-30 and 12 VAC 30-80-40).**

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

**Effective Date:** November 10, 1999.

**Summary:**

*The amendments permit providers of home infusion therapy services to bundle standard services together on their billing claim forms and to be reimbursed a per diem fee. Such bundling of billing charges will simplify providers' billing processes and also will simplify DMAS' administration.*

**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 Victoria P. Simmons, Regulatory Coordinator, 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 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 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 or specialty beds for the treatment of wounds consistent with DME criteria 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 (e.g., 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 (e.g., 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 for which 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 [ ~~42 VAC 30-50-500~~ 12 VAC 30-50-510 ].

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5. ~~Reserved.~~ Coverage of home infusion therapy. Home infusion therapy shall be defined as the intravenous administration of fluids, drugs, chemical agents, or nutritional substances to recipients in the home setting. DMAS shall reimburse for these services, supplies, and drugs on a service day rate methodology established in 12 VAC 30-80-30. The therapies to be covered under this policy shall be: hydration therapy, chemotherapy, pain management therapy, drug therapy, and total parenteral nutrition (TPN). All the therapies which meet criteria will be covered for three months. If any therapy service is required for longer than the original three months, prior authorization shall be required [ for the DME component ] for its continuation. The established service day rate shall reimburse for all services delivered in a single day. There shall be no additional reimbursement for special or extraordinary services. In the event of incompatible drug administration, a separate HCPCS code shall be used to allow for rental of a second infusion pump and purchase of an extra administration tubing. When applicable, this code may be billed in addition to the other service day rate codes. There must be documentation to support the use of this code on the I.V. Implementation Form. Proper documentation shall include the need for pump administration of the medications ordered, frequency of administration to support that they are ordered simultaneously, and indication of incompatibility. The service day rate payment methodology shall be mandatory for reimbursement of all I.V. therapy services except for the recipient who is enrolled in the Technology Assisted waiver program. The following limitations shall apply to this service:

a. This service must be medically necessary to treat a recipient's medical condition. The service must be ordered and provided in accordance with accepted medical practice. The service must not be desired solely for the convenience of the recipient or the recipient's caregiver.

b. In order for Medicaid to reimburse for this service, the recipient must:

(1) Reside in either a private home or a domiciliary care facility, such as an adult care residence. Because the reimbursement for DME is already provided under institutional reimbursement, recipients in hospitals, nursing facilities, rehabilitation centers, and other institutional settings shall not be covered for this service.

(2) Be under the care of a physician who prescribes the home infusion therapy and monitors the progress of the therapy.

(3) Have body sites available for peripheral intravenous catheter or needle placement or have a central venous access; and

(4) Be capable of either self-administering such therapy or have a caregiver who can be adequately trained, is capable of administering the therapy, and is willing to safely and efficiently administer and

monitor the home infusion therapy. The caregiver must be willing to and be capable of following appropriate teaching and adequate monitoring. In those cases where the recipient is incapable of administering or monitoring the prescribed therapy and there is no adequate or trained caregiver, it may be appropriate for a home health agency to administer the therapy.

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;

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 formula. 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 medical~~ ] 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.

**12 VAC 30-50-210. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.**

A. Prescribed drugs.

1. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered.
2. Nonlegend drugs shall be covered by Medicaid in the following situations:
  - a. Insulin, syringes, and needles for diabetic patients;
  - b. Diabetic test strips for Medicaid recipients under 21 years of age;
  - c. Family planning supplies;
  - d. Designated categories of nonlegend drugs for Medicaid recipients in nursing homes; and
  - e. Designated drugs prescribed by a licensed prescriber to be used as less expensive therapeutic alternatives to covered legend drugs.
3. Legend drugs are covered with the exception of the drugs or classes of drugs identified in 12 VAC 30-50-520. FDA-approved drug therapies and agents for weight loss, when preauthorized, will be covered for recipients who meet the strict disability standards for obesity established

by the Social Security Administration in effect on April 7, 1999, and whose condition is certified as life threatening, consistent with Department of Medical Assistance Services' medical necessity requirements, by the treating physician.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

5. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

6. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

7. Drug prior authorization.

a. Definitions. The following words and terms used in these regulations shall have the following meaning, unless the context clearly indicates otherwise:

"Board" means the Board for Medical Assistance Services.

"Committee" means the Medicaid Prior Authorization Advisory Committee.

"Department" means the Department of Medical Assistance Services.

"Director" means the Director of Medical Assistance Services.

"Drug" shall have the same meaning, unless the context otherwise dictates or the board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

b. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 11 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; one member shall be a consumer of mental health services; and one shall be a Medicaid recipient.

(1) A quorum for action of the committee shall consist of six members.

(2) The members shall serve at the pleasure of the board; vacancies shall be filled in the same manner as the original appointment.

(3) The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion

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Medical Society, the Psychiatric Society of Virginia, the Virginia Pharmaceutical Association, the Virginia Alliance for the Mentally Ill, and the Virginia Mental Health Consumers Association when making appointments to the committee.

(4) The committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the board, the director, or any two members of the committee. The department shall provide appropriate staffing to the committee.

c. Duties of the committee.

(1) The committee shall make recommendations to the board regarding drugs or categories of drugs to be subject to prior authorization, prior authorization requirements for prescription drug coverage and any subsequent amendments to or revisions of the prior authorization requirements. The board may accept or reject the recommendations in whole or in part, and may amend or add to the recommendations, except that the board may not add to the recommendation of drugs and categories of drugs to be subject to prior authorization.

(2) In formulating its recommendations to the board, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 9-6.14:1 et seq.). The committee shall, however, conduct public hearings prior to making recommendations to the board. The committee shall give 30 days written notice by mail of the time and place of its hearings and meetings to any manufacturer whose product is being reviewed by the committee and to those manufacturers who request of the committee in writing that they be informed of such hearings and meetings. These persons shall be afforded a reasonable opportunity to be heard and present information. The committee shall give 30 days notice of such public hearings to the public by publishing its intention to conduct hearings and meetings in the Calendar of Events of The Virginia Register of Regulations and a newspaper of general circulation located in Richmond.

(3) In acting on the recommendations of the committee, the board shall conduct further proceedings under the Administrative Process Act.

d. Prior authorization of prescription drug products; coverage.

(1) The committee shall review prescription drug products to recommend prior authorization under the state plan. This review may be initiated by the director, the committee itself, or by written request of the board. The committee shall complete its recommendations to the board within no more than six months from receipt of any such request.

(2) Coverage for any drug requiring prior authorization shall not be approved unless a prescribing physician obtains prior approval of the

use in accordance with regulations promulgated by the board and procedures established by the department.

(3) In formulating its recommendations to the board, the committee shall consider the potential impact on patient care and the potential fiscal impact of prior authorization on pharmacy, physician, hospitalization and outpatient costs. Any proposed regulation making a drug or category of drugs subject to prior authorization shall be accompanied by a statement of the estimated impact of this action on pharmacy, physician, hospitalization and outpatient costs.

(4) The committee shall not review any drug for which it has recommended or the board has required prior authorization within the previous 12 months, unless new or previously unavailable relevant and objective information is presented.

(5) Confidential proprietary information identified as such by a manufacturer or supplier in writing in advance and furnished to the committee or the board according to this subsection shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia). The board shall establish by regulation the means by which such confidential proprietary information shall be protected.

e. Immunity. The members of the committee and the board and the staff of the department shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.

f. Annual report to joint commission. The committee shall report annually to the Joint Commission on Health Care regarding its recommendations for prior authorization of drug products.

*8. Coverage of home infusion therapy. This service shall be covered consistent with the limits and requirements set out within home health services (12 VAC 30-50-160). Multiple applications of the same therapy (e.g., two antibiotics on the same day) shall be covered under [ one service day rate of reimbursement. Multiple applications of different therapies (e.g., chemotherapy, hydration, and pain management on the same day) shall be ] a full [ ~~per diem~~ service day rate ] methodology as provided in pharmacy services reimbursement.*

B. Dentures. Dentures are provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

C. Prosthetic devices.

1. Prosthetic services shall mean the replacement of missing arms, legs, and breasts and the provision of any internal (implant) body part. Nothing in this regulation shall be construed to refer to orthotic services or devices or organ transplantation services.

2. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments, implants and breasts) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary and preauthorized for the minimum applicable component necessary for the activities of daily living.

D. Eyeglasses. Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

## **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.

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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 [ or licensed clinical nurse specialists-psychiatric ] shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

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.

c. *Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.*

*(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12 VAC 30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.*

*(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of*

*equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.*

*(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment which is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.*

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.

## **12 VAC 30-80-40. Fee-for-service providers: pharmacy.**

Payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is greater than the HCFA upper limit of VMAC cost) subject to the conditions, where applicable, set forth in ~~items~~ subdivisions 6 and 7 ~~below~~ of this section:

1. The upper limit established by the Health Care Financing Administration (HCFA) for multiple source drugs pursuant to 42 CFR 447.331 and 447.332, as determined by the HCFA Upper Limit List plus a dispensing fee. If the agency provides payment for any



drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

2. The Virginia Maximum Allowable Cost (VMAC) established by the agency plus a dispensing fee for multiple source drugs listed on the VVF.

3. The Estimated Acquisition Cost (EAC) which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the methodology set out in a through c below.

a. Percentage discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

c. The agency will conduct surveys at intervals deemed necessary by DMAS.

4. (Reserved).

5. The provider's usual and customary charge to the public, as identified by the claim charge.

6. Payment for pharmacy services will be as described above; however, payment for [ *legend* ] drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements.

7. The Program pays additional reimbursement for the 24-hour unit dose delivery system of dispensing drugs. This service is paid only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose add-on fee and an allowance for the cost of unit dose packaging established by the state agency. The maximum allowed drug cost for specific multiple source drugs will be the lesser of: either the VMAC based on the 60th percentile cost level identified by the state agency or HCFA's upper limits. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency.

8. Determination of EAC was the result of an analysis of FY'89 paid claims data of ingredient cost used to develop a matrix of cost using 0 to 10% reductions from AWP as well as discussions with pharmacy providers. As a result of this analysis, AWP minus 9.0% was determined to represent prices currently paid by providers effective October 1, 1990.

The same methodology used to determine AWP minus 9.0% was utilized to determine a dispensing fee of \$4.40 per prescription as of October 1, 1990. A periodic review of dispensing fee using Employment Cost Index - wages and salaries, professional and technical workers will be done with changes made in dispensing fee when appropriate. As of July 1, 1995, the Estimated Acquisition Cost will be AWP minus 9.0% and dispensing fee will be \$4.25.

9. *Home infusion therapy.*

a. *The following therapy categories shall have pharmacy service day rate payment allowable: hydration therapy, chemotherapy, pain management therapy, drug therapy, total parenteral nutrition (TPN). The service day rate payment for the pharmacy component shall apply to the basic components and services intrinsic to the therapy category. Submission of claims for the per diem rate shall be accomplished by use of the HCFA 1500 claim form.*

b. *The cost of the active ingredient or ingredients for chemotherapy, pain management and drug therapies shall be submitted as a separate claim through the pharmacy program, using standard pharmacy format. Payment for this component shall be consistent with the current reimbursement for pharmacy services. Multiple applications of the same therapy shall be reimbursed one service day rate for the pharmacy services. Multiple applications of different therapies shall be reimbursed at 100% of standard pharmacy reimbursement for each active ingredient.*

**NOTICE:** The forms used in administering 12 VAC 30-50-10 et seq., Amount, Duration, and Scope of Medical and Remedial Care Services, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

### FORMS

Virginia Uniform Assessment Instrument, UAI, Virginia Long-Term Care Council, 1994.

*I.V. Therapy Implementation Form, DMAS-354, eff. 6/1/98.*

**NOTICE:** The forms used in administering 12 VAC 30-80-10 et seq., Methods and Standards for Establishing Payment Rates; Other Types of Care, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

### FORMS

Pharmacy Claim Form (3/96).

Compound Prescription Pharmacy Claim Form (3/96).

*I.V. Therapy Implementation Form, DMAS-354, eff. 6/1/98.*

VA.R. Doc. No. R98-88; Filed January 26, 1999, 2:03 p.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PSYCHOLOGY

**Title of Regulation:** 18 VAC 125-20-10 et seq. **Regulations Governing the Practice of Psychology** (amending 18 VAC 125-20-10, 18 VAC 125-20-30, 18 VAC 125-20-40, 18 VAC 125-20-80, 18 VAC 125-20-120, 18 VAC 125-20-130, 18 VAC 125-20-150, 18 VAC 125-20-160, and 18 VAC 125-20-170; adding 18 VAC 125-20-41, 18 VAC 125-20-42,

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**18 VAC 125-20-54, 18 VAC 125-20-55, 18 VAC 125-20-56, and 18 VAC 125-20-65; repealing 18 VAC 125-20-50, 18 VAC 125-20-51, 18 VAC 125-20-52, 18 VAC 125-20-53, 18 VAC 125-20-60, 18 VAC 125-20-70, 18 VAC 125-20-90, 18 VAC 125-20-100, and 18 VAC 125-20-140).**

Statutory Authority: §§ 54.1-103, 54.1-2400 and 54.1-2940; and Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: November 10, 1999.

Summary:

*The amendments update the education and experience requirements for all three licensure categories based on changes to the scope of practice definitions enacted in 1996, current national degree program standards and recent changes in internship oversight by degree programs. Extensive reformatting of the regulations accommodate the new requirements, eliminate obsolete language, and add new language for clarification where needed.*

*To expedite the licensure process for applicants with lengthy experience licensed in other jurisdictions, the board developed a waiver of the state examination requirement for individuals meeting certain criteria.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and received by the promulgating agency may be obtained from the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Janet Delorme, Department of Health Professions, 6606 West Broad Street, Richmond, VA 23230, telephone (804) 662-9575.

## **18 VAC 125-20-10. Definitions.**

The following words and terms, in addition to the words and terms defined in § 54.1-3600 of the Code of Virginia, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

*"APA" means the American Psychological Association.*

*"APPIC" means the Association of Psychology Postdoctoral and Internship Centers.*

*"Applicant" means a person who submits a complete application for licensure with the appropriate fees.*

*"Board" means the Virginia Board of Psychology.*

*"Candidate for licensure" means a person who has satisfactorily completed the appropriate educational and experience requirements for licensure and has been deemed eligible by the board to sit for the required examinations.*

*"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques, and populations served, for which one can document adequate graduate training, workshops, or appropriate supervised experience.*

*"Internship" means a an ongoing, supervised and planned organized practical experience obtained in an integrated training program in a setting included as an integral and required part of the applicant's program of study identified as a psychology internship. Other supervised experience or on-the-job training does not constitute an internship.*

*"NASP" means the National Association of School Psychologists.*

*"NCATE" means the National Council for the Accreditation of Teacher Education.*

*"Professional psychology program" means an integrated program of doctoral study designed to train professional psychologists to deliver services in psychology.*

*"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the United States Secretary of Education established to accredit senior institutions of higher education.*

*"Residency" means a post-internship, post-terminal degree, supervised experience approved by the board.*

*"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual consultation, guidance and instruction with respect to the skills and competencies of the person supervised.*

*"Supervisor" means an individual who assumes full responsibility for the education and training activities of a person and provides the supervision required by such a person.*

## **18 VAC 125-20-30. Fees required by the board.**

A. The board has established fees for the following:

1. Registration of residency (per residency request)	\$100
2. Application processing	\$150
3. Biennial renewal of license	\$200
4. Late renewal	\$10
5. <del>Endorsement</del> Verification of license to another jurisdiction	\$10
6. Additional or replacement license <del> or wall certificate</del>	\$15
7. Returned check	\$15
8. Rereview fee	\$25

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

C. Examination fees shall be paid directly to the examination service according to its requirements.

## **18 VAC 125-20-40. General requirements for licensure.**

~~A. No person shall practice psychology in the Commonwealth of Virginia except as provided in the Code of Virginia and this chapter.~~

~~B. Licensure of all applicants shall be by examination by this board.~~

~~C. An applied psychologist, a clinical psychologist or a school psychologist who desires to practice in other areas of psychology shall obtain a license from this board. Individuals licensed in one licensure category who wish to practice in another licensure category shall submit an application for the additional area licensure category in which the licensee seeks to practice.~~

**D. 18 VAC 125-20-41. Requirements for licensure by examination.**

A. Every applicant for examination for licensure by the board shall:

1. Meet the education and experience requirements prescribed in ~~18 VAC 125-20-50 or 18 VAC 125-20-60, whichever is 18 VAC 125-20-54, 18 VAC 125-20-55, or 18 VAC 125-20-56~~ and the experience requirement prescribed in 18 VAC 125-20-65 as applicable for the particular license sought; and

2. Submit to the executive director of the board, in one package not less than 90 days prior to the date of the written examination:

a. A completed application, on forms provided by the board;

b. A completed residency agreement or documentation of having fulfilled the experience requirements of ~~18 VAC 125-20-50 or 18 VAC 125-20-60 where applicable, 18 VAC 125-20-65;~~

c. The application processing fee prescribed by the board; and

~~3. Have the institution that awarded the graduate degrees submit directly to the executive director of the board, at least 90 days prior to the date of the written examination, official transcripts documenting:~~

~~a. The graduate work completed; and~~

~~b. The degrees awarded.~~

d. Official transcripts documenting the graduate work completed and the degree awarded. Applicants who are graduates of institutions that are not regionally accredited shall submit documentation from an accrediting agency acceptable to the board that their education meets the requirements set forth in 18 VAC 125-20-54, 18 VAC 125-20-55 or 18 VAC 125-20-56; and

e. Verification of any other professional license or certificate ever held in another jurisdiction.

B. In addition to fulfillment of the education and experience requirements, each applicant for licensure by examination must achieve a passing score on the required examinations for each category of licensure sought:

1. Clinical psychologist: State Practice Examination for Clinical Psychology, Jurisprudence and Examination for Professional Practice in Psychology;

2. School psychologist: State Practice Examination for School Psychology, Jurisprudence and Examination for Professional Practice in Psychology; or

3. Applied psychologist: State Practice Examination in Applied Psychology, Jurisprudence and Examination for Professional Practice in Psychology.

**18 VAC 125-20-42. Prerequisites for licensure by endorsement.**

A. Every applicant for licensure by endorsement shall submit in one package:

1. A completed application;

2. The application processing fee prescribed by the board;

3. An affidavit of having read and agreed to comply with the current Standards of Practice and laws governing the practice of psychology in Virginia;

4. Verification of all other professional licenses or certificates ever held in any jurisdiction. In order to qualify for endorsement, the applicant shall have no history of disciplinary action, shall not have surrendered a license or certificate while under investigation and shall have no unresolved action against a license or certificate; and

5. Further documentation of one of the following:

a. A current listing in the National Register of Health Services Providers in Psychology;

b. Current diplomate status in good standing with the American Board of Professional Psychology in a category comparable to the one in which licensure is sought;

c. Twenty years of active licensure in a category comparable to the one in which licensure is sought, with an appropriate degree as required in this chapter documented by an official transcript; or

d. If less than 20 years of active licensure, documentation of current psychologist licensure in good standing obtained by standards substantially equivalent to the education, experience and examination requirements set forth in this chapter for the category in which licensure is sought as verified by a certified copy of the original application submitted directly from the out-of-state licensing agency or a copy of the regulations in effect at the time of initial licensure and the following:

(1) Documentation of post-licensure active practice for at least five of the last six years immediately preceding licensure application;

(2) Verification of a passing score on the Examination for Professional Practice of Psychology as established in Virginia for the year of that administration;

(3) Verification of a passing score on other written and oral examinations or both as required by the jurisdiction which granted the license; and

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(4) Official transcripts documenting the graduate work completed and the degree awarded in the category in which licensure is sought.

B. Notwithstanding the provisions of this section, the board may issue a license to any individual who qualifies for such a license pursuant to an agreement of reciprocity entered into by this board with a board of another jurisdiction or multiple jurisdictions.

## **18 VAC 125-20-50. Education and experience requirements: Graduates of American institutions. (Repealed.)**

A. A graduate of an American higher education institution who applies for examination for licensure shall meet the requirements of 18 VAC 125-20-51, 18 VAC 125-20-52, or 18 VAC 125-20-53, whichever is applicable.

