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CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

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printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2001 VAC Supplement includes final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

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|----------------------------------------------------|----------|------------------|----------------|
| Title 1. Administration | | | |
| 1 VAC 30-60-10 et seq. | Repealed | 17:19 VA.R. 2731 | 7/4/01 |
| 1 VAC 30-70-10 et seq. | Repealed | 17:19 VA.R. 2731 | 7/4/01 |
| Title 2. Agriculture | | | |
| 2 VAC 15-20-81 | Amended | 17:14 VA.R. 2179 | 3/1/01 |
| Title 4. Conservation and Natural Resources | | | |
| 4 VAC 15-20-80 | Amended | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-20-160 | Amended | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-40-20 | Amended | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-40-150 | Repealed | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-40-280 | Amended | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-50-90 | Amended | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-90-20 | Amended | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-90-21 | Added | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-90-70 | Amended | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-90-80 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-85 | Added | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-100 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-110 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-141 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-160 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-170 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-190 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-195 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-200 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-210 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-220 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-90-240 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-110-75 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-190-60 | Added | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-240-20 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-240-31 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-240-90 | Amended | 17:19 VA.R. 2730 | 7/4/01 |
| 4 VAC 15-270-20 | Amended | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-290-140 | Amended | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 15-320-100 | Amended | 17:19 VA.R. 2729 | 7/4/01 |
| 4 VAC 20-40-20 | Amended | 17:18 VA.R. 2576 | 5/1/01 |
| 4 VAC 20-252-70 | Amended | 17:12 VA.R. 2024 | 1/26/01 |
| 4 VAC 20-252-90 | Amended | 17:12 VA.R. 2024 | 1/26/01 |
| 4 VAC 20-252-100 | Amended | 17:12 VA.R. 2024 | 1/26/01 |
| 4 VAC 20-252-110 | Amended | 17:12 VA.R. 2025 | 1/26/01 |
| 4 VAC 20-252-140 | Amended | 17:12 VA.R. 2025 | 1/26/01 |
| 4 VAC 20-270-40 | Amended | 17:14 VA.R. 2179 | 3/1/01 |
| 4 VAC 20-270-40 | Amended | 17:18 VA.R. 2576 | 5/1/01 |
| 4 VAC 20-450-30 | Amended | 17:18 VA.R. 2576 | 5/1/01 |

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|--------------------------------------------------|----------|-----------------------|-----------------|
| 4 VAC 20-561-10 through 4 VAC 20-561-50 | Added | 17:16 VA.R. 2332 | 8/16/01 |
| 4 VAC 20-620-30 | Amended | 17:14 VA.R. 2180 | 3/1/01 |
| 4 VAC 20-620-50 | Amended | 17:14 VA.R. 2180 | 3/1/01 |
| 4 VAC 20-620-70 | Amended | 17:14 VA.R. 2180 | 3/1/01 |
| 4 VAC 20-670-25 | Added | 17:18 VA.R. 2577 | 5/1/01 |
| 4 VAC 20-751-10 | Amended | 17:16 VA.R. 2333 | 4/1/01 |
| 4 VAC 20-751-20 | Amended | 17:16 VA.R. 2333 | 4/1/01 |
| 4 VAC 20-890-30 | Amended | 17:16 VA.R. 2333 | 4/1/01 |
| 4 VAC 20-910-30 | Amended | 17:14 VA.R. 2181 | 3/1/01 |
| 4 VAC 20-910-45 | Amended | 17:18 VA.R. 2577 | 5/1/01 |
| 4 VAC 20-950-30 | Amended | 17:14 VA.R. 2181 | 3/1/01 |
| 4 VAC 20-950-45 | Amended | 17:14 VA.R. 2181 | 3/1/01 |
| 4 VAC 20-950-45 | Amended | 17:16 VA.R. 2334 | 4/1/01 |
| 4 VAC 20-950-45 emer | Amended | 17:18 VA.R. 2673 | 4/24/01-5/23/01 |
| 4 VAC 20-995-20 | Amended | 17:12 VA.R. 2025 | 1/26/01 |
| 4 VAC 20-995-20 | Amended | 17:14 VA.R. 2182 | 3/1/01 |
| Title 5. Corporations | | | |
| 5 VAC 5-10-10 et seq. | Repealed | 17:18 VA.R. 2577 | 6/1/01 |
| 5 VAC 5-20-10 through 5 VAC 5-20-280 | Amended | 17:18 VA.R. 2581-2587 | 6/1/01 |
| Title 6. Criminal Justice and Corrections | | | |
| 6 VAC 20-200-10 through 6 VAC 20-200-180 | Amended | 17:19 VA.R. 2731-2735 | 7/4/01 |
| Title 8. Education | | | |
| 8 VAC 20-110-10 | Amended | 17:12 VA.R. 2026 | 3/28/01 |
| 8 VAC 20-110-20 | Repealed | 17:12 VA.R. 2026 | 3/28/01 |
| 8 VAC 20-110-40 | Amended | 17:12 VA.R. 2026 | 3/28/01 |
| 8 VAC 20-110-50 | Amended | 17:12 VA.R. 2026 | 3/28/01 |
| 8 VAC 20-110-60 | Repealed | 17:12 VA.R. 2026 | 3/28/01 |
| 8 VAC 20-110-70 | Repealed | 17:12 VA.R. 2026 | 3/28/01 |
| 8 VAC 20-110-140 | Repealed | 17:12 VA.R. 2026 | 3/28/01 |
| 8 VAC 20-540-10 et seq. | Repealed | 17:16 VA.R. 2334 | 5/23/01 |
| 8 VAC 20-541-10 through 8 VAC 20-541-60 | Added | 17:16 VA.R. 2335-2342 | 5/23/01 |
| 8 VAC 20-650-10 through 8 VAC 20-650-20 emer | Added | 17:14 VA.R. 2202 | 3/7/01-3/6/02 |
| Title 9. Environment | | | |
| 9 VAC 5-50-400 | Amended | 17:15 VA.R. 2248 | 6/1/01 |
| 9 VAC 5-60-60 | Amended | 17:15 VA.R. 2248 | 6/1/01 |
| 9 VAC 5-60-90 | Amended | 17:15 VA.R. 2248 | 6/1/01 |
| 9 VAC 5-60-100 | Amended | 17:15 VA.R. 2249 | 6/1/01 |
| 9 VAC 5-210-10 through 9 VAC 5-210-160 | Added | 17:16 VA.R. 2342-2344 | 7/1/01 |
| 9 VAC 20-15-10 through 9 VAC 20-15-160 | Added | 17:16 VA.R. 2344-2346 | 7/1/01 |
| 9 VAC 20-80-10 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-40 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-60 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-80 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-100 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-110 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-113 | Added | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-115 | Added | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-120 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-140 through 9 VAC 20-80-290 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-310 through 9 VAC 20-80-340 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-360 through 9 VAC 20-80-380 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-400 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-450 | Added | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-460 | Added | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-470 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-480 | Amended | 17:16 VA.R. 2349 | 5/23/01 |

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| 9 VAC 20-80-485 | Added | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-500 through 9 VAC 20-80-560 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-620 through 9 VAC 20-80-650 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-670 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-700 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-730 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 20-80-750 through 9 VAC 20-80-790 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| Appendices 2.1 and 2.2 | Added | 17:16 VA.R. 2349 | 5/23/01 |
| Appendix 4.1 | Repealed | 17:16 VA.R. 2349 | 5/23/01 |
| Appendix 5.1 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| Appendices 5.2 and 5.3 | Repealed | 17:16 VA.R. 2349 | 5/23/01 |
| Appendix 5.5 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| Appendix 5.6 | Added | 17:16 VA.R. 2349 | 5/23/01 |
| Appendices 7.4 and 9.1 | Amended | 17:16 VA.R. 2349 | 5/23/01 |
| 9 VAC 25-15-10 through 9 VAC 25-15-160 | Added | 17:16 VA.R. 2347-2349 | 7/1/01 |
| 9 VAC 25-31-10 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-31-30 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-31-50 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-31-100 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-31-110 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-31-120 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-31-170 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-31-220 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-31-280 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-31-370 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-31-390 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-31-410 | Amended | 17:13 VA.R. 2076 | 4/11/01 |
| 9 VAC 25-110-10 | Amended | 17:16 VA.R. 2350 | 8/1/01 |
| 9 VAC 25-110-20 | Amended | 17:16 VA.R. 2351 | 8/1/01 |
| 9 VAC 25-110-40 | Repealed | 17:16 VA.R. 2351 | 8/1/01 |
| 9 VAC 25-110-50 | Repealed | 17:16 VA.R. 2351 | 8/1/01 |
| 9 VAC 25-110-60 | Amended | 17:16 VA.R. 2351 | 8/1/01 |
| 9 VAC 25-110-70 | Amended | 17:16 VA.R. 2351 | 8/1/01 |
| 9 VAC 25-110-80 | Amended | 17:16 VA.R. 2353 | 8/1/01 |
| 9 VAC 25-115-10 through 9 VAC 25-115-50 | Amended | 17:16 VA.R. 2367-2380 | 7/24/01 |
| 9 VAC 25-260-50 | Amended | 17:16 VA.R. 2381 | * |
| 9 VAC 25-260-55 | Added | 17:16 VA.R. 2381 | * |
| Title 11. Gaming | | | |
| 11 VAC 10-60 (Forms) | Amended | 17:15 VA.R. 2259 | -- |
| 11 VAC 10-130-10 | Amended | 17:19 VA.R. 2736 | 5/7/01 |
| 11 VAC 10-130-60 | Amended | 17:19 VA.R. 2736 | 5/7/01 |
| 11 VAC 10-130-70 | Amended | 17:19 VA.R. 2737 | 5/7/01 |
| Title 12. Health | | | |
| 12 VAC 30-10-20 | Amended | 17:19 VA.R. 2737 | 8/2/01 |
| 12 VAC 30-10-160 | Amended | 17:13 VA.R. 2077 | 4/11/01 |
| 12 VAC 30-10-1000 | Added | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-20-80 | Amended | 17:13 VA.R. 2077 | 4/11/01 |
| 12 VAC 30-20-290 through 12 VAC 30-20-490 | Added | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-20-500 through 12 VAC 30-20-560 | Added | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-30-10 | Amended | 17:13 VA.R. 2077 | 4/11/01 |
| 12 VAC 30-30-10 | Amended | 17:19 VA.R. 2737 | 8/2/01 |
| 12 VAC 30-30-20 | Amended | 17:13 VA.R. 2081 | 4/11/01 |
| 12 VAC 30-30-20 | Amended | 17:18 VA.R. 2588 | 7/1/01 |

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

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|------------------|----------|------------------|----------------|
| 12 VAC 30-30-20 | Amended | 17:18 VA.R. 2589 | 7/1/01 |
| 12 VAC 30-30-40 | Amended | 17:13 VA.R. 2082 | 4/11/01 |
| 12 VAC 30-30-50 | Amended | 17:13 VA.R. 2082 | 4/11/01 |
| 12 VAC 30-40-80 | Amended | 17:13 VA.R. 2087 | 4/11/01 |
| 12 VAC 30-40-100 | Amended | 17:13 VA.R. 2083 | 4/11/01 |
| 12 VAC 30-40-220 | Amended | 17:18 VA.R. 2590 | 7/1/01 |
| 12 VAC 30-40-220 | Amended | 17:18 VA.R. 2593 | 7/1/01 |
| 12 VAC 30-40-240 | Amended | 17:13 VA.R. 2083 | 4/11/01 |
| 12 VAC 30-40-250 | Amended | 17:13 VA.R. 2085 | 4/11/01 |
| 12 VAC 30-40-280 | Amended | 17:13 VA.R. 2085 | 4/11/01 |
| 12 VAC 30-40-290 | Amended | 17:13 VA.R. 2085 | 4/11/01 |
| 12 VAC 30-40-350 | Amended | 17:13 VA.R. 2087 | 4/11/01 |
| 12 VAC 30-50-300 | Amended | 17:12 VA.R. 2026 | 6/1/01** |
| 12 VAC 30-50-490 | Added | 17:18 VA.R. 2595 | 7/1/01 |
| 12 VAC 30-50-530 | Amended | 17:12 VA.R. 2026 | 6/1/01** |
| 12 VAC 30-70-140 | Repealed | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-70-141 | Repealed | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-70-142 | Repealed | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-70-143 | Repealed | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-70-144 | Repealed | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-70-145 | Repealed | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-80-110 | Amended | 17:18 VA.R. 2597 | 7/1/01 |
| 12 VAC 30-90-19 | Added | 17:18 VA.R. 2623 | 7/1/01 |
| 12 VAC 30-90-20 | Amended | 17:18 VA.R. 2624 | 7/1/01 |
| 12 VAC 30-90-29 | Added | 17:18 VA.R. 2624 | 7/1/01 |
| 12 VAC 30-90-30 | Amended | 17:18 VA.R. 2625 | 7/1/01 |
| 12 VAC 30-90-31 | Amended | 17:18 VA.R. 2626 | 7/1/01 |
| 12 VAC 30-90-33 | Amended | 17:18 VA.R. 2626 | 7/1/01 |
| 12 VAC 30-90-34 | Amended | 17:18 VA.R. 2628 | 7/1/01 |
| 12 VAC 30-90-35 | Amended | 17:18 VA.R. 2630 | 7/1/01 |
| 12 VAC 30-90-36 | Amended | 17:18 VA.R. 2630 | 7/1/01 |
| 12 VAC 30-90-37 | Amended | 17:18 VA.R. 2632 | 7/1/01 |
| 12 VAC 30-90-38 | Amended | 17:18 VA.R. 2632 | 7/1/01 |
| 12 VAC 30-90-39 | Amended | 17:18 VA.R. 2633 | 7/1/01 |
| 12 VAC 30-90-40 | Amended | 17:18 VA.R. 2633 | 7/1/01 |
| 12 VAC 30-90-41 | Amended | 17:18 VA.R. 2633 | 7/1/01 |
| 12 VAC 30-90-42 | Repealed | 17:18 VA.R. 2635 | 7/1/01 |
| 12 VAC 30-90-43 | Repealed | 17:18 VA.R. 2636 | 7/1/01 |
| 12 VAC 30-90-50 | Amended | 17:18 VA.R. 2636 | 7/1/01 |
| 12 VAC 30-90-51 | Amended | 17:18 VA.R. 2636 | 7/1/01 |
| 12 VAC 30-90-55 | Amended | 17:18 VA.R. 2637 | 7/1/01 |
| 12 VAC 30-90-60 | Amended | 17:18 VA.R. 2638 | 7/1/01 |
| 12 VAC 30-90-65 | Amended | 17:18 VA.R. 2638 | 7/1/01 |
| 12 VAC 30-90-70 | Amended | 17:18 VA.R. 2638 | 7/1/01 |
| 12 VAC 30-90-80 | Amended | 17:18 VA.R. 2639 | 7/1/01 |
| 12 VAC 30-90-110 | Amended | 17:18 VA.R. 2639 | 7/1/01 |
| 12 VAC 30-90-120 | Amended | 17:18 VA.R. 2639 | 7/1/01 |
| 12 VAC 30-90-123 | Amended | 17:18 VA.R. 2640 | 7/1/01 |
| 12 VAC 30-90-130 | Repealed | 17:18 VA.R. 2640 | 7/1/01 |
| 12 VAC 30-90-130 | Repealed | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-90-131 | Repealed | 17:18 VA.R. 2640 | 7/1/01 |
| 12 VAC 30-90-131 | Repealed | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-90-132 | Repealed | 17:18 VA.R. 2640 | 7/1/01 |

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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|-------------------|----------|------------------|----------------|
| 12 VAC 30-90-132 | Repealed | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-90-133 | Repealed | 17:18 VA.R. 2641 | 7/1/01 |
| 12 VAC 30-90-133 | Repealed | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-90-135 | Repealed | 17:18 VA.R. 2641 | 7/1/01 |
| 12 VAC 30-90-135 | Repealed | 17:19 VA.R. 2741 | 7/4/01 |
| 12 VAC 30-90-136 | Added | 17:18 VA.R. 2641 | 7/1/01 |
| 12 VAC 30-90-160 | Amended | 17:18 VA.R. 2641 | 7/1/01 |
| 12 VAC 30-90-165 | Added | 17:18 VA.R. 2641 | 7/1/01 |
| 12 VAC 30-90-170 | Amended | 17:18 VA.R. 2642 | 7/1/01 |
| 12 VAC 30-90-221 | Amended | 17:18 VA.R. 2642 | 7/1/01 |
| 12 VAC 30-90-240 | Amended | 17:18 VA.R. 2642 | 7/1/01 |
| 12 VAC 30-90-250 | Amended | 17:18 VA.R. 2643 | 7/1/01 |
| 12 VAC 30-90-253 | Amended | 17:18 VA.R. 2643 | 7/1/01 |
| 12 VAC 30-90-260 | Repealed | 17:18 VA.R. 2643 | 7/1/01 |
| 12 VAC 30-90-264 | Amended | 17:18 VA.R. 2643 | 7/1/01 |
| 12 VAC 30-90-266 | Amended | 17:18 VA.R. 2646 | 7/1/01 |
| 12 VAC 30-90-270 | Amended | 17:18 VA.R. 2646 | 7/1/01 |
| 12 VAC 30-90-272 | Amended | 17:18 VA.R. 2646 | 7/1/01 |
| 12 VAC 30-90-280 | Amended | 17:18 VA.R. 2648 | 7/1/01 |
| 12 VAC 30-110-630 | Amended | 17:13 VA.R. 2096 | 4/11/01 |
| 12 VAC 30-110-650 | Amended | 17:13 VA.R. 2096 | 4/11/01 |
| 12 VAC 30-110-660 | Amended | 17:13 VA.R. 2096 | 4/11/01 |
| 12 VAC 30-110-670 | Amended | 17:13 VA.R. 2096 | 4/11/01 |
| 12 VAC 30-110-700 | Amended | 17:13 VA.R. 2097 | 4/11/01 |
| 12 VAC 30-110-710 | Amended | 17:13 VA.R. 2097 | 4/11/01 |
| 12 VAC 30-110-720 | Amended | 17:13 VA.R. 2088 | 4/11/01 |
| 12 VAC 30-110-730 | Amended | 17:13 VA.R. 2090 | 4/11/01 |
| 12 VAC 30-110-740 | Repealed | 17:13 VA.R. 2091 | 4/11/01 |
| 12 VAC 30-110-741 | Added | 17:13 VA.R. 2091 | 4/11/01 |
| 12 VAC 30-110-744 | Added | 17:13 VA.R. 2091 | 4/11/01 |
| 12 VAC 30-110-747 | Added | 17:13 VA.R. 2091 | 4/11/01 |
| 12 VAC 30-110-751 | Added | 17:13 VA.R. 2091 | 4/11/01 |
| 12 VAC 30-110-760 | Amended | 17:13 VA.R. 2091 | 4/11/01 |
| 12 VAC 30-110-780 | Amended | 17:13 VA.R. 2091 | 4/11/01 |
| 12 VAC 30-110-790 | Amended | 17:13 VA.R. 2091 | 4/11/01 |
| 12 VAC 30-110-800 | Amended | 17:13 VA.R. 2091 | 4/11/01 |
| 12 VAC 30-110-810 | Amended | 17:13 VA.R. 2091 | 4/11/01 |
| 12 VAC 30-110-813 | Added | 17:13 VA.R. 2092 | 4/11/01 |
| 12 VAC 30-110-815 | Added | 17:13 VA.R. 2092 | 4/11/01 |
| 12 VAC 30-110-820 | Repealed | 17:13 VA.R. 2092 | 4/11/01 |
| 12 VAC 30-110-830 | Amended | 17:13 VA.R. 2092 | 4/11/01 |
| 12 VAC 30-110-840 | Amended | 17:13 VA.R. 2092 | 4/11/01 |
| 12 VAC 30-110-850 | Amended | 17:13 VA.R. 2092 | 4/11/01 |
| 12 VAC 30-110-853 | Added | 17:13 VA.R. 2092 | 4/11/01 |
| 12 VAC 30-110-856 | Added | 17:13 VA.R. 2093 | 4/11/01 |
| 12 VAC 30-110-860 | Amended | 17:13 VA.R. 2093 | 4/11/01 |
| 12 VAC 30-110-870 | Amended | 17:13 VA.R. 2093 | 4/11/01 |
| 12 VAC 30-110-880 | Amended | 17:13 VA.R. 2093 | 4/11/01 |
| 12 VAC 30-110-890 | Repealed | 17:13 VA.R. 2093 | 4/11/01 |
| 12 VAC 30-110-900 | Amended | 17:13 VA.R. 2093 | 4/11/01 |
| 12 VAC 30-110-910 | Amended | 17:13 VA.R. 2094 | 4/11/01 |
| 12 VAC 30-110-920 | Amended | 17:13 VA.R. 2094 | 4/11/01 |
| 12 VAC 30-110-921 | Added | 17:13 VA.R. 2094 | 4/11/01 |
| 12 VAC 30-110-930 | Amended | 17:13 VA.R. 2094 | 4/11/01 |
| 12 VAC 30-110-940 | Amended | 17:13 VA.R. 2094 | 4/11/01 |
| 12 VAC 30-110-950 | Amended | 17:13 VA.R. 2094 | 4/11/01 |

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| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|----------------------------------------------------------|----------|-----------------------|----------------|
| 12 VAC 30-110-960 | Amended | 17:13 VA.R. 2095 | 4/11/01 |
| 12 VAC 30-110-970 | Amended | 17:13 VA.R. 2095 | 4/11/01 |
| 12 VAC 30-110-980 | Amended | 17:13 VA.R. 2095 | 4/11/01 |
| 12 VAC 30-110-990 | Amended | 17:13 VA.R. 2095 | 4/11/01 |
| 12 VAC 30-110-1010 | Amended | 17:13 VA.R. 2095 | 4/11/01 |
| 12 VAC 30-110-1011 | Added | 17:13 VA.R. 2095 | 4/11/01 |
| 12 VAC 30-120-700 through 12 VAC 30-120-790 | Added | 17:18 VA.R. 2597-2622 | 7/1/01 |
| Title 13. Housing | | | |
| 13 VAC 10-180-10 | Amended | 17:17 VA.R. 2444 | 4/9/01 |
| 13 VAC 10-180-40 | Amended | 17:17 VA.R. 2444 | 4/9/01 |
| 13 VAC 10-180-60 | Amended | 17:17 VA.R. 2444 | 4/9/01 |
| 13 VAC 10-180-70 | Amended | 17:17 VA.R. 2452 | 4/9/01 |
| 13 VAC 10-180-90 | Amended | 17:17 VA.R. 2452 | 4/9/01 |
| 13 VAC 10-180-100 | Amended | 17:17 VA.R. 2452 | 4/9/01 |
| Title 14. Insurance | | | |
| 14 VAC 5-215 (Forms) | Amended | 17:19 VA.R. 2753-2758 | 7/4/01 |
| 14 VAC 5-300-130 | Amended | 17:16 VA.R. 2382 | 5/1/01 |
| Title 17. Libraries and Cultural Resources | | | |
| 17 VAC 15-20-20 through 17 VAC 15-20-50 | Amended | 17:14 VA.R. 2183 | 5/1/01 |
| 17 VAC 15-20-70 through 17 VAC 15-20-120 | Amended | 17:14 VA.R. 2183 | 5/1/01 |
| 17 VAC 15-20-150 through 17 VAC 15-20-170 | Amended | 17:14 VA.R. 2183 | 5/1/01 |
| 17 VAC 15-30-10 et seq. | Repealed | 17:14 VA.R. 2183 | 5/1/01 |
| 17 VAC 15-40-10 et seq. | Repealed | 17:14 VA.R. 2183 | 5/1/01 |
| 17 VAC 15-50-20 through 17 VAC 15-50-50 | Amended | 17:14 VA.R. 2184 | 5/1/01 |
| 17 VAC 15-50-70 | Amended | 17:14 VA.R. 2184 | 5/1/01 |
| 17 VAC 15-50-90 through 17 VAC 15-50-110 | Amended | 17:14 VA.R. 2184 | 5/1/01 |
| 17 VAC 15-50-130 | Amended | 17:14 VA.R. 2184 | 5/1/01 |
| 17 VAC 15-50-140 | Repealed | 17:14 VA.R. 2184 | 5/1/01 |
| 17 VAC 15-50-150 | Amended | 17:14 VA.R. 2184 | 5/1/01 |
| 17 VAC 15-50-160 | Amended | 17:14 VA.R. 2184 | 5/1/01 |
| Title 18. Professional and Occupational Licensing | | | |
| 18 VAC 5-20-10 et seq. | Repealed | 17:14 VA.R. 2184 | 4/25/01 |
| 18 VAC 5-21-10 through 18 VAC 5-21-170 | Amended | 17:14 VA.R. 2184-2198 | 4/25/01 |
| 18 VAC 30-20-10 | Amended | 17:16 VA.R. 2383 | 5/23/01 |
| 18 VAC 30-20-80 | Amended | 17:16 VA.R. 2383 | 5/23/01 |
| 18 VAC 30-20-160 | Amended | 17:16 VA.R. 2383 | 5/23/01 |
| 18 VAC 30-20-300 | Added | 17:16 VA.R. 2384 | 5/23/01 |
| 18 VAC 30-20-310 | Added | 17:16 VA.R. 2384 | 5/23/01 |
| 18 VAC 30-20-320 | Added | 17:16 VA.R. 2384 | 5/23/01 |
| 18 VAC 85-40-61 | Added | 17:13 VA.R. 2097 | 4/11/01 |
| 18 VAC 85-50-58 | Added | 17:13 VA.R. 2098 | 4/11/01 |
| 18 VAC 85-80-10 | Amended | 17:17 VA.R. 2452 | 6/6/01 |
| 18 VAC 85-80-70 | Amended | 17:17 VA.R. 2452 | 6/6/01 |
| 18 VAC 85-80-71 | Added | 17:17 VA.R. 2452 | 6/6/01 |
| 18 VAC 85-80-72 | Added | 17:17 VA.R. 2452 | 6/6/01 |
| 18 VAC 85-80-80 | Amended | 17:17 VA.R. 2452 | 6/6/01 |
| 18 VAC 85-101-150 | Amended | 17:17 VA.R. 2452 | 6/6/01 |
| 18 VAC 85-101-151 | Added | 17:17 VA.R. 2452 | 6/6/01 |
| 18 VAC 85-101-152 | Added | 17:17 VA.R. 2452 | 6/6/01 |
| 18 VAC 85-110-150 | Amended | 17:17 VA.R. 2452 | 6/6/01 |
| 18 VAC 85-110-155 | Added | 17:17 VA.R. 2452 | 6/6/01 |
| 18 VAC 85-110-160 | Amended | 17:17 VA.R. 2452 | 6/6/01 |
| 18 VAC 85-120-10 et seq. | Added | 17:17 VA.R. 2453 | 6/6/01 |
| 18 VAC 90-30-50 | Amended | 17:13 VA.R. 2098 | 4/11/01 |
| 18 VAC 90-30-110 | Amended | 17:13 VA.R. 2098 | 4/11/01 |
| 18 VAC 90-40-60 | Amended | 17:13 VA.R. 2098 | 4/11/01 |

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|----------------------------------------------------------|-----------|-----------------------|----------------|
| 18 VAC 90-40-70 | Amended | 17:13 VA.R. 2098 | 4/11/01 |
| 18 VAC 105-20-60 | Amended | 17:17 VA.R. 2453 | 6/6/01 |
| 18 VAC 115-60-20 | Amended | 17:18 VA.R. 2651 | 6/20/01 |
| 18 VAC 115-60-40 | Amended | 17:18 VA.R. 2651 | 6/20/01 |
| 18 VAC 115-60-50 | Amended | 17:18 VA.R. 2651 | 6/20/01 |
| 18 VAC 115-60-120 | Amended | 17:18 VA.R. 2651 | 6/20/01 |
| 18 VAC 115-60-150 | Amended | 17:18 VA.R. 2651 | 6/20/01 |
| 18 VAC 125-20-10 | Amended | 17:12 VA.R. 2026 | 3/28/01 |
| 18 VAC 125-20-30 | Amended | 17:12 VA.R. 2027 | 3/28/01 |
| 18 VAC 125-20-30 | Amended | 17:18 VA.R. 2652 | 6/20/01 |
| 18 VAC 125-20-43 | Added | 17:12 VA.R. 2027 | 3/28/01 |
| 18 VAC 125-20-120 | Amended | 17:18 VA.R. 2652 | 6/20/01 |
| 18 VAC 125-20-121 | Added | 17:18 VA.R. 2653 | 6/20/01 |
| 18 VAC 125-20-122 | Added | 17:18 VA.R. 2653 | 6/20/01 |
| 18 VAC 125-20-123 | Added | 17:18 VA.R. 2653 | 6/20/01 |
| 18 VAC 125-20-130 | Amended | 17:18 VA.R. 2654 | 6/20/01 |
| 18 VAC 125-20-160 | Amended | 17:18 VA.R. 2654 | 6/20/01 |
| 18 VAC 140-20-100 | Amended | 17:14 VA.R. 2198 | 4/25/01 |
| 18 VAC 140-20-105 | Added | 17:14 VA.R. 2198 | 4/25/01 |
| 18 VAC 140-20-106 | Added | 17:14 VA.R. 2199 | 4/25/01 |
| 18 VAC 140-20-110 | Amended | 17:14 VA.R. 2199 | 4/25/01 |
| 18 VAC 140-20-160 | Amended | 17:14 VA.R. 2199 | 4/25/01 |
| Title 19. Public Safety | | | |
| 19 VAC 30-40-30 | Amended | 17:15 VA.R. 2252 | 5/9/01 |
| 19 VAC 30-70-160 | Amended | 17:15 VA.R. 2252 | 5/9/01 |
| 19 VAC 30-70-530 | Amended | 17:15 VA.R. 2255 | 5/9/01 |
| 19 VAC 30-150-5 | Added | 17:15 VA.R. 2257 | 5/9/01 |
| 19 VAC 30-150-10 | Amended | 17:15 VA.R. 2257 | 5/9/01 |
| 19 VAC 30-150-20 | Repealed | 17:15 VA.R. 2257 | 5/9/01 |
| 19 VAC 30-150-30 | Amended | 17:15 VA.R. 2257 | 5/9/01 |
| 19 VAC 30-150-50 | Amended | 17:15 VA.R. 2257 | 5/9/01 |
| 19 VAC 30-160-5 | Added | 17:15 VA.R. 2257 | 5/9/01 |
| 19 VAC 30-160-20 | Repealed | 17:15 VA.R. 2257 | 5/9/01 |
| 19 VAC 30-160-30 | Amended | 17:15 VA.R. 2257 | 5/9/01 |
| 19 VAC 30-160-40 | Amended | 17:15 VA.R. 2257 | 5/9/01 |
| 19 VAC 30-160-45 | Added | 17:15 VA.R. 2257 | 5/9/01 |
| 19 VAC 30-165-10 et seq. | Amended | 17:15 VA.R. 2258 | 5/9/01 |
| Title 20. Public Utilities and Telecommunications | | | |
| 20 VAC 5-309-10 | Amended | 17:18 VA.R. 2657 | 7/1/01 |
| 20 VAC 5-309-15 | Added | 17:18 VA.R. 2657 | 7/1/01 |
| 20 VAC 5-309-20 | Amended | 17:18 VA.R. 2657 | 7/1/01 |
| 20 VAC 5-309-30 | Amended | 17:18 VA.R. 2657 | 7/1/01 |
| 20 VAC 5-309-40 | Amended | 17:18 VA.R. 2657 | 7/1/01 |
| 20 VAC 5-309-50 | Amended | 17:18 VA.R. 2658 | 7/1/01 |
| 20 VAC 5-309-70 | Amended | 17:18 VA.R. 2658 | 7/1/01 |
| 20 VAC 5-309-90 through 20 VAC 5-309-180 | Added | 17:18 VA.R. 2658-2660 | 7/1/01 |
| Title 22. Social Services | | | |
| 22 VAC 40-130-10 et seq. | Withdrawn | 17:17 VA.R. 2456 | -- |
| 22 VAC 40-230-10 et seq. | Repealed | 17:18 VA.R. 2660 | 6/20/01 |
| 22 VAC 40-480-10 et seq. | Repealed | 17:18 VA.R. 2661 | 6/20/01 |
| 22 VAC 40-690-10 | Amended | 17:18 VA.R. 2661 | 9/1/01 |
| 22 VAC 40-690-15 | Added | 17:18 VA.R. 2662 | 9/1/01 |
| 22 VAC 40-690-20 | Amended | 17:18 VA.R. 2662 | 9/1/01 |
| 22 VAC 40-690-30 | Amended | 17:18 VA.R. 2662 | 9/1/01 |
| 22 VAC 40-690-35 | Added | 17:18 VA.R. 2663 | 9/1/01 |
| 22 VAC 40-690-40 | Amended | 17:18 VA.R. 2663 | 9/1/01 |

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| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|----------------------------------------------------|----------|-----------------------|----------------|
| 22 VAC 40-690-50 | Repealed | 17:18 VA.R. 2664 | 9/1/01 |
| 22 VAC 40-690-55 | Added | 17:18 VA.R. 2664 | 9/1/01 |
| 22 VAC 40-690-60 | Amended | 17:18 VA.R. 2664 | 9/1/01 |
| 22 VAC 40-690-65 | Added | 17:18 VA.R. 2664 | 9/1/01 |
| 22 VAC 40-690-70 | Repealed | 17:18 VA.R. 2664 | 9/1/01 |
| 22 VAC 40-730-10 emer | Amended | 17:13 VA.R. 2103 | 4/1/01-3/31/02 |
| 22 VAC 40-730-40 through 22 VAC 40-730-100 emer | Amended | 17:13 VA.R. 2103-2104 | 4/1/01-3/31/02 |
| 22 VAC 40-900-10 et seq. | Repealed | 17:18 VA.R. 2671 | 6/20/01 |
| 22 VAC 40-901-10 through 22 VAC 40-901-30 | Added | 17:18 VA.R. 2671 | 6/20/01 |
| Title 24. Transportation and Motor Vehicles | | | |
| 24 VAC 30-61-20 | Amended | 17:17 VA.R. 2456 | 6/6/01 |
| 24 VAC 30-61-40 | Amended | 17:17 VA.R. 2456 | 6/6/01 |
| 24 VAC 30-240-10 | Amended | 17:18 VA.R. 2671 | 5/1/01 |
| 24 VAC 30-280-10 | Amended | 17:13 VA.R. 2099 | 2/15/01 |
| 24 VAC 30-280-20 through 24 VAC 30-280-70 | Added | 17:13 VA.R. 2099-2102 | 2/15/01 |
| 24 VAC 30-440-10 et seq. | Repealed | 17:14 VA.R. 2200 | 3/6/01 |
| 24 VAC 30-450-10 et seq. | Amended | 17:14 VA.R. 2200 | 3/6/01 |
| 24 VAC 30-460-10 | Repealed | 17:14 VA.R. 2201 | 3/6/01 |
| 24 VAC 30-561-10 | Amended | 17:18 VA.R. 2672 | 5/2/01 |

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER 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 Agriculture and Consumer Services intends to consider amending regulations entitled: **2 VAC 5-500-10 et seq. Rules and Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including the following: the need to include certain other species of mammals if the milk or dairy products are intended for human consumption; the need for consistency and compliance with the requirements of the Pasteurized Milk Ordinance (PMO) for Grade "A" milk; provision for the cooling, storing, and sampling of milk using alternatives to bulk tanks; the need to eliminate references to fees for milk hauling permits; the need to require permits for each milk pickup tank or milk transport tank used to move milk in Virginia; the need to include recording thermometer specifications consistent with the PMO; the need to require dedicated milk transport tanks to be used to haul any pasteurized milk, milk products, or frozen dessert mixes, when the products will not be repasteurized at the plant where they are packaged; and the need to require the collection of two identical milk samples at each pickup. The agency invites comment on whether there should be an adviser. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 3.1-530.1, 3.1-530.2, 3.1-535, and 3.1-535.1 of the Code of Virginia.