B. Applicants for additional licenses. To obtain additional licenses, all requirements shall be met as prescribed by the board. Applicants shall complete a new application and submit new application fees. A complete new application process may be initiated at the board's discretion.

## **18 VAC 125-20-51. Education and experience requirements for applied psychologists. (Repealed.)**

A. Program of study. The applicant shall hold a doctorate in psychology from an institution accredited by a regional accrediting agency. Further, the applicant's program must conform to the following criteria for doctoral programs in psychology:

1. The program, wherever it may be administratively housed, shall be clearly identified and labeled as a psychology program. Such a program shall specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.
2. The psychology program must stand as a recognizable, coherent organizational entity within the institution.
3. There shall be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
4. The program must be an integrated, organized sequence of study.
5. There shall be an identifiable psychology faculty and a psychologist responsible for the program.
6. The program shall have an identifiable body of students who are matriculated in that program for a degree.

B. Education. The applicant's program shall have included at least one three-semester credit hour course in each of the following areas of study:

1. Statistics and research design;
2. Physiological psychology or sensation and perception;
3. Learning/cognition;
4. Social psychology;

5. Study of the individual;
6. History and systems; and
7. Scientific and professional ethics and standards.

C. Experience. No supervised experience is required for licensure as an applied psychologist.

## **18 VAC 125-20-52. Education and experience requirements for clinical psychologists. (Repealed.)**

A. The applicant shall hold a doctorate from a professional psychology program in a regionally accredited university, which:

1. Was accredited by the American Psychological Association (APA) prior to the applicant's graduation from the program;
2. Was accredited by the APA within four years after the applicant graduated from the program; or
3. If not APA accredited, was a program which met the criteria outlined in 18 VAC 125-20-51 A. Further, the program must have required successful completion by the applicant of all the following:

a. At least one three-semester credit hour course in each of the areas of study prescribed in 18 VAC 125-20-51 B for an applied psychologist;

b. At least one three-semester credit hour course in each of the following additional areas of study:

- (1) Personality theory;
- (2) Diagnostic interviewing and behavioral assessment;
- (3) Psychometric, psychodiagnostic, and projective testing;
- (4) Psychopathology;
- (5) Psychotherapy, both individual and group; and
- (6) Practicum: Supervision and assessment/diagnosis and psychotherapy; and

c. A one-year, full-time internship approved by the American Psychological Association (APA) or consistent with the requirements for APA approval and approved by the applicant's doctoral program.

B. Experience. Applicants shall possess post-doctoral experience as defined in this subsection and shall inform the board, when they apply, how they propose to meet this experience requirement. This requirement may be met in one of two ways:

1. By waiver based on lengthy experience. Applicants possessing many years of relevant post-doctoral experience in another jurisdiction may obtain a waiver of residency requirements by demonstrating to the board that they have received the substantial equivalent of the supervised experience required in subdivision 2 of this subsection; or

~~2.—Residency requirements.—The applicant under this provision shall show documentation of the successful completion of a one-year, full-time post-doctoral residency, or its equivalent in part-time experience for a period not to exceed three years, consisting of supervised experience in the delivery of clinical services acceptable to the board; or the applicant may request approval to begin a residency with the following conditions:~~

~~a.—Applicants shall apply for licensure and residency concurrently.~~

~~b.—Prior to initiating the proposed residency training, the applicant shall:~~

~~(1) Register with the board;~~

~~(2) Pay the registration fee;~~

~~(3) Submit an agreement signed by the applicant and proposed Virginia licensed supervisor(s) stating the nature of the services to be rendered, the number of hours of supervision, and the nature of the supervision; and~~

~~(4) Receive approval from the board to begin the residency training. (Applicants who do not apply before beginning residency training, cannot be guaranteed the residency will be approved.)~~

~~c.—Supervision shall be provided by a licensed applied psychologist, clinical psychologist, or school psychologist.~~

~~d.—The supervisor shall not provide supervision for activities beyond the supervisor's demonstrable areas of competence, nor for activities for which the applicant has not had appropriate education and training.~~

~~e.—There shall be a minimum of two hours of individual supervision per week. Group supervision of up to five residents may be substituted for one of the two hours per week on the basis that two hours of group supervision equals one hour of individual supervision, but in no case shall the resident receive less than one hour of individual supervision per week.~~

~~f.—Residents may not call themselves applied psychologists, clinical psychologists, or school psychologists; solicit clients; bill for services; or in any way represent themselves as professional psychologists. During the residency period they shall use their names, the initials of their degree, and the title, "Resident in Psychology."~~

~~g.—At the end of the residency training period, the supervisors shall submit to the board, a written evaluation of the applicant's performance.~~

**18 VAC 125-20-53. Education and experience requirements for school psychologists. (Repealed.)**

A. Education.—The applicant shall hold at least a master's degree in school psychology, with a minimum of at least 60 semester credit hours, from a college or university accredited

by a regional accrediting agency. The program requirements shall:

~~1.—Reflect a planned, integrated, and supervised program of graduate study as outlined for programs approved by the American Psychological Association (APA) or by the National Council for the Accreditation of Teacher Education (NCATE); and~~

~~2.—Include an internship approved by the applicant's training program.~~

~~B.—Experience.—Applicants shall possess post-master's degree experience as defined in this section and shall inform the board when they apply as to how they propose to meet this experience requirement. This requirement may be met in one of two ways:~~

~~1.—By waiver based on lengthy experience.—Applicants possessing many years of relevant post-master's degree experience in another jurisdiction may obtain a waiver of residency requirements by demonstrating to the board that they have received the substantial equivalent of the supervised experience required in subdivision 2 of this subsection; or~~

~~2.—By residency.—The applicant shall show documentation of a previous full-time residency of at least one school year, or the equivalent in part-time experience or request approval to begin a current residency with the following conditions:~~

~~a.—Applicants shall apply for licensure and residency concurrently.~~

~~b.—Prior to the proposed residency training, the applicant shall:~~

~~(1) Register with the board;~~

~~(2) Pay the registration fee;~~

~~(3) Submit an agreement signed by the applicant and proposed Virginia licensed supervisor(s) stating the nature of the services to be rendered, the number of hours of supervision, and the nature of the supervision; and~~

~~(4) Receive approval from the board to begin the residency training. (Applicants who do not apply before beginning residency training cannot be guaranteed the residency will be approved).~~

~~c.—Supervision shall be provided by a licensed school psychologist, licensed applied psychologist, or licensed clinical psychologist.~~

~~d.—The supervisor shall not provide supervision for activities beyond the supervisor's demonstrable areas of competence, nor for activities for which the applicant has not had appropriate education and training.~~

~~e.—There shall be a minimum of two hours of individual supervision per week. Group supervision of up to five residents may be substituted for one of the two hours per week on the basis that two hours of group supervision equals one hour of individual supervision,~~

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~~but in no case shall the resident receive less than one hour of individual supervision per week.~~

~~f. Residents may not call themselves applied psychologists, clinical psychologists, or school psychologists; solicit clients; bill for services; or in any way represent themselves as professional psychologists. During the residency period they shall use their names, the initials of their degree, and the title, "Resident in School Psychology."~~

~~g. At the end of the residency training period, the supervisor(s) shall submit to the board a written evaluation of the applicant's performance.~~

~~h. The applicant shall not continue in residency status for more than three years.~~

## **18 VAC 125-20-54. Education requirements for clinical psychologists.**

A. *The applicant shall hold a doctorate from a professional psychology program in a regionally accredited university, which was accredited by the APA within four years after the applicant graduated from the program, or shall meet the requirements of subsection B of this section.*

B. *If the applicant does not hold a doctorate from an APA accredited program, the applicant shall hold a doctorate from a professional psychology program which documents that it offers education and training which prepares individuals for the practice of clinical psychology as defined in § 54.1-3600 of the Code of Virginia and which meets the following criteria:*

1. *The program is within an institution of higher education accredited by an accrediting agency recognized by the United States Department of Education or publicly recognized by the Association of Universities and Colleges of Canada as a member in good standing. Graduates of programs that are not within the United States or Canada must provide documentation from an acceptable credential evaluation service which provides information that allows the board to determine if the program meets the requirements set forth in this chapter.*

2. *The program shall be recognizable as an organized entity within the institution.*

3. *The program shall be an integrated, organized sequence of study with an identifiable psychology faculty and a psychologist directly responsible for the program, and shall have an identifiable body of students who are matriculated in that program for a degree. The faculty shall be accessible to students and provide them with guidance and supervision. The faculty shall provide appropriate professional role models and engage in actions that promote the student's acquisition of knowledge, skills and competencies consistent with the program's training goals.*

4. *The program shall encompass a minimum of three academic years of full-time graduate study or the equivalent thereof.*

5. *The program shall include a general core curriculum containing a minimum of three or more graduate semester hours or five or more graduate quarter hours in each of the following substantive content areas.*

a. *Biological bases of behavior (e.g., physiological psychology, comparative psychology, neuropsychology, sensation and perception, health psychology, pharmacology, neuroanatomy).*

b. *Cognitive-affective bases of behavior (e.g., learning theory, cognition, motivation, emotion).*

c. *Social bases of behavior (e.g., social psychology, group processes, organizational and systems theory, community and preventive psychology, multicultural issues).*

d. *Psychological measurement.*

e. *Research methodology.*

f. *Techniques of data analysis.*

g. *Professional standards and ethics.*

6. *The program shall include a minimum of at least three or more graduate semester credit hours or five or more graduate quarter hours in each of the following clinical psychology content areas:*

a. *Individual differences in behavior (e.g., personality theory, cultural difference and diversity).*

b. *Human development (e.g., child, adolescent, geriatric psychology).*

c. *Dysfunctional behavior, abnormal behavior or psychopathology.*

d. *Theories and methods of intellectual assessment and diagnosis.*

e. *Theories and methods of personality assessment and diagnosis including its practical application.*

f. *Effective interventions and evaluating the efficacy of interventions.*

g. *Consultation and supervision (e.g., community mental health, organizational behavior, consultation liaison).*

C. *Applicants who graduated from programs which meet the criteria set forth under subsection A or B of this section shall submit documentation of having successfully completed practicum experiences in assessment and diagnosis, psychotherapy, consultation and supervision. The practicum shall include a minimum of nine graduate semester hours or 15 or more graduate quarter hours or equivalent in appropriate settings to ensure a wide range of supervised training and educational experiences.*

## **18 VAC 125-20-55. Education requirements for applied psychologists.**

A. *The applicant shall hold a doctorate from professional psychology program from a regionally accredited university which meets the following criteria:*

1. The program is within an institution of higher education accredited by an accrediting agency recognized by the United States Department of Education, or publicly recognized by the Association of Universities and Colleges of Canada as a member in good standing. Graduates of programs that are not within the United States or Canada must provide documentation from a credential evaluation service acceptable to the board which demonstrates that the program meets the requirements set forth in this chapter.

2. The program shall be recognizable as an organized entity within the institution.

3. The program shall be an integrated, organized sequence of study with an identifiable psychology faculty and a psychologist directly responsible for the program, and shall have an identifiable body of students who are matriculated in that program for a degree. The faculty shall be accessible to students and provide them with guidance and supervision. The faculty shall provide appropriate professional role models and engage in actions that promote the student's acquisition of knowledge, skills and competencies consistent with the programs training goals.

4. The program shall encompass a minimum of three academic years of full-time graduate study or the equivalent thereof.

5. The program shall include a general core curriculum containing a minimum of three or more graduate semester hours or five or more graduate quarter hours in each of the following substantive content areas.

a. Biological bases of behavior (e.g., physiological psychology, comparative psychology, neuropsychology, sensation and perception, health psychology, pharmacology, neuroanatomy).

b. Cognitive-affective bases of behavior (e.g., learning theory, cognition, motivation, emotion).

c. Social bases of behavior (e.g., social psychology, group processes, organizational and systems theory, community and preventive psychology, multicultural issues).

d. Psychological measurement.

e. Research methodology.

f. Techniques of data analysis.

g. Professional standards and ethics.

B. Demonstration of competence in applied psychology shall be met by including a minimum of at least 18 semester hours or 30 quarter hours in a concentrated program of study in an identified area of psychology, e.g., developmental, social, cognitive, motivation, applied behavioral analysis, industrial/organizational, human factors, personnel selection and evaluation, program planning and evaluation, teaching, research or consultation.

## **18 VAC 125-20-56. Education requirements for school psychologists.**

A. The applicant shall hold at least a master's degree in school psychology, with a minimum of at least 60 semester credit hours or 90 quarter hours, from a college or university accredited by a regional accrediting agency, which was accredited by the APA, NCATE or NASP, or shall meet the requirements of subsection B of this section.

B. If the applicant does not hold a master's degree in school psychology from a program accredited by the APA, NCATE or NASP, the applicant shall have a master's degree from a psychology program which offers education and training to prepare individuals for the practice of school psychology as defined in § 54.1-3600 of the Code of Virginia and which meets the following criteria:

1. The program is within an institution of higher education accredited by an accrediting agency recognized by the United States Department of Education, or publicly recognized by the Association of Universities and Colleges of Canada as a member in good standing. Graduates of programs that are not within the United States or Canada must provide documentation from a credential evaluation service acceptable to the board which demonstrates that the program meets the requirements set forth in this chapter.

2. The program shall be recognizable as an organized entity within the institution.

3. The program shall be an integrated, organized sequence of study with an identifiable psychology faculty and a psychologist directly responsible for the program, and shall have an identifiable body of students who are matriculated in that program for a degree. The faculty shall be accessible to students and provide them with guidance and supervision. The faculty shall provide appropriate professional role models and engage in actions that promote the student's acquisition of knowledge, skills and competencies consistent with the programs training goals.

4. The program shall encompass a minimum of two academic years of full-time graduate study or the equivalent thereof.

5. The program shall include a general core curriculum containing a minimum of three or more graduate semester hours or five or more graduate quarter hours in each of the following substantive content areas.

a. Psychological foundations (e.g., biological bases of behavior, human learning, social and cultural bases of behavior, child and adolescent development, individual differences).

b. Educational foundations (e.g., instructional design, organization and operation of schools).

c. Interventions/problem-solving (e.g., assessment, direct interventions, both individual and group, indirect interventions).

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# Final Regulations

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- d. *Statistics and research methodologies (e.g., research and evaluation methods, statistics, measurement).*
  - e. *Professional school psychology (e.g., history and foundations of school psychology, legal and ethical issues, professional issues and standards, alternative models for the delivery of school psychological services, emergent technologies, roles and functions of the school psychologist).*
6. *The program shall be committed to practicum experiences which shall include:*
- a. *Orientation to the educational process;*
  - b. *Assessment for intervention;*
  - c. *Direct intervention, including counseling and behavior management; and*
  - d. *Indirect intervention, including consultation.*

**18 VAC 125-20-60. ~~Graduates of foreign institutions. (Repealed.)~~**

~~A graduate of a foreign higher education institution who applies for examination for licensure as a psychologist or clinical psychologist shall:~~

- ~~1. Hold a doctorate in psychology;~~
- ~~2. Present documentation that the degree is from a planned, integrated, and supervised program of graduate study that meets requirements judged by the board to be equivalent with the requirements for approval by the American Psychological Association (APA) or equivalent with those requirements prescribed by the board and met by approved domestic institutions;~~
- ~~3. Meet the course and practicum requirements outlined in 18 VAC 125-20-50; and~~
- ~~4. Pay the application processing fee prescribed in 18 VAC 125-20-30 for graduates of foreign institutions.~~

**18 VAC 125-20-65. *Supervised experience.***

**A. *Internship requirement.***

- 1. *Candidates for clinical psychologist licensure shall have successfully completed an internship that is either accredited by APA, APPIC or the National Register of Health Service Providers in Psychology, or one that meets equivalent standards.*
- 2. *Candidates for school psychologist licensure shall have successfully completed an internship accredited by the APA, APPIC or NASP or one that meets equivalent standards.*

**B. *Residency requirement.***

- 1. *Candidates for clinical or school psychologist licensure shall have successfully completed a one-year, full-time residency, or its equivalent in part-time experience for a period not to exceed three years, consisting of a minimum of 1,500 hours of supervised experience in the delivery of clinical or school psychology*

*services acceptable to the board, or the applicant may request approval to begin a residency.*

2. *Supervised experience obtained in Virginia without prior written board approval will not be accepted toward licensure. Candidates shall not begin the residency until after completion of the required degree as set forth in 18 VAC 125-20-54 or 18 VAC 125-20-56. An individual who proposes to obtain supervised post-degree experience in Virginia shall, prior to the onset of such supervision, submit a supervisory contract along with the application package and pay the registration of supervision fee set forth in 18 VAC 125-20-30.*

3. *There shall be a minimum of two hours of individual supervision per week. Group supervision of up to five residents may be substituted for one of the two hours per week on the basis that two hours of group supervision equals one hour of individual supervision, but in no case shall the resident receive less than one hour of individual supervision per week.*

4. *Residents may not refer to or identify themselves as applied psychologists, clinical psychologists, or school psychologists; independently solicit clients; bill for services; or in any way represent themselves as licensed psychologists. Notwithstanding the above, this does not preclude supervisors or employing institutions for billing for the services of an appropriately identified resident. During the residency period they shall use their names, the initials of their degree, and the title, "Resident in Psychology," in the licensure category in which licensure is sought.*

5. *Supervision shall be provided by a psychologist licensed to practice in the licensure category in which the resident is seeking licensure.*

6. *The supervisor shall not provide supervision for activities beyond the supervisor's demonstrable areas of competence, nor for activities for which the applicant has not had appropriate education and training.*

7. *At the end of the residency training period, the supervisor or supervisors shall submit to the board a written evaluation of the applicant's performance.*

C. *Candidates for clinical psychologist licensure shall provide documentation that the internship and residency included appropriate emphasis and experience in the diagnosis and treatment of persons with moderate to severe mental disorders.*

**18 VAC 125-20-70. ~~Out-of-state applicants with lengthy experience. (Repealed.)~~**

~~An applicant who is licensed in another state may practice in Virginia in accordance with the provisions of this section.~~

~~1. Until such time as the applicant receives a Virginia license, the applicant may practice only under the supervision of a Virginia licensee.~~

~~2. The supervised practice of the applicant shall be performed in accordance with all of the provisions prescribed in this chapter for a residency. After a Virginia~~



license is granted, the applicant may terminate residency status and begin independent practice.

3. ~~The applicant shall take the examinations deemed appropriate by the board within one year of board approval of application.~~

4. ~~The applicant may not practice independently until the Virginia license is granted.~~

## 18 VAC 125-20-80. General examination requirements.

A. ~~In order to be licensed, each candidate shall take and pass the examinations determined by the board to be required according to the candidate's individual qualifications under the general provisions of this section. The complete examination process consists of two components:~~

1. ~~A nationally normed standardized examination in the practice of psychology;~~

2. ~~The Board of Psychology written examinations.~~

B. ~~A. An applicant for clinical or school psychologist licensure enrolled in an approved residency training program required in 48 VAC 125-20-50 18 VAC 125-20-65 who has met all requirements for licensure except completion of that program shall be eligible to take both the national and state written examinations.~~

### C. ~~Waivers; modifications.~~

1. ~~Diplomate applicant. The board may waive the written examinations, except for the state jurisprudence examination, for an applicant who has been awarded a diploma by the American Board of Professional Psychology in either clinical, counseling, or school psychology.~~

2. ~~Endorsement. The board may waive only the national written examination for an applicant licensed or certified in another jurisdiction by standards and procedures equivalent to those of the board and meeting the educational requirements set forth in this chapter. The state written examinations cannot be waived.~~

### D. ~~Notice.~~

1. ~~At least 30 days prior to the date of examinations, the executive director will notify all candidates in writing of the time and place of examinations.~~

2. ~~The candidate shall then submit the applicable fees.~~

3. ~~If the candidate fails to appear for the examination without providing written notice at least two weeks before the examination, the examination fee shall be forfeited.~~

### E. ~~Deferrals by candidate; time limit.~~

A candidate licensed in another jurisdiction shall follow the requirements in 18 VAC 125-20-50.

B. A candidate approved by the board to sit for an examination and who has never been licensed in any jurisdiction shall take that examination within two years of the date of the initial board approval. If the candidate has not taken the examination by the end of the two-year period here

prescribed, the applicant shall reapply according to the requirements of the regulations in effect at that time.