Public comments may be submitted until July 9, 2001.

Contact: John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 505, Richmond, VA 23219, telephone (804) 786-1453 or FAX (804) 371-7792.

VA.R. Doc. No. R01-166; Filed April 16, 2001, 4:17 p.m.



TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-20-10 et seq. Advertising.** The purpose of the proposed action is to modify current restrictions on the use of athletes or athletic teams in advertising, allowing wine and beer licensees to display point-of-sale advertising materials incorporating the use of professional athlete and athletic teams. This action is necessary to resolve a conflict between the current regulation and Chapter 361 of the 2001 Acts of Assembly. The board also intends to increase from \$5.00 to \$10.00 the maximum wholesale value of novelty and specialty items bearing alcoholic beverage advertising that may be given away by alcoholic beverage manufacturers, importers, bottlers, brokers, wholesalers, or their representatives. The allowable value has not increased since 1991. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-111 and 4.1-320 of the Code of Virginia.

Public comments may be submitted until July 5, 2001.

Contact: Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4411 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-199; Filed May 16, 2001, 10:24 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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-30-10 et seq. Tied-House.** The purpose of the proposed action is to amend the regulation to allow alcoholic beverage manufacturers, bottlers, and wholesalers to provide advertising materials to retail licensees that have been customized for the individual retailer, with some restrictions. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until July 5, 2001.

Contact: Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4411 or (804) 213-4687/TTY ☎

Notices of Intended Regulatory Action

VA.R. Doc. No. R01-200; Filed May 16, 2001, 10:25 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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-50-10 et seq. Retail Operations.** The purpose of the proposed action is to reduce the advance notice required of events to be catered under a caterer's license from two days to 24 hours. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

Contact: Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-214; Filed May 30, 2001, 11:12 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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-60-10 et seq. Manufacturers and Wholesalers Operations.** The purpose of the proposed action is to increase from \$5.00 to \$10.00 the maximum wholesale value of novelty and specialty items bearing spirits advertising that may be given away, and allow permittees to provide routine business to mixed beverage licensees subject to the same conditions and limitations that apply to wholesalers and manufacturers. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

Contact: Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-215; Filed May 30, 2001, 11:12 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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-70-10 et seq. Other Provisions.** The purpose of the proposed action is to allow for the peddling of cider and the reporting of cider sales by wholesale wine licensees in the same manner as beer. These changes are intended to accommodate cider wholesalers who are primarily beer wholesalers, allowing them to sell and invoice cider products in the same manner as their beer products. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103, 4.1-111, and 4.1-213 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

Contact: Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-216; Filed May 30, 2001, 11:12 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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-70-10 et seq. Other Provisions.** The purpose of the proposed action is to add provisions requiring all banquet and special event licensees in charge of public events to report to the board the income and expenses associated with the event when the licensee engages another person to organize, conduct or operate the event on behalf of the licensee. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

Contact: Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-217; Filed May 30, 2001, 11:12 a.m.



TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF CORRECTIONS

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 Corrections intends to consider amending regulations entitled: **6 VAC 15-80-10 et seq. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.** The purpose of the proposed action is to amend the regulation to include new technologies, campus style and direct supervision facility designs and relevant aspects of the Americans with Disabilities Act. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 53.1-5, 53.1-68 and 53.1-80 through 53.1-82.1 of the Code of Virginia.

Public comments may be submitted until July 13, 2001.

Notices of Intended Regulatory Action

Contact: J. Michael Howerton, Community Corrections/Local Facilities, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 675-3251 or FAX (804) 674-3525.

VA.R. Doc. No. R01-195; Filed May 15, 2001, 10:41 a.m.

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TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled: **9 VAC 20-80-10 et seq. Solid Waste Management Regulations.** The purpose of the proposed action is to incorporate and address statutory changes enacted by the General Assembly since Amendment 2 of the Virginia Solid Waste Management Regulations. These remaining statutes to be addressed in the regulations include at least the following:

1. The disposal capacity guarantee as required by § 10.1-1408.1 B 6.
2. Host community agreements as required by § 10.1-1408.1 B 7.
3. Reporting requirements for locally-owned facilities as required by § 10.1-1408.1 B 8.
4. Director's determinations as required by § 10.1-1408.1 D 1 and 2.
5. Permit condition for capacity guarantee as required by § 10.1-1408 1 P.

In addition, the regulation will be updated to correct any errors or omissions resulting from previous amendments and any outdated material. (See 17:17 VA.R. 2437-2440 May 7, 2001, for more detailed information.)

The department is using the participatory approach to develop a proposal.

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

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia.

Public comments may be submitted until June 22, 2001.

Contact: Michael J. Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146.

VA.R. Doc. No. R01-169; Filed April 18, 2001, 9:52 a.m.

STATE WATER CONTROL BOARD

† Withdrawal of Notice of Intended Regulatory Action

The State Water Control Board issued a Notice of Intended Regulatory Action for **9 VAC 25-32-10 et seq. Virginia Pollution Abatement (VPA) Permit Regulation** published in 17:14 VA.R. 2144 March 26, 2001. The department has decided not to continue with the regulatory action and is therefore withdrawing the NOIRA.

This decision is based on the public comment received during the NOIRA comment period and on the pending federal rulemaking on animal feeding operations that will result in a need to revise both the Virginia Pollution Abatement Permit and Virginia Pollutant Discharge Elimination System Permit Program Regulations.

VA.R. Doc. No. R01-133; Filed May 31, 2001, 10:38 a.m.

Notice of Intended Regulatory Action

Extension of Public Comment Period

The State Water Control Board is extending the comment period on the Notice of Intended Regulatory Action for the triennial review of **9 VAC 25-260-5 et seq. Water Quality Standards** published in 17:10 VA.R. 1442-1445 January 29, 2001. Comments will be accepted until June 22, 2001.

Anyone wishing to submit written comments for the public comment file may do so by mail or by e-mail to emdaub@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by June 22, 2001. All comments received since January 29, 2001, will be considered by the board in the development of the proposal. Written comments may be submitted to Elleanore Daub, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219.

VA.R. Doc. No. R01-78; Filed April 4, 2001, 10:41 a.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled: **12 VAC 5-610-10 et seq. Sewage Handling and Disposal Regulations.** The purpose of the proposed action is to address issues surrounding larger sewage disposal systems and soils with high rock content, which affects the soil's absorption ability. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-164 of the Code of Virginia.

Notices of Intended Regulatory Action

Public comments may be submitted until July 5, 2001.

Contact: Donald J. Alexander, Director, Onsite Sewage and Water Services, Department of Health, 1500 E. Main St., Room 115, Richmond, VA 23219, telephone (804) 225-4030 or FAX (804) 225-4003.

VA.R. Doc. No. R01-192; Filed May 9, 2001, 10:53 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 Health intends to consider amending regulations entitled: **12 VAC 5-610-10 et seq. Sewage Handling and Disposal Regulations**. The purpose of the proposed action is to establish (i) new site and soil requirements for onsite sewage systems utilizing secondary and advanced secondary treatment; (ii) new design and construction criteria using the concept of a minimum footprint; and (iii) requirements for operating, maintaining, and monitoring onsite wastewater systems. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-164 of the Code of Virginia.

Public comments may be submitted until July 5, 2001.

Contact: Donald J. Alexander, Director, Onsite Sewage and Water Services, Department of Health, 1500 E. Main St., Room 115, Richmond, VA 23219, telephone (804) 225-4030 or FAX (804) 225-4003.

VA.R. Doc. No. R01-193; Filed May 9, 2001, 10:54 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates for Long-Term Care**. The purpose of the proposed action is to promulgate a new methodology, called Resource Utilization Groups (RUGs), for determining and ranking the level of intensity of medical and nursing services that are needed by residents of nursing facilities. The new RUGs system will replace the PIRS methodology that was promulgated by DMAS in 1990. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until June 20, 2001, to Stan Fields, Director, Division of Cost Settlement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or (804) 371-4981.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St.,

Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or (804) 371-4981.

VA.R. Doc. No. R01-176; Filed April 25, 2001, 2:48 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: **12 VAC 30-110-10 et seq. Eligibility and Appeals**. The purpose of the proposed action is to amend the hardship provision in the Medicaid eligibility regulations for married institutionalized individuals who have a spouse who still lives in the community. 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 July 5, 2001, to Patricia Sykes, Analyst, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R01-191; Filed May 4, 2001, 2:48 p.m.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider amending regulations entitled: **12 VAC 35-190-10 et seq. Regulations Establishing Procedures for Voluntarily Admitting Persons who are Mentally Retarded to State Mental Retardation Facilities**. The purpose of this action is to update the definitions and clarify admissions criteria and process consistent with the current law. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 37.1-10 and 37.1-65.1 of the Code of Virginia.

Public comments may be submitted until June 21, 2001.

Contact: Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, Jefferson Bldg., 1220 Bank St., 12th Floor, Richmond, VA 23219, telephone (804) 225-2252 or FAX (804) 371-0092.

VA.R. Doc. No. R01-173; Filed April 23, 2001, 2:47 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-80-10 et seq. Regulations Governing the Licensure of Occupational Therapists.** The purpose of the proposed action is to clarify certain provisions of the regulation and to specify the appropriate supervision and delegation of duties to unlicensed persons. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until June 20, 2001.

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

VA.R. Doc. No. R01-187; Filed May 2, 2001, 10:44 a.m.

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled: **18 VAC 90-50-10 et seq. Regulations Governing the Certification of Massage Therapists.** The purpose of the proposed action is to address concerns about competency of certificate holders, which may include hours of continuing education by providers acceptable to the board. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public comments may be submitted until June 20, 2001.

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

VA.R. Doc. No. R01-188; Filed May 2, 2001, 10:44 a.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

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 Professional and Occupational Regulation intends to consider amending regulations entitled: **18 VAC 120-30-10 et seq. Regulations**

Governing Polygraph Examiners. The purpose of the proposed action is to make general clarifying changes to the regulations, propose other changes that may be necessary pursuant to the director's periodic review of the regulation, and make any other changes that may be necessary. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-201 and 54.1-1802 of the Code of Virginia.

Public comments may be submitted until June 20, 2001.

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

VA.R. Doc. No. R01-178; Filed April 30, 2001, 2:30 p.m.

TITLE 22. SOCIAL SERVICES

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 promulgating regulations entitled: **22 VAC 40-675-10 et seq. Personnel Policies for Local Departments of Social Services.** The purpose of the proposed action is to establish and formalize consistent and equitable personnel policies as a basis for management of employees in local departments of social services. The proposed action, advanced after advice from legal counsel for the department, satisfies both state and federal requirements. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.1-25 and 63.1-26 of the Code of Virginia.

Public comments may be submitted until July 5, 2001.

Contact: Vivian Flythe Cook, Personnel Practices Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1561 or FAX (804) 692-1598.

VA.R. Doc. No. R01-196; Filed May 15, 2001, 3:26 p.m.

Notices of Intended Regulatory Action

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commonwealth Transportation Board intends to consider **repealing** regulations entitled **24 VAC 30-150-10 et seq. Land Use Permit Manual** and **promulgating** regulations entitled: **24 VAC 30-151-10 et seq. Lane Use Permit Manual**. The purpose of the proposed action is to replace the existing regulation with a totally rewritten regulation. Changes being considered include reorganizing the regulation to improve readability and comprehension, eliminating redundant and obsolete text, conforming the regulation to amendments that have been made to other VDOT regulations, and addressing changes in administrative practices or office technology that have occurred since the last revision in 1983. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 33.1-12 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

Contact: Lynn D. Wagner, Permit Operations Program Manager, Department of Transportation, Maintenance Division, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 225-3676, FAX (804) 692-0810 or e-mail wagner_ld@vdot.state.va.us.

VA.R. Doc. No. R01-212; Filed May 29, 2001, 9:50 a.m.



PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

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.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

REGISTRAR'S NOTICE: Due to its length, the proposed regulation filed by the State Board of Health is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Health, Main Street Station, 1500 East Main Street, Richmond, VA 23219, and is accessible at <http://legis.state.va.us/codecomm/register/vol17/vol17.htm>.

Title of Regulation: 12 VAC 5-420-10 et seq. Rules and Regulations Governing Restaurants (REPEALING).

Title of Regulation: 12 VAC 5-421-10 et seq. Regulations Governing Restaurants.

Statutory Authority: §§ 35.1-11 and 35.1-14 of the Code of Virginia.

Public Hearing Date: August 20, 2001 - 7 p.m. (Henrico).
August 23, 2001 - 7 p.m. (Roanoke).
August 27, 2001 - 7 p.m. (Prince William).
August 29, 2001 - 7 p.m. (Virginia Beach).

Public comments may be submitted until August 31, 2001.
(See Calendar of Events section
for additional information)

Agency Contact: Gary L. Hagy, Director, Division of Food and Environmental Services, Department of Health, Main Street Station, 1500 E. Main Street, Room 115, Richmond, VA 23219, telephone (804) 225-4022, FAX (804) 225-4003, e-mail ghagy@vdh.state.va.us.

Basis: Section 35.1-11 of the Code of Virginia authorizes the board to promulgate regulations necessary to carry out the provisions of Title 32.1 of the Code of Virginia. Section 35.1-14 of the Code of Virginia authorizes the board to promulgate regulations governing restaurants that provide minimum standards for the following: (i) a procedure for obtaining a license; (ii) the safe and sanitary maintenance, storage, operation, and use of equipment; (iii) the sanitary maintenance and use of a restaurant's physical plant; (iv) the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods; (v) procedures for vector and pest control; (vi) requirements for toilet and cleansing facilities for employees and customers; (vii) requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; (viii) requirements for an approved water supply and sewage disposal system; (ix) personal hygiene standards for employees, particularly those engaged in food handling; and (x) the appropriate use of precautions to prevent the transmission of communicable diseases.

Purpose: The purpose of the regulations is to ensure that the dining public is protected by establishing minimum sanitary standards for restaurants. The regulations provide minimum standards for the source of foods in restaurants, the safe handling, storage, preparation and serving of food, personal hygiene of the employees, precautions to prevent the transmission of diseases communicable through food, and the general sanitation of the facility. When followed, these minimum standards will protect the public's health, safety and welfare.

Substance: The proposed regulations will replace the existing regulations that were last revised in 1984. Since then the emergence of new strains of bacteria and other organisms, such as *E. coli O157:H7*, *cyclospora* and *Listeria*, has greatly affected the food industry. With the emergence of these new organisms come new control measures that must be instituted to prevent a foodborne outbreak. The proposed regulations incorporate new control measures for prevention of foodborne disease. The regulations also incorporate the principles of Hazard Analysis Critical Control Point (HACCP) in the food service establishment. HACCP focuses on the flow and handling of food through the establishment, focusing on the hazards encountered rather than structural requirements of the building. These regulations are based on the FDA 1997 Model Food Code, which is supported by the National Restaurant Association.

Issues: The primary advantage of the regulations to the public is that they establish modern science-based standards that have broad support in the food service and food regulatory communities. More emphasis is placed on the flow and handling of the food through the establishment. Several new standards are the result of new pathogens that have emerged since the regulations were last revised. The regulations will better protect the public from outbreaks due to *E. coli O157:H7*, *Listeria monocytogenes*, and *salmonella*. The primary advantage to the agency is the regulations will be based on current food science and several areas that are regulated via recommendations and policy will now be in regulatory form. The primary advantage to the regulated community, particularly chains that operate in other states, will be better consistency between states as more adopt the FDA Model Food Code. There will be no disadvantages to the public or the Commonwealth with the adoption of these regulations.

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

Proposed Regulations

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 will replace the existing regulations that govern restaurants operating in Virginia, which were last revised in 1988. The regulations have been updated to address the emergence of new strains of bacteria and other organisms and to incorporate new control measures for the prevention of foodborne disease.

Estimated economic impact. The proposed regulations establish minimum sanitary standards for restaurants by addressing the safe handling, storage, preparation, and serving of food; personal hygiene of the employees; precautions to prevent the transmission of diseases communicable through food; and the general sanitation of the facility. The proposed regulations are based on the 1997 Food and Drug Administration (FDA) Model Food Code. According to the Virginia Department of Health (VDH) and the FDA these standards are based on the latest science for preventing foodborne illness. When followed, such rules protect the dining public from food illnesses and increase confidence in dining out, and therefore can be good for the economy.

Many of the proposed changes are technical in nature and involve rewording and restructuring the regulation to make it easier to understand. Some changes place into the regulation what has been the practice in the restaurant industry for many years and as such should have no economic impact. According to VDH and the Virginia Restaurant Association (VRA)¹, the most significant changes include incorporating the principles of Hazard Analysis Critical Control Point (HACCP) in the food service establishment and reducing the cold holding temperature from 45°F to 41°F.

HACCP requirements. HACCP controls focus on the hazards encountered during the flow and handling of food through the establishment, rather than structural requirements of the building. The principal health risk currently associated with food consumption concerns pathogen contamination of food products. In principle, the ideal method for food safety regulation would be to use microbiological methods to test for the presence of pathogens; one could simply specify standards for pathogen incidence in products, and leave it to the producers to find the most cost-effective means of getting there. However, at present, there is no reliable indicator organism that could be used as the basis of a testing strategy. The lack of such a reliable indicator means that testing would have to be extensive and, hence, expensive.

HACCP systems have been proposed precisely because of the expense of testing and the recurrent nature of the pathogen hazard. HACCP systems establish means by which individual establishments identify and evaluate the hazards

that can affect the safety of their products, institute controls necessary to keep those hazards from occurring, monitor the performance of those controls, and routinely maintain records of that monitoring. In this framework, the regulator's role is to ensure that the firm has established a HACCP system and that it is maintaining the system.

HACCP principles have been applied to other segments of the food service industry and studies indicate they have resulted in a net economic benefit.² While data on the cost effectiveness of HACCP requirements applied specifically to restaurants is not readily available, this method appears likely to be a cost-effective way to control foodborne pathogens.

Cold holding temperature requirements. The proposed regulation requires that all refrigerated, potentially hazardous foods be maintained at a temperature below 41°F instead of the current 45°F requirement. The new regulation also specifies that refrigerated, ready-to-eat, potentially hazardous foods must be discarded if not consumed within seven calendar days from the date of preparation when held at 41°F.

Estimated compliance costs. VDH is following the recommendation in the FDA Model Food Code to allow existing restaurants with refrigeration equipment capable of maintaining foods at 45°F five years from the effective date of the regulations to upgrade or replace their equipment to meet the 41°F requirement. During the five-year implementation phase, ready-to-eat, potentially hazardous foods must be discarded if not consumed within four calendar days from the date of preparation if held at 45°F. Cost implications will vary across restaurants. Experience in other localities indicates that approximately 70% of the 22,000 restaurants in Virginia can be expected to currently have refrigeration equipment that can meet the 41°F requirement.³

DPB and VDH independently contacted several local commercial refrigeration contractors and found that, of the restaurants whose equipment could not meet the 41°F requirement, almost all of those units could be upgraded to meet the requirement at a substantially lower cost than replacing the unit. According to the refrigeration specialists contacted, units that would have to be replaced would likely be those that are currently operating inefficiently and would likely have been replaced regardless of the new requirement.⁴ Based upon surveys of similar affected populations in other localities and cost estimates provided by refrigeration technicians, the cost imposed by this requirement could range from an estimated \$7 million to \$34 million dollars in current dollars.

¹ Comments from the Virginia Restaurant Association were obtained from Rhoda Elliott, Vice Chair of the Association and President of Bill's Barbecue and David Grimm, past VRA president.

² Roberts, Tanya, Jean C. Buzby, Michael Ollinger, "Using benefit and cost information to evaluate a food safety regulation: HACCP for meat and poultry," *American Journal of Agricultural Economics*, Dec 1996, v78, n5 pp1297-1302.

³ This information was provided by VDH based on surveys conducted by Wisconsin and Arlington County, Virginia prior to adoption of the 41°F requirement as state regulation and local ordinance, respectively.

⁴ Sources: Nelson Foster, Foster Refrigeration, Richmond, Virginia; RB's Refrigeration, Richmond, Virginia; Richard Gill, Gill Refrigeration, Hampton, Virginia; and Climate Masters, Hampton, Virginia.

Estimated VA Restaurant Industry Compliance Cost with Proposed 41° Refrigeration Requirement

| | | Average Cost per Refrigerator | Estimated Total Cost | |
|----------------------------------------------------------------------------------------------------------------|--------|-------------------------------|----------------------|--------------|
| | | | Low | High |
| Restaurants in VA | 22,000 | | | |
| Refrigerators affected - assuming an average of 3 per restaurant | 66,000 | | | |
| Estimated number of refrigerators that wouldn't meet 41° req. (30%) | 19,800 | | | |
| Estimated number of non-compliant refrigerators that could be easily upgraded (80%) | 15,840 | \$60 - \$100 | \$950,400 | \$1,584,000 |
| Estimated number of non-compliant refrigerators that would have to be significantly upgraded or replaced (20%) | 3,960 | \$2,000 - \$10,000 | \$7,920,000 | \$39,600,000 |
| Estimated Undiscounted Compliance Cost | | | \$8,870,400 | \$41,184,000 |
| Estimated Compliance Cost in Current Dollars | | | \$7,274,078 | \$33,772,506 |
| *Assumes costs are spread out evenly over the five years and a discount rate of 7% | | | | |

The Virginia Restaurant Association conducted an informal survey of its members to determine the impact this proposed change would have on their establishments. Of the 21 restaurants that responded, 86% indicated that they had existing equipment that could comply with the reduced main holding temperature. Concerning the financial impact this change would have on their establishments, 43% of the respondents indicated that the cost would be insignificant, 29% estimated a moderately significant impact (less than \$1,000) and 29% estimated an extremely significant impact (more than \$1,000).

Benefits. There are two types of potentially hazardous foods: ready-to-eat and raw or nonready-to-eat. Ready-to-eat foods are ready to eat without further cooking or processing. Experience indicates that the bacterial count in such foods is generally low to start with and proper refrigeration is required to keep it low. Raw or nonready-to-eat foods (such as raw chicken, raw hamburger, etc.) start off with significantly higher bacteria loads. Normally, cooking will kill any pathogenic bacteria but some bacteria, for example *Bacillus cereus*, produce toxins that are heat stable and are not destroyed by cooking. This means that if inadequate refrigeration allows this toxin to develop, the food toxin remains even if subjected to further cooking.

The Office of Epidemiology at the Virginia Department of Health reports that heat stable toxins in nonready-to-eat food account for a small percentage of foodborne illnesses. According to VDH, recent scientific research indicates that the growth rate for toxin producing bacteria at 41°F is considerably slower than at slightly higher temperatures. The lower refrigeration temperature also provides an additional

safety factor if foods are improperly cooked. Therefore, the proposed lower temperature requirement can be expected to enhance food safety for nonready-to-eat foods and reduce foodborne illnesses.

The benefits of the lower refrigeration temperature for ready-to-eat foods are not as easily demonstrated. Based on a predictive growth curve modeling program for *Listeria monocytogenes*, the FDA has determined that ready-to-eat, potentially hazardous food may be safely kept at 41°F a total of seven days or at 45°F a total of four days.⁵ The proposed rule allows ready-to-eat foods to be held longer under refrigeration. However, after the five-year implementation period, restaurants with units capable of maintaining only 45°F will no longer have the option of rotating ready-to-eat food more quickly as a means of preventing contamination. Thus, this rule could impose somewhat higher costs than would be necessary to achieve the given level of food safety for ready-to-eat foods.

VDH acknowledges this concern but feels that, rather than try to adjust the regulation to accommodate every circumstance, it is preferable to establish minimum requirements for everyone to follow and then handle special situations on a case by case basis using the variance process and a Hazard Analysis and Critical Control Point (HACCP) plan. For example, in the event that a refrigeration unit cannot achieve a 41°F temperature, the owner may submit a variance request that includes a HACCP plan that describes how he will use the time temperature relationship to control the hazard of temperatures higher than 41°F. If the HACCP plan is scientifically based and provides a level of public health protection equal to the 41°F requirement, a variance will be issued contingent upon the owner following the HACCP plan.

Conclusion. The proposed regulations revise the existing regulations that govern restaurants operating in Virginia. The most significant change is the reduction in the refrigeration temperature requirement from 45°F to 41°F. This change will impose costs on the restaurant industry, estimated to range from \$7 to \$34 million over the next five years. However, this change can also be expected to increase the safety of nonready-to-eat foods, by limiting growth of toxin producing bacteria and providing additional protection against improper cooking which may not kill all harmful bacteria. The proposed regulation has the potential to increase protection for the public against foodborne illnesses. However, given the lack of reliable cost data, it cannot be known for certain whether the costs will outweigh the benefits that result from these proposed changes.

Businesses and entities affected. There are approximately 22,000 restaurants in Virginia.

Localities particularly affected. No localities are particularly affected by the proposed regulation. Arlington County, Fairfax County, and the City of Alexandria have already adopted the FDA Model Food Code as local ordinance.

⁵ 1999 FDA Model Food Code, Annex 3, Public Health Reasons/Administrative Guidelines 3-501.19.

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Projected impact on employment. The proposed regulations will involve significant investment in the upgrading or purchasing of commercial refrigeration equipment and may marginally increase employment in the refrigeration industry. Increased costs experienced by the restaurant industry may lead to some reduction in employment in that industry. Given the current expectations of a strong labor market, most of these jobs will not involve a net change in the level of employment in Virginia, but rather a substitution of jobs between sectors of the economy. The magnitude of these effects is difficult to estimate with the data available, but is almost certainly quite modest.

Effects on the use and value of private property. While the restaurant industry will bear the direct costs of the proposed regulation, they will also benefit from increased public perception of food safety in restaurants. Therefore, no significant effect on the market value of restaurant businesses in Virginia is expected.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Health agrees substantially with the observations made and conclusions drawn in the Department of Planning and Budget's economic impact assessment of these regulations (12 VAC 5-421-10 et seq.).

Summary:

The proposed regulations will replace the existing regulations governing restaurants, which were last revised in 1988. The proposed regulation establishes minimum sanitary standards for operating restaurants. Included are standards for the safe and sanitary maintenance, storage, operation, and use of, the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods; procedures for vector and pest control; requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; requirements for an approved water supply and sewage disposal system; personal hygiene standards for employees, particularly those engaged in food handling; and the appropriate use of precautions to prevent the transmission of communicable diseases. The regulations also inform potential restaurant owners or operators how to obtain a permit to operate a restaurant from the department. This proposal addresses the emergence of new strains of bacteria and other organisms and incorporates new control measures for the prevention of foodborne disease. These regulations are based on the FDA 1997 Model Food Code, which is supported by the National Restaurant Association.

VA.R. Doc. Nos. R98-216 and R98-217; Filed May 29, 2001, 1:50 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14 VAC 5-170-10 et seq. **Rules Governing Minimum Standards for Medicare Supplement Policies (amending 14 VAC 5-170-20, 14 VAC 5-170-30, 14 VAC 5-170-70, 14 VAC 5-170-90, 14 VAC 5-170-105, 14 VAC 5-170-120, 14 VAC 5-170-130, 14 VAC 5-170-150, and 14 VAC 5-170-180; adding Appendix D).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Summary:

The proposed amendments incorporate changes required by federal law pursuant to the Ticket to Work and Work Incentives Improvement Act of 1999 and the Balanced Budget Refinement Act of 1999. Other changes include additional requirements for attained age rated policies, further describe the approval process for Medicare select policies, and specify that actuarial certifications may be required in the review of the proposed rated changes. Changes are also included to reflect the 2001 deductible and copayment amounts under Medicare.

Agency contact: Ann Colley, Bureau of Insurance, State Corporation Commission, 1300 E. Main Street, 6th Floor, Richmond, VA 23219; Mailing Address: P.O. Box 1157, Richmond, VA 23218; telephone (804) 371-9813, e-mail acolley@scc.state.va.us.

AT RICHMOND, MAY 22, 2001

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS010083

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Minimum Standards for
Medicare Supplement Policies

ORDER TO TAKE NOTICE

WHEREAS, § 12.1-13 of the Code of Virginia provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia;

WHEREAS, the rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code;

WHEREAS, the Bureau of Insurance has submitted to the Commission proposed revisions to Chapter 170 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Minimum Standards for Medicare Supplement Policies," which amend the rules at 14 VAC 5-170-20, 14 VAC 5-170-30, 14 VAC 5-170-70, 14 VAC 5-170-90, 14 VAC 5-170-105, 14 VAC 5-170-120, 14 VAC 5-170-130, 14 VAC 5-170-150, and 14 VAC 5-170-180;

WHEREAS, the proposed revisions reflect changes required by federal law pursuant to the Ticket to Work and Work Incentives Improvement Act of 1999 and the Balanced Budget Refinement Act of 1999;

WHEREAS, the proposed revisions also include changes which provide additional requirements for attained age rated policies, further describe the approval process for Medicare Select policies, and specify that actuarial certifications may be required in the review of proposed rate changes; and

WHEREAS, the Commission is of the opinion that the proposed revisions should be considered for adoption with a proposed effective date of September 1, 2001;

THEREFORE, IT IS ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Minimum Standards for Medicare Supplement Policies," which amend the rules at 14 VAC 5-170-20, 14 VAC 5-170-30, 14 VAC 5-170-70, 14 VAC 5-170-90, 14 VAC 5-170-105, 14 VAC 5-170-120, 14 VAC 5-170-130, 14 VAC 5-170-150, and 14 VAC 5-170-180 be attached hereto and made a part hereof;

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before June 26, 2001, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS010083;

(3) If no written request for a hearing on the proposed revisions is filed on or before June 26, 2001, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions, may adopt the revisions proposed by the Bureau of Insurance;

(4) AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with a draft of the proposed revisions, to all insurers, health services plans, and health maintenance organizations licensed to write Medicare supplement insurance in the Commonwealth of Virginia; and by forwarding a copy of this Order, together with a draft of the proposed revisions, to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations; and

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

14 VAC 5-170-20. Applicability and scope.

A. Except as otherwise specifically provided in 14 VAC 5-170-60, 14 VAC 5-170-110, 14 VAC 5-170-120, 14 VAC 5-170-150 and 14 VAC 5-170-200, this chapter shall apply to:

1. All Medicare supplement policies delivered or issued for delivery in this Commonwealth on or after ~~April 26, 1999~~ *September 1, 2001*; and
2. All certificates issued under group Medicare supplement policies for which certificates have been delivered or issued for delivery in this Commonwealth.

B. This chapter shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

14 VAC 5-170-30. Definitions.

For purposes of this chapter (14 VAC 5-170-10 et seq.):

"*Applicant*" means:

1. In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and
2. In the case of a group Medicare supplement policy, the proposed certificateholder.

"*Attained age rating*" means a premium structure under which premiums are based on the covered individual's age at the time of application of the policy or certificate, and for which premiums increase based on the covered individual's increase in age during the life of the policy or certificate.

"*Bankruptcy*" means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in this Commonwealth.

"*Certificate*" means any certificate delivered or issued for delivery in this Commonwealth under a group Medicare supplement policy.

"*Certificate form*" means the form on which the certificate is delivered or issued for delivery by the issuer.

"*Community rating*" means a premium structure under which premium rates are the same for all covered individuals of all ages in a given area.

"*Continuous period of creditable coverage*" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual did not have a break in coverage greater than 63 days.

"*Creditable coverage*" means, with respect to an individual, coverage of the individual provided under any of the following:

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1. A group health plan;
2. Health insurance coverage;
3. Part A or Part B of Title XVIII of the Social Security Act of 1935 (Medicare) (42 USC § 1395 et seq.);
4. Title XIX of the Social Security Act of 1935 (Medicaid) (42 USC § 1396 et seq.), other than coverage consisting solely of benefits under § 1928;
5. Chapter 55 of Title 10 of the United States Code (CHAMPUS) (10 USC §§ 1071 - 1107);
6. A medical care program of the Indian Health Service or of a tribal organization;
7. A state health benefits risk pool;
8. A health plan offered under the Federal Employees Health Benefits Act of 1959 (5 USC §§ 8901--8914);
9. A public health plan as defined in federal regulation; and
10. A health benefit plan under § 5(e) of the Peace Corps Act of 1961 (22 USC § 2504(e)).

"Creditable coverage" shall not include one or more, or any combination of, the following:

1. Coverage only for accident or disability income insurance, or any combination thereof;
2. Coverage issued as a supplement to liability insurance;
3. Liability insurance, including general liability insurance and automobile liability insurance;
4. Workers' compensation or similar insurance;
5. Automobile medical expense insurance;
6. Credit-only insurance;
7. Coverage for on-site medical clinics; and
8. Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

"Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

1. Limited scope dental or vision benefits;
2. Benefits for long-term care, nursing home care, home health care, community-based care or any combination thereof; and
3. Such other similar, limited benefits as are specified in federal regulations.

"Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:

1. Coverage only for a specified disease or illness; and
2. Hospital indemnity or other fixed indemnity insurance.

"Creditable coverage" shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

1. Medicare supplement health insurance as defined under § 1882(g)(1) of the Social Security Act of 1935 (42 USC § 1395ss);
2. Coverage supplemental to the coverage provided under Chapter 55 of Title 10 of the United States Code (10 USC §§ 1071 - 1107); and
3. Similar supplemental coverage provided to coverage under a group health plan.

"Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in the Employee Retirement Income Security Act of 1974 (29 USC § 1002).

"Insolvency" means when an issuer, duly licensed to transact an insurance business in this Commonwealth in accordance with the provisions of Chapter 10, 41, 42 or 43, respectively, of Title 38.2 of the Code of Virginia, is determined to be insolvent and placed under a final order of liquidation by a court of competent jurisdiction.

"Issue age rating" means a premium structure based upon the covered individual's age at the time of purchase of the policy or certificate. Under an issue age rating structure, premiums do not increase due to the covered individual's increase in age during the life of the policy or certificate.

"Issuer" includes insurance companies, fraternal benefit societies, corporations licensed pursuant to Chapter 42 of Title 38.2 of the Code of Virginia to offer health services plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this Commonwealth Medicare supplement policies or certificates.

"Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965 (Public Law 89-97, 79 Stat. 286 (July 30, 1965)), as then constituted or later amended.

"Medicare+Choice plan" means a plan of coverage for health benefits under Medicare Part C as defined in § 1859, ~~Title IV, Subtitle A, Chapter 1 of Public Law 105-33 (42 USC § 1395w-28(b)(1) of the Social Security Act~~, and includes:

1. Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;
2. Medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and
3. Medicare+Choice private fee-for-service plans.

"Medicare supplement policy" means a group or individual policy of accident and sickness insurance or a subscriber contract of health service plans or health maintenance organizations, other than a policy issued pursuant to a contract under § 1876 of the federal Social Security Act of 1935 (42 USC § 1395 et seq.) or an issued policy under a

demonstration project specified in 42 USC § 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

"Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

"Secretary" means the Secretary of the United States Department of Health and Human Services.

14 VAC 5-170-70. Benefit standards for policies or certificates issued or delivered on or after July 30, 1992.

A. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this Commonwealth on or after July 30, 1992. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this Commonwealth as a Medicare supplement policy or certificate unless it complies with these benefit standards.

B. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this chapter.

1. A Medicare supplement policy or certificate shall not exclude or limit benefits for a loss incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

2. A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

3. A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes provided that loss ratios are being met.

4. No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

5. Each Medicare supplement policy shall be guaranteed renewable.

a. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

b. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

c. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under

subdivision 5 e of this subsection, the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder):

(1) Provides for continuation of the benefits contained in the group policy; or

(2) Provides for benefits that otherwise meet the requirements of this subsection.

d. If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(1) Offer the certificateholder the conversion opportunity described in subdivision 5 c of this subsection; or

(2) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

e. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

6. Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

7. a. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed 24 months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act of 1935 (42 USC § 1396 et seq.), but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within 90 days after the date the individual becomes entitled to such assistance.

b. If such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, the policy or certificate shall be automatically reinstated (effective as of the date of termination of such entitlement) as of the termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.

c. *Each Medicare supplement policy or certificate shall provide that benefits and premiums under the policy shall be suspended (for the period provided by federal regulation) at the request of the policyholder if the*

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policyholder or certificateholder is entitled to benefits under § 226 (b) of the Social Security Act (42 USC § 426) and is covered under a group health plan (as defined in § 1862(b)(1)(A)(v) of the Social Security Act (42 USC § 1395y)). If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder or certificateholder provides notice of loss of coverage within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

e- d. Reinstitution of such coverages:

- (1) Shall not provide for any waiting period with respect to treatment of preexisting conditions;
- (2) Shall provide for coverage which is substantially equivalent to coverage in effect before the date of such suspension; and
- (3) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

C. Standards for basic (core) benefits common to all benefit plans. Every issuer shall make available a policy or certificate including only the following basic core package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

1. Coverage of Part A Medicare Eligible Expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
2. Coverage of Part A Medicare Eligible Expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;
3. Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;
4. Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;
5. Coverage for the coinsurance amount, *or in the case of hospital outpatient department services under a prospective payment system, the copayment amount*, of Medicare Eligible Expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

D. Standards for additional benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by 14 VAC 5-170-80.

1. Medicare Part A deductible. Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.
2. Skilled nursing facility care. Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.
3. Medicare Part B deductible. Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.
4. Eighty percent of the Medicare Part B excess charges. Coverage for 80% of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.
5. One hundred percent of the Medicare Part B excess charges. Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.
6. Basic outpatient prescription drug benefit. Coverage for 50% of outpatient prescription drug charges, after a \$250 calendar year deductible, to a maximum of \$1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.
7. Extended outpatient prescription drug benefit. Coverage for 50% of outpatient prescription drug charges, after a \$250 calendar year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.
8. Medically necessary emergency care in a foreign country. Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.
9. Preventive medical care benefit. Coverage for the following preventive health services:
 - a. An annual clinical preventive medical history and physical examination that may include tests and services from subdivision 9 b of this subsection and patient education to address preventive health care measures.

b. Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

- (1) Digital rectal examination;
- (2) Dipstick urinalysis for hematuria, bacteriuria, and proteinuria;
- (3) Pure tone (air only) hearing screening test, administered or ordered by a physician;
- (4) Serum cholesterol screening (every five years);
- (5) Thyroid function test;
- (6) Diabetes screening.

c. Tetanus and Diphtheria booster (every 10 years).

d. Any other tests or preventive measures determined appropriate by the attending physician. Reimbursement shall be for the actual charges up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of \$120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

10. At-home recovery benefit. Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

a. For purposes of this benefit, the following definitions shall apply:

"Activities of daily living" include, but are not limited to, bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

"Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

"Home" shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

"At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

b. Coverage requirements and limitations:

- (1) At-home recovery services provided must be primarily services which assist in activities of daily living.

- (2) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare; and

- (3) Coverage is limited to:

- (a) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

- (b) The actual charges for each visit up to a maximum reimbursement of \$40 per visit;

- (c) One thousand six hundred dollars per calendar year;

- (d) Seven visits in any one week;

- (e) Care furnished on a visiting basis in the insured's home;

- (f) Services provided by a care provider as defined in this section;

- (g) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

- (h) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

c. Coverage is excluded for:

- (1) Home care visits paid for by Medicare or other government programs; and

- (2) Care provided by family members, unpaid volunteers or providers who are not care providers.

11. New or innovative benefits. An issuer may, with the prior approval of the State Corporation Commission, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.

14 VAC 5-170-90. Medicare select policies and certificates.

A. 1. This section shall apply to Medicare Select policies and certificates, as defined in this section.

2. No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

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3. A Medicare Select issuer subject to these rules is deemed a health carrier responsible for a "managed care health insurance plan" or "MCHIP" as defined in § 38.2-5800 of the Code of Virginia.

B. For the purposes of this section:

"Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

"Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

"Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

"Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

"Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

"Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

"Service area" means the geographic area approved by the State Corporation Commission within which an issuer is authorized to offer a Medicare Select policy.

C. The State Corporation Commission may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and § 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (42 USC § 1395ss(t)) if the State Corporation Commission finds that the issuer has satisfied all of the requirements of this chapter. *The State Corporation Commission shall, in lieu of the requirements set forth in subsections D, E, and F of this section, accept a Certificate of Quality Assurance issued by the Virginia Commissioner of Health pursuant to § 32.1-137.2 A of the Code of Virginia, provided that the Virginia Commissioner of Health has issued such a certificate. If the Virginia Commissioner of Health has reviewed the application of the issuer and has denied or disapproved a Certificate of Quality Assurance, or has revoked a Certificate of Quality Assurance previously issued, the issuer's plan of operation shall be deemed not to be in compliance with the requirements of this section, and the issuer shall not be authorized to offer Medicare Select policies or certificates in this Commonwealth.*

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this Commonwealth until its plan of operation has been approved by the State Corporation Commission.

E. A Medicare Select issuer shall file a proposed plan of operation with the State Corporation Commission in a format prescribed by the State Corporation Commission. The plan of operation shall contain at least the following information:

1. Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

a. Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

b. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(1) To deliver adequately all services that are subject to a restricted network provision; or

(2) To make appropriate referrals.

c. There are written agreements with network providers describing specific responsibilities.

d. Emergency care is available 24 hours per day and seven days per week.

e. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting such providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subdivision shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

2. A statement or map providing a clear description of the service area.

3. A description of the grievance procedure to be utilized.

4. A description of the quality assurance program, including:

a. The formal organizational structure;

b. The written criteria for selection, retention, and removal of network providers; and

c. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

5. A list and description, by specialty, of the network providers.

6. Copies of the written information proposed to be used by the issuer to comply with subsection I of this section.

7. Any other information requested by the State Corporation Commission.

F. 1. A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the State Corporation Commission prior to implementing such changes. *Such changes shall be approved or disapproved in writing by the State Corporation Commission within 30 days after receipt*

of a complete filing by the State Corporation Commission. Such changes shall be considered approved by the State Corporation Commission after 30 days unless specifically disapproved *in writing*. Within 10 days after approval of such changes by the State Corporation Commission, the issuer shall provide a copy of the approved changes to the Virginia Department of Health (VDH) at its Center for Quality Health Care Services and Consumer Protection. A copy of the notice to VDH shall be filed with the State Corporation Commission.

2. An updated list of network providers shall be filed with the State Corporation Commission at least quarterly.

G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

1. The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

2. It is not reasonable to obtain such services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

1. An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

a. Other Medicare supplement policies or certificates offered by the issuer; and

b. Other Medicare Select policies or certificates.

2. A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers.

3. A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

4. A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

5. A description of limitations on referrals to restricted network providers and to other providers.

6. A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

7. A description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received

the information provided pursuant to subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. Such procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

1. The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

2. At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

3. Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision makers who have authority to fully investigate the issue and take corrective action.

4. If a grievance is found to be valid, corrective action shall be taken promptly.

5. All concerned parties shall be notified about the results of a grievance.

6. The issuer shall report no later than each March 31st to the State Corporation Commission regarding its grievance procedure. The report shall be in a format prescribed by the State Corporation Commission and shall contain the number of grievances filed in the past year and a summary of the subject, nature, and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M. 1. At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.

2. For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subdivision, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary determines that Medicare Select policies and certificates

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issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

1. Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies and certificates available without requiring evidence of insurability.

2. For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subdivision, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

14 VAC 5-170-105. Guaranteed issue for eligible persons.

A. Guaranteed issue provisions follow:

1. Eligible persons are those individuals described in subsection B of this section who, *subject to subdivision B 2 b of this section*, apply to enroll under the policy not later than 63 days after the date of the termination of enrollment described in subsection B, and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

2. With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection C of this section that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

B. An eligible person is an individual described in any of the following subdivisions:

1. The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates, or the plan ceases to provide substantially all such supplemental health benefits to the individual, ~~or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan.~~

2. The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under Part C of

Medicare, and any of the following circumstances apply, *or the individual is 65 years of age or older and is enrolled with a Program of All Inclusive Care for the Elderly (PACE) provider under § 1894 of the Social Security Act (42 USC § 1395eee), and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare+Choice plan:*

~~a. The organization's or plan's certification under 42 USC §§ 1395w-21 et seq. certification of the organization or plan has been terminated or the organization or plan has notified the individual of an impending termination of such certification; or~~

~~b. The organization has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides, or has notified the individual of an impending termination or discontinuance of such plan; or~~

~~b. c.~~ c. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in § 1851(g)(3)(B) of the federal Social Security Act (42 USC § 1395w-21) (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under § 1856 of the Social Security Act (42 USC § 1395w-26)), or the plan is terminated for all individuals within a residence area;

~~e. d.~~ d. The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(1) The organization offering the plan substantially violated a material provision of the organization's contract under § 1859 of the Social Security Act (42 USC §§ 1395w-21 et seq.) in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(2) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

~~d. e.~~ e. The individual meets such other exceptional conditions as the Secretary may provide, *including the following:*

(1) *An individual described in subdivision 2 e (2) of this subsection may elect to apply subsection A of this section by substituting, for the date of termination of enrollment, the date on which the individual was notified by the Medicare+Choice organization of the impending termination or discontinuance of the Medicare+Choice plan it offers in the area in which the individual resides, but only if the individual disenrolls from the plan as a result of such notification.*

(2) In the case of an individual making the election in subdivision 2 e (1) of this subsection, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subsection A of this section shall only become effective upon termination of coverage under the Medicare+Choice plan involved.

3. a. The individual is enrolled with:
 - (1) An eligible organization under a contract under § 1876 (Medicare risk or cost);
 - (2) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;
 - (3) An organization under an agreement under § 1833(a)(1)(A) (health care prepayment plan); or
 - (4) An organization under a Medicare Select policy; and
- b. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under subdivision B 2 of this section.
4. The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:
 - a. (1) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or
 - (2) Of other involuntary termination of coverage or enrollment under the policy;
 - b. The issuer of the policy substantially violated a material provision of the policy; or
 - c. The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.
5. a. The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under Part C of Medicare, any eligible organization under a contract under § 1876 (Medicare risk or cost), any similar organization operating under demonstration project authority, *any PACE program under § 1894 of the Social Security Act (42 USC § 1395eee)*, an organization under an agreement under § 1833(a)(1)(A) *of the Social Security Act (42 USC § 1395)* (health care prepayment plan), or a Medicare Select policy; and
- b. The subsequent enrollment under subdivision 5 a of this subsection is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under § 1851(e) of the federal Social Security Act) (42 USC § 1395w-21).
6. The individual, upon first becoming ~~enrolled in~~ *eligible for benefits under Part A of Medicare Part B for benefits at age 65 or older*, enrolls in a Medicare+Choice plan under Part C of Medicare, *or a PACE program under § 1894 of the Social Security Act (42 USC § 1395eee)* and disenrolls

from the plan or program by not later than 12 months after the effective date of enrollment.

C. The Medicare supplement policy to which eligible persons are entitled under:

1. Subdivisions B 1, 2, 3, and 4 of this section is a Medicare supplement policy which has a benefit package classified as Plan A, B, C or F offered by any issuer.
2. Subdivision B 5 of this section is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in subdivision 1 of this subsection.
3. Subdivision B 6 of this section shall include any Medicare supplement policy offered by any issuer.

D. Notification provisions are:

1. At the time of an event described in subsection B of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection A of this section. Such notice shall be communicated in writing contemporaneously with the notification of termination.
2. At the time of an event described in subsection B of this section because of which an individual ceases enrollment under a contract or agreement, policy or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection A of this section. Such notice shall be communicated in writing within 10 working days of the issuer receiving notification of disenrollment.

14 VAC 5-170-120. Loss ratio standards and refund or credit of premium; annual filing; public hearing.

A. 1. Loss ratio standards. A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

- a. At least 75% of the aggregate amount of premiums earned in the case of group policies; or
- b. At least 65% of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than

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reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices.

2. All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

3. For policies issued prior to July 30, 1992, expected claims in relation to premiums shall meet:

a. The originally filed anticipated loss ratio when combined with the actual experience since inception;

b. The appropriate loss ratio requirement from subdivisions 1 a and 1 b of this subsection when combined with actual experience beginning with July 1, 1991, to date; and

c. The appropriate loss ratio requirement from subdivisions 1 a and 1 b of this subsection over the entire future period for which the rates are computed to provide coverage.

B. 1. Refund or credit calculation. An issuer shall collect and file with the State Corporation Commission by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

2. If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

3. For the purposes of this section, for policies or certificates issued prior to July 30, 1992, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after April 28, 1996. The first such report shall be due by May 31, 1998.

4. A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Annual filing of premium rates. An issuer of Medicare supplement policies and certificates issued before or after

July 30, 1992, in this Commonwealth shall file annually its rates, rating schedule, and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the State Corporation Commission in accordance with the filing requirements and procedures prescribed by the State Corporation Commission. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years.

The supporting documentation shall also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the following items are true with respect to the filing:

1. *The assumptions present the actuary's best judgment as to the expected value for each assumption and are consistent with the issuer's business plan at the time of the filing;*

2. *The anticipated lifetime loss ratio, future loss ratios, and except for policies issued prior to July 30, 1992, third-year loss ratios all exceed the applicable ratio;*

3. *Except for policies issued prior to July 30, 1992, the filed rates maintain the proper relationship between policies which had different rating methodologies;*

4. *The filing was prepared based on the current standards of practices as promulgated by the Actuarial Standards Board, including the data quality standard of practice, as described at www.actuary.org;*

5. *The filing is in compliance with the applicable laws and regulations in this Commonwealth; and*

6. *The premiums are reasonable in relation to the benefits provided.*

As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this Commonwealth shall file with the State Corporation Commission, in accordance with the applicable filing procedures of this Commonwealth:

1. a. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents as necessary to justify the adjustment shall accompany the filing.

b. An issuer shall make such premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience

under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

c. If an issuer fails to make premium adjustments acceptable to the State Corporation Commission, the State Corporation Commission may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

2. Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public hearings. The State Corporation Commission may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after July 30, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the State Corporation Commission.

14 VAC 5-170-130. Filing and approval of policies and certificates and premium rates.

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this Commonwealth unless the policy form or certificate form has been filed with and approved by the State Corporation Commission in accordance with filing requirements and procedures prescribed by the State Corporation Commission.

B. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the State Corporation Commission in accordance with the filing requirements and procedures prescribed by the State Corporation Commission.

The filing shall also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the following items are true with respect to the filing:

1. *The assumptions present the actuary's best judgment as to the expected value for each assumption and are consistent with the issuer's business plan at the time of the filing;*

2. *The anticipated lifetime loss ratio, future loss ratios, and except for policies issued prior to July 30, 1992, third-year loss ratio all exceed the applicable ratio;*

3. *The filing was prepared based on the current standards or practices as promulgated by the Actuarial Standards Board including the data quality standard of practice as described at www.actuary.org;*

4. *The filing is in compliance with applicable laws and regulations in this Commonwealth; and*

5. *The premiums are reasonable in relation to the benefits provided.*

C. 1. Except as provided in subdivision 2 of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

2. An issuer may offer, with the approval of the State Corporation Commission, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

a. The inclusion of new or innovative benefits;

b. The addition of either direct response or agent marketing methods;

c. The addition of either guaranteed issue or underwritten coverage;

d. The offering of coverage to individuals eligible for Medicare by reason of disability.

3. For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy or a group Medicare Select policy.

D. 1. Except as provided in subdivision 1 a of this subsection, an issuer shall continue to make available for purchase any policy form or certificate form issued after July 30, 1992, that has been approved by the State Corporation Commission. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.

a. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the State Corporation Commission in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate.

b. An issuer that discontinues the availability of a policy form or certificate form pursuant to subdivision 1 a of this subsection shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the State Corporation Commission of the discontinuance. The period of discontinuance may be reduced if the State Corporation Commission determines that a shorter period is appropriate.

2. The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

3. A change in the rating structure or methodology shall be considered a discontinuance under subdivision 1 of this subsection unless the issuer complies with the following requirements:

a. The issuer provides an actuarial memorandum, in a form and manner prescribed by the State Corporation

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Commission, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

b. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The State Corporation Commission may approve a change to the differential which is in the public interest.

E. 1. Except as provided in subdivision 2 of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 14 VAC 5-170-120.

2. Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

14 VAC 5-170-150. Required disclosure provisions.

A. General rules.

1. Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age. *Medicare supplement policies or certificates which are attained age rated shall include a clear and prominent statement, in at least 14 point type, disclosing that premiums will increase due to changes in age and the frequency under which such changes will occur.*

2. Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

3. Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

4. If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

5. Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have all premiums made for the policy refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

6. Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to a ~~person(s)~~ *person or persons* eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12 point type. Delivery of the guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this chapter. Except in the case of direct response issuers, delivery of the guide shall be made to the applicant at the time of application and acknowledgement of receipt of the guide shall be obtained by the issuer. Direct response issuers shall deliver the guide to the applicant upon request but not later than at the time the policy is delivered.

For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

B. Notice requirements.

1. As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the State Corporation Commission. The notice shall:

a. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

b. Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

2. The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

3. Such notices shall not contain or be accompanied by any solicitation.

C. Outline of coverage requirements for Medicare Supplement Policies.

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1. Issuers shall provide an outline of coverage to all applicants at the time the application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant; and

2. If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

3. The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than 12 point type. All plans A-J shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

4. The following items shall be included in the outline of coverage in the order prescribed in the following table.

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[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page:
Benefit Plan(s) _____ [insert letter(s) of plan(s) being offered]

Medicare supplement insurance can be sold in only ten standard plans plus two high deductible plans.* This chart shows the benefits included in each plan. Every company must make available Plan "A." Some plans may not be available in your state.

Basic Benefits: Included in all Plans.

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses) *or in the case of hospital outpatient department services under a prospective payment system, applicable copayments.*

Blood: First three pints of blood each year.

| A | B | C | D | E | F | F* | G | H | I | J | J* |
|---------------|-------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|------------------------------------|------------------------------------|---------------------------------------|-----------------------------|
| Basic Benefit | Basic Benefit | Basic Benefit | Basic Benefit | Basic Benefit | Basic Benefit | Basic Benefit | Basic Benefit | Basic Benefit | Basic Benefit | Basic Benefit | Basic Benefit |
| | | Skilled Nursing Coinsurance | Skilled Nursing Coinsurance | Skilled Nursing Coinsurance | Skilled Nursing Coinsurance | Skilled Nursing Coinsurance | Skilled Nursing Coinsurance | Skilled Nursing Coinsurance | Skilled Nursing Coinsurance | Skilled Nursing Coinsurance | Skilled Nursing Coinsurance |
| | Part A Deductible | Part A Deductible | Part A Deductible | Part A Deductible | Part A Deductible | Part A Deductible | Part A Deductible | Part A Deductible | Part A Deductible | Part A Deductible | Part A Deductible |
| | | Part B Deductible | | | Part B Deductible | | | | | Part B Deductible | Part B Deductible |
| | | | | | Part B Excess (100%) | Part B Excess (80%) | | | Part B Excess (100%) | Part B Excess (100%) | Part B Excess (100%) |
| | | Foreign Travel Emergency | Foreign Travel Emergency | Foreign Travel Emergency | Foreign Travel Emergency | Foreign Travel Emergency | Foreign Travel Emergency | Foreign Travel Emergency | Foreign Travel Emergency | Foreign Travel Emergency | Foreign Travel Emergency |
| | | | At-Home Recovery | | | | At-Home Recovery | | At-Home Recovery | At-Home Recovery | At-Home Recovery |
| | | | | | | | | Basic Drug Benefit (\$1,250 Limit) | Basic Drug Benefit (\$1,250 Limit) | Extended Drug Benefit (\$3,000 Limit) | |
| | | | | Preventive Care | | | | | | Preventive Care | |

* Plans F and J also have an option called a high deductible Plan F and a high deductible Plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year \$1500 \$1580 deductible. Benefits from high deductible Plans F and J will not begin until out-of-pocket expenses are \$1500 \$1580. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but does not include, in Plan J, the plan's separate prescription drug deductible or, in Plans F and J, the plan's separate foreign travel emergency deductible.

Proposed Regulations

PREMIUM INFORMATION

Boldface Type

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this Commonwealth. [If the premium is based on ~~the increasing~~ attained age of the insured, include *the following* information:

- ~~specifying~~
1. When premiums will change;
 2. *The current premium for all ages;*
 3. *A statement that premiums for other Medicare Supplement policies that are issue age or community rated do not increase due to changes in your age; and*
 4. *A statement that while the cost of this policy at the covered individual's present age may be lower than the cost of a Medicare supplement policy that is based on issue age or community rated, it is important to compare the potential cost of these policies over the life of the policy.]*

DISCLOSURES

Boldface Type

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY

Boldface Type

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

RIGHT TO RETURN POLICY

Boldface Type

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address.] If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

POLICY REPLACEMENT

Boldface Type

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

NOTICE

Boldface Type

This policy may not fully cover all of your medical costs.

[for agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]

[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult "~~The Medicare Handbook~~" "*Medicare & You*" for more details.

COMPLETE ANSWERS ARE VERY IMPORTANT

Boldface Type

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to 14 VAC 5-170-80.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the State Corporation Commission.]

Rev. 4/99 9/01

PLAN A

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: -Additional 365 days -Beyond the Additional 365 days | All but \$764 \$792 All but \$194 \$198 a day All but \$382 \$396 a day \$0 \$0 | \$0 \$194 \$198 a day \$382 \$396 a day 100% of Medicare Eligible Expenses \$0 | \$764 \$792 (Part A Deductible) \$0 \$0 \$0 All Costs |
| SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after | All approved amounts All but \$95.50 \$99 a day \$0 | \$0 \$0 \$0 | \$0 Up to \$95.50 \$99 a day All Costs |
| BLOOD First 3 pints Additional amounts | \$0 100% | 3 pints \$0 | \$0 \$0 |
| HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services | All but very limited coinsurance for outpatient drugs and inpatient respite care | \$0 | Balance |

* * *

Proposed Regulations

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PLAN A

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------------|-----------------------------------------------|
| MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts) | \$0 Generally 80% \$0 | \$0 Generally 20% \$0 | \$100 (Part B Deductible) \$0 All Costs |
| BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | \$0 \$0 80% | All Costs \$0 20% | \$0 \$100 (Part B Deductible) \$0 |
| CLINICAL LABORATORY SERVICES -- BLOOD TESTS FOR DIAGNOSTIC SERVICES | 100% | \$0 | \$0 |

PARTS A & B

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------|-----------------------------------------|
| HOME HEALTH CARE MEDICARE-APPROVED SERVICES - Medically necessary skilled care services and medical supplies - Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | 100% \$0 80% | \$0 \$0 20% | \$0 \$100 (Part B Deductible) \$0 |

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PLAN B

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: -Additional 365 days -Beyond the Additional 365 days | All but \$764 \$792 All but \$194 \$198 a day All but \$382 \$396 a day \$0 \$0 | \$764 \$792 (Part A Deductible) \$194 \$198 a day \$382 \$396 a day 100% of Medicare Eligible Expenses \$0 | \$0 \$0 \$0 \$0 All Costs |
| SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after | All approved amounts All but \$95.50 \$99 a day \$0 | \$0 \$0 \$0 | \$0 Up to \$95.50 \$99 a day All Costs |
| BLOOD First 3 pints Additional amounts | \$0 100% | 3 pints \$0 | \$0 \$0 |
| HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services | All but very limited coinsurance for outpatient drugs and inpatient respite care | \$0 | Balance |

Proposed Regulations

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PLAN B

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------------|-----------------------------------------------|
| MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts) | \$0 Generally 80% \$0 | \$0 Generally 20% \$0 | \$100 (Part B Deductible) \$0 All Costs |
| BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | \$0 \$0 80% | All Costs \$0 20% | \$0 \$100 (Part B Deductible) \$0 |
| CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES | 100% | \$0 | \$0 |

PARTS A & B

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------|-----------------------------------------|
| HOME HEALTH CARE MEDICARE-APPROVED SERVICES - Medically necessary skilled care services and medical supplies - Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | 100% \$0 80% | \$0 \$0 20% | \$0 \$100 (Part B Deductible) \$0 |

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PLAN C

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| <p>HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies</p> <p>First 60 days 61st thru 90th day 91st day and after:</p> <ul style="list-style-type: none"> - While using 60 lifetime reserve days - Once lifetime reserve days are used: -Additional 365 days -Beyond the Additional 365 days | <p>All but \$764 \$792 All but \$194 \$198 a day</p> <p>All but \$382 \$396 a day</p> <p>\$0</p> <p>\$0</p> | <p>\$764 \$792 (Part A Deductible) \$194 \$198 a day</p> <p>\$382 \$396 a day</p> <p>100% of Medicare Eligible Expenses</p> <p>\$0</p> | <p>\$0 \$0</p> <p>\$0</p> <p>\$0</p> <p>All Costs</p> |
| <p>SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital</p> <p>First 20 days 21st thru 100th day 101st day and after</p> | <p>All approved amounts All but \$95.50 \$99 a day \$0</p> | <p>\$0 Up to \$95.50 \$99 a day \$0</p> | <p>\$0 \$0 All Costs</p> |
| <p>BLOOD First 3 pints Additional amounts</p> | <p>\$0 100%</p> | <p>3 pints \$0</p> | <p>\$0 \$0</p> |
| <p>HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services</p> | <p>All but very limited coinsurance for outpatient drugs and inpatient respite care</p> | <p>\$0</p> | <p>Balance</p> |

Proposed Regulations

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PLAN C

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-----------------------------------------------------------|---------------------------------|
| MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts) | \$0 Generally 80% \$0 | \$100 (Part B Deductible) Generally 20% \$0 | \$0 \$0 All Costs |
| BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | \$0 \$0 80% | All Costs \$100 (Part B Deductible) 20% | \$0 \$0 \$0 |
| CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES | 100% | \$0 | \$0 |

PLAN C (continued)

PARTS A & B

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------|---------------|---------------------------|---------|
| HOME HEALTH CARE MEDICARE-APPROVED SERVICES | | | |
| - Medically necessary skilled care services and medical supplies | 100% | \$0 | \$0 |
| - Durable medical equipment First \$100 of Medicare Approved Amounts* | \$0 | \$100 (Part B Deductible) | \$0 |
| Remainder of Medicare Approved Amounts | 80% | 20% | \$0 |

OTHER BENEFITS - NOT COVERED BY MEDICARE

| | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----------------------------------------------------|-------------------------------------------------------|
| FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA | | | |
| First \$250 each calendar year | \$0 | \$0 | \$250 |
| Remainder of Charges | \$0 | 80% to a lifetime maximum benefit of \$50,000 | 20% and amounts over the \$50,000 lifetime maximum |

Proposed Regulations

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PLAN D

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: -Additional 365 days -Beyond the Additional 365 days | All but \$764 \$792 All but \$194 \$198 a day All but \$382 \$396 a day \$0 \$0 | \$764 \$792 (Part A Deductible) \$194 \$198 a day \$382 \$396 a day 100% of Medicare Eligible Expenses \$0 | \$0 \$0 \$0 \$0 All Costs |
| SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after | All approved amounts All but \$95.50 \$99 a day \$0 | \$0 Up to \$95.50 \$99 a day \$0 | \$0 \$0 All Costs |
| BLOOD First 3 pints Additional amounts | \$0 100% | 3 pints \$0 | \$0 \$0 |
| HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services | All but very limited coinsurance for outpatient drugs and inpatient respite care | \$0 | Balance |

* * *

7/92

PLAN D

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|---------------------------------|---------------------------------------------------|
| MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts) | \$0 Generally 80% \$0 | \$0 Generally 20% \$0 | \$100 (Part B Deductible) \$0 All Costs |
| BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | \$0 \$0 80% | All Costs \$0 20% | \$0 \$100 (Part B Deductible) \$0 |
| CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES | 100% | \$0 | \$0 |

Proposed Regulations

PLAN D (continued)

PARTS A & B

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------------------------------------------------------|---------------------------|
| HOME HEALTH CARE MEDICARE-APPROVED SERVICES | | | |
| - Medically necessary skilled care services and medical supplies | 100% | \$0 | \$0 |
| - Durable medical equipment | | | |
| First \$100 of Medicare Approved Amounts* | \$0 | \$0 | \$100 (Part B Deductible) |
| Remainder of Medicare Approved Amounts | 80% | 20% | \$0 |
| AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE | | | |
| Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan | | | |
| - Benefit for each visit | \$0 | Actual Charges to \$40 a visit | Balance |
| - Number of visits covered (must be received within 8 weeks of last Medicare Approved visit) | \$0 | Up to the number of Medicare-approved visits not to exceed 7 each week | |
| - Calendar year maximum | \$0 | \$1,600 | |

OTHER BENEFITS - NOT COVERED BY MEDICARE

| | | | |
|-------------------------------------------------------------------------------------------------------------|-----|-----------------------------------------------|----------------------------------------------------|
| FOREIGN TRAVEL – NOT COVERED BY MEDICARE | | | |
| Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA | | | |
| First \$250 each calendar year | \$0 | \$0 | \$250 |
| Remainder of Charges | \$0 | 80% to a lifetime maximum benefit of \$50,000 | 20% and amounts over the \$50,000 lifetime maximum |

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PLAN E

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| <p>HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies</p> <p>First 60 days 61st thru 90th day 91st day and after:</p> <ul style="list-style-type: none"> - While using 60 lifetime reserve days - Once lifetime reserve days are used: -Additional 365 days -Beyond the Additional 365 days | <p>All but \$764 \$792 All but \$194 \$198 a day</p> <p>All but \$382 \$396 a day</p> <p>\$0</p> <p>\$0</p> | <p>\$764 \$792 (Part A Deductible) \$194 \$198 a day</p> <p>\$382 \$396 a day</p> <p>100% of Medicare Eligible Expenses</p> <p>\$0</p> | <p>\$0 \$0 \$0 \$0 All Costs</p> |
| <p>SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital</p> <p>First 20 days 21st thru 100th day 101st day and after</p> | <p>All approved amounts All but \$95.50 \$99 a day \$0</p> | <p>\$0 Up to \$95.50 \$99 a day \$0</p> | <p>\$0 \$0 All Costs</p> |
| <p>BLOOD First 3 pints Additional amounts</p> | <p>\$0 100%</p> | <p>3 pints \$0</p> | <p>\$0 \$0</p> |
| <p>HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services</p> | <p>All but very limited coinsurance for outpatient drugs and inpatient respite care</p> | <p>\$0</p> | <p>Balance</p> |

* * *

Proposed Regulations

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PLAN E

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------------|-----------------------------------------------|
| MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts) | \$0 Generally 80% \$0 | \$0 Generally 20% \$0 | \$100 (Part B Deductible) \$0 All Costs |
| BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | \$0 \$0 80% | All Costs \$0 20% | \$0 \$100 (Part B Deductible) \$0 |
| CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES | 100% | \$0 | \$0 |

PARTS A & B

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------|-----------------------------------------|
| HOME HEALTH CARE MEDICARE-APPROVED SERVICES - Medically necessary skilled care services and medical supplies - Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | 100% \$0 80% | \$0 \$0 20% | \$0 \$100 (Part B Deductible) \$0 |

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PLAN E

OTHER BENEFITS - NOT COVERED BY MEDICARE

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| <p>FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of Charges</p> | <p>\$0 \$0</p> | <p>\$0 80% to a lifetime maximum benefit of \$50,000</p> | <p>\$250 20% and amounts over the \$50,000 lifetime maximum</p> |
| <p>PREVENTIVE MEDICAL CARE BENEFIT* - NOT COVERED BY MEDICARE Some annual physical and preventive tests and services such as: digital rectal exam, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare First \$120 each calendar year Additional charges</p> | <p>\$0 \$0</p> | <p>\$120 \$0</p> | <p>\$0 All Costs</p> |

* Medicare benefits are subject to change. Please consult the latest Guide to Insurance for People with Medicare.