1. ~~The initial board approval to sit for the examination shall then become invalid; and~~

2. ~~In order to be considered for the examination later, the applicant shall file a complete new application with the board and pay the applicable fee.~~

C. ~~The board shall establish passing scores on the examinations.~~

D. ~~Candidates who fail an examination may be reexamined once within a 12-month period without reapplying.~~

E. ~~Candidates who fail any examination twice shall wait at least one year between the second failure and the next reexamination.~~

## 18 VAC 125-20-90. Written examinations. (Repealed.)

A. ~~The nationally normed standardized examination in the practice of psychology.~~

1. ~~This examination shall consist of multiple-choice questions that sample a broad range of psychology content areas.~~

2. ~~A passing grade shall be a score that is determined by the board for all doctoral-level examinees.~~

### B. ~~The Board of Psychology written examination.~~

1. ~~These examinations may consist of essay or multiple choice questions or both related to:~~

a. ~~The practice of psychology; and~~

b. ~~Virginia laws and board regulations governing the practice of psychology.~~

2. ~~A passing score shall be determined by the board.~~

## 18 VAC 125-20-100. Reexamination. (Repealed.)

Reexamination of candidates will be required only on the examinations failed.

1. ~~After paying the reexamination fee, a candidate may be reexamined once within a 12-month period after the failed examinations without filing a formal reapplication and without presenting evidence of additional education or experience.~~

2. ~~A candidate who fails any examination twice shall wait at least one year between the second failure and the next reexamination. Such candidate shall submit to the board:~~

a. ~~An updated application;~~

b. ~~Documentation of additional education or experience gained since the last failure; and~~

c. ~~New application and examination fees as prescribed by the board.~~

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## 18 VAC 125-20-120. Biennial renewal of licensure.

Every license issued by the board shall expire on the last day of the licensee's birth month of each even-numbered year.

1. Every licensee who intends to continue to practice shall, on or before the expiration date of the license, submit to the board: *a license renewal application on forms supplied by the board and the renewal fee prescribed in 18 VAC 125-20-30.*

~~a. A license renewal application on forms supplied by the board; and~~

~~b. The renewal fees prescribed in 18 VAC 125-20-30.~~

2. Licensees shall notify the board office in writing of any change of address. Failure of a licensee to receive a renewal notice and application forms from the board shall not excuse the licensee from the renewal requirement.

## 18 VAC 125-20-130. Late renewal; reinstatement.

A. A person whose license has expired may renew it within two years after its expiration date by paying the penalty fee prescribed in 18 VAC 125-20-30 and the license renewal fee for the biennium the license was not renewed.

B. A person whose license has not been renewed for two years or more and who wishes to resume practice shall:

1. Present evidence satisfactory to the board regarding continued competency to perform the duties regulated by the board; ~~and~~

2. Upon approval for reinstatement, pay the penalty fee and the license fee for the renewal period the license was not renewed, as prescribed by the board and pay a rereview fee as prescribed in 18 VAC 125-20-30.; ~~and~~

3. *Submit verification of any professional certification or licensure obtained in any other jurisdiction subsequent to the initial application for licensure.*

## ~~PART VI. ADVISORY COMMITTEES.~~

## 18 VAC 125-20-140. ~~Advisory and examining committees. (Repealed.)~~

~~A. The board may establish examining and advisory committees to assist it in evaluating the professional qualifications of applicants and candidates for licensure and in other matters.~~

~~B. The board may establish an advisory committee to evaluate the mental or emotional competence of any licensee or candidate for licensure when such competence is at issue before the board.~~

~~C. The chair of all advisory and examining committees shall be a member of the Board of Psychology or board designee who will moderate the proceedings and report the results to the full board.~~

## PART VII. VI.

## STANDARDS OF PRACTICE; UNPROFESSIONAL CONDUCT; DISCIPLINARY ACTIONS; REINSTATEMENT.

## 18 VAC 125-20-150. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. *Psychologists respect the rights, dignity and worth of all people, and are mindful of individual differences.*

B. Persons licensed by the board shall:

1. Provide *and supervise only those services and use only those techniques for which they are qualified by training and appropriate experience. Delegate to their employees, supervisees, residents and research assistants only those responsibilities such persons can be expected to perform competently by education, training and experience. Take ongoing steps to maintain competence in the skills they use;*

2. When ~~advertising services to the making~~ *public statements regarding credentials, published findings, directory listings, curriculum vitae, etc., ensure that such advertising is statements are neither fraudulent nor misleading;*

~~3. Represent accurately their competency, education, training and experience;~~

4. 3. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services. *Make appropriate consultations and referrals consistent with the law and based on the interest of patients or clients;*

~~5. Make advance financial arrangements that safeguard the best interests of and are clearly understood by their clients;~~

6. 4. Refrain from undertaking any activity in which their personal problems are likely to lead to inadequate or harmful services;

5. *Avoid harming patients or clients, research participants, students and others for whom they provide professional services and minimize harm when it is foreseeable and unavoidable. Not exploit or mislead people for whom they provide professional services. Be alert to and guard against misuse of influence;*

~~7. 6. Avoid dual relationships with patients, clients, residents or supervisees that could impair professional judgment or compromise the client's well-being (to include but not limited to treatment of close friends, relatives, employees and sexual intimacies with clients; bartering services; romantic or sexualized relationships with any current supervisee);~~

8. ~~Avoid any action that will violate or diminish the legal and civil rights of clients or of others who may be affected by the action;~~

7. Withdraw from, adjust or clarify conflicting roles with due regard for the best interest of the affected party or parties and maximal compliance with these standards;

8. Not engage in sexual intimacies with a student, supervisee, resident, therapy patient, client, or those included in collateral therapeutic services (such as a parent, spouse, or significant other) while providing professional services. For at least two years after cessation or termination of professional services, not engage in sexual intimacies with a therapy patient, client, or those included in collateral therapeutic services. Consent to, initiation of, or participation in sexual behavior or romantic involvement with a psychologist does not change the exploitative nature of the conduct nor lift the prohibition. Since sexual or romantic relationships are potentially exploitative, psychologists shall bear the burden of demonstrating that there has been no exploitation;

9. Keep confidential their professional relationships with patients or clients, including their records and reports, and disclose client records to others only with written consent except: (i) when a patient or client is a danger to self or others, or when the licensee is under a court order to disclose such information (ii) as required under § 32.1-127.1:03 of the Code of Virginia, or (iii) as permitted by law for a valid purpose;

10. Terminate a professional psychological relationship when it is clear that services are not benefiting the client;

11. Ensure that the welfare of clients is not compromised in any experimentation or research involving these clients;

12. Report to the board known violations of the laws and regulations governing the practice of psychology;

13. Represent oneself as a licensed psychologist only when licensed by the board as a psychologist;

14. Not represent oneself as "board certified" without specifying the complete name of the specialty board; and

10. Make reasonable efforts to provide for continuity of care when services must be interrupted or terminated;

11. Inform clients of professional services, fees, billing arrangements and limits of confidentiality before rendering services. Inform the consumer prior to the use of collection agencies or legal measures to collect fees and provide opportunity for prompt payment. Avoid bartering goods and services. Participate in bartering only if it is not clinically contraindicated and is not exploitative;

12. Construct, maintain, administer, interpret and report testing and diagnostic services in a manner and for purposes which are appropriate;

13. Keep pertinent, confidential records for at least seven years with adults and organizations and 10 years with minors after termination of services to any consumer;

14. Design, conduct and report research in accordance with recognized standards of scientific competence and research ethics; and

15. Report to the board known or suspected violations of the laws and regulations governing the practice of psychology.

## **18 VAC 125-20-160. Grounds for revocation, suspension, or denial of renewal of license disciplinary action or denial of licensure.**

A. ~~In accordance with § 54.1-2400 of the Code of Virginia, the board may, after a hearing, revoke, suspend or decline to renew a license for just cause.~~

B. ~~Action by the board to revoke, suspend or decline to renew a license shall be taken in accord with the following conduct:~~

*The board may take disciplinary action or deny a license for any of the following causes:*

1. Conviction of a felony, or a misdemeanor involving moral turpitude;
2. Procuring of a license by fraud or misrepresentation;
3. Misuse of drugs or alcohol to the extent that it interferes with professional functioning;
4. Negligence in professional conduct or violation of practice standards *including but not limited to this chapter*;
5. Performing functions outside areas of competency;
6. Mental, emotional, or physical incompetence to practice the profession; or
7. Violating or aiding and abetting another to violate any provision of Chapter 36 of Title 54.1 of the Code of Virginia; any other statute applicable to the practice of the profession regulated; or any provision of this chapter.

C. ~~Appeal of decision. An appeal may be made to the board for reinstatement upon good cause or as a result of substantial new evidence being obtained that would alter the determination reached in subsection B of this section.~~

## **18 VAC 125-20-170. Reinstatement following disciplinary action.**

A. Any person whose license has been suspended, revoked, or not renewed by the board under the provisions of 18 VAC 125-20-160 may, two years subsequent to such board action, submit a new application to the board for licensure.

B. The board in its discretion may, after a hearing, grant the reinstatement sought in subsection A of this section.

C. ~~The applicant for such reinstatement, if approved, shall be licensed upon payment of the appropriate fees applicable at the time of reinstatement, as prescribed by the board.~~

**NOTICE:** The forms used in administering 18 VAC 125-20-10 et seq., Regulations Governing the Practice of Psychology,

# Final Regulations

are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

## FORMS

Psychologist Licensure Application, Form 1, Application for Licensure by Examination, PSYEX1 (rev. 4/97 6/99).

Registration of Residency--Post-Graduate Degree Supervised Experience, Form 2, rev. 6/97 PSY2 (rev. 6/99).

Psychologist Application for Licensure by Endorsement, PSYEN1 (eff. 6/99).

Verification of Post-Degree Supervision, Form 3, PSY3 (rev. 6/97 6/99).

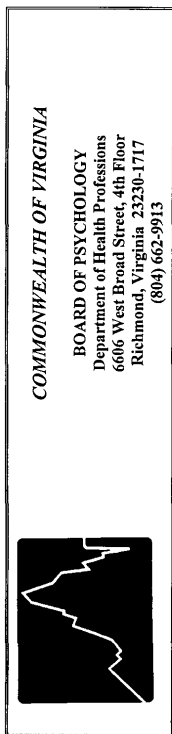
Internship Verification, Form 4, PSY4 (rev. 6/97 6/99).

Doctoral Program Approval of Internship, Form 5, rev. 6/97.

Licensure/Certification Verification, Form 6, PSY5 (rev. 4/97 6/99).

Areas of Graduate Study, Form 7, PSY6 (rev. 6/97 6/99).

Renewal Notice and Application, C-45128 (rev. 8/97).



**BOARD OF PSYCHOLOGY**  
 Department of Health Professions  
 6606 West Broad Street, 4th Floor  
 Richmond, Virginia 23230-1717  
 (804) 662-9913


### PSYCHOLOGIST APPLICATION FOR LICENSURE BY EXAMINATION

I hereby make application for licensure to practice as a  
 Clinical Psychologist  School Psychologist  Applied Psychologist  
 in the Commonwealth of Virginia. The following evidence of my qualifications is submitted with a check  
 or money order in the amount of \$150.00 made payable to the Treasurer of Virginia. I understand that  
 the application fee is non-refundable.

INSTRUCTIONS		PLEASE TYPE OR PRINT		USE BLACK INK
1. Applications lacking a Social Security Number or Virginia Department of Motor Vehicles control number will not be processed.				
2. Applications lacking all supporting documentation (including official transcripts) will not be processed.				
3. Completed application should be received no less than 90 days prior to the date of the written examination.				
I. GENERAL INFORMATION				
Full Name (Last, First, Middle, Suffix, Maiden Name)		Degree	Social Security/Virginia DMV Control Number <input type="checkbox"/>	Date of Birth
Print Your Name As You Would Like It To Appear On Your Wall Certificate				
Licensure Address (Street and/or Box Number, City, State, ZIP Code)*		Home Telephone Number		Business Telephone Number
Alternate Mailing Address (if different from above)*		E-Mail Address		Fax Number
LICENSURE/CERTIFICATION - List all the states in which you now hold or have ever held an occupational license or certificate to practice as a psychologist or other mental health care practitioner. A verification form must be completed for each of the listings below.				
STATE	LICENSE/CERTIFICATE NUMBER	ISSUE DATE	TYPE OF LICENSE/CERTIFICATE	

In accordance with Section 54-1-116 of the Code of Virginia you are required to submit your Social Security Number or your Virginia control number. Refer to instruction sheet.  
 \*The licensure address is public information under the Freedom of Information Act. The Alternate Mailing address and phone numbers will not be provided as public information.

PSY 2



**COMMONWEALTH OF VIRGINIA**  
**BOARD OF PSYCHOLOGY**  
 Department of Health Professions  
 6606 West Broad Street, 4th Floor  
 Richmond, Virginia 23230-1717  
 (804) 662-9913

**REGISTRATION OF RESIDENCY  
 POST-GRADUATE DEGREE SUPERVISED EXPERIENCE**

**FEES:** \$100.00 Initial Registration (one supervisor)  
 \$100.00 Each Additional Registration  
**Make all checks payable to THE TREASURER OF VIRGINIA - Registration fees are NON-REFUNDABLE**

**THIS FORM IS TO BE COMPLETED BY THE RESIDENT AND THE SUPERVISOR PRIOR TO INITIATING SUPERVISION**

**CHECK ONE:**  Initial Registration  Add Supervisor  Change Supervisor (Contact Board Office)\*  
 \*Indicate Name of Former Supervisor and Submit Verification of Supervision:  
**CHECK ONE:**  Full-time  Part-time

<b>RESIDENT INFORMATION (Please type or print)</b>	
Name (Last, First, Middle, Suffix, Maiden Name)	Social Security/Virginia DMV Control Number <input type="checkbox"/>
Business Name and Address	Business Telephone Number
<b>SUPERVISOR INFORMATION</b>	
Name (Last, First, Middle, Suffix, Maiden Name)	Telephone Number
Business Name and Address	E-Mail address
Fax Number	License Number
Type/Title of License	Expiration Date

**SUPERVISION TO BE PROVIDED RESIDENT** - A one-year, full-time residency is defined as a minimum of two hours of individual, face-to-face supervision per week. Part-time supervision must include at least one hour per week of face-to-face supervision. Two hours of group supervision may be substituted for one of the hours of individual face-to-face supervision.

Number of hours per week of individual, face-to-face supervision to be rendered: \_\_\_\_\_  
 Number of hours per week of group supervision to be rendered: \_\_\_\_\_

In accordance with Section 54.1-116 of the Code of Virginia you are required to submit your Social Security Number or your Virginia control number. Refer to instruction sheet.

**ANSWER THE FOLLOWING QUESTIONS:**

- |   | YES | NO  |
|---|-----|-----|
| 1. What do you consider to be your specialty in psychology? _____   | [ ] | [ ] |
| 2. Have you ever been denied the privilege of taking an occupational licensure or certification examination? If yes, state what type of occupational examination and where: _____   | [ ] | [ ] |
| 3. Have you ever taken the National (EPPP) Examination? If yes, be sure to include the LPDS score report. _____   | [ ] | [ ] |
| 4. Have you ever had any disciplinary action taken against an occupational license to practice or are any such actions pending? *If yes, see below. _____   | [ ] | [ ] |
| 5. Have you ever been convicted of a violation of or pled nolo contendere to any federal, state, or local statute, regulation or ordinance or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except for driving under the influence.) *If yes, see below. _____ | [ ] | [ ] |
| 6. Have you ever been censured, warned, or requested to withdraw from your employment, terminated from any health care facility, agency, or practice? *If yes, see below. _____   | [ ] | [ ] |

\*If you answered "YES", please provide an explanation on a separate sheet of paper and any supporting documentation.

The following statement must be executed by a Notary Public. This form is not valid unless properly notarized.

**AFFIDAVIT  
 (To be completed before a notary public)**

I, \_\_\_\_\_, being duly sworn, says that he/she is the person who is referred to in the foregoing application for licensure as a psychologist in the Commonwealth of Virginia, that the statements herein contained are true in every respect, that he/she has complied with all requirements of the law, and that he/she has read and understands this affidavit.

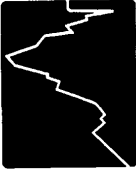
State of \_\_\_\_\_ County/City of \_\_\_\_\_

Signature of Applicant \_\_\_\_\_  
 Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

My commission expires on \_\_\_\_\_

Signature of Notary Public \_\_\_\_\_

SEAL  
 PSYEX1 rev. 6/99



**COMMONWEALTH OF VIRGINIA**  
**BOARD OF PSYCHOLOGY**  
 Department of Health Professions  
 6606 West Broad Street, 4th Floor  
 Richmond, Virginia 23230-1717  
 (804) 662-9913

## PSYCHOLOGIST APPLICATION FOR LICENSURE BY ENDORSEMENT

I hereby make application for licensure to practice as a  
 **Clinical Psychologist**     **School Psychologist**     **Applied Psychologist**  
 in the Commonwealth of Virginia. The following evidence of my qualifications is submitted with a check  
 or money order in the amount of \$150.00 made payable to the Treasurer of Virginia. I understand that  
 the application fee is non-refundable.

Check the appropriate endorsement provision:  
 National Register     ABPP     20 Years Of Active Licensure     Five of the past six years active licensure

PLEASE TYPE OR PRINT	USE BLACK INK
1. Applications lacking a Social Security Number or Virginia Department of Motor Vehicles control number will not be processed. 2. Applications lacking all supporting documentation (including official transcripts) will not be processed.	
<b>I. GENERAL INFORMATION</b>	
Full Name (Last, First, Middle, Suffix, Maiden Name)	Degree      Social Security/Virginia DMV Control Number <input type="checkbox"/>
Date of Birth	
Print Your Name As You Would Like It To Appear On Your Wall Certificate	
Mailing Address (Street and/or Box Number, City, State, ZIP Code)	Home Telephone Number
Business Name and Address (if different from above)	Business Telephone Number
Fax Number	E-Mail Address
<b>LICENSE/CERTIFICATION</b> - List all the states in which you now hold or have ever held an occupational license or certificate to practice as a psychologist or other mental health care practitioner. A verification form must be completed for each of the listings below.	
STATE	LICENSE/CERTIFICATE NUMBER      ISSUE DATE      TYPE OF LICENSE/CERTIFICATE

In accordance with Section 54-1-116 of the Code of Virginia you are required to submit your Social Security Number or your Virginia control number. Refer to instruction sheet.

**SERVICES TO BE RENDERED BY THE RESIDENT WHILE IN SUPERVISION** - include population of clients to receive service, assessments to be used, and techniques to be used. Residents in clinical psychology must include appropriate emphasis and experience in the diagnosis and treatment of persons with moderate to severe mental disorders.

I, \_\_\_\_\_, declare under penalty of perjury under the laws of the Commonwealth of Virginia that I will not provide supervision to \_\_\_\_\_ (Resident) in areas outside of the competencies of my license to practice as a \_\_\_\_\_ (License of Supervisor). As supervisor, I assume responsibility for the clinical activities of the individual registered under my supervision. We hereby agree to this supervision contract which is being registered with the Board of Psychology. I further attest that I have read and understand the regulations pertaining to residents in Virginia.

Signature of Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_  
 Signature of Resident: \_\_\_\_\_ Date: \_\_\_\_\_  
 Signature of Authorized Representative of Sponsoring Agency (if applicable) \_\_\_\_\_ Date: \_\_\_\_\_

rev. 6/99

The following statement must be executed by a Notary Public. This form is not valid unless properly notarized.

**AFFIDAVIT**  
(To be completed before a notary public)

State of \_\_\_\_\_ County/City of \_\_\_\_\_

Name \_\_\_\_\_, being duly sworn, attests that he/she has read and agrees to comply with the Standards of Practice and laws governing the practice of psychology in Virginia and says that he/she is the person who is referred to in the foregoing application for licensure as a psychologist in the Commonwealth of Virginia, that the statements herein contained are true in every respect, that he/she has complied with all requirements of the law, and that he/she has read and understands this affidavit.

Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

My commission expires on \_\_\_\_\_.

SEAL

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Signature of Applicant

PSYENI rev. 6/99

**ANSWER THE FOLLOWING QUESTIONS:**

1. What do you consider to be your specialty in psychology? \_\_\_\_\_ YES  NO

2. Have you ever been denied the privilege of taking an occupational licensure or certification examination? If yes, state what type of occupational examination and where: \_\_\_\_\_ YES  NO

3. Have you ever had any disciplinary action taken against an occupational license to practice or are any such actions pending? \*If yes, see below. \_\_\_\_\_ YES  NO


4. Have you ever been convicted of a violation of or pled nolo contendere to any federal, state, or local statute, regulation or ordinance or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except for driving under the influence.) \*If yes, see below. \_\_\_\_\_ YES  NO

5. Have you ever been censured, warned, or requested to withdraw from your employment, terminated from any health care facility, agency, or practice? \*If yes, see below. \_\_\_\_\_ YES  NO

\*If you answered "YES", please provide an explanation on a separate sheet of paper and any supporting documentation.

**V. OTHER PROFESSIONAL EXPERIENCE (Practicum, Externship, Employment)**  
List your entire professional employment experiences (a resume may be submitted to support what is listed below).

Dates of Employment	Employer	Address	Hours per week	Supervisor	Duties



**COMMONWEALTH OF VIRGINIA**  
**BOARD OF PSYCHOLOGY**  
 Department of Health Professions  
 6606 West Broad Street, 4th Floor  
 Richmond, Virginia 23230-1717  
 (804) 662-9913

**VERIFICATION OF POST DEGREE SUPERVISION**  
 This form is to be filled out when supervision is completed.

Applicant's Name _____		Social Security/Virginia DMV Control Number: <input type="checkbox"/>	
Supervisor's Name _____		Professional Title _____	
Is supervisor licensed as a mental health professional? Yes [ ] No [ ]		If yes, in which jurisdiction(s)? _____	
License Title(s) _____		License number(s) and expiration date(s) _____	
Clinical experience? Yes [ ] No [ ]		If yes, number of years _____	
Fax Number _____		E-Mail Address _____	
Business Name and Address _____			
Employment Position _____			
Applicant's position under your supervision _____		Length of time under your supervision: _____ Month/Year	
		to _____ Month/year	
Total number of residency hours: _____			
Number of hours per week of individual, face-to-face supervision this applicant received in clinical practice: _____			
Total number of hours of individual, face-to-face supervision received by this applicant: _____			
Number of hours per week of group supervision this applicant received in clinical practice: _____			
Total number of hours of group supervision received by this applicant: _____			

In accordance with Section 54.1-116 of the Code of Virginia you are required to submit your Social Security Number or your Virginia control number. Refer to instruction sheet.

Dates performed by applicant under your supervision. For clinical psychology residencies, describe the applicant's experience in the diagnosis and treatment of persons with moderate to severe mental disorders.

In your opinion, is the applicant competent to practice under the license for which he or she has applied? Yes [ ] No [ ]

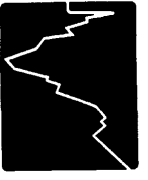
If no, please explain: \_\_\_\_\_

Additional comments: \_\_\_\_\_

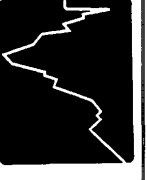
Supervisor's Signature \_\_\_\_\_ Date \_\_\_\_\_

PSY 3 rev. 6/99





**COMMONWEALTH OF VIRGINIA**  
**BOARD OF PSYCHOLOGY**  
 Department of Health Professions  
 6606 West Broad Street, 4th Floor  
 Richmond, Virginia 23230-1717  
 (804) 662-9913



**COMMONWEALTH OF VIRGINIA**  
**BOARD OF PSYCHOLOGY**  
 Department of Health Professions  
 6606 West Broad Street, 4th Floor  
 Richmond, Virginia 23230-1717  
 (804) 662-9913

**LICENSURE/CERTIFICATION VERIFICATION**

Applicants for psychology licensure in the Commonwealth of Virginia are required to send a licensure/certification verification form to every jurisdiction in which they currently hold, or have held, a license/certification to practice as a psychologist or any other health practitioner.

Name: \_\_\_\_\_ License Number: \_\_\_\_\_  
 Address: \_\_\_\_\_

**TO BE COMPLETED BY STATE LICENSING/CERTIFYING BOARD**  
 Please complete this form and return it directly to the applicant in a sealed envelope.

Title of License: \_\_\_\_\_ License Number: \_\_\_\_\_  
 Issue Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
 By Examination \_\_\_\_\_ By Endorsement \_\_\_\_\_ By Waiver \_\_\_\_\_ By Reciprocity \_\_\_\_\_  
 Type of Examination: \_\_\_\_\_ Date of Examination: \_\_\_\_\_ Cut-Off Score \_\_\_\_\_ Applicant's Score \_\_\_\_\_  
 EPPP \_\_\_\_\_ Date: \_\_\_\_\_ Cut-Off Score \_\_\_\_\_ Applicant's Score \_\_\_\_\_  
 State Exam \_\_\_\_\_ Date: \_\_\_\_\_ Cut-Off Score \_\_\_\_\_ Applicant's Score \_\_\_\_\_  
 State Exam \_\_\_\_\_ Date: \_\_\_\_\_ Cut-Off Score \_\_\_\_\_ Applicant's Score \_\_\_\_\_

Has there ever been any disciplinary action taken against the licensee? [ ] Yes [ ] No If yes, give full particulars on a separate sheet.

Certification by the authorized Licensure Official of the State Board of \_\_\_\_\_ Telephone Number (\_\_\_\_) \_\_\_\_\_  
 State of \_\_\_\_\_

I certify that the information is correct.  
 \_\_\_\_\_  
 Authorized Licensure Official  
 \_\_\_\_\_  
 Title  
 \_\_\_\_\_  
 Jurisdiction/State  
 \_\_\_\_\_  
 Date  
 \_\_\_\_\_

**SEAL**

**INTERNSHIP VERIFICATION**

Applicant's Name \_\_\_\_\_ Social Security/Virginia DMV Control Number  \_\_\_\_\_

**TO THE DIRECTOR/CHAIR OF THE APPLICANT'S INTERNSHIP PROGRAM:** The following information is required in order to determine the eligibility of the above-named applicant for licensure as a Clinical Psychologist or School Psychologist

Name and location of internship program: \_\_\_\_\_

Which of the following criteria does your internship meet?  
 The American Psychological Association? \_\_\_\_\_ Meets Equivalent Standards \_\_\_\_\_  
 The National Register of Health Service Providers in Psychology? \_\_\_\_\_  
 The National Association of School Psychologists? \_\_\_\_\_  
 The Association of Psychology Postdoctoral and Internship Centers? \_\_\_\_\_

Describe the nature of the internship program. If this was an internship in clinical psychology, describe the emphasis and experience in the diagnosis and treatment of persons with moderate to severe mental disorders.  
 \_\_\_\_\_

I attest that the information provided above is correct.  
 \_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Name and Title (please print)  
 \_\_\_\_\_  
 Date  
 \_\_\_\_\_

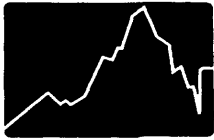
In accordance with Section 54.1-116 of the Code of Virginia you are required to submit your Social Security Number or your Virginia control number. Refer to instruction sheet.

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PSY rev. 6/99

# Final Regulations

## AREAS OF GRADUATE STUDY

	<b>COMMONWEALTH OF VIRGINIA</b>  <b>BOARD OF PSYCHOLOGY</b> Department of Health Professions 6606 West Broad Street, 4th Floor Richmond, Virginia 23230-1717 (804) 662-9913		
Applicant's Name _____ Social Security/Virginia DMV Control Number <input type="checkbox"/> _____ Please list in the spaces provided below graduate coursework completed which corresponds to the courses listed below. Indicate course title, course number and number of credit hours received as shown on your graduate transcript. Also indicate on this form any area of study where you cannot specify that coursework was completed, or where it may be unclear from the title of a course that the course content was covered. Catalogue descriptions may be submitted for clarification. If more space is needed, please attach additional sheets. You are only required to complete the numbers listed below, as applies to the licensure you are seeking: Applied Psychologist applicants complete items 1 - 8 only Clinical Psychologist applicants complete items 2 - 17 only School Psychologist applicants complete items 18-26 only			
Required Content	Course Title and Number	Number of Credits	Name of Institution
1. Concentration in _____ <i>(must have a total of 18 semester hours)</i>			
2. Biological bases of behavior			
3. Cognitive-affective bases of behavior			
4. Social bases of behavior			

In accordance with Section 54.1-116 of the *Code of Virginia* you are required to submit your Social Security Number or your *Virginia* control number. Refer to instruction sheet.

5. Psychological Measurement			
6. Research Methodology			
7. Techniques of data analysis			
8. Professional Ethics and Standards			
9. Individual differences in behavior			
10. Human Development			
11. Dysfunctional behavior, abnormal behavior or psychopathology			
12. Theories and methods of intellectual assessment and diagnosis			
13. Theories and methods of personality assessment and diagnosis including its practical application.			

14. Effective interventions and evaluating the efficacy of interventions.			
15. Practicum: Assessment and Diagnosis			
16. Practicum: Psychotherapy			
17. Practicum: Consultation and supervision			
18. Psychological foundations			
19. Educational foundations			
20. Interventions/problem solving			
21. Statistics and research methodologies			
22. Professional school psychology			
23. Practicum in orientation to the educational process			
24. Practicum in assessment for intervention			
25. Practicum in direct intervention			
26. Practicum in indirect intervention			

PSY 6 rev. 6/99

# 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	CURRENT AMOUNT DUE \$	RENEWAL PERIOD FROM TO	AMOUNT DUE IF RECEIVED AFTER \$
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C-4512AB

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> In accordance with § 54.1-116 of the <i>Code of Virginia</i>, you are required to submit your Social Security Number or your control number* issued by the <i>Virginia</i> Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will <u>not</u> be refunded. 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. 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><b>NO LICENSE, CERTIFICATION OR REGISTRATION WILL BE ISSUED TO ANY INDIVIDUAL WHO HAS FAILED TO DISCLOSE ONE OF THESE NUMBERS.</b></p> <p style="text-align: center;"> <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> </p> <p><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.</small></p>	<p><b>INSTRUCTIONS</b></p> <ol style="list-style-type: none"> <li>1. Verify Social Security or Virginia DMV Control Number at left.</li> <li>2. Complete item "A" below if you do not wish to renew.</li> <li>3. Make any <u>address</u> changes on this application when renewing.</li> <li>4. Make any <u>name</u> changes on this application and enclose a copy of your marriage license or court order.</li> <li>5. Note name and license, certificate or registration number on all enclosures.</li> <li>6. Return the bottom portion of this application in the enclosed envelope.</li> </ol> <p>A. <input type="checkbox"/> Check here if you <u>do not</u> wish to renew, and sign below.</p> <p style="text-align: right;">_____ Signature</p>
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**THIS BOTTOM PORTION MUST BE RETURNED IN ORDER TO RENEW**

Department of Health Professions  
Type of renewal:  
License, certificate or registration number:

V.A.R. Doc. No. R97-358; Filed September 22, 1999, 11:14 a.m.

**TITLE 24. TRANSPORTATION AND  
MOTOR VEHICLES**

**COMMONWEALTH TRANSPORTATION BOARD**

**Title of Regulation:** 24 VAC 30-130-10 et seq. **Rules and Regulations Governing the Prequalification and Classification of Prospective Bidders.**

**Statutory Authority:** § 33.1-12 of the Code of Virginia.

**Effective Date:** September 13, 1999.

**Exemptions Claimed:**

*This regulation is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1 B 2 of the Code of Virginia, which exempts agency action involving the award or denial of state contracts, as well as decisions regarding compliance therewith. Subdivision 2 f of § 2.3 of the Virginia Code Commission Regulations allows regulations concerning public contracts to be filed by description subject to the authorization of the Registrar of Regulations.*

**Summary:**

*This regulation sets forth the requirements contractors must meet to become prequalified or certified to bid on transportation projects awarded by the Commonwealth Transportation Board (CTB). The CTB, under authority granted it by § 33.1-12 (2) and (7) of the Code of Virginia, has established rules concerning the establishment of proof of competency and responsibility of those wishing to submit bids pursuant to Title 11, Chapter 7 of the Code of Virginia, known as the Virginia Public Procurement Act, which public bodies must follow in awarding public contracts.*

*Complete information on contracting opportunities with VDOT can be obtained by contacting the Construction Division, 1401 East Broad Street, 12th Floor, Richmond, VA 23219, or by accessing VDOT's website (Opportunities Network) at <http://www.vdot.state.va.us>.*

VA.R. Doc. No. R00-8; Filed September 13, 1999, 3:17 p.m.



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## THE LEGISLATIVE RECORD

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*The Legislative Record* is available on the Internet at <http://dls.state.va.us/legrec99.htm>



























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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF CONSERVATION AND RECREATION

CASE NO. PUA990054

### Notice of Public Information Meetings on the York Tributary Strategy Plan

Pursuant to the Tributary Plan Act (§§ 2.1-51.12:1 through 2.1-51.12:3 of the Code of Virginia), agencies of the Secretariat of Natural Resources have prepared a Draft York River and Lower York Coastal Basins Final Tributary Nutrient Reduction Strategy Plan.

On behalf of the Secretary of Natural Resources, the Department of Conservation and Recreation conducted two public information meetings to summarize the strategy plan document and answer questions about its contents. These meetings were held on September 30, 1999, at the Ashland Public Library, 201 South Railroad Avenue, Ashland, Virginia; and on October 7, 1999, in Watermans Hall at the Virginia Military Institute of Marine Science, Route 1208 (Great Road), Gloucester Point, Virginia.

The department will receive written comments through October 20, 1999, at 5 p.m., relating to the nutrient and sediment reduction goals, caps, and related management measures, in the strategy plan document. Comments should be addressed to Darryl M. Glover, Department of Conservation and Recreation, York Watershed Office, P.O. Box 1425, Tappahannock, VA 23560. Comments may also be submitted by FAX to (804) 443-4534, or by e-mail to [DMG@dcr.state.va.us](mailto:DMG@dcr.state.va.us). A copy of the strategy plan may be obtained via mail by calling (804) 443-6752 or writing to the above address.

## STATE CORPORATION COMMISSION

### Division of Public Utility Accounting

**EDITOR'S NOTE:** Appendices A, B, C, D and E referenced in the following order are not being published. However, these appendices are available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. to 5 p.m., Monday through Friday.

Copies of the order may be obtained from the State Corporation Commission Document Control Center, 1st Floor, Tyler Building, 1300 East Main Street, Richmond, VA 23219, telephone (804) 371-9033. Mailing address is P.O. Box 2118, Richmond, VA 23218. Questions regarding the order may be addressed to Susan Larsen, Division of Public Utility Accounting, 4th Floor, Tyler Building, Richmond, VA 23219, (804) 371-9950. Mailing address is P.O. Box 1197, Richmond, VA 23218.

AT RICHMOND, SEPTEMBER 14, 1999

COMMONWEALTH OF VIRGINIA

At the relation of the  
STATE CORPORATION COMMISSION

**Ex Parte:** In the matter of adopting additions and amendments to the Commission's rules governing the filing of rate increase applications

### ORDER ESTABLISHING PROCEEDING

The Commission has determined that modifications and amendments may be needed to its Rules Governing Utility Rate Increase Applications and Annual Informational Filings ("Rate Case Rules"), adopted in Case No. PUE820056<sup>1</sup> and modified in Case No. PUE850022.<sup>2</sup> The Commission is of the further opinion that amendments or additions may also be necessary to its Rules Governing Streamlined Rate Proceedings and General Rate Proceedings for Electric Cooperatives Subject to the State Corporation Commission's Rate Jurisdiction, 20 VAC 5-200-21 ("Coop Rules"), adopted in Case No. PUE930054.<sup>3</sup>

The rules promulgated in these cases establish filing requirements and other obligations for public utilities, including investor-owned electric, natural gas, telephone, certain water and sewer companies, and electric cooperatives, that seek increases in their regulated operating revenues. The Commission is of the opinion that the Commission Staff should investigate what changes are needed to the current rules, including any required by recently enacted legislation, and should report any recommended amendments to the existing rules as part of the report ordered below. As is evident from the dates of the cases set out in the footnotes, the rules have been in effect for a considerable period of time and much has changed within the public utility industry and in the Code of Virginia since the rules were last comprehensively examined.

In particular, the 1999 Session of the Virginia General Assembly enacted S.B. 1269, the Virginia Electric Utility Restructuring Act ("Act"), which became the law of the Commonwealth on July 1, 1999.<sup>4</sup> The Act added a new chapter to Title 56 of the Code of Virginia, consisting of sections numbered 56-576 through 56-595. This new law extensively altered the manner in which electric utility service will be provided in the Commonwealth and also the manner in which such service will be regulated, both during and following the transition period established in the Act. For example, new § 56-582 requires the Commission to establish

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<sup>1</sup> Commonwealth of Virginia, ex rel State Corporation Commission, Ex parte: In the matter of adopting revised rules governing Financial Operating Review and utility rate case filings, 1982 S.C.C. Ann. Rep. 629.

<sup>2</sup> Commonwealth of Virginia, ex rel State Corporation Commission, Ex parte: In the matter of adopting certain amendments to the Rules Governing Utility Rate Increase Applications, 1985 S.C.C. Ann. Rep. 478.

<sup>3</sup> Commonwealth of Virginia, ex rel. State Corporation Commission, Ex parte: In re: Investigation of the rules governing electric cooperative rate cases and rate regulation of electric cooperatives, 1996 S.C.C. Ann. Rep. 247.

<sup>4</sup> The General Assembly also enacted H.B. 2438, which completely replaced Chapter 9 of Title 56 of the Code of Virginia, regarding the organization, powers and regulation of electric cooperatives.

rate caps for each electric utility, including the electric cooperatives, but permits certain utilities to make an application to the Commission prior to January 1, 2001, for modification of the current capped rate. Section 56-582 states that "such rate application and the Commission's approval shall give due consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for a period of time ending as late as July 1, 2007." Our existing Rate Case Rules and Coop Rules may not provide for all such forward-looking adjustments.

New § 56-581 further requires the Commission to regulate the rates for the transmission of electric energy, to the extent not pre-empted from doing so by federal law, and for the distribution of electric energy to retail customers on an unbundled basis. The establishment of rates for these services will require the submittal of information different, and in different format, from that required by the current rules, which permit the Commission to establish rates on a bundled basis. Consequently, amendments to and supplements of the Rate Case Rules and Coop Rules appear to be necessary. As set out above, the Commission is of the opinion that a comprehensive review of the rules is now timely. Accordingly,

**IT IS ORDERED THAT:**

- (1) The Commission Staff shall, on or before November 9, 1999, file a report recommending any proposed amendments and additions to the Rate Case Rules and Coop Rules, including those necessary for the Commission to carry out its duties under the Act.
- (2) On or before December 21, 1999, any interested party may file an original and fifteen (15) copies of any comments on the proposals contained in the Staff's report, or request for hearing on the proposals contained in the Staff's report. Any request for hearing should state with specificity the issues proposed to be addressed at a public hearing and the evidence expected to be offered therein. If no sufficient request for hearing is received, the Commission may act upon the pleadings filed in this matter.
- (3) On or before October 8, 1999, the Commission's Division of Public Utility Accounting shall cause a copy of the following notice to be published in newspapers having general circulation throughout the state:

**NOTICE OF PROPOSED AMENDMENTS TO RULES ESTABLISHED BY THE STATE CORPORATION COMMISSION FOR THE FILING OF RATE INCREASE APPLICATIONS BY PUBLIC UTILITIES, COOPERATIVES AND TELEPHONE COMPANIES**

On September 14, 1999, the State Corporation Commission entered an order directing its Staff to investigate and propose amendments and additions to its Rules Governing Utility Rate Increase Applications and Annual Informational Filings ("Rate Case Rules") and to its Rules Governing Streamlined Rate Proceedings and General Rate Proceedings for Electric Cooperatives Subject to the State Corporation Commission's Rate Jurisdiction, ("Coop Rules").

The Commission is of the opinion that a comprehensive review of these rules is necessary in light of sweeping changes in the public utility industries and amendments to the Code of Virginia that have occurred since the rules were last reviewed comprehensively. In particular, the enactment of the Virginia Electric Utility Restructuring Act, which became effective July 1, 1999, extensively altered the manner in which electric utility service will be provided and regulated in the Commonwealth.