Proposed Regulations

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PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year ~~[\$1500]~~ ~~[\$1580]~~ deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are ~~[\$1500]~~ ~~[\$1580]~~. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

| SERVICES | MEDICARE PAYS | AFTER YOU PAY \$1500 \$1580 DEDUCTIBLE,** PLAN PAYS | IN ADDITION TO \$1500 \$1580 DEDUCTIBLE,** YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: -Additional 365 days -Beyond the Additional 365 days | All but \$764 \$792 All but \$194 \$198 a day All but \$382 \$396 a day \$0 \$0 | \$764 \$792 (Part A Deductible) \$194 \$198 a day \$382 \$396 a day 100% of Medicare Eligible Expenses \$0 | \$0 \$0 \$0 \$0 All Costs |
| SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after | All approved amounts All but \$95.50 \$99 a day \$0 | \$0 Up to \$95.50 \$99 a day \$0 | \$0 \$0 All Costs |
| BLOOD First 3 pints Additional amounts | \$0 100% | 3 pints \$0 | \$0 \$0 |
| HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services | All but very limited coinsurance for outpatient drugs and inpatient respite care | \$0 | Balance |

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Rev. 4/99 9/01

PLAN F or HIGH DEDUCTIBLE PLAN F
 MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year ~~[\$1500]~~ ~~[\$1580]~~ deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are ~~[\$1500]~~ ~~[\$1580]~~. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

| SERVICES | MEDICARE PAYS | AFTER YOU PAY \$1500 \$1580 DEDUCTIBLE,** PLAN PAYS | IN ADDITION TO \$1500 \$1580 DEDUCTIBLE,** YOU PAY |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------|
| MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts) | \$0 Generally 80% \$0 | \$100 (Part B Deductible) Generally 20% 100% | \$0 \$0 \$0 |
| BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | \$0 \$0 80% | All Costs \$100 (Part B Deductible) 20% | \$0 \$0 \$0 |
| CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES | 100% | \$0 | \$0 |

Proposed Regulations

PLAN F or HIGH DEDUCTIBLE PLAN F (continued)

PARTS A & B

| SERVICES | MEDICARE PAYS | AFTER YOU PAY \$1500 \$1580 DEDUCTIBLE,** PLAN PAYS | IN ADDITION TO \$1500 \$1580 DEDUCTIBLE,** YOU PAY |
|-----------------------------------------------------------------------------|---------------|-----------------------------------------------------------|-------------------------------------------------------|
| HOME HEALTH CARE MEDICARE-APPROVED SERVICES | | | |
| - Medically necessary skilled care services and medical supplies | 100% | \$0 | \$0 |
| - Durable medical equipment First \$100 of Medicare Approved Amounts* | \$0 | \$100 (Part B Deductible) | \$0 |
| Remainder of Medicare Approved Amounts | 80% | 20% | \$0 |

OTHER BENEFITS - NOT COVERED BY MEDICARE

| | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----------------------------------------------------|-------------------------------------------------------|
| FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA | | | |
| First \$250 each calendar year | \$0 | \$0 | \$250 |
| Remainder of Charges | \$0 | 80% to a lifetime maximum benefit of \$50,000 | 20% and amounts over the \$50,000 lifetime maximum |

* * *

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PLAN G

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| <p>HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies</p> <p>First 60 days 61st thru 90th day 91st day and after:</p> <ul style="list-style-type: none"> - While using 60 lifetime reserve days - Once lifetime reserve days are used: -Additional 365 days -Beyond the Additional 365 days | <p>All but \$764 \$792 All but \$194 \$198 a day</p> <p>All but \$382 \$396 a day</p> <p>\$0</p> <p>\$0</p> | <p>\$764 \$792 (Part A Deductible) \$194 \$198 a day</p> <p>\$382 \$396 a day</p> <p>100% of Medicare Eligible Expenses</p> <p>\$0</p> | <p>\$0 \$0 \$0 \$0 All Costs</p> |
| <p>SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital</p> <p>First 20 days 21st thru 100th day 101st day and after</p> | <p>All approved amounts All but \$95.50 \$99 a day \$0</p> | <p>\$0 Up to \$95.50 \$99 a day \$0</p> | <p>\$0 \$0 All Costs</p> |
| <p>BLOOD First 3 pints Additional amounts</p> | <p>\$0 100%</p> | <p>3 pints \$0</p> | <p>\$0 \$0</p> |
| <p>HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services</p> | <p>All but very limited coinsurance for outpatient drugs and inpatient respite care</p> | <p>\$0</p> | <p>Balance</p> |

Proposed Regulations

7/92

PLAN G

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------------|-----------------------------------------|
| MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts) | \$0 Generally 80% \$0 | \$0 Generally 20% 80% | \$100 (Part B Deductible) \$0 20% |
| BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | \$0 \$0 80% | All Costs \$0 20% | \$0 \$100 (Part B Deductible) \$0 |
| CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES | 100% | \$0 | \$0 |

PLAN G (continued)

PARTS A & B

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| HOME HEALTH CARE MEDICARE-APPROVED SERVICES - Medically necessary skilled care services and medical supplies - Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | 100% \$0 80% | \$0 \$0 20% | \$0 \$100 (Part B Deductible) \$0 |
| AT HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan - Benefit for each visit - Number of visits covered (must be received within 8 weeks of last Medicare approved visit) - Calendar year maximum | \$0 \$0 \$0 | Actual Charges to \$40 a visit Up to the number of Medicare approved visits not to exceed 7 each week \$1,600 | Balance |

OTHER BENEFITS - NOT COVERED BY MEDICARE

| | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------------------------------------------------|-------------------------------------------------------------|
| FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of Charges | \$0 \$0 | \$0 80% to a lifetime maximum benefit of \$50,000 | \$250 20% and amounts over the \$50,000 lifetime maximum |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------------------------------------------------|-------------------------------------------------------------|

Proposed Regulations

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PLAN H

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: -Additional 365 days -Beyond the Additional 365 days | All but \$764 \$792 All but \$194 \$198 a day All but \$382 \$396 a day \$0 \$0 | \$764 \$792 (Part A Deductible) \$194 \$198 a day \$382 \$396 a day 100% of Medicare Eligible Expenses \$0 | \$0 \$0 \$0 \$0 All Costs |
| SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after | All approved amounts All but \$95.50 \$99 a day \$0 | \$0 Up to \$95.50 \$99 a day \$0 | \$0 \$0 All Costs |
| BLOOD First 3 pints Additional amounts | \$0 100% | 3 pints \$0 | \$0 \$0 |
| HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services | All but very limited coinsurance for outpatient drugs and inpatient respite care | \$0 | Balance |

* * *

7/92

PLAN H

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------------|-----------------------------------------------|
| MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts) | \$0 Generally 80% \$0 | \$0 Generally 20% \$0 | \$100 (Part B Deductible) \$0 All Costs |
| BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | \$0 \$0 80% | All Costs \$0 20% | \$0 \$100 (Part B Deductible) \$0 |
| CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES | 100% | \$0 | \$0 |

Proposed Regulations

PLAN H (continued)

PARTS A & B

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|------------------------------------------------------------------|---------------|-----------|---------------------------|
| HOME HEALTH CARE MEDICARE-APPROVED SERVICES | | | |
| - Medically necessary skilled care services and medical supplies | 100% | \$0 | \$0 |
| - Durable medical equipment | | | |
| First \$100 of Medicare Approved Amounts* | \$0 | \$0 | \$100 (Part B Deductible) |
| Remainder of Medicare Approved Amounts | 80% | 20% | \$0 |

OTHER BENEFITS - NOT COVERED BY MEDICARE

| | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----------------------------------------------|----------------------------------------------------|
| FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA | | | |
| First \$250 each calendar year | \$0 | \$0 | \$250 |
| Remainder of Charges | \$0 | 80% to a lifetime maximum benefit of \$50,000 | 20% and amounts over the \$50,000 lifetime maximum |
| BASIC OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE | | | |
| First \$250 each calendar year | \$0 | \$0 | \$250 |
| Next \$2,500 each calendar year | \$0 | 50% - \$1,250 calendar year maximum benefit | 50% |
| Over \$2,500 each calendar year | \$0 | \$0 | All Costs |

* * *

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PLAN I

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: -Additional 365 days -Beyond the Additional 365 days | All but \$764 \$792 All but \$194 \$198 a day All but \$382 \$396 a day \$0 \$0 | \$764 \$792 (Part A Deductible) \$194 \$198 a day \$382 \$396 a day 100% of Medicare Eligible Expenses \$0 | \$0 \$0 \$0 \$0 All Costs |
| SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after | All approved amounts All but \$95.50 \$99 a day \$0 | \$0 Up to \$95.50 \$99 a day \$0 | \$0 \$0 All Costs |
| BLOOD First 3 pints Additional amounts | \$0 100% | 3 pints \$0 | \$0 \$0 |
| HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services | All but very limited coinsurance for outpatient drugs and inpatient respite care | \$0 | Balance |

Proposed Regulations

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PLAN I

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|------------------------------|-----------------------------------------|
| MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts) | \$0 Generally 80% \$0 | \$0 Generally 20% 100% | \$100 (Part B Deductible) \$0 \$0 |
| BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | \$0 \$0 80% | All Costs \$0 20% | \$0 \$100 (Part B Deductible) \$0 |
| CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES | 100% | \$0 | \$0 |

PLAN I (continued)

PARTS A & B

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------------------------------------------------------|---------------------------|
| HOME HEALTH CARE MEDICARE-APPROVED SERVICES | | | |
| - Medically necessary skilled care services and medical supplies | 100% | \$0 | \$0 |
| - Durable medical equipment | | | |
| First \$100 of Medicare Approved Amounts* | \$0 | \$0 | \$100 (Part B Deductible) |
| Remainder of Medicare Approved Amounts | 80% | 20% | \$0 |
| AT HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE | | | |
| Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan | | | |
| - Benefit for each visit | \$0 | Actual Charges to \$40 a visit | Balance |
| - Number of visits covered (must be received within 8 weeks of last Medicare Approved visit) | \$0 | Up to the number of Medicare Approved visits not to exceed 7 each week | |
| - Calendar year maximum | \$0 | \$1,600 | |

OTHER BENEFITS - NOT COVERED BY MEDICARE

| SERVICES | MEDICARE PAYS | PLAN PAYS | YOU PAY |
|-------------------------------------------------------------------------------------------------------------|---------------|-----------------------------------------------|----------------------------------------------------|
| FOREIGN TRAVEL - NOT COVERED BY MEDICARE | | | |
| Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA | | | |
| First \$250 each calendar year | \$0 | \$0 | \$250 |
| Remainder of Charges* | \$0 | 80% to a lifetime maximum benefit of \$50,000 | 20% and amounts over the \$50,000 lifetime maximum |
| BASIC OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE | | | |
| First \$250 each calendar year | \$0 | \$0 | \$250 |
| Next \$2,500 each calendar year | \$0 | 50% - \$1,250 calendar year maximum benefit | 50% |
| Over \$2,500 each calendar year | \$0 | \$0 | All Costs |

Proposed Regulations

PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year ~~[\$1500]~~ ~~[\$1580]~~ deductible. Benefits from high deductible Plan J will not begin until out-of-pocket expenses are ~~[\$1500]~~ ~~[\$1580]~~. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible or the plan's separate foreign travel emergency deductible.

| SERVICES | MEDICARE PAYS | AFTER YOU PAY \$1500 \$1580 DEDUCTIBLE,** PLAN PAYS | IN ADDITION TO \$1500 \$1580 DEDUCTIBLE,** YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: -Additional 365 days -Beyond the Additional 365 days | All but \$764 \$792 All but \$191 \$198 a day All but \$382 \$396 a day \$0 \$0 | \$764 \$792 (Part A Deductible) \$191 \$198 a day \$382 \$396 a day 100% of Medicare Eligible Expenses \$0 | \$0 \$0 \$0 \$0 All Costs |
| SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after | All approved amounts All but \$95.50 \$99 a day \$0 | \$0 Up to \$95.50 \$99 a day \$0 | \$0 \$0 All Costs |
| BLOOD First 3 pints Additional amounts | \$0 100% | 3 pints \$0 | \$0 \$0 |
| HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services | All but very limited coinsurance for outpatient drugs and inpatient respite care | \$0 | Balance |

* * *

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PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year [~~\$1,500~~ /\$1580] deductible. Benefits from high deductible Plan J will not begin until out-of-pocket expenses are [~~\$1,500~~ /\$1580]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible or the plan's separate foreign travel emergency deductible.

| SERVICES | MEDICARE PAYS | AFTER YOU PAY \$1500 \$1580 DEDUCTIBLE,** PLAN PAYS | IN ADDITION TO \$1500 \$1580 DEDUCTIBLE,** YOU PAY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|----------------------------------------------------------------|---------------------------------------------------------------|
| MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts) | \$0 Generally 80% \$0 | \$100 (Part B Deductible) Generally 20% 100% | \$0 \$0 \$0 |
| BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts | \$0 \$0 80% | All Costs \$100 (Part B Deductible) 20% | \$0 \$0 \$0 |
| CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES | 100% | \$0 | \$0 |

Proposed Regulations

PLAN J or HIGH DEDUCTIBLE PLAN J (continued)

PARTS A & B

| SERVICES | MEDICARE PAYS | AFTER YOU PAY \$1500 \$1580 DEDUCTIBLE,** PLAN PAYS | IN ADDITION TO \$1500 \$1580 DEDUCTIBLE,** YOU PAY |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------------------------------------------------------------|----------------------------------------------------------|
| HOME HEALTH CARE MEDICARE-APPROVED SERVICES | | | |
| - Medically necessary skilled care services and medical supplies | 100% | \$0 | \$0 |
| - Durable medical equipment First \$100 of Medicare Approved Amounts* | \$0 | \$100 (Part B Deductible) | \$0 |
| Remainder of Medicare Approved Amounts | 80% | 20% | \$0 |
| AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE | | | |
| Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan | | | |
| - Benefit for each visit | \$0 | Actual Charges to \$40 a visit | Balance |
| - Number of visits covered (must be received within 8 weeks of last Medicare Approved visit) | \$0 | Up to the number of Medicare Approved visits not to exceed 7 each week | |
| - Calendar year maximum | \$0 | \$1,600 | |

Proposed Regulations

PLAN J or HIGH DEDUCTIBLE PLAN J (continued)

OTHER BENEFITS - NOT COVERED BY MEDICARE

| SERVICES | MEDICARE PAYS | AFTER YOU PAY \$1500 \$1580 DEDUCTIBLE,** PLAN PAYS | IN ADDITION TO \$1500 \$1580 DEDUCTIBLE,** YOU PAY |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----------------------------------------------------------|-------------------------------------------------------------|
| FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of Charges | \$0 \$0 | \$0 80% to a lifetime maximum benefit of \$50,000 | \$250 20% and amounts over the \$50,000 lifetime maximum |
| EXTENDED OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE First \$250 each calendar year Next \$6,000 each calendar year Over \$6,000 each calendar year | \$0 \$0 \$0 | \$0 50% - \$3,000 calendar year maximum benefit \$0 | \$250 50% All Costs |
| PREVENTIVE MEDICAL CARE BENEFIT - NOT COVERED BY MEDICARE*** Some annual physical and preventive tests and services such as: digital rectal exam, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare First \$120 each calendar year Additional charges | \$0 \$0 | \$120 \$0 | \$0 All Costs |

***Medicare benefits are subject to change. Please consult the latest "Guide to Health Insurance for People with Medicare."

Proposed Regulations

D. Notice regarding policies or certificates which are not Medicare supplement policies.

1. Any accident and sickness insurance policy or certificate issued for delivery in this Commonwealth to persons eligible for Medicare, other than a Medicare supplement policy, a policy issued pursuant to a contract under § 1876 of the federal Social Security Act (42 USC § 1395 et seq.), a disability income policy, or other policy identified in 14 VAC 5-170-20 B, shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than 12 point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

2. Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in subdivision 1 of this subsection shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

E. Notice requirements for attained age rated medicare supplement policies or certificates. Issuers of Medicare supplement policies or certificates which use attained age rating shall provide a notice to all prospective applicants at the time the application is presented, and except for direct response policies or certificates, shall obtain an acknowledgement of receipt of the notice from the applicant. The notice shall be in no less than 12 point type and shall contain the information included in Appendix D. The notice shall be provided as part of, or together with, the application for the policy or certificate.

14 VAC 5-170-180. Standards for marketing.

A. An issuer, directly or through its producers, shall:

1. Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.
2. Establish marketing procedures to assure excessive insurance is not sold or issued.
3. Display prominently by type, stamp or other appropriate means, on the first page of the policy the following:

"Notice to buyer: This policy may not cover all of your medical expenses."

4. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

5. If the Medicare supplement policy or certificate uses attained age rating, all marketing materials or rate quotations other than the outline of coverage shall display prominently the following notice in close proximity to anywhere the insurer or agent displays a premium:

"Notice: This (policy's/certificate's) premium increases based on your attained age. Please read the Notice For Attained Age Rated Medicare Supplement Policies carefully."

5- 6. Establish auditable procedures for verifying compliance with subsection A of this section.

B. In addition to the practices prohibited in Chapter 5 (§ 38.2-500 et seq.) of Title 38.2 of the Code of Virginia, the following acts and practices are prohibited:

1. Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert an insurance policy or to take out a policy of insurance with another insurer.

2. High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

3. Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. The terms "Medicare supplement," "Medigap," "Medicare Wrap-Around," and words of similar import shall not be used unless the policy is issued in compliance with this chapter.

| |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>REGISTRAR'S NOTICE: Appendices A, B and C are intentionally omitted from this proposed regulatory action since no changes are being proposed to these appendices. The full text can be found in the printed volume of the Virginia Administrative Code (Vol. 13A, pages 236 through 251) or on the Internet at http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+14VAC5-170-180.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Appendix D

Notice For Attained Age Rated Medicare Supplement Policies

Under Medicare supplement policies or certificates that use attained age rating, premiums automatically increase as you get older. You can expect your premiums to increase each year (or other frequency as established under the policy or certificate) due to changes in age.

Currently, the premiums for all ages under this policy (or certificate) are as follows:

(include current premiums for all ages)

The premiums for other Medicare Supplement policies that are issue age or community rated do not increase due to changes in your age.

[The following sentence shall be in boldface type] While the cost for a Medicare Supplement policy that is based on attained age may be lower than the cost of a Medicare Supplement policy that is issue age or community rated at your present age, it is important to compare the potential cost of these policies over the life of the policy.

VA.R. Doc. No. R01-207; Filed May 25, 2001, 1:07 p.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Title of Regulation: 24 VAC 30-40-10 et seq. Rules and Regulations Governing Relocation Assistance (REPEALING).

Title of Regulation: 24 VAC 30-41-10 et seq. Rules and Regulations Governing Relocation Assistance.

Statutory Authority: §§ 25-253 and 33.1-12 of the Code of Virginia; 42 USC § 4601 et seq.

Public Hearing Date: July 16, 2001 - 10 a.m.

Public comments may be submitted until August 20, 2001.
(See Calendar of Events section
for additional information)

Agency Contact: Beverly D. Fulwider, Relocations Program Manager, Department of Transportation, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-4366 or FAX (804) 786-1706.

Basis: The Commonwealth Transportation Board, the policy board charged with oversight of VDOT activities, has discretionary power under § 33.12 (5) to comply fully with the provisions of current or future federal aid acts, and § 25-253 authorizes all state agencies to promulgate rules and regulations necessary to carry out the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1972. Federal regulations (49 CFR Part 24) and related federal law (42 USC § 4601 et seq.) require that relocation services be provided to eligible recipients.

Purpose: In acquiring the rights of way necessary for the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth, it often becomes necessary to displace individuals, families, businesses, farms, and nonprofit organizations. The purpose of the replacement regulation is to permit VDOT to establish a uniform regulation concerning the prompt and equitable relocation and reestablishment of these displacees that is more streamlined, easier to understand and administer, and promotes efficiency. This regulation will ensure adequate relocation services and will provide moving, replacement housing, and other expense payments so that individuals will

not suffer disproportionate injuries as a result of the highway improvement programs.

The proposed replacement regulation is intended to streamline certain procedures to improve operational efficiency and effectiveness. It revises and reformats text to make the policies and procedures more understandable to both displacees eligible for these services, as well as the VDOT personnel who will implement and interpret the regulation. Rather than a remedy to address one or more problems, the replacement regulation represents an example of VDOT's ongoing efforts to improve the quality and timeliness of its transportation services.

Therefore, VDOT believes that, in facilitating the provision of decent, safe, and sanitary facilities for families and businesses relocated due to highway projects, the proposed replacement regulation is essential to the protection of the health, safety, and welfare of the citizens, and is an essential part of VDOT's transportation functions.

The goals of the replacement regulation are to:

1. Comply with the requirements of federal and state law;
2. Administer relocation services to displacees in a fair, impartial manner;
3. Ensure that the provisions of the regulations are clearly understood by all participants;
4. Receive satisfactory audit reports; and
5. Protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Substance: As a result of a comprehensive review of instructional manuals, memoranda, policies and procedures used in the Right of Way and Utilities Division, VDOT proposes to replace the existing regulation with a substantially rewritten regulation that incorporates the following changes:

1. Text has been reformatted and rewritten in a less legalistic way to facilitate understanding of the policies and procedures discussed;
2. Examples of payment calculations have been added in sections relating to replacement housing to clarify procedures;
3. Added and deleted or rewrote certain definitions;
4. Revised policy on Relocation Appeals;
5. Revisions to the process as permitted by 49 CFR 24.203 (c) (3) for sending vacating notices to displacees specified in 24 VAC 30-41-160; this change will permit them to be received earlier, thereby providing more timely notification to displacees, and allowing VDOT to maintain more projects in an active status;
6. Added "Self-Move" procedures for residential moves;
7. Added policy on Section 8 Housing; and
8. Creation of a Guidance Document to assist VDOT employees in interpreting the regulation.

Proposed Regulations

VDOT will consider other changes to the regulation based on any input received during the external review, comment and public hearing periods.

Issues: Because the proposed regulation has revised existing provisions to improve the quality and timeliness of relocation services, affected persons and businesses will benefit from implementation of the new provisions of the regulation. Both VDOT personnel and those affected by the regulation will benefit from the proposed replacement regulation, which has sample calculations and is written in a less legalistic manner. These features will make the proposed regulation easier to administer and understand. Therefore, there will be no disadvantages to either the Commonwealth or the public in implementing the proposed replacement regulation.

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 is a replacement regulation for 24 VAC 30-40, which has the same title. The Virginia Department of Transportation (VDOT), rather than amending the current regulation, finds replacing it with the proposed regulation appropriate, due to the extensive nature of definitional and procedural changes. Three of these changes are substantive. First, displacees will be issued a 90-day assurance notice instead of a 90-day notice to vacate their property. Second, the proposed changes will allow reimbursement of self-moving expenses. Third, the presence of a court reporter will be required during the final appeal hearings.

Estimated economic impact. VDOT must often relocate individuals for the maintenance and construction of highway projects. During the relocation process, VDOT has two main responsibilities. First, it has to ensure that displacees are given an appropriate amount of time and compensation to vacate their property. Second, it has to ensure that highway projects can start in a timely manner so that the projects are completed for public use as soon as possible.

90-Day Assurance Notice. Currently, VDOT makes a written offer to the displacees for their property that must be vacated for highway projects. Once the offer is made, VDOT moves to obtain legal possession of the property by either acceptance of the displacee or filing of certificate. Obtaining the legal possession takes about 60 days, on average, but may vary between one week to three months.¹ When the legal

possession is obtained, VDOT issues a 90-day notice to vacate the property. The 90-day notice essentially determines the maximum amount of time the displacee may stay at the property once the legal possession is obtained by VDOT. During the 90-day period, displacees are not required to pay rent to VDOT, which legally owns the property.

Under the proposed regulations, the displacees must be issued a 90-day assurance notice when a written offer is made. The notice will assure that displacees have at least 90 days to vacate the property. Further, during the 90 days, the displacees will be given a 30-day notice with a specific date by which they must vacate the property. The 30-day notice may be given to the displacee at the time VDOT has legal possession of the property, provided that 30-day notice is issued at least 60 days after issuing 90-day assurance notice.

Since the assurance notice can be issued when a written offer is made instead of when the legal possession is obtained by VDOT, the proposed regulations reduce the amount of time by which the property must be vacated by the amount of time it takes to get legal possession. This period is estimated to be 60 days on average but may vary between one week to three months. The significance of the 60-day reduction in the process partially depends on the length of the time period during which the displacees are aware that they have to move out sometime in the future. If the 60-day reduction in the process is large relative to the length of the whole process, the potential additional hardship to displacees is likely to be significant. VDOT indicates that the first time the displacees are notified that they will likely have to vacate is about 10 to 12 months prior to the last day to vacate the property, although these expectations are not based on an official notice. Displacees are certain of the relocation when a written offer is made which is about five months before the last date to vacate the property.

Proposed changes will affect the displacees in at least two ways. First, the displacees will lose approximately two months of rental value of the property. Once VDOT obtains the legal possession of the property, it does not require displacees to pay rent. Under the current regulations, VDOT has the legal possession of the property during all of the 90-day period and displacees are not required to pay rent for this period. Under the proposed regulations, however, VDOT will obtain the legal possession after about 60 days from issuing the 90-days notice. This will allow the displacees to stay at the property for only about 30 days without paying rent. Thus, the displacees will lose approximately two months rental value of the property.

Second, it is likely that the proposed changes will introduce some hardship to displacees by reducing the time to move to another property. As mentioned before, the proposed regulations reduce the amount of time by which the property must be vacated by the amount of time it takes to get legal possession. Since it takes about 60 days to get the legal possession of the property, the displacees will have to vacate the property 60 days earlier than they otherwise would. This 60-day reduction is likely to adversely affect the search for a new home. The displacees' choice in available properties will likely be reduced and their ability to obtain a competitive mortgage rate may be negatively affected.

¹ The Virginia Department of Transportation

On the other hand, the time gained at the expense of the displacees will likely allow VDOT to start and complete projects earlier. A highway project is a good example of a public good. Virtually every individual can consume a public good and it is often impossible to exclude others from consuming it. For this reason, the total benefits of completing the projects early will depend on the number of people and businesses who use these highway projects and their savings in time and cost. Thus, given sufficient savings in time and cost by the people utilizing these highway projects, the total benefits of this particular change may exceed the total costs incurred by the displacees.

Self Moving Expenses. The proposed regulation will allow a new method for reimbursement of moving expenses. Currently, there are two types of payment methods; (1) payment based on the amount charged by the commercial mover, and (2) payment based on a scheduled fixed fee per room. Proposed changes will allow (3) reimbursement of self-moving labor and transportation expenses such as rental truck expenses and time spent. VDOT indicated that there is a need for the new reimbursement method. The need arises from the fact that sometimes the displacees strongly prefer to move themselves. In these cases, where a commercial move is not preferred, the only alternative under the current regulations is compensation for the moving expenses based on the fixed fee payment method. VDOT indicates that usually the actual costs of such self-moves exceed the amount determined by the fixed fee payment method. With this additional new method, the exact amount of transportation and labor costs can be claimed with receipts or other proof of purchase. The new method has the potential to compensate the displacee for the moving expenses that would not be covered by the fixed fee payment method. This is expected to increase reimbursements paid for moving expenses. But also, it is likely to satisfy the displacees more than they would be with the fixed payment method. According to VDOT, about 30% of the residential moves should be expected to be reimbursed according to the new method. Thus, about 60 residential families are expected to utilize the new method in a year.

Court Reporter. The board proposes to require the presence of a court reporter for the transcripts of the final appeal for relocation procedures. A court reporter will be contracted from the private sector as needed. The total amount paid to the reporter is expected to be about \$350 per hearing covering the labor costs, travel expenses and the costs associated with producing the transcripts. Since VDOT expects five appeal hearings per year, the expected costs of the court reporter is about \$1,750 per year. The expected benefit of the court reporter is that the legal transcript of the appeal could be presented in court proceedings. Based on a recommendation from the Attorney General's Office, VDOT indicates that many misunderstandings between them and displacees might be eliminated. The costs of resolving misunderstandings that could be eliminated by the existence of transcripts are likely to exceed the costs of the court reporter. Thus, there is a good indication that the benefits of the court reporter justify the costs.

Other. Finally, the proposed regulation incorporates many changes that are not substantive in nature. These changes

include simplification of the language of the regulation, changes in definitions, incorporating the procedures followed in practice to the language of the regulation. Among these many less substantive changes, two are worth mentioning. These proposed regulations require that a guidance document be prepared for the relocation agents, and examples to determine the amount of relocation compensation are added to the text of the regulation. VDOT indicates that relocation includes a wide range of situations and the guidance document and the examples make it easier to understand the regulation by the relocation agents and produce relocation assistance in a consistent manner. More importantly, the public will have access to the examples provided and be able to determine the amount of relocation compensation by themselves. This informational aspect in turn should provide a double check should a mistake be made by a relocation agent.

Businesses and entities affected. The proposed changes will affect all individuals, businesses, nonprofit organizations, farms, and families who must be relocated due to VDOT's highway maintenance, construction, reconstruction, alteration, and repair projects. In the recent past, approximately 200 families or individuals and 75 businesses, nonprofit organizations and farms have been relocated annually. However, these numbers are expected to increase significantly in the next six years because the level of funding for highway projects will be raised by almost 43% and there is a positive correlation between the level of spending and the number of people relocated.

Localities particularly affected. The proposed regulation applies to all localities in commonwealth proportionally.

Projected impact on employment. No net increase in employment is expected other than the services of one court reporter during appeal hearings about five times a year.

Effects on the use and value of private property. The proposed regulations will reduce the amount of time that displacees have to vacate their property by approximately 60 days.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: VDOT concurs with the findings of DPB's economic impact analysis.

Summary:

As a result of a comprehensive review of instructional manuals, memoranda, policies, and procedures used in the Right of Way and Utilities Division, VDOT proposes to replace the existing regulation with a substantially rewritten regulation that incorporates a number of changes, outlined below.

Specific substantive changes in proposed regulation due to changes in policy, law, etc.: On the advice of the Office of the Attorney General, the policy on Relocation Appeals has been revised to require the presence of a court reporter. The definition of "persons who do not qualify as a displaced person" has been revised due to a change in federal law. "Self-Move" procedures have been added to the section on "Actual, Reasonable Moving Expenses." The process for sending vacating notices to displacees in 24 VAC 30-41-

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160 has been revised to permit them to be received earlier, thereby providing more timely notification to displacees, and allowing VDOT to maintain more projects in an active status.

Other substantive changes not associated with changes in policy, law, etc.: Text has been reformatted and rewritten in a less legalistic way to facilitate understanding of the policies and procedures discussed. Sections have been consolidated, re-ordered, or reduced in size to improve ease of understanding. Likewise, the list of definitions has been revised to omit unnecessary or obsolete terms, add new ones, or re-state meanings. An existing policy concerning "Section 8 Housing" has been added to the regulation. An existing policy regarding displacees' right to judicial review after final appeal determinations is required to be explicitly disclosed to displacees. Examples of payment calculations have been added in sections relating to replacement housing to clarify procedures. Finally, a guidance document has been created to assist VDOT employees in interpreting the regulation.

CHAPTER 41.

RULES AND REGULATIONS GOVERNING RELOCATION ASSISTANCE.

PART I.

GENERAL PROVISIONS AND ADMINISTRATION OF PROGRAM.

24 VAC 30-41-10. General.

In order to acquire the rights of way necessary for the construction, reconstruction, alteration, maintenance and repair of the public highways of the Commonwealth, it is often necessary for individuals, families, businesses, farms, and nonprofit organizations to be displaced. A comprehensive program of services and benefits has been established to ensure, to the maximum extent possible, the timely and successful relocation of displacees and reestablishment of businesses. These regulations guide the administration of the relocation program in a manner that is equitable, consistent, and cost effective. They will ensure effective relocation services, and will provide moving reimbursement, replacement housing payments and other cost reimbursements so that individuals displaced will not suffer disproportionate injuries as a result of the Virginia Department of Transportation's (VDOT's) highway improvement program.

24 VAC 30-41-20. Applicability.

The provisions of this chapter are applicable to any person who is displaced by any project on which state or federal funds are or will be utilized. This includes persons displaced from rights of way acquired by any city, county or town where right of way is to be furnished as a required contribution incidental to a state or federal assisted highway project.

24 VAC 30-41-30. Definitions.

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

"Business" means any lawful activity, except a farm operation, that is conducted:

1. Primarily for the sale of services to the public;
2. Primarily for the purchase, sale, lease, rental or any combination of these, of personal or real property, or both, or for the manufacture, processing, or marketing of products, commodities, or any other personal property;
3. Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
4. By a nonprofit organization that has established its nonprofit status under applicable federal or state law.

"Comparable replacement housing" means a dwelling that is:

1. Decent, safe and sanitary (defined below).
2. Functionally equivalent to the displacement dwelling in that it performs the same function, provides the same utility and is capable of contributing to a comparable style of living. While every feature of a displacement dwelling need not be present, the principal features must be provided. Functional equivalency reflects the range of purposes for which the various physical features of a building may be used. Special consideration will be given to the number of rooms, and area of living space. VDOT may consider reasonable trade offs for specific features when the replacement unit is equal to or better than the displacement dwelling.
3. Adequate in size to accommodate the displacee.
4. In a location generally not less desirable than the displacement dwelling with respect to public utilities, commercial and public facilities, and is reasonably accessible to the displacee's place of employment.
5. On a site typical in size for residential use, with normal site improvements (The site need not include features such as swimming pools or outbuildings).
6. Currently available to the displaced person on the private market. However, a publicly owned or assisted unit may be comparable for a person displaced from the same type of unit.
7. Within financial means of the displaced person.

Comparable replacement housing is the standard for replacement housing that VDOT is obligated to make available to displaced persons. It also is the standard for establishing owner and rental purchase supplement benefits.

"Contributes materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as VDOT determines to be more equitable, a business or farm operation:

1. Had average annual gross receipts of at least \$5,000;
2. Had average annual net earnings of at least \$1,000; or
3. Contributed at least 33-1/3% of the owner's or operator's average annual gross income from all sources.

If the application of the above criteria creates an inequity or hardship in any given case, VDOT may approve the use of other criteria as determined appropriate.