The Commission Staff is ordered to file its report, proposing any changes or amendments to the rules, on or before November 9, 1999. Changes to the rules may have an effect on the filing by any public utility of a request for a rate increase, including electric, natural gas, telephone, electric cooperative and certain water and sewer companies.

Any interested party may obtain a copy of the Staff's report by requesting same in writing from the Clerk of the Commission at the address listed below.

Any interested party may comment upon the Staff's proposals, or request a hearing on the Staff's proposals, by filing an original and fifteen copies of the comment or request with Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before December 21, 1999, making reference in such filing to Case No. PUA990054.

Any request for hearing must state with specificity the issues to be addressed at a public hearing and the evidence the party proposes to introduce at such hearing. If no sufficient request for hearing is received, the Commission may act upon the pleadings filed in this case without conducting a hearing.

**VIRGINIA STATE CORPORATION COMMISSION**

- (4) This matter is continued for further orders of the Commission.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: all interexchange carriers certificated in Virginia as shown in Appendix A; all local exchange carriers certificated in Virginia as shown in Appendix B; all electric cooperatives and electric companies in Virginia as shown in Appendix C; all gas companies in Virginia as shown in Appendix D; all water and sewer companies in Virginia as shown in Appendix E; the Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Jean Ann Fox, Vice President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Jeffrey M. Gleason, Esquire, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, Virginia 22902; Virginia Committee for Fair Utility Rates, Louis R. Monacell, Esquire, Christian & Barton, 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; Dennis R. Bates, Esquire, Senior Assistant County Attorney, Fairfax County, 12000 Government Center Parkway, Suite 549, Fairfax, Virginia 22035-0064; Virginia Independent Power Producers, Kenneth G. Hurwitz, Esquire, Rita Wecker, Esquire, Venable, Baetjer, Howard & Civiletti, LLP, 1201 New York Avenue, N.W., 11th Floor, Washington, D.C. 20005; and the

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# General Notices/Errata

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Commission's Divisions of Communications, Energy Regulation, Economics and Finance, and Public Utility Accounting.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Notice of Public Meeting and Public Comment on Accotink Creek TMDL

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for fecal coliform bacteria on a 4.5 mile segment of Accotink Creek. This impaired segment is located in Fairfax County and begins at the confluence of Crooks Branch and extends to Lake Accotink. Accotink Creek is identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria.

Section 303(d) of the federal Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia, require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The first public meeting on the development of the Accotink Creek fecal coliform TMDL will be held on Thursday, October 28, 1999, at 7 p.m. in the cafeteria of the Robert Frost Middle School located at 4101 Pickett Road in Fairfax County. The public comment period will end on November 10, 1999.

A fact sheet on the development of the TMDL for fecal coliform bacteria on Accotink Creek is available upon request. Questions or information requests should be addressed to Joan Crowther. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Ms. Joan Crowther, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193, telephone (703) 583-3828, FAX (703) 583-3841, or e-mail [jccrowther@deq.state.va.us](mailto:jccrowther@deq.state.va.us).

## DEPARTMENT OF TRANSPORTATION

### Notice of Periodic Review of Regulation Pursuant to Executive Order 25 (98)

Pursuant to Executive Order Number 25 (98), the Virginia Department of Transportation has scheduled the regulation listed below for review. Since § 9-6.14:7.1 D of the Administrative Process Act (APA) requires that agencies promulgate a regulation concerning public participation in the enactment of regulations subject to the APA, VDOT will conduct this review only to determine whether the regulation should be amended or retained as written. If any changes are deemed necessary, VDOT will file the appropriate documentation as required through the APA (§ 9-6.14:1 et seq. of the Code of Virginia).

VDOT seeks public comment regarding the following questions:

1. Does the regulation meet the following goals?
  - Ensure the public has opportunity to comment on regulations promulgation;
  - Comply with statutory and procedural requirements concerning public participation; and
  - Protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth
2. Is the regulation written clearly and understandably?

Regulation Title: 24 VAC 30-10-10 et seq. Public Participation Guidelines

Subject: Establishes the manner in which VDOT will solicit public input in the development of regulations promulgated under the Administrative Process Act.

APA Exemption: None

Comments may be submitted from October 11 through November 1, 1999, to the contact referenced below.

Contact: David L. Roberts, Policy Analyst Senior, Management Services Division, Virginia Department of Transportation, 1401 E. Broad St., Room 712, Richmond, Virginia 23219, telephone (804) 786-3620, FAX (804) 371-0074, or e-mail [roberts\\_dl@vdot.state.va.us](mailto:roberts_dl@vdot.state.va.us).

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Pursuant to Executive Order Number 25 (98), the Virginia Department of Transportation has scheduled the regulation listed below for review. VDOT will conduct this review to determine whether the regulation should be terminated, amended, or retained as written. If any changes are deemed necessary, VDOT will file the appropriate documentation as required through the Administrative Process Act (APA) (§ 9-6.14:1 et seq. of the Code of Virginia).

VDOT seeks public comment regarding the following questions:

1. Does the regulation meet the following goals?
  - Serve as a reference resource for parties involved in the planning, design, development, and regulation of residential, commercial, and industrial subdivisions.
  - Establish the minimum criteria for the addition of subdivision streets as a part of Virginia's secondary system of state highways.
  - Protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth.
2. Is the regulation written clearly and understandably?

Regulation Title: 24 VAC 30-90-10 et seq. Subdivision Street Requirements

Subject: Establish the minimum criteria for the addition of subdivision streets as a part of Virginia's secondary system of highways. (*Note:* This regulation does not apply to the

counties of Arlington or Henrico, nor does it apply to the independent cities or towns of more than 3,500 population, unless otherwise referenced in the subdivision control ordinance of the jurisdiction.)

APA Exemption: None

Comments may be submitted from October 11 through November 1, 1999, to the contact referenced below.

Contact: James S. Givens, State Secondary Roads Engineer, Secondary Roads Division, Room 403, Virginia Department of Transportation, 1401 E. Broad St., Richmond, Virginia 23219, telephone (804) 786-2745, FAX (804) 786-2603, or e-mail [givens\\_js@vdot.state.va.us](mailto:givens_js@vdot.state.va.us).

## VIRGINIA WASTE MANAGEMENT BOARD

### Periodic Review of Regulations

Pursuant to Executive Order Number 25 (1998), the Department of Environmental Quality, on behalf of the Virginia Waste Management Board, will review the Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.). The purpose of the review is to determine whether they should be terminated, amended or retained in their current form. The review of the regulation will be guided by the principles listed in Executive Order Number 25.

The department and the board are seeking public comment on the review of the Regulated Medical Waste Management Regulation on any issue relating to these regulations, including (i) whether the regulations are effective in achieving their goals, (ii) whether the regulations are essential to protect the health, safety or welfare of citizens or for the economical performance of important governmental functions, (iii) whether there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations, and (iv) whether the regulations are clearly written and easily understandable by affected persons.

Written and electronically submitted comments on the above listed regulation are welcome and will be accepted until 5 p.m. on Wednesday, December 1, 1999. Comments should be sent to John Ely, Division of Waste Program Coordination, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, (804) 698-4249, FAX (804) 698-4327 or e-mail [jeely@deq.state.va.us](mailto:jeely@deq.state.va.us).

## STATE WATER CONTROL BOARD

### Proposed Consent Special Order Amherst County Service Authority

The State Water Control Board (SWCB) proposes to issue a proposed consent special order (CSO) to the Amherst County Service Authority regarding settlement of a civil enforcement action related to compliance with the Virginia Pollution Discharge Elimination System (VPDES) Permit Regulation, 9 VAC 25-31-10 et seq. On behalf of the SWCB, the department will consider written comments relating to this

settlement until November 10, 1999. Comments should be addressed to Robert Steele, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

The final CSO may be examined at the department during regular business hours. Copies are available from Mr. Steele at the address above or by calling (540) 562-6777.

### Proposed Consent Special Order Knight Oil Company, Inc. (PC#98-2201)

The State Water Control Board proposes to take an enforcement action against the Knight Oil Company, Inc., located at 207 Jefferson Avenue in Newport News, Virginia. The enforcement action will be a consent special order that will require the company to submit a site characterization report and a corrective action plan for remediating petroleum contamination.

The Department of Environmental Quality will receive written comments relating to the board's proposed consent special order from October 11, 1999, through November 10, 1999. Comments should be addressed to David S. Gussman, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia 23462 and should refer to the Knight Oil Company, Inc. consent special order. The proposed order may be examined at the above address and copies of the order may be obtained in person or by mail.

### Proposed Consent Special Order Staywel, Inc.

The State Water Control Board (SWCB) proposes to issue a proposed consent special order (CSO) to Staywel, Inc. regarding settlement of a civil enforcement action related to compliance with the Virginia Pollution Discharge Elimination System Permit Regulation, 9 VAC 25-31-10 et seq. On behalf of the SWCB, the department will consider written comments relating to this settlement until November 10, 1999. Comments should be addressed to Robert Steele, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

The final CSO may be examined at the department during regular business hours. Copies are available from Mr. Steele at the address above or by calling (540) 562-6777.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

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## General Notices/Errata

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### **Forms for Filing Material for Publication in *The Virginia Register of Regulations***

All agencies are required to use the appropriate forms when furnishing material for publication in *The Virginia Register of Regulations*. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

**Internet:** Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page: <http://legis.state.va.us/codecomm/register/regindex.htm>

#### FORMS:

- NOTICE of INTENDED REGULATORY ACTION - RR01
- NOTICE of COMMENT PERIOD - RR02
- PROPOSED (Transmittal Sheet) - RR03
- FINAL (Transmittal Sheet) - RR04
- EMERGENCY (Transmittal Sheet) - RR05
- NOTICE of MEETING - RR06
- AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS  
- RR08

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1. Complete and file one copy of this form with your postmaster annually on or before October 1. Keep a copy of the completed form for your records.  
 2. In cases where the stockholder or security holder is a trustee, include in items 10 and 11 the name of the person or corporation for whom the trustee is acting. Also include the names and addresses of individuals who are stockholders who own or hold 1 percent or more of the total amount of bonds, mortgages, or other securities of the publishing corporation. In item 11, if none, check the box. Use blank sheets if more space is required.  
 3. Be sure to furnish all circulation information called for in item 15. Free circulation must be shown in items 15a, e, and f.  
 4. Item 15b. Copies not Distributed, must include (1) newspaper copies originally stated on Form 3541, and returned to the publisher, (2) estimated returns from news agents, and (3), copies for office use, leftovers, spoiled, and all other copies not distributed.  
 5. If the publication had Periodicals authorization as a general or requester publication, this Statement of Ownership, Management, and Circulation must be published; it must be printed in any issue in October or, if the publication is not published during October, the first issue printed after October.  
 6. In item 16, indicate the date of the issue in which this Statement of Ownership will be published.  
 7. Item 17 must be signed.  
 Failure to file or publish a statement of ownership may lead to suspension of Periodicals authorization.  
 PS Form 3526, September 1988 (Reverse)

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 Editor: (Name and complete mailing address)  
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 Managing Editor: (Name and complete mailing address)  
Jane Chaffin, VA Code Comm, General Assembly Bldg, and Fl, 910 Capitol St, Richmond, VA 23019

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 Complete Mailing Address:  
Virginia Code Commission, General Assembly Bldg, 2nd Floor, 910 Capitol St, Richmond, VA 23019

11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box.  
 Complete Mailing Address:  
None

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 Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)  
 (See Instructions on Reverse)

PS Form 3526, September 1988


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# CALENDAR OF EVENTS

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## Symbol Key


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

 Location accessible to handicapped

 Teletype (TTY)/Voice Designation

## NOTICE


Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY , or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."


VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD OF ACCOUNTANCY


**October 18, 1999 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Conference Room 5W, Richmond,  
Virginia. 

The board will conduct routine business. A public comment period will be held at the beginning of the meeting.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8505, FAX (804) 367-2475 or (804) 367-9753/TTY 

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Virginia Egg Board


† **October 15, 1999 - Noon** -- Open Meeting  
† **October 16, 1999 - 7:30 a.m.** -- Open Meeting  
Virginia Tech, Litton Reaves Building, West Campus Drive,  
Room 1810, Poultry Science Department, Blacksburg,  
Virginia.  (Interpreter for the deaf provided upon request)

A meeting to (i) receive reports from the Executive Director of the Egg Council and the Secretary of the Egg Board on the board's finances, marketing plans, past and future programs, publicity, public relations and old and new business and (ii) approve the minutes of the past meeting. An educational seminar for the egg board and industry will take place immediately following the business meeting and continue on Saturday. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Cecilia

Glembocki at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Cecilia Glembocki, Secretary, Virginia Egg Board, 911 Saddleback Court, McLean, VA 22102-1317, telephone (703) 790-1984 or toll-free 1-800-779-7759.

#### Virginia Marine Products Board

**October 13, 1999 - 6 p.m.** -- Open Meeting  
Madison's Prime Rib and Seafood Restaurant, 4329 George Washington Memorial Highway, Gloucester, 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 Peanut Board

**October 12, 1999 - 1:30 p.m.** -- Open Meeting  
Cooperative Extension Office, Courtland, Virginia. 

A meeting to nominate two qualified persons for the National Peanut Board from Virginia, and two qualified persons for the alternative member. The minutes of the last meeting will be heard and approved, if appropriate, and board's financial statement will be reviewed. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Russell C.



Schools at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Russell C. Schools, Program Director, Virginia Peanut Board, P.O. Box 356, Capron, VA 23829, telephone (804) 658-4573 or FAX (804) 658-4531.

## Pesticide Control Board

**October 14, 1999 - 9 a.m.** -- Open Meeting  
Department of Agriculture and Consumer Services,  
Washington Building, 1100 Bank Street, Board Room, Room  
204, Richmond, Virginia. ☎

A general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. At 9 a.m. the public will have an opportunity to comment on any matter not on the board's agenda. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least seven days before the meeting date so that suitable arrangements can be made.

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

## Virginia Pork Industry Board

† **October 15, 1999 - 3 p.m.** -- Open Meeting  
Holiday Inn-Monticello, I-64 and 5th Street, Charlottesville,  
Virginia. ☎

A meeting to review past minutes, conduct general business, and approve projects. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact John H. Parker at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** John H. Parker, Executive Director, Virginia Pork Industry Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 1008, Richmond, VA 23219, telephone (804) 786-7092 or FAX (804) 371-7786.

## STATE AIR POLLUTION CONTROL BOARD

† **November 17, 1999 - 10 a.m.** -- Public Hearing  
Main Street Centre, 600 East Main Street, Lower Level,  
Conference Room, Richmond, Virginia.

**December 10, 1999** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled:  
**Regulations for the Control and Abatement of Air**

**Pollution; Special Provisions for Existing Sources, New and Modified Sources, and Hazardous Air Pollutant Sources (Rev. D97): 9 VAC 5-10-10 et seq. General Definitions; 9 VAC 5-20-10 et seq. General Provisions; 9 VAC 5-40-10 et seq. Existing Stationary Sources; 9 VAC 5-50-10 et seq. New and Modified Stationary Sources; and 9 VAC 5-60-10 et seq. Hazardous Air Pollutant Sources.** Special Provisions for Existing Stationary Sources, New and Modified Stationary Sources, and Hazardous Air Pollutant Sources which are in Chapters 40, 50 and 60 of the board's regulations address issues such as: applicability, compliance, emission testing, monitoring, notification, records and reporting. The proposed amendments update certain requirements in the provisions to be consistent with new federal requirements and EPA policy and address concerns identified pursuant to the review of existing regulations mandated by Executive Order 15 (94) as well as changes made to federal regulations since that review.

**Request for Comments:** The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

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

**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 regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation 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 Air Regulatory Development (Eighth Floor), 629 East Main Street, Richmond, Virginia and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
3019 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 562-6700

Lynchburg Satellite Office  
Department of Environmental Quality  
7705 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

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# Calendar of Events

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Valley Regional Office  
Department of Environmental Quality  
4411 Early Road  
Harrisonburg, Virginia 22801  
Ph: (540) 574-7800

Fredericksburg Satellite Office  
Department of Environmental Quality  
806 Westwood Office Park  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Northern Regional Office  
Department of Environmental Quality  
13901 Crown Court  
Woodbridge, Virginia  
Ph: (703) 583-3800

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
5636 Southern Boulevard  
Virginia Beach, Virginia  
Ph: (757) 518-2000

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

Public comments may be submitted until 4:30 p.m. December 10, 1999, to the Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Mary E. Major, Environmental Program Manager, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TTY ☎

## ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

† **November 3, 1999 - 10 a.m.** -- Open Meeting  
Ninth Street Office Building, 202 North 9th Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to continue the review of results and any subsequent changes to the report submitted September 1, 1999. There will be a 20-minute public comment period at the beginning of the meeting.

**Contact:** Ian N. Kremer, J.D., Alzheimer's Disease and Related Disorders Commission, 10201 Lee Highway, Suite 210, Fairfax, VA 22030, telephone (703) 359-4440, FAX (703) 359-4441 or toll-free 1-800-207-8679.

## VIRGINIA BOARD FOR ASBESTOS AND LEAD

**November 9, 1999 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ♿

A meeting to conduct routine business. Public comment will be received at the beginning of the meeting.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2176, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

## AUCTIONEERS BOARD

† **October 12, 1999 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

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

## BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **November 10, 1999 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A general business meeting. Public comments will be heard for 15 minutes prior to the start of the meeting.

**Contact:** Senita Booker, Administrative Staff Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9523 or (804) 662-7197/TTY ☎

## VIRGINIA AVIATION BOARD

† **October 19, 1999 - 3 p.m.** -- Open Meeting  
Falwell Airport, 3900 Campbell Avenue, Lynchburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

A workshop for the board. No formal actions will be taken. Individuals with disabilities should contact Tony Williams at least 10 days prior to the meeting if assistance is needed.

**Contact:** Tony Williams, Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, VA 23250-2422, telephone (804) 236-3626 or (804) 236-3624/TTY ☎

† **October 20, 1999 - 9 a.m.** -- Open Meeting  
Richmond Marriott, 500 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular bimonthly meeting of the board. Applications for state funding will be presented to the board and other matters of the Virginia aviation community will be discussed. Individuals with disabilities should contact Tony Williams at least 10 days prior to the meeting if assistance is needed.

**Contact:** Tony Williams, Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, VA 23250-2422, telephone (804) 236-3626 or (804) 236-3624/TTY

## CEMETERY BOARD

† **October 20, 1999 - 1 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

**December 10, 1999** - 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 Cemetery Board intends to adopt regulations entitled: **18 VAC 47-10-10 et seq. Public Participation Guidelines.** The purpose of these regulations are to assure that the public is provided adequate notice concerning each opportunity for participation in the development, promulgation, and review of regulations affecting the operation of licensed cemeteries in the Commonwealth of Virginia.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

**Contact:** Eric Olson, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8510, FAX (804) 367-2475 or (804) 367-9753/TTY

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† **October 20, 1999 - 1 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

**December 10, 1999** - 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 Cemetery Board intends to adopt regulations entitled: **18 VAC 47-20-10 et seq. Cemetery Board Rules and Regulations.** The purpose of the proposed regulations is to outline requirements placed on cemetery companies and their sales personnel concerning their licensing reporting and enforcement of the regulations and the Cemetery Act (Chapter 23.1 of Title 54.1 of the Code of Virginia).

Statutory Authority: §§ 54.1-201 and 54.1-2313 of the Code of Virginia.

**Contact:** Eric Olson, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8510, FAX (804) 367-2475 or (804) 367-9753/TTY

## CHARITABLE GAMING COMMISSION

† **October 25, 1999 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.

A regular meeting.

**Contact:** Kristi Leslie, Administrative Staff Assistant, Charitable Gaming Commission, Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-3014 or FAX (804) 786-1079.

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

**October 26, 1999 - 10 a.m.** -- Open Meeting  
Chesapeake Bay Local Assistance Department, 101 North 14th Street, 17th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Northern Area Review Committee to review Chesapeake Bay Preservation Area programs for the northern area. Persons interested in observing should call the department to verify meeting time, location and schedule. No public comments will be heard at the meeting; however, written comments are welcome.

**Contact:** Carolyn J. Elliott, Executive Secretary, Chesapeake Bay Local Assistance Department, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447 or toll-free (800) 243-7229/TTY

**October 26, 1999 - 2 p.m.** -- Open Meeting  
Chesapeake Bay Local Assistance Department, 101 North 14th Street, 17th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Southern Area Review Committee to review Chesapeake Bay Preservation Area programs for the southern area. Persons interested in observing should call the department to verify meeting time, location and schedule. No public comments will be heard at the meeting; however, written comments are welcome.

**Contact:** Carolyn J. Elliott, Executive Secretary, Chesapeake Bay Local Assistance Department, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447 or toll-free (800) 243-7229/TTY

## CHILD DAY-CARE COUNCIL

† **October 14, 1999 - 9:30 a.m.** -- Open Meeting  
Theater Row Building, 730 East Broad Street, Lower Level 1, Richmond, Virginia.

The council will meet to discuss issues and concerns that impact child day centers, camps, school age programs, and preschool/nursery schools. Public comment will be

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# Calendar of Events

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received at noon. Please call ahead of time for possible change in meeting time.

**Contact:** Arlene Kasper, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1791 or FAX (804) 692-2370.

## DEPARTMENT OF CONSERVATION AND RECREATION

**October 13, 1999 - 7 p.m.** -- Open Meeting  
Cove Ridge Center, Natural Tunnel State Park, Route 3, Duffield, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss development of the Natural Tunnel State Park master plan .

**Contact:** James E. Guyton, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-2093, FAX (804) 371-7899 or (804) 786-2121/TTY

† **October 26, 1999 - 10 a.m.** -- Open Meeting  
Douthat State Park, Route 1, Restaurant, Millboro, Virginia. (Interpreter for the deaf provided upon request)

The final Steering Committee meeting on the general findings of the feasibility study to determine the potential for developing a horse trail between the Virginia Equine Center in Lexington and the Homestead Hotel in Bath County.

**Contact:** Robert S. Munson, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899 or (804) 786-2121/TTY

† **November 4, 1999 - 7 p.m.** -- Open Meeting  
Hungry Mother State Park, 2854 Park Boulevard, Hemlock Haven Conference Center, Dogwood Room, Marion, Virginia. (Interpreter for the deaf provided upon request)

A Steering Committee meeting to discuss the development of the Hungry Mother State Park master plan.

**Contact:** Robert S. Munson, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899 or (804) 786-2121/TTY

## Chippokes Plantation Farm Foundation

† **October 18, 1999 - 9:30 a.m.** -- Open Meeting  
Chippokes Plantation State Park, Mansion, 695 Chippokes Park Road, Conference Room, Surry, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting.

**Contact:** Katherine R. Wright, Executive Secretary, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-7950 or FAX (804) 371-8500.

## Falls of the James Scenic River Advisory Board

**November 4, 1999 - 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 discuss 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, FAX (804) 371-7899 or (804) 786-2121/TTY

## Board of Conservation and Development of Public Beaches

† **October 18, 1999 - 10 a.m.** -- Open Meeting  
Virginia Institute of Marine Science, Chesapeake Bay Hall, Gloucester Point, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss proposed projects by localities requesting matching grant funds, to review the status of beaches after Hurricanes Dennis and Floyd, and to receive public comments about public beaches or the activities of the board. Requests for an interpreter for the deaf must be made to Carlton Lee Hill by October 12.

**Contact:** Carlton Lee Hill, Staff Advisor, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3998 or FAX (804) 786-1798.

## BOARD OF CORRECTIONS

**October 12, 1999 - 9:30 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.


A meeting of the Correctional Services Committee to discuss correctional services matters which may be presented to the full board.

**Contact:** Barbara Fellows, Administrative Assistant to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

**October 13, 1999 - 8:30 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia.

A meeting of the Administration Committee to discuss administrative matters which may be presented to the full board.

**Contact:** Barbara Fellows, Administrative Assistant to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.


**October 13, 1999 - 10 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting to discuss matters which may be presented to the full board.


**Contact:** Barbara Fellows, Administrative Assistant to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

## BOARD FOR COSMETOLOGY

NOTE: CHANGE IN DATE

**December 6, 1999 - 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, comments from informational proceedings, and other matters requiring board action, including disciplinary cases. All meetings are subject to cancellation and the time of the meeting is subject to change. Please call the board on December 3 for possible changes. 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 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TTY 

## BOARD OF DENTISTRY


**October 15, 1999** -- 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 Dentistry intends to amend regulations entitled: **18 VAC 60-20-10 et seq. Regulations Governing the Practice of Dentistry and Dental Hygiene.** The proposed amendments replace emergency regulations, which were promulgated to comply with statutory provisions authorizing the board to issue volunteer restricted licenses in dentistry and dental hygiene.

Statutory Authority: §§ 54.1-2400, 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia.

**Contact:** Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9901.


## BOARD OF EDUCATION

† **October 28, 1999 - 9 a.m.** -- Open Meeting  
Wise County School Board, Conference Center, Wise, Virginia.  (Interpreter for the deaf provided upon request)


The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items on the agenda. The agenda is available upon request.

**Contact:** Dr. Margaret N. Roberts, Executive Assistant for the State Board, Department of Education, Monroe Bldg., 101 N. 14th St., P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2540, FAX (804) 225-2524 or toll-free 1-800-292-3820.

## LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

† **October 27, 1999 - 6:30 p.m.** -- Open Meeting  
Virginia Institute of Marine Science of the College of William and Mary, Gloucester Point, Virginia. 

A tour and review of the Virginia Institute of Marine Science's chemical waste storage system.

**Contact:** Georgette N. Hurley, Assistant County Administrator, Gloucester County Administrator's Office, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042 or (804) 693-1479/TTY 


## DEPARTMENT OF ENVIRONMENTAL QUALITY

† **October 20, 1999 - 7 p.m.** -- Public Hearing  
Sandston Library, 23 East Williamsburg Road, Meeting Room, Richmond, Virginia. 

A public hearing to receive comments on the draft post-closure permit for CSX Transportation, Inc.'s closed hazardous waste surface impoundment on Charles City Road in Richmond, Virginia.

**Contact:** Glenn von Gonten, Department of Environmental Quality, Office of Waste Permitting, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4231.

## Solid Waste Management Regulation Advisory Committee

**October 28, 1999 - 9 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 


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# Calendar of Events

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A meeting of the advisory committee for Amendment 2 to the Solid Waste Management Regulations.

**Contact:** John Ely, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4249.

† **October 28, 1999 - 7 p.m.** -- Public Hearing  
Robert Frost Middle School, 4101 Pickett Road, Cafeteria, Fairfax County, Virginia. 

A public hearing to receive comments on the development of a total maximum daily load (TMDL) for fecal coliform bacteria on a 4.5 mile segment of Accotink Creek in Fairfax County.

**Contact:** Joan Crowther, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3828 or FAX (703) 583-3841.

## VIRGINIA FIRE SERVICES BOARD

**October 14, 1999 - 8:30 a.m.** -- Open Meeting  
Bernard's Landing at Smith Mountain Lake, 775 Ashmeade Road, Moneta, Virginia.

**December 2, 1999 - 8:30 a.m.** -- Open Meeting  
Holiday Inn Hotel and Suites Conference Center, 3005 Linden Drive, Bristol, Virginia.

Committee meetings of the board to discuss fire training and policies will meet as follows:

Fire/EMS Education and Training Committee - 8:30 a.m.  
Legislative/Liaison Committee - 10 a.m.  
Fire Prevention and Control Committee - 1 p.m.

The meetings are open to the public for input and comments.

**Contact:** Troy H. Lapetina, Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220.

**October 15, 1999 - 9 a.m.** -- Open Meeting  
Bernard's Landing at Smith Mountain Lake, 775 Ashmeade Road, Moneta, Virginia.


**December 3, 1999 - 9 a.m.** -- Open Meeting  
Holiday Inn Hotel and Suites Conference Center, 3005 Linden Drive, Bristol, Virginia.

A business meeting to discuss fire training and policies. The meeting is open to the public for input and comments.

**Contact:** Troy H. Lapetina, Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

NOTE: CHANGE IN MEETING TIME

† **October 12, 1999 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A meeting of the Regulatory and Bylaws Committee to discuss and review future regulatory proposals. There will be a 15-minute public comment period 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.


\* \* \* \* \*

**October 15, 1999** -- 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 Funeral Directors and Embalmers intends to amend regulations entitled: **18 VAC 65-20-10 et seq. Regulations of the Board of Funeral Directors and Embalmers.** The proposed amendments replace emergency regulations, which were promulgated to comply with statutory provisions authorizing the board to register crematories.


Statutory Authority: §§ 54.1-2400 and Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1 of the Code of Virginia.

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

† **October 18, 1999 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A meeting of the Special Conference Committee to hold informal hearings. Public comment 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.

† **November 16, 1999 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A meeting of the board and Legislative Committee to adopt final crematory regulations. The Legislative Committee will meet at 10 a.m. to discuss future legislative proposals. There will be a 15-minute public comment period 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.

NOTE: CHANGE IN MEETING DATE AND TIME

† **November 16, 1999 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 


The Legislative Committee will review and discuss future legislative proposals. There will be a 15-minute public comment period 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

**October 21, 1999 - 9 a.m.** -- Open Meeting

**October 22, 1999 - 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 board will meet, discuss general and administrative issues, and receive a status report on the House Bill 38 planning study and public opinion surveys. The board may elect to hold a dinner Wednesday evening, October 20, at a location and time to be determined; and it may hold a closed session before the public session begins on October 21. If the board completes its entire agenda on October 21, it may not convene on October 22.


**Contact:** Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA, telephone (804) 367-1000 or FAX (804) 367-0488.

## BOARD FOR GEOLOGY

**October 21, 1999 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks in advance of the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** William H. Ferguson, II, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, or (804) 367-9753/TTY 

## STATE BOARD OF HEALTH

**October 15, 1999** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **12 VAC 5-408-10 et seq. Regulations for the Certification of Managed Care Health Insurance Plan Licenses.** Senate Bill 712 (1998) established a quality assurance certification program for managed care health insurance plan (MCHIP) licensees. All MCHIP licensees will have to obtain certification and remain certified by the State

Health Commissioner to confirm the quality of health care services they deliver. The regulation will define the expectations relating to quality upon which certification will be based.

Statutory Authority: § 32.1-137.3 of the Code of Virginia.

Public comments may be submitted until October 15, 1999, to Nancy R. Hofheimer, Director, Department of Health, 3600 West Broad Street, Richmond, VA 23230.


**Contact:** Carrie Eddy, Policy Analyst, Center for Quality Health Care Services and Consumer Protection, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2157 or FAX (804) 367-2149.

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**November 26, 1999** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-80-10 et seq. Regulations for the Administration of the Virginia Hearing Impairment Identification and Monitoring System.** The purpose of the proposed regulations is to reflect current statutory law by providing consistent guidance for the implementation and administration of a system designed to ensure that infants with hearing loss are identified and receive appropriate intervention at the earliest possible age after birth. The amendments will (i) establish standards by which hospitals with neonatal intensive care services and hospitals with newborn nurseries shall perform hearing screening on all newborns prior to discharge after birth and provide information to parents and primary medical care providers; (ii) establish procedures for reporting by hospitals and by persons providing audiological services; (iii) establish appropriate mechanisms for follow-up; and (iv) establish responsibilities of the Virginia Department of Health for monitoring and evaluation.

Statutory Authority: §§ 32.1-12 and 32.1-64 of the Code of Virginia.

**Contact:** Pat T. Dewey, Speech and Hearing Services Administrator, Division of Child and Adolescent Health, Department of Health, P.O. Box 2448, Richmond, VA 23218-2448, telephone (804) 786-1964, FAX (804) 786-0917 or toll-free 1-800-828-1120/TTY 

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† **December 10, 1999** - Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **12 VAC 5-165-10 et seq. Regulations for the Repacking of Crab Meat.** These regulations establish criteria by which the Virginia crab industry can safely repack both domestic and foreign crab meat. Repacking involves the removal of

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crab meat picked and packed at another location and placing it in another container bearing the name of the packer.

Statutory Authority: §§ 28.2-801 and 28.2-803 of the Code of Virginia.


**Contact:** Keith Skiles, Program Manager, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-7937 or FAX (804) 786-5567.

## VIRGINIA HIV COMMUNITY PLANNING COMMITTEE


**October 21, 1999 - 8:30 a.m.** -- Open Meeting  
Holiday Inn Crossroads, 2000 Staples Mill Road, Richmond, Virginia. 

**December 10, 1999 - 8:30 a.m.** -- Open Meeting  
Holiday Inn Select, 1021 Koger Center Boulevard, Richmond, Virginia. 

A regular meeting focusing on HIV prevention planning.

**Contact:** Elaine G. Martin, Coordinator, Coordinator AIDS Education, Information and Training, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23218, telephone (804) 786-0877 or toll-free 1-800-533-4148/TTY .


## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**November 2, 1999 - 9 a.m.** -- Open Meeting  
**December 7, 1999 - 9 a.m.** -- Open Meeting  
Hopewell Community Center, 100 West City Point Road, Hopewell, Virginia.  (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

**Contact:** Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.


## VIRGINIA INFORMATION PROVIDERS NETWORK AUTHORITY

**October 28, 1999 - 1 p.m.** -- Open Meeting  
Division of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular bimonthly meeting.

**Contact:** Fred Marcus, Agency Management Analyst, Virginia Information Providers Network Authority, 2300 W. Broad St., Room 321, Richmond, VA 23269, telephone (804) 367-2850 or FAX (804) 367-2536.


## VIRGINIA ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

**October 17, 1999 - 2 p.m.** -- Open Meeting  
Williamsburg Lodge and Conference Center, Dominion Room, Second Floor, Williamsburg, Virginia. 

A meeting coinciding with the beginning of the Virginia Municipal League's annual conference to discuss the ACIR's legislative agenda for the 2000 General Assembly session.


**Contact:** Adele MacLean, Secretary, Virginia Advisory Commission on Intergovernmental Relations, Pocahontas Bldg., 900 E. Main St., Suite 103, Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 828-1120/TTY 

## STATE BOARD OF JUVENILE JUSTICE

† **October 13, 1999 - 9 a.m.** -- Open Meeting  
700 Centre, 700 East Franklin Street, Richmond, Virginia. 

The Secure Program Committee and the Nonsecure Program Committee will meet at 9 a.m. to receive certification audit reports. The full board will meet at 10 a.m. to take certification action, consider policy proposals, and address other matters that may come before the board.

**Contact:** Donald R. Carignan, Policy Analyst, Department of Juvenile Justice, 700 E. Franklin St., P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.


† **November 10, 1999 - 9 a.m.** -- Open Meeting  
700 Centre, 700 East Franklin Street, Richmond, Virginia. 

Committees of the board will meet at 9 a.m. to receive certification audit reports. The full board will meet at 10 a.m. to take certification actions, consider regulatory changes, and address other matters that may come before the board.

**Contact:** Donald R. Carignan, Policy Analyst, Department of Juvenile Justice, 700 E. Franklin St., P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

## DEPARTMENT OF LABOR AND INDUSTRY

### Apprenticeship Council

† **October 21, 1999 - 10 a.m.** -- Open Meeting  
Location to be announced.  (Interpreter for the deaf provided upon request)

A regular meeting rescheduled from September 16. Agenda items include (i) a program on the Workforce Investment Act and (ii) reports on the progress of Orkand Corporation and Town of Wytheville Apprenticeship Programs, the subcommittee to approve Virginia Apprenticeship Standards, revised standards for the



Board for Cosmetology, and the Outstanding Virginia Apprenticeship Committee.

**Contact:** Beverly Donati, Assistant Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, or (804) 786-2376/TTY ☎

**November 18, 1999 - 9:30 a.m.** -- Open Meeting  
Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A subcommittee meeting of the council. Agenda to be announced.

**Contact:** Beverly Donati, Assistant Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, or (804) 786-2376/TTY ☎

## VIRGINIA LAND CONSERVATION FOUNDATION

† **October 26, 1999 - 10 a.m.** -- Open Meeting  
Gunston Hall Plantation, 10709 Gunston Road, Mason Neck, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting. Public comment will be received following the conclusion of regular business.

**Contact:** Mary Vaughan Gibson, Confidential Policy Analyst, Department of Conservation and Recreation, Director's Office, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2871, FAX (804) 786-6141 or (804) 786-2121/TTY ☎

## COMMISSION ON LOCAL GOVERNMENT

† **October 25, 1999 - 10 a.m.** -- Open Meeting  
† **October 26, 1999 - 9 a.m.** -- Open Meeting  
South Hill area; site to be determined.

Oral presentations regarding the Town of South Hill - Mecklenburg County annexation action. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, Pocahontas Bldg., 900 East Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999 or toll-free 1-800-828-1120/VA Relay Center.

† **October 25, 1999 - 7 p.m.** -- Public Hearing  
South Hill area; site to be determined.

A public hearing regarding the Town of South Hill - Mecklenburg County annexation action. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, Pocahontas Bldg., 900

East Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999 or toll-free 1-800-828-1120/VA Relay Center.

† **November 15, 1999 - 10 a.m.** -- Open Meeting  
Pocahontas Building, 900 East Main Street, Suite 103, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to consider matters that may be presented.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, Pocahontas Bldg., 900 East Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999 or toll-free 1-800-828-1120/VA Relay Center.

## MARINE RESOURCES COMMISSION

**October 26, 1999 - 9:30 a.m.** -- Open Meeting  
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ♿ (Interpreter for the deaf provided upon request)

The commission will hear and decide the following marine environmental matters: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; and policy and regulatory issues. The commission will hear and decide the following fishery management items beginning at approximately noon: regulatory proposals; fishery management plans; fishery conservation issues; licensing; and 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.

**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/TTY ☎

## BOARD OF MEDICAL ASSISTANCE SERVICES

**November 9, 1999 - 10 a.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 E. Broad Street, Richmond, Virginia. ♿

A regular meeting.

**Contact:** Leah D. Hamaker, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-4626 or FAX (804) 371-4981.

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# Calendar of Events

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## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**November 1, 1999 - 1 p.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

The Pharmacy Liaison Committee will conduct routine business.

**Contact:** Marianne Rollings, Pharmacy Services, Division of Program Operators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268.

## BOARD OF MEDICINE

**October 14, 1999 - 8 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general board business, receive committee and board reports, and discuss any other items which may come before the board. The board will also meet on Thursday, Friday, and Saturday, October 14, 15, and 16, to 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, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9517 or (804) 662-7197/TTY

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**October 15, 1999** - 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 Medicine intends to amend regulations entitled: **18 VAC 85-101-10 et seq. Regulations for the Licensure of Occupational Therapists.** The amendments are proposed to replace emergency regulations, effective January 29, 1999, which were promulgated to comply with statutory provisions requiring licensure of occupational therapists. Proposed amendments clarify the requirements for licensure and clarify that evidence of active practice is required for renewal or reinstatement of a license and for an applicant applying for licensure from another state. Active practice is defined as 160 hours within a 24-month period.

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

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

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**October 15, 1999** - 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 Medicine intends to amend regulations entitled: **18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic and Physician Acupuncture.** The amendments are proposed pursuant to a statutory mandate in § 54.1-2910.1 of the Code of Virginia to establish a physician profile system which would provide information on the practice and disciplinary history of doctors of medicine and osteopathy.

Statutory Authority: §§ 54.1-2400 and 54.1-2910.1 of the Code of Virginia.

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

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**November 19, 1999 - 8 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

**November 26, 1999** – 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 Medicine intends to amend regulations entitled: **18 VAC 85-31-10 et seq. Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed amendments is to clarify the use of unlicensed persons in the practice of physical therapy, require proof of English proficiency for graduates of schools located outside the United States and Canada, require graduates of nonapproved schools to provide documentation of certification by the Foreign Credentialing Commission on Physical Therapy, establish the passing score for the examination, and to clarify certain requirements for practice and supervision of physical therapy assistants. In addition, the proposed amendments establish an inactive licensure status and those requirements for renewal or reinstatement of licensure which are necessary to protect the public health and safety in the delivery of physical therapy services.