“Decent, safe and sanitary housing” means that a dwelling:

- 1. Is structurally sound, weather tight and in good repair;*
- 2. Has a safe electrical wiring system adequate for lighting and appliances;*
- 3. Contains a heating system capable of maintaining a healthful temperature;*
- 4. Is adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced household;*
- 5. Has a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains sink, toilet, and bathing facilities (shower or bath, or both), all operational and connected to a functional water and sewer disposal system;*
- 6. Provides unobstructed egress to safe open space at ground level. If the unit is above the first floor and served by a common corridor, there must be two means of egress; and*
- 7. Is free of barriers to egress, ingress and use by a displacee who is handicapped.*

This is the qualitative and safety standard to which displacees must relocate in order to qualify for replacement housing payment benefits provided by VDOT. Decent, safe and sanitary is also an element in the definition of comparable replacement housing defined above.

“Displaced person” means any person who moves from real property or moves personal property from real property as a direct result of the initiation of negotiations for the acquisition of the property; the acquisition of the real property, in whole or in part, for a project; as a direct result of rehabilitation or demolition for a project; or as a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. If the move occurs after a written order to vacate is issued, the occupant is considered a displaced person even though the property is not acquired.

Persons who do not qualify as a displaced person under these regulations include:

- 1. A person who moves before the initiation of negotiations, unless VDOT determines that the person was displaced as a direct result of the project;*
- 2. A person who initially enters into occupancy of the property after the date of its acquisition for the project;*
- 3. A person who is not required to relocate permanently as a direct result of a project. VDOT, after weighing the facts, shall make such determination on a case-by-case basis;*
- 4. A person who has occupied the property for the purpose of obtaining assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amendments (42 USC § 4601 et seq.);*
- 5. A person who, after receiving a notice of relocation eligibility, is notified in writing that it would not be necessary*

to relocate. Such notice shall not be issued unless the person has not moved and VDOT agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

6. An owner-occupant who voluntarily conveys a property after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, VDOT will not acquire the property. In such cases, tenants who are displaced are eligible for relocation benefits;

7. A person whom VDOT determines is not displaced as a direct result of a partial acquisition;

8. A person who is determined by VDOT to be in unlawful occupancy or a person who has been evicted for cause, under applicable law, prior to the initiation of negotiations for the property; or

9. A person determined to be not lawfully present in the United States.

Only parties designated as “displaced persons” are eligible for relocation benefits.

“Dwelling” means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house, a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

“Family” means two or more individuals, one of whom is the head of a household plus all other individuals, regardless of blood or legal ties, who live with and are considered part of the family unit. Where two or more individuals occupy the same dwelling with no identifiable head of household, they shall be treated as one family for replacement housing payment purposes.

“Farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support.

“Financial means” of the displaced person means:

1. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner’s financial means if the homeowner will receive the full price differential, all increased mortgage interest costs and all eligible incidental expenses.

2. A replacement dwelling rented by an eligible displaced person is considered to be within their financial means if, after receiving rental assistance under this part, the person’s monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person’s base monthly rental for the displacement dwelling.

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3. For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if VDOT pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30% of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amount designated for shelter and utilities.

"Increased interest payment" means the amount which will reduce the mortgage balance on a new mortgage to an amount that will be amortized with the same monthly payment for principal and interest as that for the mortgage on the displacement dwelling.

"Nonprofit organization" means an organization that is incorporated under the applicable laws of a state as a nonprofit organization and exempt from paying federal income taxes under § 501 of the Internal Revenue Code (26 USC § 501).

"Owner" means any person who purchases or holds any of the following interests in real property:

1. Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition;
2. An interest in a cooperative housing project which includes the right to occupy a dwelling; or
3. A contract to purchase any of the interests or estates described in the preceding two descriptions of interests in real property.

"Person" means any individual, family, partnership, corporation or association.

"Purchase supplement" means the amount which, when added to the acquisition value, equals the cost of comparable replacement housing.

"Rent supplement" means the amount which equals 42 times the difference between base monthly rental of a displacement dwelling including utilities and the monthly rent of a comparable dwelling including utilities.

"Small business" means any business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites operated solely by outdoor advertising signs, displays or devices do not qualify as a small business eligible for reestablishment expenses.

"State agency" means any department, agency, or instrumentality of the Commonwealth; public authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof; person who has the authority to acquire property by eminent domain under state law; or two or more of the aforementioned, which carries out projects that cause people to be displaced.

24 VAC 30-41-40. Duplication of payment.

A person is not eligible to receive relocation payments if that person receives a payment under federal, state or local law which is determined to have the same purpose and effect as payments under these regulations.

24 VAC 30-41-50. Withholding of relocation payment.

A displacee's relocation payment may be withheld to satisfy any rent owed to VDOT provided such payment would not prevent the displaced person from obtaining comparable replacement housing. However, no relocation payment shall be withheld to satisfy an obligation to any other creditor or for any other purpose.

24 VAC 30-41-60. Relocation payments not considered as income.

No relocation payment received by a displaced person shall be considered as income for the purpose of the Internal Revenue Code or for the purpose of determining the eligibility of any person for assistance under the Social Security Act or any other federal law, except for any federal law providing low-income housing.

24 VAC 30-41-70. Civil rights and equal opportunity requirements.

A. All aspects of the relocation assistance program of VDOT shall be conducted without regard to race, color, religious creed, ancestry, national origin, age or sex. VDOT, through its field representatives, should advise all claimants of this policy of nondiscrimination. Displacees who feel that they have been discriminated against because of any of the factors listed shall be advised to write the district right of way and utilities manager (district manager) and explain their situation.

B. Replacement housing listings referred to persons displaced shall be available without regard to race, color, religion, ancestry, national origin, age or sex. Each right of way and utilities office (referred to in this regulation as a district office) shall make parties providing listings aware of this requirement. If any instance of discrimination against displacees by listing agencies or other parties providing listings is reported, the district shall attempt to ascertain the facts of the case. If the charges of discrimination are valid, the listing agency shall be so notified and the listing will no longer be used.

C. Independent contractors employed by the displacee for the purpose of moving the personal property, or to perform any other services related to the relocation, will be expected to observe non-discrimination statutes and policies. If any incidence of discrimination is observed or reported, the contractor involved shall be asked to explain actions taken involving the particular displacee. Appropriate further action will be taken as required by relevant laws and policies.

D. Availability of financing and access to social services, which may be required by the displacee, shall be on a nondiscriminatory basis.

E. Relocation activities will comply with the applicable federal laws and implementing regulations listed in 54 FR 8932, § 24.8.

24 VAC 30-41-80. Administration of relocation program.

A. *Central office organization and responsibility.* The right of way and utilities division's relocation section administers the relocation program at the central office level. The primary functions of the relocation section are to promulgate policies and procedures, to monitor program implementation, and to coordinate administrative responsibilities necessary to successfully carry out the provision of the relocation program. The relocation section is staffed with skilled personnel to enable it to monitor program activities in district offices to assure delivery of consistent, fair and high quality services to displacees. It provides advice and policy interpretations to district right of way and utilities offices (referred to in this regulation as district offices) in the administration of complex or unique relocation cases. It monitors the relocation status on all projects, assuring that resources are available and problems are resolved so transportation projects can proceed to construction on schedule. The relocation section maintains close coordination with the district offices to assure adequate levels of staffing and to perform training needed to inform relocation personnel in changing and evolving relocation policy and practices.

B. *District organization and responsibility.*

1. It is the responsibility of the district office to carry out the relocation program in accordance with the provisions of this policy in a manner which assures timely, orderly and humane treatment of all displaced persons. The district office will perform the program in an efficient and orderly manner, so as to clear right of way needed for scheduled transportation project construction.
2. The district manager is responsible for assigning personnel to perform the relocation function and for managing and coordinating their activities.
3. The district office will monitor relocation assistance activities conducted by any other agencies or by consultants performing the relocation function for VDOT projects. Such monitoring will be by whatever means and extent necessary to assure compliance with the provisions of policy, procedures and instructions.

24 VAC 30-41-90. Appeals.

A. It is anticipated that from time to time persons affected by VDOT's relocation program will be dissatisfied with VDOT's determination as to their eligibility or with the amount of payments or services offered. It is the policy of VDOT to provide an opportunity to all persons to have their dissatisfactions heard and considered on an administrative level, without the expense, delay or inconvenience of court adjudication. VDOT's appeal procedure is promulgated to all potentially interested persons through the right of way brochure distributed at public hearings and provided to all displacees.

Persons making the appeal may be represented by legal counsel or any other representative at their expense. However, professional representation is not necessary for an appeal to be heard. The appellant will be permitted to inspect and copy all materials relevant to the matter appealed, except

materials which are classified as confidential by VDOT or where disclosure is prohibited by law.

The appeal process consists of two levels. An interim appeal is heard in the district office. If the appellant is not satisfied on completion of the interim appeal, a final appeal may be addressed to the Commonwealth Transportation Commissioner.

B. *Interim appeal.* When displacees are dissatisfied with VDOT's determination of eligibility, or the amount offered under the relocation assistance and payments statutes, they may appeal in writing. The appeal must be submitted to the district manager within 90 days after receipt of VDOT's written determination. The district manager will schedule an informal hearing. A decision will be made following the hearing. A written copy of the decision, also stating the basis for the decision, will be provided to the appellant. A copy of such decision, along with all pertinent information involving the case, is to be submitted to the director of the right of way and utilities division. The central office relocation manager, or a designated representative, will be present at all interim appeals to provide technical program advice.

C. *Final appeal.* Upon notification of the district manager's decision, if the displacee is still dissatisfied, an appeal in writing may be submitted to the Commonwealth Transportation Commissioner within 10 days. Upon receipt by the commissioner, the appeal will be referred to a review board consisting of the director of the right of way and utilities division or a designated representative as chairman, a district manager selected by the chairman and not functioning in the area where the displacee resides, and a district administrator or a designated representative. The district administrator serving on this board will be the one functioning in the area where the appellant resides. Legal counsel for VDOT may also be present. The review board will schedule a hearing at a time and place reasonably convenient to the appellant. At the hearing all parties will be afforded an opportunity to express their respective positions and submit any supporting information or documents. A Court Reporter will be present to record and provide a transcript of all information presented at the hearing. Upon conclusion of the hearing, the review board will furnish the commissioner a written report of its findings. The commissioner or a designated representative will review the report and render a decision, which shall be final. The appellant and his attorney, if applicable, will be advised of the decision in writing, by certified mail, and will be provided a summary of the basis for the board's decision. If the full relief requested is not granted, the displacee shall be advised of the right to seek judicial review, which must be filed with the court within 30 days after receipt of the final appeal determination.

PART II.

RELOCATION PLANNING AND PUBLIC INFORMATION.

24 VAC 30-41-100. Relocation planning at conceptual stage.

A. A project will be considered to be in the conceptual stage from the time preliminary plans are issued by the location and design division showing alternate roadway location alignments, until the final location is approved.

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B. Upon receipt of location study plans, the district office will perform a review to compile right of way and relocation costs and estimates for each proposed alignment. The information will be secured from visual observations and secondary sources and compiled into a Relocation Assistance Report. Potential displacees will normally not be contacted at this time.

The Relocation Assistance Report will contain the following information:

1. An estimate of households to be displaced, including the family characteristics (e.g., minorities, approximate income levels, tenure, elderly, large families).
2. Divisive or disruptive effect on the community such as separation of residences from community facilities or separation of neighborhoods.
3. Impact of displacement on housing availability where relocation is likely to take place.
4. The number of businesses, nonprofit organizations and farms that would be acquired and the estimated number of employees affected.
5. An assessment of the effect the non-residential displacements will have on the economy and stability of the community.
6. Major businesses being displaced that will require advance coordination and planning are to be contacted and advised of the studies being made by VDOT and of the opportunities for their input through public hearings and meetings.
7. A description of available housing in the area that is appropriate to provide housing for the types of families to be displaced. Contact should be made with local real estate firms, listing services, newspapers, housing agencies, local community organizations, etc.
8. A description of special relocation advisory services that will be necessary for identified unusual conditions, such as a concentration of elderly displacees.
9. A description of the actions proposed to remedy insufficient relocation housing, including, if necessary, housing of last resort. In the event it is found that there is an insufficient supply of housing, inquiries should be made of real estate developers, construction firms, public officials and interested parties to determine their willingness to assist in providing the necessary replacement housing and the conditions under which they would be willing to render this service.
10. Outcome of consultation with local officials, service agencies and community groups regarding the impact on the community affected.
11. An estimate of relocation costs, separated as follows:
 - a. Cost of moving personal property for residential units, businesses, farm operations and nonprofit organizations;
 - b. Cost of replacement housing payments for displaced individuals and families, including typical mortgage

interest differentials and closing costs incident to the purchase of replacement facilities;

c. Cost potentially incurred by businesses, farms and nonprofit organizations in searching for replacement facilities; and

d. Reestablishment costs for small businesses, farms and nonprofit organizations.

24 VAC 30-41-110. Relocation planning at acquisition stage.

A. Prior to the initiation of negotiations the district relocation section will conduct a pre-acquisition survey of the project. The pre-acquisition survey is primarily a data gathering function to provide an inventory of relevant characteristics, circumstances and relocation needs of all residential and non-residential displacees. It should also include a survey of available comparable replacement housing and replacement sites.

B. The district relocation staff will conduct interviews with individuals, families, businesses, farms and nonprofit organizations within the proposed right of way. It is important that accurate and detailed information be obtained that fully reflects the housing needs of each potential displacee.

When the relocation agent visits the potential displacee, the agent should explain that VDOT is conducting a data-gathering survey and that the visit in no way should be construed as a notice to move, or qualification for any relocation benefits. The following points should be explained to the occupant at the time this contact is made:

1. The persons involved must be in occupancy of the subject property when VDOT makes the written offer for the parcel (unless a notice of Intent to Acquire is issued) to qualify for relocation payments; and

2. The potential displacee should not make any financial commitments concerning replacement housing at this time. The property has not yet been acquired and a premature move could result in disqualification for benefits they would otherwise receive.

C. The survey should include the following information for each displacement unit:

1. The name, home address, home and work telephone numbers of the displacee and the best time to call.

2. The number of people residing in the dwelling, indicating each person's gender, age, and social security numbers for all adults (an adult is anyone age 18 or older).

3. A description of all buildings on the property and a list of all rooms in the dwelling unit. If a mobile home is situated on the parcel, state the exterior dimensions.

4. Any handicaps or disabilities of the occupants which could affect relocation needs.

5. A statement as to whether or not the dwelling meets decent, safe and sanitary standards. If the dwelling doesn't meet standards, an explanation should be included.

6. The type of displacee, (owner or tenant) and identification of the type of dwelling unit now occupied, (house, apartment, room or mobile home). If the displacee is a tenant, determine if the unit is furnished or unfurnished.

7. The gross family income from all sources including wages, interest, social security, welfare (excluding food stamps), disability payments and other untaxed income.

8. The date the family occupied the dwelling. Care should be exercised in completing this item as it establishes eligibility for various relocation benefits. For tenants, an outside source, owners' rental records, etc., should verify the date of occupancy. Conflicting information about occupancy status must be resolved if they affect eligibility. Rent paid and the cost and type of utilities included in the rent should be secured. Also, determine if a special tenant-landlord relationship exists (son-father, etc.) and determine if the tenant performs any services in lieu of rent.

9. If an owner-displacee has an outstanding mortgage, the monthly payment, interest rate, original amount, term, and the unpaid balance should be secured.

10. The displacee's replacement housing intentions and preferences (specific school district, location, etc.).

24 VAC 30-41-120. Public meetings and hearings.

A. General requirements. The district office will present information on real estate acquisition and displacement impacts and relocation services and benefits, at public meetings and hearings. An opportunity will be provided for public comments and questions. Copies of the right of way brochure will be available at all public meetings and hearings and distributed to interested individuals and organizations upon request.

B. Corridor (location) public hearing. The district office will present a summary of relocation program services, benefits and important qualification criteria, and a summary of the following relocation information compiled for the Relocation Assistance Report:

1. The estimated number of displacements of each classification that would be caused by each of the alignments under consideration;

2. The availability of relocation assistance and services, eligibility requirements and payment procedures.

3. A summary of the process and the methods that will be employed to assure that the housing needs of the displacees will be met.

C. Highway design or combined location and design public hearings. A presentation including the following information will be made at all design or combined location and design public hearings for projects on which the displacement will occur:

1. That no person shall be displaced from a residence unless a comparable replacement dwelling is available.

2. The services available under VDOT's relocation assistance advisory program, the address and telephone

number of the local relocation office and the name of the relocation agent in charge.

3. The estimated number of individuals, families, businesses, farms and nonprofit organizations to be displaced.

4. The estimated number of dwelling units presently available that meet replacement housing requirements.

5. An estimate of the time necessary for relocation and the number of dwelling units meeting the replacement housing requirements that will become available during that period.

6. VDOT's replacement housing program need not be recited in detail because the brochure adequately covers these topics and a reference to secure answers to specific questions has been provided. It is important to selectively present items of special importance, such as the need to be in occupancy at initiation of negotiations to be eligible for benefits.

PART III. WRITTEN NOTICES.

24 VAC 30-41-130. General.

Written notices must be furnished each displaced person to ensure full understanding of the benefits and services available. A copy of the notices referred to in 24 VAC 30-41-140, 24 VAC 30-41-150, and 24 VAC 30-41-160 must be placed in the project files after delivery to each recipient.

24 VAC 30-41-140. Notice of intent to acquire.

A. The purpose of the notice of intent to acquire is to establish eligibility for relocation benefits prior to the initiation of negotiations for the parcel. It is utilized in exceptional circumstances to relieve hardship to displacees. It is primarily applicable to residential owners who are prevented from selling a home because of the knowledge in the area of an impending project. It is also applicable to tenants and to owners of unimproved property.

B. The Virginia Department of Transportation (VDOT) must determine that a hardship exists for the occupants of the property in order to utilize the notice of intent to acquire. Such hardship may arise from a change in employment requiring a move; illness or infirmity making it difficult to live in and maintain the occupied property; or financial inability to pay costs of ownership or rental.

C. When the notice of intent to acquire is furnished to an owner, it must also be furnished to any tenants within 15 days. When the notice is furnished a tenant, the owner must simultaneously be furnished with a copy of such notice.

D. The notice letter will include a statement of eligibility, the anticipated date of initiation of negotiations for the acquisition of the parcel and how additional information on relocation assistance benefits and services can be obtained.

E. The notice of intent to acquire will be issued only after authorization is received to initiate negotiations on the project, or authorization of acquisition of individual parcels solely for protective buying or because of hardship. When the notice is issued, every effort should be made to acquire the property as

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soon as possible, to prevent possible subsequent tenant occupancy and to minimize rental vacancy loss for the owner.

24 VAC 30-41-150. Notice of replacement housing payment.

A. Residential owners and tenant occupants will be advised in person or by certified mail of the amount of the maximum replacement housing payments for which they are eligible. This notice will also provide the specific comparable dwelling which was used as the basis for the purchase or rental supplement and which is referred to as available for occupancy.

B. When feasible the Replacement Housing Payment Notice should be delivered at the time of the initiation of negotiations for the parcel.

C. If the maximum purchase or rent supplement payment cannot be established prior to the initiation of negotiations due to unusual circumstances which exist, such as large household size, low family income, unusually large number of rooms in the existing dwelling, absence of available comparable dwellings, or any combination of these, the owners will be fully advised of the entitlement to benefits during the first negotiations contact. They will also be advised that they will not be required to move until at least 90 days after the date when comparable housing is offered and they are informed of the maximum replacement housing benefit amount for which they are eligible. Tenants for whom payment amounts are not yet established will be similarly advised.

24 VAC 30-41-160. 90-Day assurance notice.

A. The construction or development of a highway project must be scheduled so that to the greatest extent practicable assurance will be made that no person lawfully occupying real property will be required to move from a dwelling, business, farm or nonprofit organization for at least 90 days from the date the written offer for the property is made by the department.

B. A 90-day assurance notice will be issued when a written offer for the property is made. In the case of a residential displacee, the 90-day assurance notice can be issued only after the written offer for the property and the replacement housing payment offer have been made. The 90-day assurance notice will state that the displaced person will not be required to move from a dwelling, business, farm or nonprofit organization before 90 days from the date of the notice. The 90-day notice will further state the displaced person will be given a 30-day written notice with the specific date by which the property must be vacated.

C. The 30-day written notice may be given to the displaced person at the time the department has legal possession of the property, providing the time is at least 60 days after the date of the 90-day notice. No written 30-day notice will be required where a displaced person moves prior to the time such notice should be given. The file should indicate that the displaced person moved prior to the 30-day notice being issued.

PART IV. RELOCATION ADVISORY SERVICES.

24 VAC 30-41-170. General.

The relocation advisory services program will be carried out so that displacees will receive uniform and consistent services and payments regardless of race, color, religion, sex, or national origin. The services provided under this section are intended to assist displacees in relocating to decent, safe and sanitary housing that meets their needs. The services will be provided by personal contact. If personal contact cannot be made, the district office will document the file to show that reasonable efforts were made to achieve the personal contact.

Relocation advisory services shall be offered to:

1. Any displaced person as defined in 24 VAC 30-41-30.
2. Any person occupying property immediately adjacent to the real property acquired when VDOT determines that such person or persons are caused substantial economic injury because of the acquisition.
3. Any person who, as a result of the project, moves, or moves personal property from real property not being acquired for the project.

24 VAC 30-41-180. Relocation offices.

A. The need for the establishment of a relocation office to service the displacees located on a project will be determined on a project-by-project basis by the district manager. The main criteria for establishing a project office will be whether such an office would be efficient and responsive to displacee needs and an efficient use of staff resources. An adequate sign clearly visible to the public will identify all project site offices.

B. A local relocation office must be easily accessible to project area residents and business operators and shall be open during normal work hours and during evening hours when necessary to serve the project displacees. The office should be arranged so as to afford privacy during meetings with project residents and other persons having business at the office. At least one relocation agent will be assigned to the office with the primary responsibility of providing relocation assistance. The agent will be required to maintain regular contact with the project's displacees and be available for evening appointments at the convenience of the displacees.

The following information should be available:

1. Local ordinances pertaining to housing, building codes and open housing.
2. Consumer educational literature on housing, shelter costs and family budgeting.
3. Copy of VDOT's relocation brochure.
4. A current and continuing list of decent, safe and sanitary replacement dwellings, both for rent and for sale. The list will contain only fair and open housing available to persons without regard to race, color, religion, or national origin.

5. A similar list of commercial properties and locations for business.

6. Current data for such costs as security deposits for utilities, leases and closing costs, typical down payments, interest rates and terms, taxes, assessments, etc.

7. Maps showing location of schools, parks, playgrounds, shopping areas and appropriate public transportation routes, schedules and costs.

8. Any other important information of value to displacees.

24 VAC 30-41-190. Minimum advisory assistance service requirements.

A. Advisory assistance service will be provided by personal face to face contact with displacees whenever possible. Services will include measures, facilities or services necessary or appropriate to:

1. Determine the relocation needs, preferences and intentions of each person to be displaced.

2. Explain the relocation eligibility requirements and the procedures for obtaining such assistance. This will include a personal interview with each person. These actions are taken in the normal course of the pre-acquisition and negotiations phases.

3. Advise displacees that payments are not considered income for tax purposes.

4. Provide current and continuing information on the availability, purchase prices and rental costs of comparable replacement dwellings. Explain that no one can be required to move unless a comparable replacement dwelling is available.

5. Inform the person of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of relocation payments. The basis for the determination should be explained.

6. Provide reasonable opportunity to minority persons to relocate to decent, safe and sanitary replacement dwellings, not located in areas of minority concentration, that are within their financial means. This policy, however, does not require VDOT to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

7. Offer all displacees, especially the elderly and handicapped, transportation to inspect housing to which they are referred.

8. Provide current and continuing information on the availability, purchase prices and rental costs of suitable commercial properties and locations for businesses.

9. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

10. Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of

assistance that may be available and such other help as may be appropriate.

11. Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loans and other similar programs administered by federal and state agencies.

Advisory services will be offered on a basis commensurate with the displacee's needs. This may require only minimum assistance when displacees are involved who are well informed, mentally, physically and financially able to manage their displacement and who neither need nor desire VDOT's assistance. A much greater degree and intensity of services and assistance will be provided to those who are elderly, infirm, immobile or otherwise unable to cope with their displacement or economic problems.

B. The relocation agent must offer relocation assistance to every displacee. The displacee may specifically state that there is no need for assistance, other than providing payment offers and processing claims. Even then, the agent must make a subjective judgment as to the ability of the displacee to competently locate, acquire and occupy a decent, safe and sanitary replacement dwelling. If the relocation agent does not feel the displacee possesses the ability to relocate without help, the agent should make efforts to furnish assistance or refer other service providers having specialized knowledge, skills and programs.

C. The relocation agent will notify the displacee in writing of the availability of comparable replacement housing, even though the displacee may have no intention or desire to relocate into the specific dwelling units being referred. The relocation agent can fulfill this requirement by informing the displacee of the comparable replacement housing utilized in the supplemental evaluation and other lower priced comparables. The agent can then tailor continuing relocation efforts to locating replacement housing that meets the particular desires of the displacee.

D. The relocation agent should develop a multitude of sources for replacement housing. These sources will include, but are not limited to the following:

1. Real estate brokers and boards of realtors;
2. Multiple listing agencies;
3. Real estate developers;
4. Housing and Urban Development (HUD) and Veterans Administration (VA) area and region offices;
5. Builders and construction associations;
6. Real estate management firms;
7. Public housing agencies;
8. Newspaper advertisements;
9. Mobile home dealers; and
10. Banks and other lending institutions.

E. The relocation agent should maintain contact, exchange information and coordinate its relocation activities with other

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displacing agencies and with community organizations rendering services useful to displaced persons. Such agencies should include, but not be limited to: Social Welfare Agencies, Urban Renewal Agencies, Redevelopment Authorities, Federal Housing Administration, Veterans Administration, Small Business Administration, Farmer's Home Administration, Department of Community Affairs, Department of Housing and Urban Development and local Chambers of Commerce. Local private nonprofit housing service organizations and other community organizations should also be contacted and informed of general displacement activities and needs.

F. Once the displacee locates replacement housing, the agent should be sufficiently knowledgeable in real estate practices to guide the displacee through the procedures necessary to obtain this housing. It is not the responsibility of the agent to assume the role of the various real estate professions. The agent should however counsel the displacee concerning lease and purchase agreement provisions, security deposits, earnest money, mortgages and other forms of financing, closing costs and settlement procedures. The agent should advise the displacee to enter a decent, safe, and sanitary inspection clause in any lease or purchase agreement for replacement housing.

G. It is the duty of the agent to ensure that the displacee receives all payments and benefits to which the displacee is legally entitled. In order to facilitate the payment process, the agent shall assist the displacee in completing all required forms, as well as obtaining any necessary supporting documentation for the payment.

H. Immediately after each contact with the displacee, the agent shall enter on the contact record (Library Form RW-68A) a summary of topics discussed and conclusions or agreements reached. The record should indicate:

1. Date of the contact;
2. Person contacted;
3. Topics discussed;
4. Displacee's attitude and opinion;
5. Notation of available replacement housing offered, if any; and
6. Any other pertinent information obtained during the contact.

PART V. MOVING COSTS - RESIDENTIAL MOVES.

24 VAC 30-41-200. General.

A. A displaced individual or family is entitled to receive a payment for moving personal property. The displacee has the option of a payment based upon the actual reasonable moving expenses (commercial move or self-move), a fixed payment that is based on VDOT's room count schedule, or, in unusual circumstances, any combination of the above. An example of such a circumstance would be to have a commercial mover that will move the household items, but will not move certain personal property stored in a shed. The

displacee can remove the items from the shed as a self-move.

B. The displacee is required to file a written application, Form RW-60A with VDOT and obtain approval prior to the date on which the move is to be accomplished. After the move has been completed, the displacee must complete and submit a relocation certification claim, Form RW-67A, within 18 months after the later of the following dates:

1. The date the displacee moves from the real property, or moves personal property from real property; or
2. The date of acquisition.

C. For relocation program purposes, a "family" is defined as two or more persons who share the same dwelling unit. Two or more occupants who share the same dwelling unit before displacement may relocate into separate units. If the move to separate units results from unavailability of units that will accommodate all persons, the occupants may each be reimbursed either on an actual cost basis or on a schedule move, which includes a dislocation allowance for each family. When the move into separate dwelling units is a voluntary decision and a single comparable dwelling unit is available, they may be reimbursed on a prorated share of the estimated cost of a single move as determined by VDOT. Alternatively, schedule move payments will be based on the number of rooms actually occupied by each family plus community rooms utilized by each family.

24 VAC 30-41-210. Actual reasonable moving expenses.

A. Move performed by commercial mover.

1. If a displaced individual or family desires to have a move performed by a commercial mover, the assigned relocation agent will obtain bids or estimates from two reputable moving companies. VDOT may pay the cost of obtaining bids or estimates, if approved by the district manager. VDOT will retain the right to reject any and all bids. The agent will also assure that all bids or estimates received are based upon the same move specifications and personal property inventory. The maximum payment will be the amount of the lowest acceptable bid or estimate. Since the displaced individual or family has the right to engage the services of any company, VDOT will pay the amount of receipted bills, but not to exceed the amount of the approved low bid or estimate.

2. If the actual cost of the move exceeds the estimated amount, the excess amount may be paid, if sufficient documentation is presented with the claim and the district recommends payment.

3. The displacee may present an unpaid mover's bill, along with the moving cost claim form, to VDOT for direct payment to the mover.

B. Self-move. An actual cost move may be carried out by the displacee in a self-move for actual, reasonable, and necessary costs expended. The relocation staff should work with the displacee to determine an amount necessary to move the personal property. The displacee may be reimbursed for time spent in moving. The hourly rate of the displacee's time should be reasonable and should not exceed the rates paid to

skilled packers and movers of local moving firms. Receipts or other evidence of expenses are necessary for reimbursement. Displacees may not move themselves based on the cost of a commercial move.

C. Reimbursable costs include:

1. Transportation of personal property not to exceed 50 miles.
2. Transportation of persons up to 50 miles, at a mileage rate determined by VDOT, or actual reasonable cost. Special transportation, such as an ambulance for infirm displacees, may also be approved.
3. Packing, crating, unpacking and uncrating of the personal property.
4. Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property.
5. Storage of the personal property for a period not to exceed 12 months, unless the district office determines that a longer period is necessary. Storage costs cannot be paid if the storage site is a part of the acquired property or other property owned, leased or controlled by the displacee.
6. Insurance for the replacement value of the property in connection with the move and necessary storage.
7. The replacement value of property lost, stolen or damaged in the process of moving (through no fault or negligence of the displaced person, or an agent or employee of the displaced person) when insurance covering such loss, theft or damage is not reasonably available.

D. The following costs are ineligible for reimbursement as residential move expenses:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;
2. Interest on a loan to cover moving expenses;
3. Personal injury;
4. Expenses for searching for a replacement dwelling; and
5. Additional expenses of living in a new location.

24 VAC 30-41-220. Moving expense schedule.

A. In lieu of a payment for actual costs, a displaced person or family who occupies the acquired dwelling may choose to be reimbursed for moving costs based on a moving expense schedule established by VDOT based on a room count. The schedule is revised periodically, based on a survey of movers, to reflect current costs. The schedule is used by all acquiring agencies throughout the state by agreement coordinated by the Federal Highway Administration.

The room count used will include occupied rooms within the dwelling unit plus personal property located in attics, unfinished basements, garages and outbuildings, or significant outdoor storage. Spaces included in the count

must contain sufficient personal property as to constitute a room.

B. A person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons, or if the move is performed by VDOT at no cost to the person, shall be limited to \$50.

C. The cost to move a retained dwelling, any other structure, or any item determined to be real estate prior to the move, is not a reimbursable moving cost. However, if an owner-occupant retains the dwelling, including a mobile home, and chooses to use it as a means of moving personal belongings and furnishings, the owner-occupant may receive a moving cost payment based upon the moving expense schedule.

D. A discussion of residential move reimbursement options is contained in the "Guidance Document for Determination of Certain Financial Benefits to Displacees" (to become effective the same date as this regulation).

PART VI.
MOVING COSTS - BUSINESSES, FARMS AND
NONPROFIT ORGANIZATIONS.

24 VAC 30-41-230. General.

A. The operator of a displaced business, farm or nonprofit organization is entitled to receive payment for the following categories of actual costs associated with moving:

1. Moving costs for relocating all personal property including machinery, equipment and fixtures and disconnect/reconnect costs;
2. Search costs for a replacement location not to exceed \$1,000; and
3. Reestablishment expenses not to exceed \$25,000.

All moving expenses will be actual and reasonable. To assure this, the district office will monitor the process of conducting inventories, developing move specifications, securing commercial moving bids and estimates and observing the conduct of the move. Emphasis will be directed toward moves that are of a complicated nature or involve a substantial expenditure.

B. As an alternative to the actual cost reimbursement as explained above, the displaced business, farm or nonprofit organization that meets certain criteria may choose to receive a fixed payment in lieu of actual moving expenses not less than \$1,000 or more than \$50,000. The specific amount is based on the net income of the displaced business, farm or nonprofit organization.

The reimbursable actual moving expenses and the fixed payment in lieu of moving expenses are explained in detail in the remainder of this part.

C. The displaced business, farm, or nonprofit organization is required to file a written application, Form RW-60B with VDOT and obtain approval prior to the date on which the move is to be accomplished. After the move has been completed, the displacee must complete and submit a relocation certification claim, Form RW-67B, within 18 months after the later of the following dates:

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1. The date the displacee moves from the real property, or moves personal property from real property; or
2. The date of acquisition.

24 VAC 30-41-240. Certified inventory.

A. The owner of the displaced entity will prepare an inventory of the items to be actually moved. The inventory will be certified as true and correct as of a specific date by the person making it, as well as the owner of the business. The inventory will be provided to the district office along with the moving cost application, Library Form RW-60B.

B. The inventory will be checked against VDOT's approved appraisal for the real estate to preclude the possibility of paying to move items which have been classified as real estate. This inventory will also be furnished to all interested bidders in order to ensure that all bids are based on moving the same personal property.

In a complex or expensive move the assigned relocation agent will visually confirm the accuracy of the inventory as an element of monitoring the move.