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

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

† **November 19, 1999 - 8 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Richmond, Virginia.  (Interpreter for the deaf  
provided upon request)

The Executive Committee will meet in open and closed session to (i) review disciplinary files requiring administrative action, (ii) adopt amendments and approve for promulgation regulations as presented, (iii) interview applicants, and (iv) act on other issues that come before the board. The chairman will entertain public comments on agenda items for 15 minutes following adoption of the agenda.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9517 or (804) 662-7197/TTY 


### Informal Conference Committee

**October 22, 1999 - 9 a.m.** -- Open Meeting  
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.


**October 27, 1999 - 9 a.m.** -- Open Meeting  
† **November 17, 1999 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

† **November 4, 1999 - 9 a.m.** -- Open Meeting  
Sheraton Inn, 2801 Plank Road, Fredericksburg, 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) 662-7693, FAX (804) 662-9517 or (804) 662-7197/TTY 

### DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES


† **October 29, 1999 - 9 a.m.** -- Open Meeting  
Eastern State Hospital, 4601 Ironbound Road, Williamsburg, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the State Human Rights Committee to discuss business and conduct hearings relating to human rights issues. Agenda items are available from the department.

**Contact:** Kli Kinzie, Executive Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-3988, FAX (804) 371-2308 or (804) 371-8977/TTY 

### DEPARTMENT OF MOTOR VEHICLES


#### Medical Advisory Board

† **October 13, 1999 - 1 p.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. 


A regular business meeting.

**Contact:** Millicent Ford, Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-1032.


### VIRGINIA MUSEUM OF NATURAL HISTORY

**October 16, 1999 - 9 a.m.** -- Open Meeting  
Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, Virginia. 


A meeting of the Board of Trustees to receive reports from the development, executive, finance, legislative, marketing, nominating, outreach, personnel, planning and facilities, and research and collections committees. Public comment will be received following approval of the minutes of the August meeting.

**Contact:** Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616, or (540) 666-8638/TTY 

### BOARD OF NURSING

† **October 12, 1999 - 8:30 a.m.** -- Open Meeting  
† **October 14, 1999 - 8:30 a.m.** -- Open Meeting  
† **October 18, 1999 - 8:30 a.m.** -- Open Meeting  
† **October 19, 1999 - 8:30 a.m.** -- Open Meeting  
† **October 26, 1999 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A Special Conference Committee will conduct informal conferences with licensees and certificate holders. 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/TTY 

### BOARD OF NURSING HOME ADMINISTRATORS

**October 13, 1999 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. 

A regular meeting to discuss general board business. Public comments will be received for 15 minutes prior to the start of the meeting.

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# Calendar of Events

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**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/TTY ☎

## BOARD FOR OPTICIANS

† **November 12, 1999 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿  
(Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review, disciplinary cases and other matters requiring board action. A public comment period will be held at the beginning of the meeting. The meeting is subject to cancellation and the meeting time is subject to change. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks in advance of the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TTY ☎

## VIRGINIA OUTDOORS FOUNDATION

**December 8, 1999 - 10 a.m.** -- Open Meeting  
**December 9, 1999 - 10 a.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regularly scheduled meeting of the Board of Trustees to discuss foundation business and accept conservation easements. Public input will be accepted after the regular business meeting.

**Contact:** Tamara Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Room 317, Richmond, VA 23219, telephone (804) 225-2147 or FAX (804) 371-4810.

## BOARD OF PHARMACY

**October 12, 1999 - 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 ad hoc committee on pharmacy technicians. A board panel will hold formal hearings at 10 a.m. Public comments will not be received.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911 or FAX (804) 662-9313.

† **October 20, 1999 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

† **October 26, 1999 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

The Special Conference Committee will conduct informal conferences. Public comments will not be received.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911 or FAX (804) 662-9313.

## BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

**November 16, 1999 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting. 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/TTY ☎

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

**October 27, 1999 - 1:30 p.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4, Richmond, Virginia.

**November 1, 1999** - 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 Professional and Occupational Regulation intends to amend regulations entitled: **18 VAC 120-10-10 et seq. Public Participation Guidelines.** The proposed amendments make technical changes to this regulation so that it will apply to all regulatory programs that are under the authority of the Director of the Department of Professional and Occupational Regulation rather than a regulatory board. The result will be that the regulation will apply to the newly created professional boxing and wrestling program as well as to the polygraph examiners regulatory program and to any regulatory program assigned to the Director of the Department of Professional and Occupational Regulation in the future.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

**Contact:** David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475 and (804) 367-9753/TTY ☎

## BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

**October 15, 1999** - 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 115-30-10 et seq. Regulations Governing the Certification of Substance Abuse Treatment Counselors.** The purpose of the proposed amendments is to respond to Executive Order 15 (94) by clarifying and reformatting the regulations, extending the endorsement provision to include holders of certain national certifications, reducing the burden of the supervised training requirement, and clarifying the standard of practice pertaining to dual relationships. To reduce the financial burden on individuals who wish to renew a certification which has lapsed for more than four years, the board is proposing a reapplication alternative to the current cumulative renewal and penalty fee.

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

**Contact:** Janet Delorme, Deputy 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) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TTY ☎

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**October 15, 1999** - 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 115-50-10 et seq. Regulations Governing the Practice of Marriage and Family Therapy.** The purpose of the proposed amendments is to respond to a petition for rulemaking to make it possible for individuals to be licensed if their educational programs do not offer all course work currently required; to conform the residency requirements to those required for the licensed professional counselors as mandated by statute; to simplify documentation of

credentials for endorsement applicants; and to recognize all acceptable accrediting bodies for graduate programs.

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

**Contact:** Janet Delorme, Deputy 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) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TTY ☎

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**October 15, 1999** - 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 115-60-10 et seq. Regulations Governing the Practice of Substance Abuse Treatment Practitioners.** The purpose of the proposed amendments is to promulgate new regulations establishing qualifications for licensure of substance abuse treatment practitioners, fees, and standards of ethical practice as required by statutory mandate.

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

**Contact:** Janet Delorme, Deputy 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) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TTY ☎

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**November 18, 1999 - 1 p.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

**November 26, 1999** – 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 Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals intends to amend regulations entitled: **18 VAC 115-20-10 et seq. Regulations Governing the Practice of Professional Counseling.** The purpose of the proposed action is to amend regulations pursuant to Executive Order 15 (94) to clarify and simplify regulations, include an endorsement provision for practitioners licensed in other jurisdictions, reduce the burden of the residency requirements, simplify the reinstatement procedure and update the education requirements.

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# Calendar of Events

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Statutory Authority: §§ 54.1-103 and 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of the Code of Virginia.

**Contact:** Janet Delorme, Deputy 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) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TTY ☎

## BOARD OF PSYCHOLOGY

**October 22, 1999 - 10:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

The board will meet with representatives of the Virginia Psychological Association and the Virginia Psychology Academies to discuss the establishment of continuing requirements for Virginia's licensed psychologists. Public comment will be received at various times during the meeting.

**Contact:** Janet Delorme, Deputy 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) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TTY ☎

† **October 22, 1999 - 12:30 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Conference Room 1, Richmond, Virginia. ♿

A formal administrative hearing will be held pursuant to § 9-6.14:12 of the Code of Virginia. Public comments will not be received.

**Contact:** Evelyn 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) 662-9967 or FAX (804) 662-9943.

## VIRGINIA RACING COMMISSION

**October 19, 1999 - 9:30 a.m.** -- Open Meeting  
Tyler Building, 1300 East Main Street, Richmond, Virginia. ♿

Informal fact-finding conferences on the applications of Colonial Downs and the Virginia Turf Club to construct, own and operate racetracks in the Commonwealth.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7404 or FAX (804) 966-7418.

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**November 29, 1999** - 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 10-60-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Participants.** The purpose of the proposed action is to establish the qualifications and responsibilities of participants in pari-mutuel horse racing in the Commonwealth.

Statutory Authority: § 59.1-360 of the Code of Virginia.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404 or FAX (804) 966-7418.

## REAL ESTATE APPRAISER BOARD

**October 26, 1999 - 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 board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TTY ☎

## REAL ESTATE BOARD

**October 12, 1999 - 9 a.m.** -- Open Meeting  
**October 13, 1999 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct informal fact-finding conferences pursuant to § 9-6.14:11 of the Administrative Process Act. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** Debbie A. Amaker, Legal Assistant, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8582, FAX (804) 367-2179 or (804) 367-9753/TTY ☎

## STATE REHABILITATION COUNCIL

† **November 1, 1999 - 9:30 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Council committee meetings followed by a regular business meeting.

**Contact:** Kay Magill, State Rehabilitation Council Liaison, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7527, FAX (804) 662-7696, or toll-free 1-800-552-5019 or 1-800-464-9950/TTY ☎

## DEPARTMENT OF REHABILITATIVE SERVICES

**December 19, 1999** - 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 Rehabilitative Services intends to adopt regulations entitled: **22 VAC 30-40-10 et seq. Protection of Participants in Human Research.** The purpose of the proposed regulation is to establish a human research review committee and requirements for obtaining participant voluntary informed consent in human research conducted or authorized by the department, Woodrow Wilson Rehabilitation Center, centers for independent living, and sheltered workshops.

Statutory Authority: §§ 51.5-5.1 and 51.5-14 of the Code of Virginia.

**Contact:** Elizabeth Smith, Policy and Planning Manager, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K300, Richmond, VA 23288-0300, telephone (804) 662-7071, FAX (804) 662-7696, toll-free 1-800-552-5019 or 1-800-464-9950/TTY ☎

## DEPARTMENT OF REHABILITATIVE SERVICES AND STATE REHABILITATION COUNCIL

† **November 1, 1999 - 4 p.m.** -- Public Hearing  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Virginia.♿ (Interpreter for the deaf provided upon request)

† **November 15, 1999 - 5:30 p.m.** -- Public Hearing  
Woodrow Wilson Rehabilitation Center, Fishersville, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to receive comments for the State Plan for Vocational Rehabilitation and Supported Employment.

**Contact:** Gloria O'Neal, Program Support Technician, Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23288-0300, telephone (804) 662-7611, FAX (804) 662-7696, toll-free 1-800-552-5019, or (804) 662-9040/TTY ☎

## VIRGINIA RESOURCES AUTHORITY

† **October 12, 1999 - 9 a.m.** -- Open Meeting  
† **November 9, 1999 - 9 a.m.** -- Open Meeting  
† **December 14, 1999 - 9 a.m.** -- Open Meeting  
Virginia Resources Authority, 707 East Main Street, Suite 1350, Richmond, Virginia.

A meeting to approve minutes of the prior meeting, 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.

**Contact:** Robert W. Lauterberg, Executive Director, Virginia Resources Authority, 707 E. Main St., Suite 1350, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

## DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

† **October 27, 1999 - 10 a.m.** -- Open Meeting  
Hampton Inn, 900 West Main Street, Charlottesville, Virginia.♿ (Interpreter for the deaf provided upon request)

A quarterly meeting of the Developmental Disabilities Advisory Council. Public comment will be received at approximately 10 a.m.

**Contact:** Heidi Lawyer, Deputy Director, Department for Rights of Virginians with Disabilities, 202 N. 9th St., Richmond, VA 23219, telephone (804) 225-2042, FAX (804) 225-3221, toll-free 1-800-552-3962, or (804) 225-2042/TTY ☎

## SCIENCE MUSEUM OF VIRGINIA

† **October 21, 1999 - 3 p.m.** -- Open Meeting  
Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia.♿

A quarterly meeting of the Board of Trustees.

**Contact:** Karen Spencer, Administrative Assistant, Science Museum of Virginia, 2500 W. Broad St., Richmond, VA 23220, telephone (804) 367-6799, FAX (804) 367-8410 or toll-free 1-800-659-1727.

## SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

**October 27, 1999 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.♿

A meeting to hear appeals of health department denials of septic tank permits.

**Contact:** Susan Sherertz, Board Secretary, Sewage Handling and Disposal Appeal Review Board, P.O. Box 2448, Room 115, Richmond, VA 23218, telephone (804) 371-4236 or FAX (804) 225-4003.

## VIRGINIA SMALL BUSINESS ADVISORY BOARD

† **November 17, 1999 - 10 a.m.** -- Open Meeting  
Department of Business Assistance, 707 East Main Street, 2nd Floor Conference Room, Richmond, Virginia.

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## Calendar of Events

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A meeting to advise, counsel and confer with the Virginia Small Business Development Center Network on matters pertaining to the operation of the center.

**Contact:** Vicki Humphreys, Associate State Director, Virginia Small Business Development Center, 707 E. Main St., Suite 300, Richmond, VA 23219, telephone (804) 371-6280 or FAX (804) 225-3384.

### VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **October 26, 1999 - 10 a.m.** -- Open Meeting  
Department of Business Assistance, 707 East Main Street, 3rd Floor, Board Room, Richmond, Virginia. 

A meeting of the Loan Committee to review applications for loans submitted to the authority for approval. Contact the authority for confirmation of meeting time.

**Contact:** Cathleen M. Surface, Executive Director, Virginia Small Business Financing Authority, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8254 or FAX (804) 225-3384.

### STATE BOARD OF SOCIAL SERVICES


**October 15, 1999** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **22 VAC 40-705-10 et seq. Child Protective Services.** The purpose of the proposed amendments is to require attending physicians to respond to their local department of social services office evidence that newborn infants have been exposed to a controlled substance or display symptoms of fetal alcohol syndrome as required by § 63.1-248.3 A1 and 63.1-248.1 E 1 and E 2 of the Code of Virginia.

Statutory Authority: §§ 63.1-25, 63.1-248.3 and 63.1-248.6 of the Code of Virginia.


**Contact:** Betty Jo Zarris, Program Consultant, Department of Social Services, Child Protective Services Program, 730 E. Broad St., 2nd Floor, Richmond, VA 23219, telephone (804) 692-1220 or FAX (804) 692-2215.


**October 13, 1999 - 9 a.m.** -- Open Meeting


**October 14, 1999 - 9 a.m.** -- Open Meeting  
Western Regional Office, 190 Patton Street, Abingdon, Virginia. 

A work session and formal business meeting.

**Contact:** Pat Rengnerth, State Board Liaison, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1826, FAX (804) 692-1962, toll-free 1-800-552-3431, or toll-free 1-800-552-7096/TTY 

**October 18, 1999 - 9 a.m.** -- Open Meeting  
Roanoke, Virginia; location to be announced. 


**November 8, 1999 - 9 a.m.** -- Open Meeting  
Department of Social Services, 730 East Broad Street, Lower Level, Training Room 1, Richmond, Virginia. 

**December 6, 1999 - 9 a.m.** -- Open Meeting  
Tidewater, Virginia; location to be announced. 


A regular business meeting of the Virginia Commission on National and Community Service. Subcommittee sessions begin at 9 a.m.

**Contact:** Kimberly Brown, Program Officer, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1951, FAX (804) 692-1999 or toll-free 1-800-638-3839.

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

† **October 22, 1999 - 9 a.m.** -- Open Meeting  
Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A quarterly board meeting rescheduled from September 16. Public comment will be heard following the conclusion of regular business.

**Contact:** Leon App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141 or (804) 786-2121/TTY 


### VIRGINIA TOURISM AUTHORITY

† **October 19, 1999 - 11 a.m.** -- Open Meeting  
Virginia Tourism Authority, 901 East Byrd Street, Riverfront Plaza, West Tower, 19th Floor, Board Room, Richmond, Virginia.

A meeting of the Motion Picture Development Committee to continue discussion regarding the Motion Picture Incentive Fund; discuss strategic allies, partners and direction; and formally adopt the Governor's Motion Picture Opportunity Funds. Public comment will be taken at the beginning of the meeting.

**Contact:** Judy H. Bulls, Assistant to the President and CEO, Virginia Tourism Authority, 901 East Byrd St., Richmond, VA 23219, telephone (804) 371-8174, FAX (804) 786-1919 or (804) 371-0327/TTY 

### COMMONWEALTH TRANSPORTATION BOARD

**October 20, 1999 - 2 p.m.** -- Open Meeting  
Natural Bridge Hotel, Natural Bridge, Virginia.  (Interpreter for the deaf provided upon request)


A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for comment



has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

**Contact:** Shirley J. Ybarra, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675.


## GOVERNOR'S COMMISSION ON TRANSPORTATION POLICY

† **October 13, 1999 - 9 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

Meetings of the Structure, Strategy and Support Task Forces will begin at 9 a.m. The purpose of the meeting will be to provide members of the commission information on innovative financing available in the Transportation Equity Act for the 21st Century, and information on prioritizing transportation projects. Press inquiries should be directed to the Governor's press office at (804) 786-2211.

**Contact:** Dan Shoemaker, Staff Director, Governor's Commission on Transportation Policy, Richmond, VA, telephone (804) 786-3655.


## TRANSPORTATION SAFETY BOARD

**October 19, 1999 - 11 a.m.** -- Open Meeting  
Insurance Institute for Highway Safety, Ruckersville, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting to discuss matters of interest regarding traffic safety.


**Contact:** Angelisa Jennings, Management Analyst, Department of Motor Vehicles, 2300 W. Broad St., P.O. Box 27412, Room 405, Richmond, VA 23269, telephone (804) 367-2026.

## BOARD FOR THE VISUALLY HANDICAPPED

**October 19, 1999 - 1 p.m.** -- Open Meeting  
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular quarterly meeting to receive information regarding department activities and operations, review expenditures from the board's endowment 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) 371-3145, toll-free 1-


800-622-2155, FAX (804) 371-3157 or (804) 371-3140/TTY 

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

### Vocational Rehabilitation Services

**October 23, 1999 - 11:30 a.m.** -- Public Hearing  
Holiday Inn, 725 Woodlake Drive, Chesapeake, Virginia.  (Interpreter for the deaf provided upon request)

Public hearing to invite comments from the public regarding vocational rehabilitation services for persons with visual disabilities. All comments will be considered in developing the state plan for this program.

**Contact:** James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3111, FAX (804) 371-3351, toll-free 1-800-622-2155 or (804) 371-3140/TTY 

## VIRGINIA VOLUNTARY FORMULARY BOARD

† **November 12, 1999 - 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 revision to the formulary adds drugs and drug products to the formulary revision that became effective on July 27, 1998, and its most recent supplement. Copies of the proposed additions to the formulary are available for inspection at the Department of Health, Bureau of Pharmacy Services, 101 North 14th Street, Room S-45, Richmond, Virginia. Written comments received prior to 5 p.m. on November 12, 1999, will be made a part of the hearing record and considered by the formulary board.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy, Virginia Voluntary Formulary Board, Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326 or FAX (804) 371-0236.

## BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

**October 27, 1999 - 11 a.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4, Richmond, Virginia.

**November 1, 1999** - 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 for Waste Management Facility Operators intends to amend

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# Calendar of Events

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regulations entitled: **18 VAC 155-20-10 et seq. Waste Management Facility Operators Regulations.** The proposed amendments will revise definitions, delete the interim certification provisions, delete the Class V license provisions, empower one license to be issued with all classifications, delete the continuing education requirements, and delete the CPE sponsor approval process.

Statutory Authority: § 54.1-2211 of the Code of Virginia.

**Contact:** Thomas Perry, Office Manager, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475 and (804) 367-9753/TTY ☎

**November 4, 1999 - 10 a.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ♿

A meeting to conduct routine board business. A public comment period will be held at the beginning of the meeting.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8595, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

## STATE WATER CONTROL BOARD

† **October 26, 1999 - 7 p.m.** -- Public Hearing  
Stonewall Elementary School, 3165 Martinsburg Pike, Clearbrook, Virginia. ♿

A public hearing to receive comments on the proposed issuance of a Virginia Pollutant Discharge Elimination System Permit to Arogas, Inc., for the Arogas Truck Stop in Frederick County, Virginia.

**Contact:** Janardan R. Pandey, Department of Environmental Quality, Valley Regional Office, 4411 Early Rd., Harrisonburg, VA 22801, telephone (540) 574-7800.

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**October 27, 1999 - 7 p.m.** -- Public Hearing  
Shenandoah County Brick Building, 112 South Main Street, 3rd Floor Conference Room, Woodstock, Virginia.

**November 29, 1999** - 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 25-260-5 et seq. Water Quality Standards.** Water Quality Standards consist of designated uses of the water body and narrative and numeric criteria that protect those uses by describing water quality in general terms and specifically as numerical limits for physical, chemical and biological characteristics of water.