24 VAC 30-41-250. Actual reasonable moving costs.

A. Eligible and ineligible moving costs. The following items are eligible for reimbursement as moving costs if they are reasonable and are actually incurred during the moving process:

1. Transportation costs for moving the personal property. The transportation charges will normally be reimbursed for up to the first 50 miles of travel. When the move exceeds 50 miles, all estimates should be prepared based upon a move of 50 miles. Similarly, the mover's bill must be detailed to show transportation costs for the first 50 miles as well as the cost for the remainder of the distance. When VDOT determines that the business cannot be relocated within a 50-mile limit, reimbursement will be allowed to the nearest adequate and available site.
2. Packing, crating, unpacking and uncrating the personal property.
3. Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property. This includes connections to utilities available nearby. It also includes modification of the personal property necessary to adapt it to the replacement structure, the replacement site or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right of way to the building or improvement are excluded.)
4. Storage costs not to exceed 12 months, including moving in and out of storage. Storage costs for a longer period may be approved if the district manager determines that a longer period is necessary. Costs for storage of personal property on a site owned, leased or controlled by the displaced person are not eligible.
5. Insurance for replacement value due to the loss, theft or damage to the personal property in connection with the move and necessary storage. Where insurance is not

reasonably available, the replacement value of property lost, stolen or damaged in the process of moving may be paid, unless the loss results from fault or negligence of the displaced person, their agent, or employee.

6. Any license, permit or certification required at the replacement location. The payment may be based on the remaining useful life of the existing permit, license or certification.

7. Professional services necessary for planning the move, moving and installing personal property at the replacement location. This can include the displacee's time, provided the claim is well documented.

8. The relettering of signs and the cost of replacing stationery on hand at the time of the move that are made obsolete by the acquisition.

9. Other moving related expenses that are not listed as ineligible in 24 VAC 30-41-250 B as determined to be reasonable and necessary.

B. The following items are ineligible for reimbursement as moving costs:

1. Any additional expense incurred because of operating at a new location except as provided as a business reestablishment expense;
2. Cost of moving structures, improvements, or other items of realty retained by the owner;
3. Physical changes to the real property at the replacement location of a business, farm or nonprofit organization except as provided for in subsection A of this section and 24 VAC 30-41-310;
4. Interest on loans to cover moving expenses;
5. Loss of goodwill;
6. Loss of trained or skilled employees, or both;
7. Loss of business or profits, or both; and
8. Personal injury.

24 VAC 30-41-260. Moves performed by a commercial mover.

The district office will secure two independent bids or estimates from reputable and qualified moving companies, which VDOT may pay for if necessary. The movers will be provided with the certified inventory of the personal property to be moved. Arrangements will be made for an inspection of the site from which property will be moved. Bids will be solicited with the understanding that VDOT has the right to reject any and all bids. It is incumbent upon the district office to see that all bids received are based on the certified inventory and move specifications. The maximum payment will be limited to the lowest acceptable bid. The displacee has the right to engage any moving company to accomplish the move, and VDOT will pay the amount for the move supported by receipted bills not to exceed the amount of the approved low bid.

24 VAC 30-41-270. Self-moves.

A. Businesses, farms and nonprofit organizations have the option of performing a self-move. When the district office can obtain two acceptable bids or estimates from qualified moving firms based on the certified inventory, the owner may be paid the actual reasonable moving cost, not to exceed the amount of the low bid.

B. If such bids or estimates cannot be obtained, the business may submit a bid based on the actual, reasonable, and necessary expenses for a self-move. Labor is to be charged at the actual rates paid by the business, but not to exceed the rate charged by local moving firms for the same services. Receipts or other evidence of expenses must be submitted before payment is made to support actual cost.

C. In the case of a low-cost, uncomplicated move, a moving cost finding, not to exceed \$2,500, may be prepared by qualified district office staff.

D. It is possible to have a business move in which part of the move is a self-move and another part is a professional move.

24 VAC 30-41-280. Low value, high bulk personal property.

When personal property which is used in connection with the business to be moved is of low value and high bulk, such as firewood, sand, gravel, etc., and the estimated cost of moving would be disproportionate in relation to its value, the district office may negotiate with the owner for an amount not to exceed the difference between the cost to replace the item and the amount which would probably have been received for the item or items on liquidation. This amount may not exceed the estimated cost of moving the property. However, the owner retains the right to have the property moved if desired.

24 VAC 30-41-290. Actual direct losses of tangible personal property.

A. Actual, direct losses of tangible personal property are allowed when a person who is displaced from a business, farm or nonprofit organization is entitled to relocate such property but elects not to do so. This may occur if an item of equipment is bulky and expensive to move, but is obsolete and the owner desires to replace it with a new item that performs the same function. Payments for actual, direct losses can be made only after an effort has been made by the owner to sell the item involved. When the item is sold, payment will be determined in accordance with subsection B or C of this section. If the item cannot be sold, the owner will be compensated in accordance with subsection D of this section. The sales prices and the cost of advertising and conducting the sale, must be supported by copies of bills, receipts, advertisements, offers to sell, auction records and other data supporting the bona fide nature of the sale.

B. If an item of personal property which is used in connection with the business is not moved but is replaced with a comparable item at the new location, the payment will be the lesser of:

1. The replacement cost minus the net proceeds of the sale. Trade-in value may be substituted for net proceeds of sale where applicable; or

2. The estimated cost of moving the item to the replacement site but not to exceed 50 miles.

C. If the item is not to be replaced in the reestablished business, the payment will be the lesser of:

1. The difference between the market value of the item in place for continued use at its location prior to displacement less its net proceeds of the sale; or
2. The estimated cost of moving the item to the replacement site but not to exceed 50 miles. (See "Guidance Document for Determination of Certain Financial Benefits for Displacees" (to become effective the same date as this regulation) for example.)

D. If a sale is not effected under subsection B or C of this section because no offer is received for the property and the property is abandoned, payment for the actual direct loss of that item may not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item 50 miles, whichever is less, plus the cost of the attempted sale, irrespective of the cost to VDOT of removing the item.

E. The owner will not be entitled to moving expenses or losses for the items involved if the property is abandoned with no effort being made to dispose of it by sale, or by removal at no cost. The district manager may allow exceptions to this requirement for good cause.

F. The cost of removal of personal property by VDOT will not be considered as an offsetting charge against other payments to the displaced person.

24 VAC 30-41-300. Searching expenses.

A. A displaced business, farm operation, or nonprofit organization is entitled to reimbursement for actual expenses, not to exceed \$1,000, as VDOT determines to be reasonable, which are incurred in searching for a replacement location, and includes expenses for:

1. Transportation. A mileage rate determined by VDOT will apply to the use of an automobile.
2. Meals and lodging away from home.
3. Time spent searching, based on reasonable salary or earnings.
4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

B. Documentation for a move search claim will include expense receipts and logs of times, dates and locations related to the search. (See "Guidance Document for Determination of Certain Financial Benefits for Displacees" (to become effective the same date as this regulation) for example.)

24 VAC 30-41-310. Reestablishment expenses.

A. A small business, farm or nonprofit organization may be eligible to receive a payment, not to exceed \$25,000, for expenses actually incurred in reestablishing operations at a replacement site. A small business, farm or nonprofit

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organization that elects a fixed payment in lieu of actual moving expenses is not eligible for a reestablishment expense payment.

B. Eligible expenses. Reestablishment expenses must be reasonable and actually incurred. They may include the following items:

1. Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance;
2. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;
3. Construction and installation costs for exterior signing to advertise the business;
4. Providing utilities from right-of-way to improvements on the replacement site;
5. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting;
6. Licenses, fees and permits when not paid as part of moving expenses;
7. Feasibility surveys, soil testing and marketing studies;
8. Advertisement of replacement location;
9. Professional services in connection with the purchase or lease of a replacement site;
10. Increased costs of operation during the first two years at the replacement site for such items as:
 - a. Lease or rental charges;
 - b. Personal or real property taxes;
 - c. Insurance premiums; and
 - d. Utility charges, excluding impact fees.
11. Impact fees or one-time assessments for anticipated heavy utility usage.
12. Other items that VDOT considers essential to the reestablishment of the business.

A discussion of business reestablishment costs is contained in the "Guidance Document for the Determination of Certain Financial Benefits to Displacees" (to become effective the same date as this regulation.)

C. Ineligible expenses. The following is a nonexclusive listing of ineligible reestablishment expenditures.

1. Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures;
2. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation;
3. Interest on money borrowed to make the move or purchase the replacement property; and

4. Payment to a part-time business in the home which does not contribute materially to the household income.

24 VAC 30-41-320. Fixed payment in lieu of actual costs.

A. A displaced business, farm or nonprofit organization, meeting eligibility criteria may receive a fixed payment in lieu of a payment for actual moving and related expenses. The amount of this payment is equal to its average annual net earnings as computed in accordance with subsection E of this section, but not less than \$1,000 nor more than \$50,000.

B. Criteria for eligibility. For an owner of a displaced business to be entitled to a payment in lieu of actual moving expenses, the district office must determine that:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, it vacates or relocates from its displacement site.
2. The displaced business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless VDOT determines, for a stated reason, that it will not suffer a substantial loss of its existing patronage.
3. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by VDOT and which are under the same ownership and engaged in the same or similar business activities. (For purposes of this rule, any remaining business facility that did not contribute materially to the income of the displaced person during the two taxable years prior to displacement shall not be considered "other entity.")
4. The business is not operated at displacement dwelling or site solely for the purpose of renting such dwelling or site to others.
5. The business contributed materially to the income of the displaced person during the two taxable years prior to displacement. However, VDOT may waive this test for good cause. A part-time individual or family occupation in the home that does not contribute materially to the displaced owner is not eligible.

C. In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
3. The entities are held out to the public and to those customarily dealing with them, as one business; and
4. The same person, or closely related persons own, control, or manage the affairs of the entities.

The district office will make a decision after consideration of all the above items and so advise the displacee.

D. A displaced farm operation may choose a fixed payment in lieu of the payments for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with subsection E of this section, but not less than \$1,000 nor more than \$50,000. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if VDOT determines that:

1. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
2. The partial acquisition caused a substantial change in the nature of the farm operation.

A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$50,000 in lieu of the payments for actual moving and related expenses if VDOT determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless VDOT demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses.

Gross revenues for a nonprofit organization include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are for administrative support, such as rent, utilities, salaries, advertising and other like items, as well as fund raising expenses. Operating expenses are not included in administrative expenses.

E. Payment determination. The term "average annual net earnings" means one-half of all net earnings of the business or farm before federal, state and local income taxes, during the two tax years immediately preceding the tax year in which the business or farm is relocated. If the two years immediately preceding displacement are not representative, VDOT may use a period that would be more representative. For instance, proposed construction may have caused recent outflow of business customers, resulting in a decline in net income for the business.

The term "average annual net earnings" include any compensation paid by the business to the owner, spouse, or dependents during the two-year period. In the case of a corporate owner of a business, earnings shall include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For the purpose of determining majority ownership, stock held by a husband, his wife and their children shall be treated as one unit.

If the business, farm or nonprofit organization was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate.

F. Information to be provided by owner. For the owner of a business, farm or nonprofit organization to be entitled to this

payment, the owner must provide information to support the net earnings of the business, farm or nonprofit organization. State or federal tax returns for the tax years in question are the best source of this information. However, certified financial statements can be accepted as evidence of earnings. The tax returns furnished must either be signed and dated or accompanied by a certification from the business owner that the returns being furnished reflect the actual income of the business as reported to the Internal Revenue Service or the State Department of Taxation for the periods in question. The owner's statement alone would not be sufficient if the amount claimed exceeded the minimum payment of \$1,000.

A more complete discussion of this benefit is contained in the "Guidance Document for Determination of Certain Financial Benefits for Displacees" (to become effective the same date as this regulation).

PART VII.

GENERAL PROVISIONS FOR REPLACEMENT HOUSING PAYMENTS.

24 VAC 30-41-330. General.

Individuals and families displaced from a dwelling are eligible for purchase or rental supplement payments in accordance with the provisions of this part. The purpose of the purchase or rental supplement is to enable the displaced household to relocate to decent, safe and sanitary replacement housing that is within financial means. The specific type of payment will depend on the status as owner or tenant and length of occupancy at the displacement dwelling. There are also conditions for payment including the requirement that the displacee occupy replacement housing that meets decent, safe and sanitary standards and submit a claim within the required period. The key terms used in this part are defined as follows:

"Incidental expenses" mean closing and other costs incidental to the purchase of a replacement dwelling.

"Increased interest payment" means the amount which will reduce the mortgage balance on a new mortgage to an amount that will be amortized with the same monthly payment for principal and interest as that for the mortgage on the displacement dwelling.

"Purchase supplement payment" means the amount which, when added to the acquisition value, equals the cost of comparable replacement housing.

"Rent supplement payment" means the amount which equals 42 times the difference between base monthly rental of a displacement dwelling and the monthly rent of a comparable dwelling.

"Replacement housing payment" means the total of the amounts established for a displacee under the definitions listed in this section.

24 VAC 30-41-340. Fully eligible occupants.

A. A fully eligible owner-occupant of 180 days or more may receive either a purchase supplement payment plus

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increased mortgage interest costs and incidental costs not to exceed \$22,500 or a rent supplement not to exceed \$5,250.

A fully eligible owner-occupant of between 90 and 180 days or a tenant-occupant of at least 90 days may receive either a down payment supplement including closing costs, not to exceed \$5,250 or a rent supplement, not to exceed \$5,250.

B. The above limits of \$22,500 and \$5,250 do not apply if a displacee's circumstances with regard to available replacement housing require the use of Last Resort Housing provisions. It is VDOT's obligation to enable the displacee to relocate to comparable replacement housing while retaining original status as either an owner or a tenant. This obligation overrides any monetary limit, which would otherwise apply. Refer to Part XI (24 VAC 30-41-650 et seq.) for last resort housing provisions.

24 VAC 30-41-350. Partially eligible occupants.

A person who occupies a dwelling prior to its acquisition by VDOT, but who did not occupy it long enough (90 days) to gain full eligibility, may still qualify for a last resort housing rent supplement when a comparable rental is not available at or below 30% of the person's monthly gross income.

When length of occupancy places a person in this category, a rent supplement computation using 30% of the person's monthly gross income as the base rent must be computed and offered. Regardless of the amount, an offer under these circumstances must be documented using last resort housing procedures (see 24 VAC 30-41-660).

24 VAC 30-41-360. Requirements to receive payment.

A. In addition to length of occupancy provisions, the displaced person must occupy a decent, safe and sanitary dwelling, as defined in 24 VAC 30-41-30, within one year, beginning on the following dates:

1. Owner-occupant of 180 days or more. The date on which the owner received payment of the entire consideration for the acquired dwelling in negotiated settlements; or in the case of condemnation, the date on which the certificate was filed and the amount set forth in the certificate was made available for the benefit of the owner.

2. Tenant-occupant of 90 days or more. The date on which the move occurs. An occupancy affidavit (Form RW-62C) shall be secured as evidence of occupancy.

A displaced person who cannot occupy the replacement dwelling within the one-year time period because of construction delays beyond reasonable control, will be considered to have purchased and occupied the dwelling as of the date of the contract to purchase. The replacement housing payment under these conditions may be deferred until replacement housing is actually occupied.

B. Upon relocating, the displacee must properly complete the appropriate application, Library Form RW-65A(1), RW-65B, or RW-65C(1) to receive a replacement housing payment and submit them to the district manager. The application must be filed no later than six months after the expiration of the one-year period specified in subdivisions A 1 and A 2 of this section. In condemnation cases the one-year period is

extended to six months after final adjudication. The district office must stamp the application to show the date of its receipt. Where husband and wife both hold title to the property, or there is more than one owner-occupant, each owner must sign the application for payment. In the case of tenant-occupants, each must sign the application for payment.

C. The payment may be made directly to the displaced persons whose names are on the application for payment. On written instruction from a tenant-displacee, payment may be made to the lessor for rent. For an owner, payment may be made to the seller or lending agency at closing on the replacement property. If payment is made at closing, it will be personally delivered by a district office employee who will remain present to assure that the full purchase supplement amount is credited to the purchase of the replacement dwelling. If this is performed, the occupancy requirement will be considered met at the completion of closing, providing an occupancy agreement has been signed.

24 VAC 30-41-370. Inspection for decent, safe and sanitary housing.

Before submitting the displacee's claim for payment, a district relocation agent must inspect the replacement dwelling and determine that it meets the standards for decent, safe and sanitary housing. This inspection is to be made to the extent necessary to obtain the information to accurately complete Library Form RW-69B. A copy of Library Form RW-68A showing the dates and substance of all contacts with the displacee must accompany this completed form. This inspection is made solely for the purpose of determining the eligibility of relocated individuals and families for payment under this section and is not a representation for any other purpose.

24 VAC 30-41-380. Multiple occupancy of same dwelling unit.

A. If eligible multiple occupants occupy the same dwelling unit, they will be considered to constitute a family for relocation purpose if a comparable replacement dwelling is available. The occupants are entitled to only one replacement housing or rent supplement payment. If a comparable replacement dwelling is not available, a replacement housing or rent supplement payment for each occupant will be based on housing which is comparable to the quarters privately occupied by each occupant plus community rooms which have been shared with other occupants.

B. When all individuals displaced from one dwelling do not relocate into decent, safe and sanitary housing, those individuals who do relocate into decent, safe and sanitary housing will be paid the pro rata share of the appropriate payment they would have received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

C. If eligible multiple occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by VDOT, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling.

D. If VDOT determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

PART VIII.

REPLACEMENT HOUSING PAYMENTS FOR OWNER-
OCCUPANTS FOR 180 DAYS OR MORE.

24 VAC 30-41-390. General.

A displaced owner-occupant of a dwelling may receive a replacement housing payment, the elements of which will not exceed \$22,500 except when last resort housing has been authorized. The elements included in the replacement housing payment are: additional costs necessary to purchase replacement housing (purchase supplement); compensation to the owner for the increased interest cost and other debt service costs which are incurred in connection with a mortgage or mortgages on the replacement dwelling; and reimbursement to the owner for expenses incidental to the purchase of replacement housing when such costs are incurred as specified by the provisions of this chapter.

The purchase supplement is the amount, if any, which when added to the amount for which VDOT acquired the dwelling, equals the actual cost which the owner is required to pay for a decent, safe and sanitary dwelling or, if lesser, the amount determined by VDOT as necessary to purchase a comparable decent, safe and sanitary dwelling.

24 VAC 30-41-400. Eligibility.

An owner-occupant is entitled to a replacement housing payment when:

1. The owner is in occupancy at the initiation of negotiations for the acquisition of the property, or is in occupancy at the time a written notice of intent to acquire is delivered by VDOT;
2. Such ownership and occupancy has been for at least 180 consecutive days immediately prior to the earlier of the initiation of negotiations, or the date of vacation if a notice of intent to acquire has been issued;
3. Purchase and occupancy of a decent, safe and sanitary dwelling has occurred within the specified time period; and
4. If otherwise eligible, the owner-occupant can receive these payments if the move was a result of the initiation of negotiations, even though VDOT did not acquire the property.

24 VAC 30-41-410. Purchase of replacement dwelling.

A. For the purpose of this section, a displaced person "purchases" a dwelling when:

1. An existing decent, safe and sanitary dwelling is acquired.
2. A life estate in a retirement home is purchased. The actual cost will be entrance fee plus any other monetary commitments to the home, except periodic service charges may not be considered. The replacement housing payment is limited to the reasonable cost of purchasing a

comparable replacement dwelling less the acquisition cost of the acquired dwelling.

3. A dwelling previously owned or acquired is relocated or rehabilitated, or both. The basis for determining the purchase supplement will be the current value of the dwelling at the time of relocation.

4. Construction is completed or contracts have been executed for the construction of a new dwelling on a site owned or acquired. The actual cost provision limits the reimbursable construction cost to only those costs necessary to construct a dwelling comparable to the one acquired. The costs of adding new features that clearly exceed comparable features in the displacement dwelling are not eligible for reimbursement. Eligible costs of the site will be limited to the current residential fair market value of the replacement site rather than what the displaced person actually paid for it.

5. Any person who has obtained legal ownership of a replacement dwelling or land upon which the replacement dwelling is located, constructed or relocated to, either before or after displacement and occupies the replacement dwelling after being displaced, but within the time limit specified in 24 VAC 30-41-360 is eligible for a replacement housing payment if the replacement dwelling meets the decent, safe and sanitary standards. The current fair market value of land and dwelling will constitute the "actual cost" in the replacement housing determination.

B. When the replacement dwelling has decent, safe and sanitary deficiencies, the cost to correct such deficiencies may be added to the current fair market value of a previously owned dwelling, or the purchase price of the acquired replacement dwelling.

24 VAC 30-41-420. Advance replacement housing payments in condemnation cases.

An advance replacement housing payment may be paid to a property owner if the payment of the acquisition price for the displacement dwelling is delayed pending the outcome of condemnation proceedings. A provisional replacement housing payment may be determined by using the amount of the Certificate as the acquisition price.

Payment can be made upon the owner-occupant signing the agreement included on Library Form RW-65A(1) that:

1. Upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed using the acquisition price determined by the court.
2. If the amount awarded by the court for the value of the residential unit exceeds the Certificate amount, the displacee will make a refund for any excess replacement housing payment resulting from the court judgment. The difference in the replacement housing payment will be deducted from the court award before final payment is made. However, in no event will the refund be more than the amount of the replacement housing payment advanced. If the property owner fails to execute the Provisional Replacement Housing Payment Clause on Library Form

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RW-65A, the replacement housing payment will be deferred until the case is adjudicated.

24 VAC 30-41-430. Purchase supplement payment computation.

A. Method.

1. The probable selling price of a comparable dwelling will be determined by the district office by analyzing at least three dwellings from the inventory of available housing, Library Form RW-69B, which are available on the private market and which meet the criteria of a comparable replacement dwelling. Less than three comparables may be used for this determination when fewer comparable dwellings are available. The relocation agent performing the determination must provide a full explanation supporting the determination, including a discussion of efforts to locate more than one comparable. One comparable, from among those evaluated and considered, will be selected as the basis for the purchase supplement determination. The selection will be made by careful consideration of all factors in the dwellings being considered which affect the needs of the displacee with reference to the elements in the definition of comparable replacement housing.

Refer to the "Guidance Document for Determination of Certain Financial Benefits for Displacees" (to become effective the same date as this regulation) for a step-by-step summary of the determination process, and an example of the purchase supplement payment computation.

2. If comparable decent, safe and sanitary housing cannot be located, after a diligent search of the market, available non-decent, safe and sanitary replacement dwellings may be used as the basis for the maximum amount of the purchase supplement. In these cases, the maximum payment will be established by obtaining cost estimates from persons qualified to correct the decent, safe and sanitary deficiencies and adding this amount to the probable selling price of the available replacement housing.

A displacee will not be required to vacate the displacement dwelling until decent, safe and sanitary housing has been made available.

3. Consideration will be given to adjusting the asking price of the comparable dwelling selected as the basis for the Purchase Supplement Determination. This will be done to the extent that local housing market data reflects a difference between asking or listing prices and sale prices. If the asking price of the selected comparable dwellings is adjusted the agent will advise the displaced person concerning negotiations practices, to enable the displacee to enter the market as a knowledgeable buyer. If a displaced person elects to purchase the comparable, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment up to the offer or listing amount. Where a dwelling is obviously overpriced in relation to other comparables, it may not be used in the replacement housing computation.

B. Major exterior attributes. When the dwelling selected in computing the payment is similar, except it lacks major exterior attributes present at the displacement property such as a garage, outbuilding, swimming pool, etc., the appraised value of such items will be deducted from the acquisition cost of the acquired dwelling for purposes of computing the payment. No exterior attributes are to be added to the comparable. However, the added cost of actually building an exterior attribute at the replacement property occupied, may be added to the acquisition cost provided major exterior attributes having the same function are found in the displacement property and in the comparable used to determine the maximum payment.

The following calculation shows how a purchase supplement is determined when a major exterior attribute is present:

| Example Major Exterior Attribute (swimming pool) | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| The appraiser assigned \$5,000 contributing value for the pool, and a total property value of \$100,000. A comparable house, not having a pool, is listed for sale at \$105,000. After a 3% adjustment, a probable selling price of \$101,850 is determined for the comparable property. The purchase supplement amount is computed below: | |
| Comparable Dwelling (adjusted) | \$101,850 |
| Less: | |
| Displacement property value | \$100,000 |
| Less value of the pool | \$ 5,000 |
| Adjusted displacement property value | \$ 95,000 |
| Purchase Supplement Amount | \$ 6,850 |

C. Comparable housing not available.

1. In the absence of available comparable housing upon which to compute the maximum replacement housing payment, the district office may establish the estimated selling price of a new comparable decent, safe and sanitary dwelling on a typical home site. To accomplish this, the district office will contact at least two reputable home builders for the purpose of obtaining firm commitments for the cost of building a comparable dwelling on a typical home site.

2. If the only housing available greatly exceeds comparable standards, a payment determination may be based on estimated construction cost of a new dwelling which meets, but does not exceed, comparable standards.

24 VAC 30-41-440. Highest and best use other than residential.

When the acquired dwelling is located on a site where the fair market value is established on a use higher and better than residential, the purchase supplement maximum amount will be determined by deducting the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land which represents a tract typical in size for the area from the probable selling price of the most comparable listing. The following calculation shows how this amount is determined:

| <i>Example</i> <i>Acquired Dwelling on Commercial Zoned Site</i> | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| <p>The acquired house (whole take) is on a five-acre site zoned commercial. The typical residential lot in the area is one acre. The land is appraised at \$50,000/acre and the dwelling is valued at \$10,000 as an interim use.</p> <p>A comparable house on a residentially zoned lot is available for \$70,000 (after adjustment). The maximum purchase supplement amount is determined below:</p> | |
| Comparable property | \$70,000 |
| LESS: Value of the house acquired on one acre | \$60,000 |
| Maximum Purchase Supplement Amount | \$10,000 |

24 VAC 30-41-450. Mixed-use properties.

A. When the acquired dwelling unit is part of a structure which also includes space used for nonresidential purposes, the amount of the purchase supplement offer will be determined by using only that part of the fair market value that is attributable to the residential use of the acquired property. The following calculation shows how this amount is determined:

| <i>Example</i> <i>Displacement Property in Residential and Commercial Use</i> | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| <p>A grocery storeowner lives in a two-bedroom, one-bath apartment above the store. The residential unit has 1,200 sq. ft. of habitable living space. The property is appraised at \$150,000. The appraiser allocated 40% of total property value to the residence.</p> <p>There are several two-bedroom, one-bath units available for sale. They are: (i) a duplex with two identical units - \$125,000; (ii) a single-family house - \$75,000; (iii) a condo unit in a sixplex - \$50,000.</p> | |
| Most comparable property: a) duplex unit. | Value \$62,500 |
| LESS: Displacement dwelling. | Value \$60,000 |
| Maximum Purchase Supplement Amount | \$ 2,500 |

When the replacement property is a structure which includes space used for nonresidential purposes, only that part of the total cost that relates to the value of the owner's living unit will be used when determining the purchase supplement payment.

B. When the replacement property contains buildings other than the residence which are used for non residential purposes, the value of these buildings must be carved out of the entire purchase price of the replacement property in order to determine the residential use value. The residential use value will represent the amount paid for replacement housing when determining the purchase supplement payment amount. The following calculation shows how this amount is determined:

| <i>Example</i> <i>Displacee Purchases Mixed Use Replacement Property</i> | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p>A family displaced from a single-family house (acquisition value \$80,000, purchase supplement \$10,000) contracts to purchase an operating chicken farm for \$250,000. They will live in the farmhouse, which has an estimated value separate from the farm of \$85,000. The displaced family submits a claim for the full \$10,000 maximum purchase supplement amount.</p> | |
| <p>The family is eligible to receive \$5,000, not \$10,000, as a Purchase Supplement Payment.</p> | |
| <p>Before processing the claim for payment, the district office must determine the value of the farmhouse on a lot normal for residential use in the area. This will determine the payment ceiling. The part of the purchase price attributable to the farm operation (\$165,000) is not to be considered in the claim. This should have been explained to the displaced family members before they search for replacement property.</p> | |

C. When the acquired property consists of a multi-family structure of which one unit is owner-occupied, the amount of the supplemental offer will be the difference between the value of one unit of a multi-family comparable and the value of the owner occupied residential-use portion of the acquired property. When the replacement property is a multi-family structure, only the value of the owner's living unit can be used to determine the supplemental payment, not the entire purchase price. The purchase supplement amount will be the price of one unit of a multi-family comparable or the price of one unit of a multi-family replacement, whichever is less, minus the residential use portion of the acquired property.

The following calculation shows how this amount is determined:

| <i>Example</i> <i>Owner Displaced from Condominium Unit</i> | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p>The acquired dwelling is a condominium unit in a building containing three stores and six residential units. The appraised value of the building is \$1 million. The value of the displacee's unit is \$120,000.</p> | |
| <p>The purchase supplement is the cost of a comparable condo unit in a similarly configured building having residential and commercial units, less the \$120,000 attributed to the displacement unit.</p> | |
| <p>There may not be a condominium unit on the market in a mixed use, six residential unit building. Look for units in buildings having five, four, three, or two units. Use the "most comparable" unit considering the ownership form and configuration of units, as well as other factors.</p> | |

24 VAC 30-41-460. Partial take of a typical residential site.

A. Remaining buildable site. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential site, VDOT will offer to purchase the entire property. If the owner refuses to sell the remainder which is a buildable site to VDOT, the fair market value of the remainder will be added to the acquisition cost of the acquired property

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for the purposes of computing the maximum purchase supplement payment.

B. Remaining uneconomic remnant. If the owner refuses to sell the residue that is an uneconomic remnant to VDOT, the value of the take and damages to the remainder will be used in computing the replacement housing payment.

C. Larger tract than normal. If the acquired property is a dwelling on a significantly larger site than typical for residential use in the area, the maximum replacement housing payment is the asking price of a comparable replacement dwelling on a tract typical in size for residential use, less the acquisition price of the acquired dwelling and the portion of the site which represents a typical size residential lot in the area. The following calculation shows how this amount is determined:

| <i>Example</i> | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| <i>Partial Take From Larger than Typical Residential Site</i> | |
| <i>The displacement dwelling is on a five-acre site. One-acre lots are typical in the area. The house and three acres are being acquired. Appraised value: \$125,000 (no remainder damage). The appraiser valued land at \$5,000/acre. A comparable house on one acre is available. It is estimated it will sell for \$120,000 (adjusted listing price).</i> | |
| <i>Comparable property</i> | <i>\$120,000</i> |
| <i>LESS: Displacement property*</i> | <i>\$115,000</i> |
| <i>Maximum Purchase Supplement Amount</i> | <i>\$ 5,000</i> |
| <i>* \$10,000 value of two acres of acquisition area excess to typical lot has been deducted.</i> | |

24 VAC 30-41-470. Payment to occupant with a partial ownership.

A. When a displacement dwelling is owned by several persons and occupied by only some of the owners, the replacement housing payment will be the lesser of:

1. The difference between the owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement; or,
2. The difference between the total acquisition cost of the acquired dwelling and the amount determined by the district as necessary to purchase a comparable dwelling.

Generally, the circumstance of partial owner occupants arises when the ownership comes from a family inheritance, where one or more, but not all the heirs, occupy the property.

B. If the displaced partial owner-occupants rent rather than purchase a replacement dwelling, they will be entitled to receive a rent supplement payment if they rent and occupy a decent, safe and sanitary dwelling in accordance with the provisions of 24 VAC 30-41-510 of this chapter.

C. If unusual circumstances would create an unintended hardship on the occupants with a partial ownership, the full facts along with a recommended solution are to be submitted to the central office for consideration.

24 VAC 30-41-480. Revisions to replacement housing amount.

Housing must be offered which is available for purchase within the offered amount. When comparable housing is no longer available within the amount initially established, the district office will review the housing market and establish a revised replacement housing amount. In no event will a purchase supplement amount previously offered be reduced as the result of this review.

24 VAC 30-41-490. Increased interest payments.

A. General. Increased interest payments are provided to compensate a displaced person for higher increased interest costs required for financing a replacement dwelling. The increased interest payment will be allowed only when the dwelling acquired by VDOT was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days before the established eligibility date under Part 7 (usually date of initial offer to purchase). All bona fide mortgages on the dwelling acquired by VDOT will be used to compute the increased interest portion of the replacement housing payment. Home equity loans are valid mortgages on residential real property regardless of how the proceeds from the loans are used. Therefore, they must be included in the computation. In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less. When the property is secured with an adjustable rate mortgage, the mortgage interest rate that is current on the property as of the date of acquisition will be used in the computation. The displaced person will be advised of the approximate amount of this payment as soon as the facts relative to the person's current mortgages are known. The payment will be made at the time of closing on the replacement dwelling, so that the new mortgage can be reduced.

B. Payment computation. The computation of the payment for increased interest costs will be the amount which will reduce the mortgage balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage or mortgages on the displacement dwelling. The amount of the increased interest payment will be computed by the district office, utilizing Library Form RW-66, based on:

1. The unpaid mortgage balances on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance computed in the buydown determination, the payment will be prorated and reduced accordingly.
2. The remaining term of the mortgage or mortgages on the displacement dwelling or the term of the new mortgage, whichever is shorter.
3. The interest rate on the new mortgage which shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

C. To whom payment is made. The increased interest amount can be paid to the displaced individual or family. On written instruction from the displacee, it can be paid to the mortgagee of the replacement dwelling. Upon specific request, VDOT can make an advance payment into escrow prior to the displacee moving.

The following calculation shows how this increased interest cost is determined:

| Example Increased Mortgage Interest Payment | |
|------------------------------------------------------------------------------------------------------|---------------------|
| FACTS: | |
| 1. Outstanding balance – acquired dwelling mortgage | \$43,210 |
| 2. Outstanding balance – replacement | \$47,000 |
| 3. Remaining term, in months, acquired dwelling mortgage | 212 |
| 4. Term, in months, replacement dwelling mortgage | 360 |
| 5. Interest rate – acquired dwelling mortgage | 7.5% |
| 6. Interest rate – replacement mortgage | 8.0% |
| DETERMINATION: | |
| 1. Monthly payment required to amortize a loan of \$43,210 in 212 months at an annual rate of 7-1/2% | \$368.38 |
| 2. Amount of reduced loan having a monthly payment of \$368.38 for 212 months at interest rate of 8% | \$41,749 |
| 3. Increased Mortgage Interest Payment: | \$1,462 |
| | \$43,210 - \$41,749 |

D. Partial acquisition.

1. When the displacement or the replacement dwelling is located on a tract larger than normal for residential use in the area, the interest payment will be reduced to the percentage ratio that the respective acquisition price bears to the value of the part of the property normal for residential use property, except the reduction will not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

2. Where a dwelling is located on a tract larger than normal for residential use in the area, the total mortgage balance will be reduced to the percentage ratio that the value of the residential portion bears to the before value for computational purposes. This reduction will apply whether or not it is required that the entire mortgage balance be paid.

E. Multi-use properties. The interest payment on the multi-use properties will be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

F. Other highest and best use. If the dwelling is located on a tract where the fair market value is established on a higher

and better use than residential and if the mortgage is based on residential value, the interest payment will be computed as provided in the appropriate sub-section above. If the mortgage is obviously based on the higher use, however, the interest payment will be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.

24 VAC 30-41-500. Incidental expenses (closing costs incurred in purchase of replacement dwelling).

The incidental expenses payment is the amount necessary to reimburse the homeowner for the reasonable costs actually incurred incidental to the purchase of the replacement dwelling, but not for prepaid expenses such as prepaid real estate taxes, fire insurance, etc. Such costs include the following items if normally paid by the buyer:

1. Legal, closing and related costs, including those for title search and mortgage insurance, preparing conveyance instruments, notary fees, preparing surveys and plats and recording fees;
2. Lender, Federal Housing Administration (FHA) or Veterans Administration (VA) appraisal fees;
3. FHA or VA application fee;
4. Certification of structural soundness when required by the lender;
5. Credit report;
6. Owner's and mortgagee's evidence of title, e.g., title insurance, (not to exceed the cost for the comparable replacement dwelling);
7. Escrow agent's fee;
8. State and local revenue or documentary stamps, sales or transfer taxes charged to record deed (not to exceed the costs for a comparable replacement dwelling);
9. Loan origination or assumption fees that do not represent prepaid interest;
10. Purchaser's points, but not seller's points, normal to similar real estate transactions;
11. Such other costs as VDOT determines to be incidental to the purchase;

No fee, cost, charge or expense is reimbursable as an incidental expense when it is determined to be part of the debt service or finance charge under the Truth in Lending Act. Except when the replacement housing amount is paid into escrow, the combined total of the payments under this section will be claimed and paid in a lump sum.

24 VAC 30-41-510. Owner-occupant for 180 days or more who rents.

A. An owner-occupant eligible for a replacement housing payment under this section who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed \$5,250. The amount of a rent supplement also will not exceed the amount the displaced family would have received had the family purchased replacement housing.

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B. The payment is to be computed and disbursed in accordance with the provisions of 24 VAC 30-41-520, except that the present rental rate for the displacement dwelling will be the economic rent.

C. An owner-displacee retains eligibility for a replacement housing payment if replacement housing is purchased and occupied within one year after the date of final payment is received for the acquired property. Further, eligibility to submit a claim for relocation benefits extends for 18 months from the date of final payment for the acquired property. An owner who initially rents replacement housing may later purchase and qualify for a replacement housing payment. The total amount of the rent and the purchase supplements, however, will not exceed the amount that would have been received if the displacee had initially purchased replacement housing.

PART IX.

REPLACEMENT HOUSING BENEFITS FOR TENANTS, AND OWNERS WHO CHOOSE TO RENT REPLACEMENT HOUSING.

24 VAC 30-41-520. General.

A. A residential tenant who was in occupancy at the displacement dwelling for 90 days or more before the initiation of negotiations for the property is eligible to receive a rent supplement to provide for relocation to comparable replacement housing. An owner-displacee who was in occupancy from 90 - 179 days before the initiation of negotiations is eligible for the same benefits as the tenant-displacee of 90+ days.

B. A displaced owner or tenant eligible under this category can receive a replacement housing payment not to exceed \$5,250 to rent a decent, safe and sanitary replacement dwelling. A tenant may be eligible for a down payment supplement up to \$5,250. The monetary limit of \$5,250 for a rental replacement housing payment, or a down payment supplement, does not apply if provisions of Last Resort Housing are applicable (see Part XI (24 VAC 30-41-650 et seq.)).

C. A discussion of rent supplement determination is found in the "Guidance Document for the Determination of Certain Financial Benefits to Displacees" (to become effective the same date as this regulation).

24 VAC 30-41-530. Payment computation.

A. The rental replacement housing determination is 42 times the amount obtained by subtracting the base monthly rental including utilities (heat, electric, water and sewer) for the displacement dwelling from the lesser of:

1. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling as defined in 24 VAC 30-41-30; or
2. The monthly rent and estimated average monthly cost of utilities for the decent, safe and sanitary replacement dwelling actually occupied by the displaced person.

B. The district office will determine the rental rates of comparable housing by use of the three comparable methods (24 VAC 30-41-430), except with regard to the adjustment of

asking price. Less than three comparables may be used for this determination when it is concluded, after a diligent search, that fewer comparable rental units are available. If the determination is based on fewer than three comparables, the project file will be documented as to the efforts to locate comparable housing.

C. The base monthly rental for the displacement dwelling is the lesser of:

1. The average monthly cost for rent and utilities at the displacement dwelling during the last three months. For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent unless its use would result in a hardship because of the person's income or other circumstances; or
2. Thirty percent of the average gross household income from all sources. Income must be supported by tax documents, employer verification, etc. If the district manager determines that income is not disclosed or the amount is not adequately supported, the benefit will be based on rent and utilities in subdivision 1 of this subsection.

D. Utility costs of heat, electricity, water and sewer must be included in both the displacement and selected comparable rent. Reasonable efforts should be made to secure accurate information. The displacee's utility bills or a statement from the utility company is best. If actual costs are not available, a reasonable estimate should be made based on size and type of unit and other factors. The basis for the utility estimate should be documented in the project file.

E. If the displacee receives public assistance that allocates an amount for housing costs and the displacee has been informed of such allocation, the payment will be considered within the individual's financial means and the rent supplement will be computed in accordance with this section.

24 VAC 30-41-540. Disbursement of rental replacement housing payment.

The rental payment, in the amount of \$5,250 or less, as determined in 24 VAC 30-41-530 shall be paid in a lump sum, unless the district manager determines that it should be paid in installments.

24 VAC 30-41-550. \$5,250 limit on offers.

A rent supplement payment offer is limited to \$5,250 under normal program authority. VDOT has an overriding responsibility, however, to enable tenant displacees to rent replacement housing within their financial means. See 24 VAC 30-41-30 for the definition of "financial means." If the payment computation exceeds \$5,250, last resort housing provisions are applicable. See Part XI (24 VAC 30-41-650 et seq.) for last resort housing provisions.

24 VAC 30-41-560. Change of occupancy.

If a tenant, after moving to a decent, safe and sanitary dwelling, relocates within the one-year period specified in 24 VAC 30-41-340 to a higher cost rental unit, another claim may be presented for the amount in excess of that amount

which was originally claimed, but not to exceed the total rent supplement originally computed.

24 VAC 30-41-570. Down payment benefit - 90-day tenants.

A. A displaced tenant eligible for a rental replacement housing payment who elects to purchase a replacement dwelling in lieu of accepting such rental assistance payment may elect to apply the entire computed payment to the purchase of a replacement dwelling. This payment may be increased to any amount, not to exceed \$5,250, for the purchase of a replacement dwelling and related incidental expenses.

B. VDOT has a responsibility to enable a displacee to relocate to housing of the same tenancy or ownership status as was occupied before displacement. Efforts will be made through advisory assistance and the down payment benefit to assist a tenant to move to ownership, but the achievement of ownership by tenants is not a program requirement.

24 VAC 30-41-580. Section 8 Housing Assistance Program.

A. Program features.

1. Section 8 is a rent subsidy program funded by the U.S. Department of Housing and Urban Development (HUD), to enable low-income families to rent privately owned decent, safe and sanitary housing. Section 8 is administered by local housing agencies. Landlords receive a subsidy representing the difference between 30% of an eligible tenant's adjusted gross household income, and reasonable housing rent as determined under program rules.

There are three types of Section 8 housing:

- a. A certificate based on the income of the recipient and the rent paid;
- b. A voucher, which pays a specific amount toward the recipient's rent; and
- c. Market rehab unit.

The first two program types are portable, meaning the benefit moves with the recipient. The market rehab form stays with the housing facility.

2. Section 8 assistance has a feature that is superior to the relocation rent supplement in that it is not limited to 42 months, but continues as long as the recipient household is income eligible. The district office should make every effort to relocate existing Section 8 recipients to units in which their Section 8 benefits will continue. If a normal relocation rent supplement is paid, the local housing agency may consider this income, and disqualify the displaced household from eligibility for Section 8. It may be difficult to reenter the program, as there is usually a long waiting list. The district office should closely coordinate with the administering local housing agency.

B. Replacement housing payment computation. In order to transfer Section 8 benefits the recipient must relocate to a decent, safe and sanitary unit in which the owner agrees to participate in this program. Local housing agencies generally maintain current lists of participating owners and properties.

The criteria below will apply, corresponding to the type of Section 8 program the displacee is receiving:

- 1. For the certificate program, rent must be less than the ceiling set as fair market rent in the HUD schedule for the local area. Housing agencies will provide a copy of the current HUD established local schedule.
- 2. For a recipient in the voucher program Section 8 will pay up to the housing authority approved payment standard for the area. This is usually 80-100% of the fair market rent in subdivision 1 of this subsection. The recipient may pay the landlord the difference if actual rent is higher than the standard.
- 3. Market rehab Section 8 recipients may remain in Section 8 on concurrence of the local housing agency and the landlord.

In determining the rent supplement amount, assume utility costs are the same as before relocation. An effort should be made to use comparable dwellings meeting Section 8 criteria. The standard of base monthly rent should be used, which is the lower of the following: existing rent before subsidy, market rent, or 30% of income. Under the Section 8 certificate program, rent paid should be the same as 30% of income. However, this will not always be the case in the Voucher program. An example is provided below:

| Example Rent Supplement – Section 8 Voucher Program | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| FACTS BEFORE RELOCATION: | |
| Displacee household income | \$1,000/month |
| 30% of income | \$ 300/month |
| Fair market rent and contract rent | \$ 550/month |
| Actual rent paid (Section 8 voucher = \$225) | \$ 325/month |
| AFTER RELOCATION: | |
| Displacee moves to comparable housing at \$550/month and retains Section 8 voucher paying \$225 to landlord. VDOT pays rent supplement on incremental difference between 30% of income (\$300) and actual replacement rent (\$325). | |
| $(\$325 - \$300) \times 42 \text{ months} = \$1,050$ | |

C. Displacee options. The agent will inform the displacee of the replacement housing payment, both with and without Section 8 participation and advise of the following options:

- 1. Accept VDOT conventional rent supplement, which is limited to 42 months, and may disqualify the displacee for Section 8 in the future.
- 2. Receive down payment subsidy of \$5,250 to assist in purchase of a replacement dwelling. or
- 3. Retain Section 8. VDOT will pay rent supplement only to the extent of any difference between Section 8 subsidy and base monthly rent (as in above example). In most cases, the VDOT payment will be \$0. Tenants should be encouraged to accept this option if they plan to continue to rent and have no prospects of significant increase of income.

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D. *Tenant not on Section 8 before displacement. Determine rent supplement based on comparable unsubsidized housing, and the lesser of existing rent, market rent or 30% of income. This is a conventional rent supplement situation. If the tenant moves to Section 8 housing as a replacement, recalculate based on the net increase (if any) in monthly housing cost to the displacee after applying the Section 8 subsidy.*

PART X.
MOBILE HOMES.

24 VAC 30-41-590. General.

A. *Mobile homes have special legal and physical characteristics as opposed to conventional housing types. Mobile home occupants are entitled to the same relocation benefits as apply to all other displacees. However, certain policy adjustments and special benefit determination methods need to be employed because of the following unique characteristics:*

1. *Eligibility; personalty vs. realty. A mobile home may have legal status as either real estate or personalty depending on factors such as the permanency of its fixture to the ground, its condition, and the intention of the owner in placing the mobile home on its present location.*

An initial presumption should be made that a mobile home located on proposed right of way is personalty, and that the present owner will retain ownership and move the mobile home from the right of way. However, in some cases it will be clear that the unit is part of the real estate. For instance, the mobile home that is on a concrete foundation with basement and is on a professionally landscaped site would be considered real estate. In many cases the distinction is not clear. Legal advice may be secured from the assistant attorney general. Also, the district manager should monitor mobile home personalty/realty determinations to assure that they are made on a fair and consistent basis.

A mobile home determined to be real estate will be acquired and the occupant, if the owner, will be provided relocation benefits as an owner-occupant-displacee.

A mobile home considered as personalty and not real estate may be acquired and relocation benefits provided as an owner occupant under the following circumstances:

- a. *The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable cost;*
- b. *The mobile home itself is not and cannot economically be made a decent, safe and sanitary dwelling;*
- c. *The mobile home cannot be relocated because there is no available comparable replacement site; or*
- d. *The mobile home cannot be relocated because it does not meet mobile home park entrance requirements.*

The determination as to whether to acquire an owner-occupied mobile home considered to be personalty should be made promptly after the first relocation contact has been made with the occupant. In making this determination, consideration must be given to whether the mobile home itself is not a decent, safe and sanitary unit because of its

physical condition or its size. Under the procedures outlined in this section, it is not intended that an offer be made by VDOT to acquire a mobile home simply because of required utility deficiencies such as hot and cold running water and septic system. Considering the above, if it is determined by the district manager that VDOT has an obligation to offer to acquire the mobile home, the relocation agent is to contact several reputable mobile home dealers in the area to establish the amount that the mobile home would bring if offered for sale on the open market (salvage value or trade-in value, whichever is higher, shall be used when computing the price differential amount). Once this value is established and approved by the district manager, the approved amount will be used for comparison against the amount established as necessary for the displacee to purchase and relocate into comparable decent, safe and sanitary replacement facility. Upon approval of the maximum replacement housing payment, an offer is to be made for the purchase of the mobile home. Simultaneously, the displacee will be advised of the approved maximum replacement housing payment and the basis for establishing that amount. In the event the displacee refuses VDOT's offer, the district files are to be so documented and no further attempt made to acquire the mobile home. This being the case, the mobile home occupant is to be advised of the Replacement Housing Payment which is the difference between the established value of the mobile home and that amount necessary to acquire a comparable decent, safe and sanitary facility as computed above. Under these conditions the cost to move the mobile home is not an eligible expense.

If VDOT's offer to acquire the mobile home is accepted, the district must have the owner execute an agreement of sale. Upon delivery of the check to the owner, the district will obtain title to the mobile home, a bill of sale, an affidavit, or other proof of ownership. Upon relocation of the occupants, the disposal of the mobile home will be handled in the same manner as other acquired buildings.

2. *Owner/tenancy status; mobile home and site. A characteristic unique to the mobile home payment computation is that there is often a divided ownership of the dwelling unit and its site. A mobile home occupant may own the dwelling but rent the site. Conversely, an occupant may own the site and rent the dwelling unit. Relocation benefits will conform to this feature by treating the site and the dwelling separately for purposes of determining replacement housing benefits. This is discussed more fully in 24 VAC 30-41-630.*

24 VAC 30-41-600. Mobile home park displacement.

The proposed right of way may include a portion of a mobile home park. VDOT will determine whether a sufficient portion of the park is taken to cause the owner-operator of such park to discontinue business because of not having an economic remainder to conduct operations. If the remainder is not an economic unit as a mobile home park, all occupants of mobile home units will be considered displaced persons eligible for appropriate relocation benefits, whether or not the residue on which any of the mobile homes are located is acquired by VDOT. The owner-operator may qualify for benefits as a

business displacee, as well a residential displacee, if the owner-operator resides in a unit on the property.

24 VAC 30-41-610. Moving expenses.

A. A nonoccupant owner of a rented mobile home can be paid for actual, reasonable cost of moving the mobile home or other personal property, or both, under provisions of 24 VAC 30-41-210.

If a displaced mobile home owner files a claim for actual moving expenses for moving the mobile home to a replacement site, the reasonable cost of disassembling, moving and reassembling attached items such as porches, decks, skirting and awnings, anchoring of the unit and utility "hook-up" charges are reimbursable. The cost of repairs or modifications to enable the unit to be moved to a replacement site may be paid. VDOT must determine in advance that it is necessary and practical to do so. Payment will be limited to the reasonable costs of moving the mobile home and making necessary repairs or modifications.

B. Nonreturnable entrance fees are reimbursable as part of actual cost moving expenses to an owner- or tenant-occupant, unless comparable mobile home parks are available which do not require entrance fees.

C. If the mobile home is not moved, the owner- or tenant-occupant may be paid for moving personal property in accordance with the moving expense schedule referred to in 24 VAC 30-41-220, or actual reasonable expenses in accordance with 24 VAC 30-41-210.

D. If the owner is reimbursed for the cost of moving the mobile home under these procedures, the owner is not eligible to receive a replacement housing payment, or rent supplement to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for a rent or purchase supplement to enable the displacee to secure a replacement site, as discussed in 24 VAC 30-41-630.

24 VAC 30-41-620. Replacement housing payments; general.

A. The ownership or tenancy of the mobile home, not the land on which it is located, determines the occupant's status as an owner or a tenant. The length of ownership and occupancy of the mobile home on the mobile home site will determine the occupant's status as a 180-day or 90-day owner or tenant.

The mobile home must be occupied on the same site (or in the same mobile home park) for the requisite 90 or 180 days to make the occupant fully eligible for rent or purchase supplement benefits.

B. After the above eligibility determinations are made, the replacement housing payment is computed in two parts:

1. If the mobile home is being acquired, the replacement housing, or rent supplement payment is computed for the mobile home unit in accordance with the same procedures for any other dwelling unit.

2. The replacement housing or rent supplement payment is computed separately for the mobile home site in accordance with normal procedures. The payment amount

is limited to the maximums according to the displacee's ownership or tenancy of the land.

The sum of the two parts computed above cannot exceed the maximum limitation of the \$5,250 for 90-day owner and tenant-occupants or \$22,500 for 180-day owner-occupants, unless last resort housing provisions in accordance with Part XI (24 VAC 30-41-650 et seq.) are applicable. Replacement housing and rent supplement offers and payments will be computed in accordance with Parts VIII (24 VAC 30-41-390 et seq.) and IX (24 VAC 30-41-520 et seq.) of this chapter. The offer will set the maximum limit of the supplemental payment.

When determining the purchase supplement payment for an owner-occupant-displacee from a mobile home, the cost of a comparable is the reasonable cost of a comparable mobile home, including the site. When a comparable mobile home is not available, the supplement may be determined using a conventional dwelling.

If a mobile home requires repairs or modifications to permit its relocation to another site and the district office determines that it would be practical to make the repairs or modifications, the cost of a comparable dwelling is the value of the displacee's mobile home plus the cost to make the necessary repairs or modifications.

24 VAC 30-41-630. Replacement housing payments; 180-day owner-occupant.

A. General. A displaced owner of a mobile home who has occupied the home and site for at least 180 days is eligible for the following as a replacement housing benefit:

1. The additional cost necessary to purchase replacement housing as specified in subdivisions 2, 3, 4, and 5 of this subsection, and in accordance with the provisions of Part VIII (24 VAC 30-41-390 et seq.) of this chapter;

2. Compensation for the loss of favorable financing on the existing mortgage in the financing of such replacement housing, under the provisions of 24 VAC 30-41-500; and

3. An amount to reimburse the owner for incidental expenses incident to the purchase of such replacement housing in accordance with the provisions of 24 VAC 30-41-510.

A displaced owner-occupant of a mobile home eligible for a replacement housing payment as shown above who elects to rent is eligible for a rental replacement housing payment, not to exceed \$5,250, in accordance with 24 VAC 30-41-510.

B. Acquisition of mobile home and site from owner-occupant.

1. The purchase supplement payment will be an amount, if any, which when added to the amount for which VDOT acquired the mobile home and site equals the lesser of:

a. The amount the owner is required to pay for a decent, safe and sanitary replacement mobile home and site; or

b. The amount determined by the district office as necessary to purchase a comparable mobile home and site in accordance with the provisions of 24 VAC 30-41-430.

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2. Rental replacement housing payment. If the owner elects to rent, the rent supplement will be determined by subtracting 42 times the economic rent of the mobile home and site from the lesser of:

- a. The amount determined by the district office necessary to rent a comparable mobile home and site for a period of 42 months; or
- b. Forty-two times the monthly rent paid for the replacement mobile home and site.

C. Acquisition of site only - owner-occupant retains mobile home.

1. Upon acquisition of the site but not the home situated upon the site and the mobile home is required to be moved, the replacement housing payment will be the amount, if any, which when added to the amount for which VDOT acquired the mobile home site equals the lesser of:

- a. The amount the owner is required to pay for a comparable site; or
- b. The amount determined by the district office as necessary to purchase a comparable mobile home site.

2. If the owner elects to rent, the rent supplement shall be determined by subtracting 42 times the economic rent of the mobile home site from the lesser of:

- a. The amount determined as necessary to rent a comparable mobile home site for 42 months; or
- b. Forty-two times the monthly rent paid at the replacement mobile home site.

D. Acquisition of mobile home only - owner-occupant rents site.

1. The replacement housing payment is to be the amount, if any, which when added to the amount for which VDOT acquired the mobile home equals the lesser of:

- a. The actual amount the owner is required to pay for a replacement dwelling; or
- b. The amount determined as necessary to purchase a comparable mobile home, plus the difference in the amount determined by the district office as necessary to rent a comparable mobile home site for a period of 42 months and 42 times the rent being paid on the site acquired.

The entire computed amount may be applied toward the purchase of a comparable mobile home site, if so desired.

2. If the owner elects to rent a replacement mobile home, the rent supplement payment shall be determined by subtracting 42 times the economic rent of the mobile home and the actual rent of the site from the lesser of:

- a. The amount determined by the district office as necessary to rent a comparable mobile home and site for 42 months; or
- b. Forty-two times the monthly rent paid for the replacement dwelling.

E. Acquisition of rental site only - mobile home not acquired. When the site is acquired but not the mobile home, which must be moved, the owner-occupant of the mobile home is eligible for up to \$5,250 as a rent supplement for a comparable replacement site. This rent supplement payment shall be the difference determined by subtracting 42 times the rent on the site being acquired from the lesser of:

1. The amount determined as necessary to rent a comparable home site for 42 months; or
2. Forty-two times the monthly rent paid for the replacement site.

The entire computed amount may be applied toward the down payment and incidental expenses on a comparable home site.

24 VAC 30-41-640. Replacement housing payment to tenants of 90 days or more and owner occupants for 90-179 days.

A displaced owner or tenant of a mobile home or site, or both, under this category can receive a replacement housing payment not to exceed \$5,250 (except under last resort housing) to rent a comparable decent, safe and sanitary mobile home or site, or both, or make a down payment on either or both computed as follows:

1. The rental replacement housing payment is to be determined in accordance with the provisions of 24 VAC 30-41-530.
2. If a purchase decision is made, the entire computed rental payment may be applied towards the purchase, including related incidental expenses for a replacement mobile home, site, or both.
3. An owner-occupant under this category is entitled to the same replacement housing payments as the tenant-occupant, except economic rent of the acquired mobile home and site will be used.

PART XI. LAST RESORT HOUSING.

24 VAC 30-41-650. General.

A. No displaced persons will be required to move until a comparable replacement dwelling is made available within their financial means. Comparable replacement housing may not be available on the private market or does not meet specific requirements or special needs of a particular displaced family. Also, housing may be available on the market, but the cost exceeds the benefit limits for tenants and owners of \$5,250 and \$22,500, respectively. If housing is not available to a displacee and the transportation project would thereby be prevented from proceeding in a timely manner, VDOT is authorized to take a broad range of measures to make housing available. These measures, which are outside normal relocation benefit limits, are called collectively last resort housing.

B. It is the responsibility of VDOT to provide a replacement dwelling, which enables the displacee to relocate to the same ownership or tenancy status as prior to displacement. The displacee may voluntarily relocate to a different status. The district office may also provide a dwelling, which changes a

status of the displacee with their concurrence, if a comparable replacement dwelling of the same status is not available.

A more complete discussion of last resort housing appears in the "Guidance Document for Determination of Certain Financial Benefits for Displacees" (to become effective the same date as this regulation).

24 VAC 30-41-660. Utilization of last resort housing.

Last resort housing is applicable when:

1. Comparable replacement housing is not available on the housing market; or
2. Comparable replacement housing is available, but:
 - a. The computed replacement housing payment exceeds the \$22,500 limitation; or
 - b. The computed rent supplement exceeds the \$5,250 limitation.
3. Comparable housing is not available within the financial means of a displaced person who is ineligible to receive a replacement housing payment because of failure to meet length-of-occupancy requirements and when comparable replacement rental housing is not available at rental rates within 30% of the person's gross monthly household income.

24 VAC 30-41-670. Last resort housing plan.

If the analysis of the characteristics and needs of a displaced family indicates that the provision of last resort housing may be necessary, the district office will develop a plan to determine the method of producing comparable replacement housing. In the development of the plan, innovative approaches and methods for the provision and financing of replacement housing will be considered. The plan shall include:

1. Consideration of requirements of local zoning and building codes with reference to methods proposed to provide comparable housing;
2. Discussion of how, when and where housing will be provided;
3. Consideration of environmental suitability of the location of the proposed housing, including consideration of environmental justice;
4. How housing will be financed and the amount of funds to be used for such housing from all funding agencies and private sources;
5. Prices for the housing to be rented or sold is within the financial means of the families and individuals to be displaced;
6. Arrangements for maintaining rent levels appropriate for the persons to be relocated;
7. Arrangements for rental housing management;
8. Disposition of the proceeds from rental, sale, or resale of such housing;
9. How the construction will be monitored; and

10. Any other comments pertinent to providing replacement housing.

The central office relocation section may perform the approval of Last Resort Housing Plans when the computation exceeds an amount determined by the director of the right of way and utilities division.

Last resort housing cases are often identified during the process of providing relocation services and benefits. They may arise from unique circumstances that affect a displaced household. The relocation plan in these cases will consist of a summary of the specific relocation problems, a discussion of methods considered and a detailed statement of the method, estimated cost and time required to implement the recommended solution. The method will be implemented on approval of the district manager or an assistant district manager.

24 VAC 30-41-680. Last resort housing alternative solutions.

A. VDOT has broad latitude in the methods used and the manner in which it provides housing of last resort. After consideration of all practical options, a method should be selected which provides comparable housing at the most reasonable cost, within the time constraints of roadway project scheduling and urgency of the displacee's need. Methods for providing this housing include, but are not limited to:

1. Making an offer and payment greater than \$22,500 for a displaced owner or \$5,250 for a displaced tenant;
2. Rehabilitation, modifications or additions to an existing replacement dwelling to accommodate displacee needs;
3. The construction of a new replacement dwelling;
4. The relocation and, if necessary, rehabilitation of a replacement dwelling;
5. The purchase of land or a replacement dwelling, or both, by VDOT and subsequent sale, lease to, or exchange with a displaced person;
6. Acting as mortgagee in financing a displacee's purchase of housing; and
7. The provision of features such as entrance ramps, wide doors, etc., which will make a dwelling accessible to a handicapped displacee.

B. Under special circumstances, consistent with the definition of a comparable replacement dwelling, consideration will be given to providing replacement housing with space and physical characteristics different from those in the displacement dwelling. This may include upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate families displaced from marginal or substandard housing. In no event, however, will a displaced person be required to move into a dwelling that is not functionally equivalent to the displacement dwelling.

24 VAC 30-41-690. Cooperative agreements.

VDOT may enter into agreements with any other federal, state or local agency or contract with any individual, firm,

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corporation or nonprofit association for services in connection with these activities. It is expected that VDOT, to the greatest extent practicable, will utilize the services of federal, state or local housing agencies or other agencies having experience in the administration or conduct of similar housing assistance activities.

24 VAC 30-41-700. Consequential displacement.

Any person displaced because of the acquisition of real property for a last resort housing project under VDOT's power of eminent domain (including amicable agreements under the threat of such power) is entitled to all eligible benefits under the relocation assistance provision. This provision is not applicable to an owner-occupant who voluntarily acts to sell the property to VDOT for last resort housing and owner certifies same in a statement that will be retained in VDOT files.

24 VAC 30-41-710. Last resort housing disbursements.

A. Rental assistance payments made to displacees who rent replacement housing under this section will be paid in annual installments directly to the displacee. However, when in the district manager's judgment, a direct payment or annual payments would not be prudent and in the public interest, other payment options will be arranged. Whenever special payment options are invoked, the file will be documented with the reasons for invoking these options.

B. Displacees may not be required to accept last resort housing in place of a rent supplement or a purchase supplement for which they may be eligible under normal program provisions. A displacee may choose to accept a conventional purchase or rental supplement in lieu of a last resort housing solution. This is conditioned that all eligibility criteria are met, including rental or purchase and occupancy of a decent, safe and sanitary dwelling.

C. Displacees who receive a housing or financial payment under last resort housing will be required to certify that they accept the housing or benefit in lieu of the rent supplement or purchase supplement for which they would otherwise be eligible.

PART XII.

RECORDS, REPORTS AND AUDITS.

24 VAC 30-41-720. Relocation records.

The district office will assemble and maintain records on project, parcel and case levels, showing the basis for major decisions and benefit determinations. Copies of all official forms and letters to and from displacees will be retained.

The following specific records will be retained:

1. State and Federal Project and Parcel identification.
2. Date of initiation of negotiations for project.
3. Names and addresses of displaced persons and their complete original and new addresses and telephone numbers (Library Forms RW-69A and 69B).
4. Personal contacts made with each displaced person, including for each:

- a. Date of notification of availability of relocation payments and services (Library Forms RW-69A, RW-59 (1), (2), and (3) and RW-68A);

- b. Name of the relocation agent offering or providing the relocation assistance (Library Forms RW-69A and RW-68A);

- c. Whether the offer of assistance in locating or obtaining replacement housing was declined or accepted and the name of the individual accepting or declining the offer (Library Form RW-69B);

- d. Date and substance of all relocation contacts (Library Form RW-68A);

- e. Date on which the relocated person was required to move from the property acquired for the project (included in the confirmation or acceptance letter in the parcel file);

- f. Date on which actual relocation occurred (Library Forms RW-67A or B); and

- g. Type of tenure before and after relocation (Library Forms RW-69A and 69B).

5. For displacements from dwellings:

- a. Number in family (Library Form RW-69A);

- b. Type of property (Library Form RW-69A);

- c. Monthly rental (Library Form RW-69A); and

- d. Number of rooms occupied (Library Form RW-69A).

6. For relocated businesses, farms and nonprofit organizations:

- a. Type of business (Library Form RW-69A);

- b. Whether continued or terminated (Parcel File); and

- c. If relocated, approximate distance moved (Library Form RW-67B).

24 VAC 30-41-730. Moving expense records.

The district office will maintain records containing the following information regarding moving expense payments for each displacee:

1. The date the removal of personal property was accomplished (Library Form RW-67A or B);

2. The location from which and to which the personal property was moved (Library Forms RW-69A, RW-67A or RW-67B);

3. If the personal property was stored temporarily, the location where the property was stored, the duration of such storage and justification for the storage and storage charges. (Library Form RW-67A or B);

4. Itemized statement of the cost incurred supported by receipted bills or other evidence of expense (Library Form RW-67A or B);

5. Amount of reimbursement claimed, amount allowed and an explanation of any difference (Library Form RW-67A or B);

6. Data supporting any determination that a business cannot be relocated without a substantial loss of its existing

patronage and that it is not part of a commercial enterprise having more than three establishments not being acquired (Parcel File); and

7. When an in lieu of payment is made to a business, nonprofit organization, or farm operation, data showing how the payment was computed (Parcel File).

24 VAC 30-41-740. Replacement housing payment records.

The district office shall maintain records containing the following information regarding replacement-housing payments for each displacee:

1. The date of receipt of each application for such payment (Library Forms RW-65A(1), RW-65B and RW-65C(1));
2. The date on which each payment was made or the application rejected (Parcel File);
3. Supporting data showing how the amount of the supplemental payment to which the applicant is entitled was calculated (Library Form RW-62A or RW-62B);
4. A copy of the closing statement to support when replacement housing is purchased (Parcel File);
5. A copy of the Truth in Lending Statement and other data, including computations to support the increased interest payment (Parcel File and Library Form RW-66);
6. The individual responsible for determining the amount of the replacement housing payment shall place in the file a signed and dated statement setting forth:
 - a. The amount of the replacement housing payment (Library Forms RW-62A and B);
 - b. An understanding that the determined amount is to be used in connection with a federal-aid highway project (Library Forms RW-62A and B);
 - c. There is no direct or indirect present or contemplated personal interest in this transaction nor will any benefit be derived from the replacement housing payment (Library Forms RW-62A and B); and
7. A statement that the relocated person has been relocated into decent, safe and sanitary replacement housing (Library Form RW-69B).

24 VAC 30-41-750. Reports.

VDOT will submit the following reports as scheduled or requested by the Federal Highway Administration:

1. Annual Federal Uniform Act Statistical Report. An annual Uniform Act Statistical Report will be submitted for the period ending September 30 each year. The report shall be prepared by the central office relocation section and submitted to the Federal Highway Administration.
2. Periodic Report of Residential Moving Cost Schedules. Periodically, the district office will be requested to initiate a survey to determine the adequacy of the current residential moving cost schedules.

Local, reputable movers shall be contacted in order to determine their charges for moving unfurnished dwellings and furnished dwellings.

Requests to the districts to provide information will be issued by the central office as necessary.

24 VAC 30-41-760. Relocation audits.

A. In order to ensure consistency in the implementation of the relocation program, relocation audits will be performed on a periodic basis by the central office relocation section. The projects selected for audit should include residential occupants (both owners and tenants) and businesses.

B. Audits will include review of district and central office files and interviews with some of the displacees. Upon completion of the audit, a written report detailing the audit findings will be provided to the appropriate district right of way and utilities manager for review. A meeting will be held with the central office relocation auditor or auditors and the district manager to discuss details and recommendations.

NOTICE: The forms used in administering 24 VAC 30-41-10 et seq., Rules and Regulations Governing Relocation Assistance, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Commonwealth Transportation Board, 1401 E. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

RW-59(1) (Form letter for moving families w/certification of citizenship/legal residence) (rev. 11/98).

RW-59(2) (Form letter for moving personal property w/certification of citizenship/legal residence) (rev. 8/99).

RW-59(3) (Form letter for moving businesses, farms, and nonprofit organizations w/certification of citizenship/legal residence) (rev. 8/99).