The State Water Control Board proposes to amend the State's Water Board's Water Quality Standards at 9 VAC 25-260-350 and 9 VAC 25-260-400 to designate Stony Creek and its tributaries in Shenandoah County as a nutrient enriched water. If the water is designated nutrient enriched, a companion regulation, the Board's Policy for Nutrient Enriched Waters, 9 VAC 25-40-10 et seq., requires certain municipal and industrial dischargers with a design flow of 1.0 MGD or greater and effluents containing phosphorus to maintain a monthly average total phosphorus concentration of 2 milligrams per liter (mg/l) or less. Rocco Farm Foods near Edinburg - based on a design flow of 1.3 MGD - would be the only point source discharger impacted by this regulatory requirement to install a phosphorus removal system to control total phosphorus.

**Question and Answer Period:** A question and answer period will be held one half hour prior to the beginning of the public hearing at the same location. Department of Environmental Quality staff will be present to answer questions regarding the proposed action.

**Accessibility to Person with Disabilities:** The hearing will be held at a public facility believed to be accessible to persons with disabilities. Any persons with questions on the accessibility of the facilities should contact Jean Gregory at the address or phone numbers in the contact information given below.

**Comments:** The agency requests comments on any aspect of the proposal and also on the costs and benefits of the proposal.

**Alternatives:** In compliance with the State Water Control Board's Public Participation Guidelines, 9 VAC 25-10-10 et seq., the department will consider all alternatives which are considered to be less burdensome and less intrusive for achieving the essential purpose of the proposed regulation and any other alternatives presented during the proposed rulemaking. Several alternatives have already been considered. One alternative was to leave the regulation unchanged. This may appear to be the least intrusive approach; however, such an alternative would not provide a control strategy for the potential water quality degradation in Stony Creek from an already documented excess of phosphorus.

There may be other less intrusive alternatives to consider. For example, other alternatives would be to designate only the mainstem or a portion of the mainstem of Stony Creek as a nutrient enriched water.

**Other Pertinent Information:** The department has conducted analyses on the proposed action related to basis, substance, issues, need, estimated impacts, applicable federal requirements and alternative approaches and schedule for reevaluation. These analyses as well as copies of the amendments may be viewed at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801 or obtained from Jean Gregory.

Statutory Authority: § 62.1-44.15 (3a) of the Code of Virginia.

**Contact:** Jean Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, 1-800-592-5482 or (804) 698-4161 TTY/☎, or e-mail jwgregory@deq.state.va.us.

**October 28, 1999 - 10 a.m.** -- Open Meeting  
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia.

A meeting of the Poultry Advisory Group to continue development of a draft general permit regulation for poultry waste management. Meeting dates and time are subject to change. The public may wish to confirm these with the contact person.

**Contact:** Richard Ayers, Technical Services Administrator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075.

† **December 7, 1999 - 9:30 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.♿

A quarterly meeting of the board.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378 or FAX (804) 698-4346.

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **October 29, 1999 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia.♿

A routine business meeting. A public comment period will be held at the beginning of the meeting. This meeting is being held in place of the meeting scheduled for September 16, 1999, that was canceled due to Hurricane Floyd.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-2176, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

## VIRGINIA WORKFORCE COUNCIL

† **October 13, 1999 - 10 a.m.** -- Open Meeting  
Virginia Employment Commission, Central Office, 703 East Main Street, Conference Room 303, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting of the Emerging Workforce Committee to set its agenda for the fiscal year and review draft portions of the final report on Virginia's Workforce Strategy, which will be presented to the Governor in December 1999.

**Contact:** Gail Robinson, Virginia Workforce Council Liaison, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23218-1358, telephone (804) 225-3070, FAX (804) 371-8697 or (804) 371-8050/TTY ☎

## INDEPENDENT

### VIRGINIA RETIREMENT SYSTEM

† **October 21, 1999 - 1 p.m.** -- Open Meeting  
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia.♿

A regular meeting of the Board of Trustees.

**Contact:** Darla Kestner, Administrative Staff Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free 1-888-827-3847, or (804) 344-3190/TTY ☎

### VIRGINIA WORKERS' COMPENSATION COMMISSION

**December 14, 1999** - 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 Workers' Compensation Commission intends to adopt regulations entitled: **16 VAC 30-11-10 et seq. Public Participation Guidelines.** The purpose of the proposed regulation is to define the Workers' Compensation Commission's process for soliciting input of interested parties in the formation and development of regulations.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

**Contact:** Sam Lupica, Staff Attorney, Virginia Workers' Compensation Commission, 1000 DMV Dr., Richmond, VA 23220, telephone (804) 367-0438, FAX (804) 367-9740, toll-free 1-877-664-2566, or (804) 367-8600/TTY ☎

## LEGISLATIVE

### SPECIAL JOINT SUBCOMMITTEE STUDYING VIRGINIA'S MEDICAL CARE FACILITIES CERTIFICATE OF PUBLIC NEED PROGRAM AND LAW (SJR 496, 1999)

**November 15, 1999 - 1 p.m.** -- Open Meeting  
**December 8, 1999 - 2 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A regular meeting. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least seven days prior to the meeting.


**Contact:** Brian B. Taylor, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

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# Calendar of Events

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## COMMISSION ON REFORM OF THE CLASSIFIED COMPENSATION PLAN

**November 30, 1999 - 2 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be directed to Bill Echelberger, Senate Committee Finance Staff, (804) 698-7480. Individuals requiring interpreter services or other accommodations should call or write Senate Committee Operations.

**Contact:** John McE. Garrett, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY 


## VIRGINIA CODE COMMISSION

**October 18, 1999 - 2 p.m.** -- Open Meeting

**October 19, 1999 - 9:30 a.m.** -- Open Meeting

† **November 10, 1999 - 10 a.m.** -- Open Meeting


† **December 16, 1999 - 10 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to continue with the recodification of Titles 2.1 and 9. Public comment will be received at the end of the meeting for a period not to exceed 15 minutes.

**Contact:** Jane D. Chaffin, Registrar of Regulations, General Assembly Building, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625 or e-mail jchaffin@leg.state.va.us.

## SENATE COMMITTEE ON COMMERCE AND LABOR


**December 7, 1999 - 1:30 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A joint meeting with the House Committee on Corporations, Insurance and Banking to brief members of the two committees on revised Article 9, Secured Transactions, of the Uniform Commercial Code, as proposed by the Uniform Law Commissioners. Questions should be directed to Jescey French, Staff Attorney, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should call or write Senate Committee Operations at least seven days prior to the meeting.


**Contact:** John McE. Garrett, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY 

## CORPORATIONS, INSURANCE AND BANKING SUBCOMMITTEE


### Subcommittee #4 (HB1882, 1999) - Landlord and Tenant; Access to Telecommunications Services

**December 7, 1999 - 1:30 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to brief members on revised Article 9, Secured Transactions, of the Uniform Commercial Code, as proposed by the Uniform Law Commissioners. A representative of the Uniform Law Commissioners will present the briefing and the Virginia Bar Association, which is currently reviewing the revision, will participate. Questions regarding the meeting should be addressed to Jescey French, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Dawn B. Smith, Committee Operations, House of Delegates, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 


### JOINT SUBCOMMITTEE STUDYING ELECTION LAWS INNOVATIONS, IMPROVED METHODS TO INFORM VOTERS ABOUT BALLOT ISSUES AND CANDIDATES, AND OTHER MATTERS (SJR 423, 1999)

† **October 26, 1999 - 2 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be directed to Mary Spain, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should call or write Senate Committee Operations at least seven days prior the meeting.

**Contact:** Patty J. Lung, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY 

### SPECIAL TASK FORCE STUDYING FAITH-BASED COMMUNITY SERVICE GROUPS WHO MAY PROVIDE ASSISTANCE TO MEET SOCIAL NEEDS (HJR 764, 1999)

**November 8, 1999 - 1 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Gayle Vergara, Senior Research Associate, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact Kimberly Rockhold at least 10 working days prior to the meeting. You can also access information on the Internet at <http://legis.state.va.us/jchc/jchchome.htm>.

**Contact:** Kimberly Rockhold, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## JOINT COMMISSION ON HEALTH CARE

† **October 13, 1999 - 10 a.m.** -- Open Meeting  
† **November 16, 1999 - 10 a.m.** -- Open Meeting  
† **December 1, 1999 - 10 a.m.** -- Open Meeting  
† **December 7, 1999 - 10 a.m.** -- Open Meeting  
† **January 6, 2000 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Individuals requiring interpreter services or other special assistance should contact Kimberly Rockhold at least 10 working days prior to the meeting. You can also access information on the Internet at <http://legis.state.va.us/jchc/jchchome.htm>.

**Contact:** Kimberly Rockhold, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## Long-Term Care Committee

† **November 4, 1999 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Individuals requiring interpreter services or other special assistance should contact Kimberly Rockhold at least 10 working days prior to the meeting. You can also access information on the Internet at <http://legis.state.va.us/jchc/jchchome.htm>.

**Contact:** Kimberly Rockhold, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## Midwifery Subcommittee

† **October 13, 1999 - 9:30 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Individuals requiring interpreter services or other special assistance should contact Kimberly Rockhold at least 10 working days prior to the meeting. You can also access information on the Internet at <http://legis.state.va.us/jchc/jchchome.htm>.

**Contact:** Kimberly Rockhold, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

**October 12, 1999 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.

A staff briefing on the Virginia Port Authority.

**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.

## JOINT SUBCOMMITTEE STUDYING THE FUTURE DELIVERY OF PUBLICLY FUNDED MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (HJR 225)

**November 16, 1999 - 1:30 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Gayle Vergara, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Anne R. Howard, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## Comprehensive Services Act Work Group

**October 20, 1999 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, 7th Floor West Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Gayle Vergara, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Anne R. Howard, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540, (804) 786-2369/TTY ☎, or e-mail [ahoward@leg.state.va.us](mailto:ahoward@leg.state.va.us)

## Medicaid Carve-Out Work Group

**October 14, 1999 - 10 a.m.** -- Open Meeting  
† **November 15, 1999 - 2 p.m.** -- Open Meeting

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# Calendar of Events

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General Assembly Building, 9th and Broad Streets, 7th Floor  
West Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Gayle Vergara or Nancy Roberts, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Anne R. Howard, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540, (804) 786-2369/TTY ☎, or e-mail ahoward@leg.state.va.us

## COMMISSION ON COORDINATION OF SERVICES TO FACILITATE SELF-SUFFICIENCY AND SUPPORT OF PERSONS WITH PHYSICAL AND SENSORY DISABILITIES

**November 8, 1999 - 9 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Brian Parsons or Barbara Etnner, Virginia Board for People with Disabilities, (804) 786-0016. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** W. Travis Varner, Committee Operations, House of Delegates, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## JOINT SUBCOMMITTEE STUDYING REMEDIATION (HJR 572, 1999)

† **November 10, 1999 - 10 a.m.** -- Open Meeting  
† **November 29, 1999 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Brenda Edwards, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting. Persons making audiovisual presentations to the committee should call for specifications.

**Contact:** Dawn B. Smith, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

† **November 4, 1999 - 1:30 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of Advisory Committee #5, co-chaired by Delegates Diamonstein and May, to discuss the Uniform Computer Information Transactions Act (UCITA) and the Uniform Electronic Transactions Act (UETA) as a follow-up to the commission's meeting on September 21, 1999. The proposed agenda will be posted on the commission's web page at <http://legis.state.va.us/jcots/jcots.htm> approximately one week before the meeting.

**Contact:** John Jung, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169 or e-mail jjung@leg.state.va.us.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### October 12

- Agriculture and Consumer Services, Department of
  - Virginia Peanut Board
- † Auctioneers Board
- Corrections, Board of
  - Correctional Services Committee
- Funeral Directors and Embalmers, Board of
  - Regulatory and Bylaws Committee
- Legislative Audit and Review Commission, Joint
- † Nursing, Board of
  - Special Conference Committee
- Pharmacy, Board of
- Real Estate Board
- † Resources Authority, Virginia
  - Board of Directors

#### October 13

- Agriculture and Consumer Services, Department of
  - Virginia Marine Products Board
- Conservation and Recreation, Department of
- Corrections, Board of
  - Administration Committee
- † Health Care, Joint Commission on
  - Midwifery Subcommittee
- † Juvenile Justice State Board of
- † Motor Vehicles, Department of
  - Medical Advisory Board
- Nursing Home Administrators, Board of
- Real Estate Board
- Social Services, State Board of
- † Workforce Council, Virginia
  - Emerging Workforce Committee

#### October 14

- Agriculture and Consumer Services, Department of
  - Pesticide Control Board

† Child Day-Care Council  
Fire Services Board, Virginia  
- Fire/EMS Education and Training Committee  
- Fire Prevention Committee  
- Legislative/Liaison Committee  
Independent Living Council, Statewide  
Medicine, Board of  
Mental Health, Mental Retardation and Substance Abuse  
Services, Joint Subcommittee Studying the Future  
Delivery of Publicly Funded  
- Medicaid Carve-Out Work Group  
† Mental Health, Mental Retardation and Substance  
Abuse Services Board, State  
† Nursing, Board of  
- Special Conference Committee  
Social Services, State Board of

## October 15

† Agriculture and Consumer Services, Department of  
- Virginia Egg Board  
- Virginia Pork Industry Board  
Fire Services Board, Virginia  
† Mental Health, Mental Retardation and Substance  
Abuse Services Board, State

## October 16

Museum of Natural History, Virginia  
- Board of Trustees

## October 17

Intergovernmental Relations, Advisory Commission on

## October 18

Accountancy, Board of  
Code Commission, Virginia  
† Conservation and Recreation, Department of  
- Chippokes Plantation Farm Foundation Board of  
Trustees  
- Conservation and Development of Public Beaches  
† Funeral Directors and Embalmers, Board of  
- Special Conference Committee  
† Nursing, Board of  
- Special Conference Committee  
Social Services, Department of  
- Commission on National and Community Services

## October 19

† Aviation Board, Virginia  
Code Commission, Virginia  
† Nursing, Board of  
- Special Conference Committee  
Racing Commission, Virginia  
Transportation Safety Board  
† Virginia Tourism Authority  
Visually Handicapped, Board for the

## October 20

† Aviation Board, Virginia  
Mental Health, Mental Retardation and Substance Abuse  
Services, Joint Subcommittee Studying the Future  
Delivery of Publicly Funded  
- Comprehensive Services Act Work Group  
† Pharmacy, Board of  
- Special Conference Committee

Transportation Board, Commonwealth

## October 21

Game and Inland Fisheries, Board of  
Geology, Board for  
HIV Prevention Planning Committee, Virginia  
† Labor and Industry, Department of  
- Apprenticeship Council  
† Retirement System, Virginia  
- Board of Trustees  
† Science Museum of Virginia  
- Board of Trustees

## October 22

Game and Inland Fisheries, Board of  
Medicine, Board of  
† Psychology, Board of  
† Soil and Water Conservation Board, Virginia

## October 23

Visually Handicapped, Department for the  
- Vocational Rehabilitation Services

## October 25

† Charitable Gaming Commission  
† Local Government, Commission on

## October 26

Chesapeake Bay Local Assistance Board  
- Northern Area Review Committee  
- Southern Area Review Committee  
† Conservation and Recreation, Department of  
† Election Laws Innovations, Improved Methods to Inform  
Voters about Ballot Issues and Candidates, and Other  
Matters, Joint Subcommittee Studying  
† Land Conservation Foundation, Virginia  
† Local Government, Commission on  
Marine Resources Commission  
† Nursing, Board of  
- Special Conference Committee  
† Pharmacy, Board of  
† Small Business Advisory Board, Virginia  
- Loan Committee  
Real Estate Appraiser Board

## October 27

† Emergency Planning Committee, Local  
- Gloucester County  
Medicine, Board of  
- Informal Conference Committee  
† Rights of Virginians with Disabilities, Department for  
- Developmental Disabilities Advisory Council  
Sewage Handling and Disposal Appeal Review Board

## October 28

† Education, Board of  
Information Providers Network Authority, Virginia  
Environmental Quality, Department of  
- Solid Waste Management Regulation Advisory  
Committee  
Water Control Board, State  
- Poultry Advisory Group

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# Calendar of Events

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**October 29**

- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
  - State Human Rights Committee
- † Waterworks and Wastewater Works Operators, Board for

**November 1**

- Medical Assistance Services, Department of
  - Pharmacy Liaison Committee
- † Rehabilitation Council, State

**November 2**

- Hopewell Industrial Safety Council

**November 3**

- † Alzheimer's Disease and Related Disorders Commission

**November 4**

- † Conservation and Recreation, Department of
  - Falls of the James Scenic River Advisory Board
- † Health Care, Joint Commission on
  - Long-Term Care Subcommittee
- † Medicine, Board of
  - Informal Conference Committee
- † Technology and Science, Joint Commission on
  - Advisory Committee #5
- Waste Management Facility Operators, Board for

**November 8**

- Faith-Based Community Service Groups Who May Provide Assistance to Meet Social Needs, Special Task Force Studying
- Physical and Sensory Disabilities, Commission on Coordination of Services to Facilitate Self-Sufficiency and Support of Persons with
- Social Services, Department of
  - Virginia Commission on National and Community Services

**November 9**

- Asbestos and Lead, Virginia Board for Medical Assistance Services, Board of
- † Resources Authority, Virginia
  - Board of Directors

**November 10**

- † Audiology and Speech-Language Pathology, Board of
- † Code Commission, Virginia
- † Juvenile Justice, State Board of
- † Remediation, Joint Subcommittee Studying

**November 12**

- † Opticians, Board for

**November 15**

- Certificate of Public Need Program and Law, Special Joint Subcommittee Studying Virginia's Medical Care Facilities
- † Local Government, Commission on
- † Mental Health, Mental Retardation and Substance Abuse Services, Joint Subcommittee Studying the Future Delivery of Publicly Funded
  - Medicaid Carve-Out Work Group

**November 16**

- Certificate of Public Need Program and Law, Special Joint Subcommittee Studying Virginia's Medical Care Facilities
- † Funeral Directors and Embalmers, Board of
  - Legislative Committee
- † Health Care, Joint Commission on
- Mental Health, Mental Retardation and Substance Abuse Services, Joint Subcommittee Studying the Future Delivery of Publicly Funded
- Professional and Occupational Regulation, Board for

**November 17**

- † Medicine, Board of
  - Informal Conference Committee
- † Small Business Advisory Board, Virginia

**November 18**

- Labor and Industry, Department of
  - Virginia Apprenticeship Council

**November 19**

- † Medicine, Board of
  - Executive Committee

**November 29**

- † Remediation, Joint Subcommittee Studying

**November 30**

- Classified Compensation Plan, Commission on Reform of the

**December 1**

- † Health Care, Joint Commission on

**December 2**

- Fire Services Board, Virginia
  - Fire/EMS Education and Training Committee
  - Fire Prevention and Control Committee
  - Legislation Committee

**December 3**

- Fire Services Board, Virginia

**December 6**

- Cosmetology, Board for
- Social Services, Department of
  - Virginia Commission on National and Community Services

**December 7**

- Commerce and Labor, Senate Committee on Corporations, Insurance and Banking Committee
- † Health Care, Joint Commission on
- Hopewell Industrial Safety Council
- † Water Control Board, State

**December 8**

- Outdoors Foundation, Virginia
  - Board of Trustees

**December 9**

- Outdoors Foundation, Virginia
  - Board of Trustees

**December 10**

- HIV Prevention Community Planning Committee



**December 14**

† Resources Authority, Virginia  
- Board of Directors

**December 16**

† Code Commission, Virginia

**January 6, 2000**

† Health Care, Joint Commission on

## PUBLIC HEARINGS

**October 20**

† Cemetery Board  
† Environmental Quality, Department of

**October 25**

† Local Government, Commission on

**October 26**

† Water Control Board, State

**October 27**

Professional and Occupational Regulation, Department  
of  
Waste Management Facility Operators, Board for  
Water Control Board, State

**October 28**

† Environmental Quality, Department of

**November 1**

† Rehabilitative Services, Department of and State  
Rehabilitation Council

**November 12**

† Voluntary Formulary Board, Virginia

**November 15**

† Rehabilitative Services, Department of and State  
Rehabilitation Council

**November 17**

† Air Pollution Control Board, State

**November 18**

Professional Counselors, Marriage and Family Therapists  
and Substance Abuse Treatment Professionals, Board  
of Licensed

**November 19**

Medicine, Board of

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