Occupancy Agreement (no form number) (rev. 8/99).

RW-60A, Moving Cost Application (Families and Individual/Personal Property only) (rev. 10/00).

RW-60B, Moving Cost Application (Businesses, Farms, and Nonprofit Organizations) (rev. 8/00).

RW-62C, Occupancy Affidavit (Tenants) (rev. 8/99).

RW-65A(1), Application for Purchase Replacement Housing Payment (Owner-occupant for 180 days or more) (rev. 4/01).

RW-65B(1), Application for Purchase Replacement Housing Payment (Owner-occupant for less than 180 days but not less than 90 days/Tenant-occupant of not less than 90 days) (rev. 4/01).

RW-65C(1), Application for Rental Replacement Housing Payment (rev. 11/98).

RW-67A, Moving Cost Payment Claim (Families and Individuals/Personal Property only) (rev. 11/98).

RW-67B, Moving Cost Payment Claim (Businesses, Farms, and Nonprofit Organizations) (rev. 8/99).

VA.R. Doc. No. R99-69; Filed May 29, 2001, 9:50 a.m.



FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 F of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4 VAC 20-620-10 et seq. Pertaining to Summer Flounder (amending 4 VAC 20-620-70).

Statutory Authority: §§ 28.2-201 and 28.2-204 of the Code of Virginia.

Effective Date: June 1, 2001.

Summary:

The amendment reduces the 2001 recreational landings by 4.0% in order to maintain compliance with the Atlantic States Marine Fisheries Commission management plan for summer flounder.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, 2600 Washington Avenue, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-620-70. Recreational fishing season.

A. The recreational fishing season shall be closed from January 1 through March 28, and from July 24 through August 4, ~~except as described in subsection B of this section 7.~~

~~B. The recreational fishing season for the Potomac River tributaries shall be closed from January 1 through June 5.~~

~~C. B.~~ It shall be unlawful for any person fishing recreationally to take, catch, or possess any Summer Flounder during any closed recreational fishing season.

~~D. C.~~ Nothing in this chapter shall prohibit the landing of Summer Flounder in Virginia which were legally harvested in the Potomac River.

VA.R. Doc. No. R01-211; Filed May 29, 2001, 10:12 a.m.

* * * * *

Title of Regulation: 4 VAC 20-950-10 et seq. Pertaining to Black Sea Bass (amending 4 VAC 20-950-45).

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

Effective Date: May 25, 2001.

Summary:

The amendments revise the threshold amount of landings from 50% to 40%, which triggers a lowering of initial quarterly (2nd, 3rd and 4th quarters) possession limits, as pertaining to those three periods of time. The amendments also add prohibitions that are enacted when the threshold amount of landings (40%) is reached in the 2nd, 3rd or 4th quarters.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, 2600 Washington Avenue, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-950-45. Possession limits and harvest quotas.

A. During the period January 1 through March 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 9,000 pounds of black sea bass, except when it is announced that 75% of the coastwide quota for this period has been taken; then, it shall be unlawful for any person to possess aboard any vessel or land in Virginia more than 4,500 pounds of black sea bass, until such time that the coastwide quota for this period has been reached.

B. During the period April 1 through June 30 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 1,500 pounds of black sea bass, ~~except, then~~. When it is announced that 50% 40% of the coastwide quota for this period *is projected to have been taken; then, it shall be unlawful for any person to possess aboard any vessel or land in Virginia more than 750 pounds of black sea bass, until such time that the coastwide quota for this period has been reached*, the provisions of subsection E of this section shall apply.

C. During the period July 1 through September 30 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 1,000 pounds of black sea bass, ~~except~~. When it is announced that 50% 40% of the coastwide quota for this period *has is projected to have been taken; then, it shall be unlawful for any person to possess aboard any vessel or land in Virginia more than 500 pounds of black sea bass, until such time that the coastwide quota for this period has been reached*, the provisions of subsection E of this section shall apply.

D. During the period October 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 2,000 pounds of black sea bass, ~~except~~. When it is announced that 50% 40% of the coastwide quota for this period has been taken; ~~then, it shall be unlawful for any person to possess aboard any vessel or land in Virginia more than 1,000 pounds of black sea bass, until such time that the coastwide quota for this period has been reached~~, the provisions of subsection E of this section shall apply.

E. When it is announced that 40% of the coastwide quota for any of the periods designated in subsections B, C, and D of this section has been taken, it shall be unlawful for any person to do any of the following:

- 1. Possess aboard any vessel in Virginia waters more than 1,000 pounds of black sea bass.
2. Land black sea bass in Virginia, for commercial purposes, more than four times within each consecutive seven-day period, with the first seven-day period beginning upon the announcement that 40% of the coastwide quota for the period has been taken.
3. Land in Virginia more than a total of 1,000 pounds of black sea bass during each consecutive seven-day period, with the first seven-day period beginning upon the announcement that 40% of the coastwide quota for the period has been taken.
4. Fail to contact the Marine Resources Commission's Interactive Voice Recording system within 24 hours of landing to report the name of the vessel and fisherman and the weight of each landing of black sea bass.

F. It shall be unlawful for any person to possess or to land any black sea bass for commercial purposes after the coastwide quota for the designated period as described in subsections A through D of this section has been attained and announced as such.

G. It shall be unlawful for any buyer of seafood to receive any black sea bass after any commercial harvest quota has been attained and announced as such.

H. It shall be unlawful for any person to possess or to land any black sea bass for recreational purposes, from March 1 through March 31 and from July 15 through August 14 of each year.

I. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 25 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 25. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

J. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection I of this section shall be presumed to be for commercial purposes.

VA.R. Doc. No. R01-209; Filed May 26, 2001, 11:36 a.m.

Title of Regulation: 4 VAC 20-1040-10 et seq. Pertaining to Crabbing Licenses (amending 4 VAC 20-1040-20).

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

Effective Date: May 26, 2001,

Summary:

The amendment provides that the sales of commercial crabbing licenses for 2001, 2002 and 2003 shall only be issued to holders of the identical license in 2000. The amendment also extends the moratorium on the sale of additional commercial crab gear licenses until May 26, 2004.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, 2600 Washington Avenue, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-1040-20. License sales moratorium.

A. Except as provided in subsection B of this section, additional commercial licenses for crab pots, peeler pots, crab scrapes, crab traps, ordinary trot lines, patent trot lines, and crab dip nets for the 2000 crabbing season shall not be sold after May 25, 2000. Crabbing licenses sold for the 2001, 2002 and 2003 crabbing seasons shall be issued only to those registered commercial fishermen who held the identical valid crabbing license in 2000.

B. Commercial licenses for crab pots, peeler pots, crab scrapes, crab traps, ordinary trot lines, patent trot lines, and crab dip nets may be transferred to an immediate family member of the licensee and, in the case of death or incapacitation of the licensee, may be transferred to a registered commercial fisherman. Crabbing licenses also may be transferred to another registered commercial fisherman if the licensee's boat or vessel and gear used for crabbing are also transferred or sold to the registered commercial fisherman. All such transfers shall be documented on forms provided by the commission and shall be subject to the approval of the commissioner.

C. The moratorium on the sale of additional commercial licenses for crab pots, peeler pots, crab scrapes, crab traps, ordinary trot lines, patent trot lines, and crab dip nets shall end on May 26, 2004.

VA.R. Doc. No. R01-208; Filed May 25, 2001, 11:42 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: 4 VAC 25-90-10 et seq. Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines (amending 4 VAC 25-90-10 through 4 VAC 25-90-100; repealing 4 VAC 25-90-120, 4 VAC 25-90-270, 4 VAC 25-90-300, 4 VAC 25-90-340, and 4 VAC 25-90-360).

Statutory Authority: §§ 45.1-161.3, 45.1-161.106 and 45.1-161.206 of the Code of Virginia.

Effective Date: July 18, 2001.

Summary:

The amendments reorganize the regulation under new subject headings and rewrite provisions for clarity and ease of understanding. The revisions address changes made in Virginia's Coal Mine Safety Act, address hazards not

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addressed by the Mine Safety and Health Administration (MSHA), avoid conflicts with MSHA regulations and federal law, reflect changes in technology, and eliminate duplicative information. Many of the changes conform the regulation to federal law under MSHA. Significant amendments (i) eliminate the requirements to test air quality for the presence of sulfur dioxide, carbon dioxide, and formaldehyde; (ii) eliminate the requirement to test diesel equipment emissions for nitric oxide; (iii) reduce the threshold limit value for carbon monoxide from 50 ppm to 25 ppm; and (iv) allow operators to obtain approval for diesel equipment from the Chief of the Virginia Division of Mines' designated representative.

Substantive changes have been made since the publication of the proposed regulation. The section on diesel equipment approval is amended for clarification and to add diesel powered ambulances and diesel powered fire fighting equipment. The proposed section on diesel equipment operation is amended to clarify the use of sanding and rerailling devices and to be more inclusive of all intake and exhaust equipment by using the term exhaust systems as opposed to exhaust couplings. The section on diesel equipment maintenance is amended to include maintenance of all filter types rather than just fuel filters. The section on ventilation of diesel equipment is amended to include the actual effective date of the regulation. The section on diesel emission testing and evaluation is amended to clarify that all diesel engine exhaust streams require testing and to clarify the exhaust emission testing responsibilities of the mine operator. The section on air quality is renumbered and the section on fuel use, storage, and handling is amended to require frame grounding of equipment during fueling. The section is also reformatted for clarification.

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 Stephen A. Walz, Department of Mines, Minerals and Energy, Ninth Street Office Building, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3211.

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| <p>REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 17:7 VA.R. 983-992 December 18, 2000 with the additional changes shown below. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.</p> |
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CHAPTER 90.
~~RULES AND REGULATIONS GOVERNING THE USE OF~~
DIESEL-POWERED EQUIPMENT IN UNDERGROUND
COAL MINES.

4 VAC 25-90-10. [No change from proposed.]

~~**4 VAC 25-90-20 to 4 VAC 25-90-110. [Reserved]**~~

4 VAC 25-90-20. Diesel equipment approval.

A. Diesel-powered equipment shall not be permitted underground without receiving approval from the Chief or his designated representative. Approval will be based on:

1. Meeting the requirements of this regulation.
2. Compliance with 30 CFR Part 7 Subpart E, design and performance requirements for nonpermissible diesel-powered equipment.

Compliance with 30 CFR Part 7 Subparts E and F, and 30 CFR Part 36, requirements for permissible diesel-powered equipment.

3. An evaluation by the Division of Mines of the equipment, undiluted exhaust emissions, the adequacy of ventilation, [and] fire protection [, and air quality for the type of equipment] .

4. If an oxidation catalytic converter, a diesel particulate filter, or both, are installed on underground diesel-powered equipment they shall be installed and maintained in accordance with manufacturer's specifications.

B. If at any time the Chief determines that any condition or practice permitted under this approval may threaten the health or safety of employees, additional requirements may be imposed for the purpose of eliminating the condition or practice.

C. Stationary diesel-powered equipment [and,] portable diesel generators [, diesel-powered ambulances, and diesel fire fighting equipment] shall not be permitted underground without an approved plan. The plan shall address ventilation, fire protection, fuel handling, storage, and any other requirements the Chief determines as necessary to protect the health and safety of miners.

D. The Division of Mines shall be notified after completion of any alterations in design, substitution of components, and any other changes in the condition of operating diesel-powered equipment that affects emissions. Additional engine testing and adjustments shall be required as necessary should any resulting changes be made that may increase diesel emissions.

4 VAC 25-90-30. Operation of diesel equipment.

A. All mobile underground diesel-powered equipment shall be operated safely and shall meet the following requirements:

1. Be free of excess accumulation of coal dust, oil, grease, fuel and other combustible materials; and

2. Be operated with:

- a. An audible warning device;

- b. An engine start and stop mechanism;
- c. Guards over moving components;
- d. A [~~rerailling device and sanding devices~~ proper lifting device for the rerailling of such equipment] (self-propelled rail equipment only);
- [e. Sanding devices, except for personnel carriers that transport not more than five personnel (self-propelled rail equipment only);]
- [~~e. f.~~] Headlights on each end;
- [~~f. g.~~] Park and service brakes;
- [~~g. h.~~] A fire suppression system;
- [~~h. i.~~] Intake and exhaust [~~couplings systems~~] in good condition; and
- [~~i. j.~~] A self closing filler cap on the fuel tank.

To avoid contact with energized trolley wires or trolley feeder wires a six-inch minimum clearance shall be maintained or the equipment shall be adequately insulated.

B. All mobile diesel-powered equipment operated in or inby the last open crosscut or in return air courses shall be permissible. Such diesel-powered equipment shall be maintained and operated in accordance with 4 VAC 25-90-20 and as follows:

1. Electrical component permissibility shall be maintained;
2. Emergency engine shutdown shall be operable;
3. Flame arresters (intake and exhaust) shall be provided; and
4. Low-level shutdown (water bath/scrubber) shall be operable.

C. The engine of mobile diesel-powered equipment shall not be left idling unattended.

D. The engine of any mobile diesel-powered equipment shall not be capable of starting unless the transmission controls are in the neutral position.

E. The operation of any diesel-powered equipment in any manner or under any condition that does not comply with the requirements of this chapter shall result in a notice of violation and if not corrected within a reasonable time a closure order shall be issued that requires the machine be taken out of service until such condition or practice is corrected. Upon review of the history of violations, the Chief may void the approval for use of underground diesel-powered equipment at that mine.

4 VAC 25-90-40. Maintenance of diesel equipment.

A. Engine intake and exhaust systems shall be inspected visually by an authorized person at least once each day that the equipment is operated.

B. Permissible and emission components of diesel-powered equipment shall be inspected weekly by a certified diesel engine mechanic in accordance with the instructions of the

manufacturer and all applicable federal and state requirements.

C. [~~Fuel All~~] filters on diesel engines shall be maintained or replaced as recommended by the manufacturer or more often if necessary.

D. Maintenance and repair work on emission components shall be done by a certified diesel engine mechanic in accordance with the instructions of the manufacturer and all applicable federal and state requirements.

E. All diesel-powered equipment shall be equipped with an hour meter to accurately display engine run time.

F. Maintenance manuals shall be made available for review by interested persons.

G. Records shall be kept of inspections, maintenance, and repair work for at least one year and shall be made available for inspection by interested persons.

4 VAC 25-90-50. Ventilation of diesel equipment.

A. The ventilating air in all active areas where diesel-powered equipment is operated shall not have combustible or other contaminating gases in such concentration that may affect combustion in the diesel engine by materially increasing toxic, poisonous or other objectionable constituents in the engine exhaust.

B. The air supplied for ventilation where diesel-powered equipment is used shall contain less than 1.0% by volume of methane.

C. The minimum ventilating air quantity maintained in the last open crosscut of each working section where units of diesel-powered equipment are operated must be at least the sum of that specified on the approval plates of all the diesel-powered equipment to be operated in these areas.

D. The minimum ventilating air quantity maintained in the intake reaching the working face of each longwall and at the intake end of any pillar line where units of diesel-powered equipment are operated on the working section must be at least the sum of that specified on the approval plates of all the diesel-powered equipment to be operated in these areas.

E. The minimum ventilating air quantity for an individual unit of diesel-powered equipment being operated outby the working section shall be at least that specified on the approval plate for that equipment. Such air quantity shall be maintained:

1. In any entry where the equipment is being operated in areas of the mine developed on or after [~~the effective date of these regulations~~ July 18, 2001] ;
2. In any air course with single or multiple entries where the equipment is being operated in areas of the mine developed prior to [~~the effective date of these regulations~~ July 18, 2001] ; and
3. At any other location as the Chief may require.

F. The quantity of ventilating air supplied to the active areas where diesel-powered equipment is operated must be adequate to dilute and carry away constituents of the engine

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exhaust so that the composition of the air meets the air quality standards set forth in 4 VAC 25-90-70.

4 VAC 25-90-60. Emission testing and evaluation.

Undiluted exhaust emissions of diesel engines [~~#, to include each side of a dual exhaust system, on~~] diesel-powered equipment used in underground coal mines shall be tested and evaluated weekly by an authorized person. The mine operator shall develop and implement effective written procedures for such testing and evaluation [~~and that~~] shall include the following:

1. The method for which a repeatable load test is conducted that must include an engine RPM reading;
2. Sampling and analytical methods used to measure diesel engine emission concentrations;
3. Instrumentation [~~calibrated and used to accurately detect, measure and monitor the air emission concentrations in 4 VAC 25-90-70 and calibration of instrumentation capable of accurately detecting carbon monoxide in the expected concentrations~~] ;
4. The [~~method of~~] evaluation and interpretation of [~~air quality testing and~~] sampling results;
5. The concentration or changes in concentration of carbon monoxide that will indicate a change in engine performance and an action plan to address changes in performance. The operator will [~~compare~~] establish a baseline level of diesel exhaust emissions, subject to approval by the Chief based upon [~~the~~] MSHA engine approval data [~~with and~~] the [~~average of the~~] first four [~~undiluted exhaust~~] emission tests [~~at the mine and establish an acceptable level of carbon monoxide emissions, subject to approval by the Chief. Carbon monoxide emissions shall not exceed two times the established level and at no time exceed 2500 parts per million required by this section. This plan will establish an action level not to exceed the lesser of two times the baseline or 2500 parts per million (ppm) of carbon monoxide. Should the action level be exceeded, the machine shall be removed from service and engine performance improved~~] .
6. The maintenance of records necessary to track engine performance. These records shall be:
 - a. Recorded in a secure book that is not susceptible to alteration, or recorded electronically in a computer system that is secure and not susceptible to alteration; and
 - b. Retained at a surface location at the mine for at least one year and made available for inspection by interested persons.

4 VAC 25-90-70. Air quality.

A. During on-shift examinations required by § 45.1-161.209 of the Code of Virginia, a mine foreman authorized by the operator shall determine the concentration of carbon monoxide (CO) and nitrogen dioxide (NO₂).

[~~B. 1.~~] In the return of each working section where diesel equipment is used inby the loading point at a location which

represents the contribution of all diesel equipment on such section.

[~~G. 2.~~] At a point inby the last piece of diesel equipment on a longwall or shortwall when mining equipment is being installed or removed. This examination shall be made at a time which represents the contribution of all diesel equipment used for this activity including the diesel equipment used to transport longwall or shortwall equipment to and from the section.

[~~D. 3.~~] In any other area designated by the Chief where diesel equipment is operated in a manner which can result in significant concentrations of diesel exhaust emissions.

[~~E. 4.~~] The concentrations of carbon monoxide (CO) and nitrogen dioxide (NO₂) shall not exceed the following threshold limit values:

Threshold Limit Values (TLV)

| | |
|-------------------------------------|--------|
| Carbon Monoxide (CO) | 25 ppm |
| Nitrogen Dioxide (NO ₂) | 3 ppm |

[~~F. B.~~] Samples of CO and NO₂ shall be collected and analyzed:

1. By appropriate instrumentation that has been maintained and calibrated in accordance with the manufacturer's recommendations;
2. In a manner that makes the results available immediately to the person collecting the samples; and
3. During periods that are representative of conditions during normal operations.

[~~G. C.~~] The results of these tests shall be:

1. Recorded in a secure book that is not susceptible to alteration, or recorded electronically in a computer system that is secure and not subject to alteration; and
2. Retained at a surface location at the mine for at least one year and made available for inspection by interested persons.

4 VAC 25-90-80. [No change from proposed.]

4 VAC 25-90-90. [No change from proposed.]

4 VAC 25-90-100. Fuel use, storage, and handling.

A. Unless otherwise approved, fuel taken underground shall be transported in metal containers that have self-closing devices.

B. Fuel taken underground and awaiting transfer to diesel-powered equipment fuel tanks shall be stored in a closed compartment or container constructed of incombustible material and shall be kept in a well-ventilated location until placed in the fuel tank.

C. Fuel shall be transferred from the storage compartment to a fuel tank through a flexible hose that is fitted with a self-closing valve. This does not apply to portable containers of five gallons or less.

D. The fuel handling system and the diesel-powered equipment shall be frame grounded [so that a difference in

potential does not exist] when fuel is being transferred from the storage compartment to the fuel tank. This does not apply to portable containers of five gallons or less.

E. The air vents on fuel handling equipment shall be flameproof. This does not apply to portable containers of five gallons or less.

F. When fuel is being transferred from a storage compartment to the diesel equipment fuel tank, the engine shall be stopped.

G. A supply of sand or other suitable incombustible material for absorbing spilled fuel shall be available during the transfer of fuel from a storage compartment to the diesel equipment fuel tank. Fuel spilled shall be cleaned up immediately.

H. In order to prevent unintentional opening, all drain plugs in the fuel handling system shall be threaded, sealed, locked, and protected in the closed position.

I. During fuel handling operations, precautions shall be taken to keep the fuel clean and free from contamination by foreign material such as dirt, sediment and water.

J. Diesel fuel storage and handling in a working section shall comply with the following:

1. Underground storage areas that exceed 100 gallons shall be vented with intake air that is coursed into a return air course or to the surface and not used to ventilate working places.

2. At least one 20-pound approved ABC type fire extinguisher and no less than 200 pounds of rock dust per 100 gallons of fuel storage shall be maintained at the designated underground mine storage area.

~~[3. Storage underground shall be limited to a typical 48-hour supply not to exceed 1,000 gallons.~~

4. 3.] Only one temporary underground diesel fuel storage area is permitted for each working section or in each area of the mine where equipment is being installed or removed. Temporary storage areas must be located within 500 feet of the current loading point, the projected loading point where equipment is being installed, or the last loading point where equipment is being removed.

~~[5. K.]~~ Temporary and permanent underground diesel fuel storage facilities must be:

[a. 1.] At least 100 feet from shafts, slopes, shops, or explosive magazines;

[b. 2.] At least 25 feet from trolley wires, power cables, or electrical equipment not necessary for the operation of the storage facilities or areas; and

[c. 3.] In a location protected from hazards of other mobile equipment.

[Storage underground shall be limited to a typical 48-hour supply not to exceed 1,000 gallons.]

4 VAC 25-90-120 through 4 VAC 25-90-360. [No change from proposed.]

VA.R. Doc. No. R00-85; Filed May 30, 2001, 11:46 a.m.

Title of Regulation: **4 VAC 25-100-10 et seq. Regulations Governing Vertical Ventilation Holes and Mining near Gas and Oil Wells (REPEALED).**

Title of Regulation: **4 VAC 25-101-10 et seq. Regulations Governing Vertical Ventilation Holes and Mining near Gas and Oil Wells.**

Statutory Authority: §§ 45.1-161.3, 45.1-161.106, 45.1-161.121, 45.1-161.254 and 45.1-161.292 of the Code of Virginia.

Effective Date: July 18, 2001.

Summary:

The regulation governs the drilling, equipping, operating and plugging of vertical ventilation holes and the practice of mining near or through a vertical ventilation hole or gas well. Due to the extensive formatting changes, DMME is repealing 4 VAC 25-100, Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells and promulgating new 4 VAC 25-101, Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells.

Changes from the current regulation include (i) conforming the definitions with the Virginia Gas and Oil Regulation (4 VAC 25-150) and current industry standards; (ii) clarifying provisions for citizens' right to object to permit applications; (iii) establishing recordkeeping requirements that are reasonable for industry compliance and easy for citizens to understand; (iv) clarifying casing requirements for vertical ventilation holes, voids and gas and oil wells; (v) establishing safe mining procedures for inclusion in the approved bleeder plan; (vi) clarifying requirements for plugging of open holes, cased holes and uncemented casing; and (vii) providing permanent markers of abandoned vertical ventilation holes.

The department has made two changes to the regulation since the proposed regulation was published. Both of these changes are to clarify that the provisions governing mining near or through a well only apply in instances where a well penetrates a coal seam but do not apply in instances where the well is located outside of where the coal seam outcrops to the surface.

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 Stephen A. Walz, Department of Mines, Minerals and Energy, Ninth Street Office Building, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3211.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 17:7 VA.R. 992-1005 December 18, 2000 with the additional changes shown below. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.

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4 VAC 25-101-10 through 4 VAC 25-101-140. [No change from proposed.]

4 VAC 25-101-150. Mining within 500 feet of a vertical ventilation hole or gas well.

A. Before removing any coal or other mineral, or extending any mine workings or operations within 500 horizontal feet of any permitted or pending vertical ventilation hole or gas well, the mine operator shall give notice by certified mail to the vertical ventilation hole operator and the Chief or, in the case of a gas well, the mine operator shall give notice as provided for in §§ 45.1-161.121 A and 45.1-161.292 A of the Coal Mine Safety Act.

B. The mine operator shall send to the vertical ventilation hole operator and the Chief an accurate map or plat. The map shall show the location of the hole and projected mine workings within 500 horizontal feet of the ventilation hole and shall be shown in accordance with the state plane coordinate system.

C. Once notice and the map have been provided, the mine operator may proceed with mining operations as shown on the map. However, the mine operator shall not remove any coal or other mineral, or conduct any mining operations nearer than 200 horizontal feet, as determined by survey, to any permitted or pending vertical ventilation hole or gas well without the approval of the Chief.

D. This provision shall not apply to mining operations in the seam which the vertical ventilation hole or gas well is intended to ventilate if safe mining procedures have been incorporated in the approved bleeder plan as provided in 4 VAC 25-101-190, unless the casing extends through that seam [or if the vertical ventilation hole, gas well, or pipeline is located outside the coal seam outcrop] .

4 VAC 25-101-160. Mining within 200 feet of a vertical ventilation hole, gas well or pipeline.

A. A mine operator shall submit a plan to the Chief for approval to conduct mining operations within 200 feet (horizontally or vertically) of any permitted or pending vertical ventilation hole or gas well or to conduct surface mining operations within 200 feet of pipelines.

B. The plan shall comply with requirements developed by the chief. It shall be accompanied by an accurate map or plat showing the location of the hole, well, or pipeline, mine workings within 500 feet of the hole, well, or pipeline, projected mine workings within 200 horizontal feet of the vertical ventilation hole, gas well, or pipeline in accordance with the state plane coordinate system.

C. The Chief may, prior to considering the plan, make or cause to be made any inspections or surveys which he deems necessary.

D. Notice of intent, including a copy of the plan, shall be sent by certified mail to the operator of the vertical ventilation hole or pipeline, which may be affected by the proposed mining operations. Gas well operators, which may be affected by the proposed mining operations, shall be given notice as required in §§ 45.1-161.121.C and 45.1-161.292.B of the Coal Mine Safety Act. The notice shall inform the operator of the right to

object to the proposed mining activity. Objections shall be filed with the Chief within 10 days of the date that the notice is received. If the operator files an objection, the Chief shall schedule a hearing in accordance with the provisions in 4 VAC 25-101-70.

E. If the mine operator submits proof in writing that the operator of the vertical ventilation hole, gas well, or pipeline does not object to the projected mining activity, then the Chief may waive the notice requirement and issue a permit, provided all other conditions for permit issuance have been met.

F. The Chief may, if the operator of the vertical ventilation hole, or gas well, or pipeline does not file an objection within the specified period, approve the plan for the mining operations as projected, or with such modifications as the Chief may deem necessary.

G. This section shall not apply to mining operations in the seam that the vertical ventilation hole or gas well is intended to ventilate, if safe mining procedures have been incorporated in the approved bleeder plan as provided in 4 VAC 25-101-190, unless the casing extends through the seam [or if the vertical ventilation hole, gas well, or pipeline is located outside the coal seam outcrop] .

4 VAC 25-101-170 through 4 VAC 25-101-220. [No change from proposed.]

VA.R. Doc. Nos. R00-92 and R00-95; Filed May 30, 2001, 11:48 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

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| REGISTRAR'S NOTICE: The Department of Environmental Quality, on behalf of the State Air Pollution Control Board, suspended Article 2 (9 VAC 5-80-310 through 9 VAC 5-80-355) of Part II of 9 VAC 5 Chapter 80 pending reconsideration by the board of the final amendments to Article 2. The final action was published in 17:4 VA.R. 585 November 6, 2000, and the amendments were to become effective January 1, 2001. Only the aforementioned sections were suspended (see 17:9 VA.R. January 15, 2000); the remainder of the amendments to Revision K97 that were published in 17:4 VA.R. 585 November 6, 2000, became effective January 1, 2001. At its May 24, 2001, meeting, the board took final action on amendments to Article 2, which will become effective July 18, 2001. |
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Title of Regulation: Regulations for the Control and Abatement of Air Pollution (Rev. K97).
9 VAC 5-80-10 et seq. Permits for Stationary Sources (amending 9 VAC 5-80-310 through 9 VAC 5-80-350; repealing 9 VAC 5-80-355)

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

Effective Date: July 18, 2001.

Summary:

Article 2 of 9 VAC 5 Chapter 80 establishes requirements for the payment of fees for Title V permits. The final amendments are different from the proposed in 9 VAC 5-80-340 E and 9 VAC 5-80-350. The substantive changes are in 9 VAC 5-80-350 B concerning alternate payment schedules. The final amendments allow an owner to elect to pay the annual fee in equal quarterly payments with payments due on September 1, December 1, March 1 and June 1. The final amendments also allow the Department of Environmental Quality to issue a notice of failure to pay to an owner who fails to make a quarterly payment.

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 Alma Jenkins, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070.

Article 2.

Permit Program Fees For Stationary Sources [~~Rule 8-6~~].

9 VAC 5-80-310. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to the following stationary sources:

1. Any major source.
2. Any source, including an area source, subject to a standard, limitation, or other requirement under § 111 of the federal Clean Air Act.
3. Any source, including an area source, subject to a standard, limitation, or other requirement under § 112 of the federal Clean Air Act.
4. Any affected source.
5. Any other source subject to the permit requirements of Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this chapter.
6. Any source that would be subject to the permit requirements of Article 1 (9 VAC 5-80-50 et seq.) of this chapter in the absence of a permit issued under 9 VAC 5-80-40.

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

C. The provisions of this article shall not apply to the following:

1. All sources and source categories that would be subject to this article solely because they are subject to the provisions of 40 CFR Part 60, Subpart AAA (standards of performance for new residential wood heaters), as prescribed in Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50.

2. All sources and source categories that would be subject to this article solely because they are subject to the provisions of 40 CFR 61.145 (national emission standard for hazardous air pollutants for asbestos, standard for demolition and renovation), Subpart M, as prescribed in Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.

3. Any source issued a permit under [~~9 VAC 5-80-10, or Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part~~ the new source review program] that began initial operation during the calendar year preceding the year in which the annual permit program fee is assessed.

4. That portion of emissions in excess of 4,000 tons per year of any regulated air pollutant emitted by any source otherwise subject to an annual permit program fee.

5. During the years 1995 through 1999 inclusive, any affected source under § 404 of the federal Clean Air Act (phase I sulfur dioxide requirements).

6. Any emissions unit within a stationary source subject to this article that is identified as being an insignificant activity in Article 4 (9 VAC 5-80-710 et seq.) of this chapter.

7. All sources and source categories that would be subject to this article solely because they are subject to regulations or requirements under § 112(r) of the federal Clean Air Act.

8. Any source deferred by the provisions of subsection D of this section provided the source is not part of a major source.

D. Sources shall be deferred from initial applicability as follows.

1. Area sources subject to this article under subdivision A 2 or A 3 of this section shall be deferred from the obligation to pay fees under this article except as follows.

a. In cases for which EPA has promulgated a standard under § 111 or § 112 of the federal Clean Air Act and has declared that the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

b. In cases for which EPA has promulgated a standard under § 111 or § 112 of the federal Clean Air Act after July 21, 1992, and has failed to declare whether the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

2. The following sources shall not be deferred from the obligation to pay fees under this article:

a. Major sources.

b. Solid waste incineration units subject to the provisions of 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.) as adopted pursuant to § 129 (e) of the federal Clean Air Act.

3. Any source deferred under subdivision 1 of this subsection may apply for a permit under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of 9 VAC 5 Chapter 80. If the source applies for a permit, the

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source shall be subject to this article and shall pay fees accordingly.

E. Particulate matter emissions shall be used to determine the applicability of this article to major sources or to determine actual emissions only if particulate matter (PM₁₀) emissions cannot be quantified in a manner acceptable to the board.

9 VAC 5-80-320. Definitions.

A. For the purpose of this article and subsequent amendments or any orders issued by the board, the words or phrases shall have the meanings given them in subsection C of this section.

B. All words and phrases not defined in subsection C of this section shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Actual emissions" means the actual rate of emissions in tons per year of any regulated air pollutant emitted from a source subject to this article over the preceding calendar year. Actual emissions may be calculated according to any method acceptable to the department provided such calculation takes into account the source's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Any regulated pollutant which could be classed in more than one category shall be classed in only one category.

"Affected source" means a source that includes one or more affected units.

"Affected unit" means a unit that is subject to any federal acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Parts 72, 73, 75, 77 or 78.

"Area source" means any stationary source that is not a major source. For purposes of this section, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Hazardous air pollutant" means any air pollutant listed in § 112(b)(4) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Major source" means:

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the

potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

- (1) Coal cleaning plants (with thermal dryers);
- (2) Kraft pulp mills;
- (3) Portland cement plants;
- (4) Primary zinc smelters;
- (5) Iron and steel mills;
- (6) Primary aluminum ore reduction plants;
- (7) Primary copper smelters;
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;
- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;
- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plant;
- (18) Sintering plants;
- (19) Secondary metal production plants;
- (20) Chemical process plants;
- (21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (23) Taconite ore processing plants;
- (24) Glass fiber processing plants;
- (25) Charcoal production plants;
- (26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (27) Any other stationary source category regulated under § 111 or § 112 of the federal Clean Air Act for which the administrator has made an affirmative decision under § 302(j) of the federal Clean Air Act.

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas

classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NOx requirements for ozone nonattainment areas) do not apply.

d. For attainment areas in ozone transport regions, any stationary source with the potential to emit 50 tons per year or more of volatile organic compounds.

"Permit program costs" means all reasonable (direct and indirect) costs required to develop, administer, and enforce the permit program; and to develop and administer the Small Business Technical and Environmental Compliance Assistance Program established pursuant to the provisions of § 10.1-1323 of the Code of Virginia.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Regulated air pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound;
- b. Any pollutant for which an ambient air quality standard has been promulgated except carbon monoxide;
- c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act;
- d. Any pollutant subject to a standard promulgated under § 112 (hazardous air pollutants) or other requirements established under § 112 of the federal Clean Air Act, particularly §§ 112(b), 112(d), 112(g)(2), 112(j), and 112(r); except that any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under § 112(r) of the federal Clean Air Act shall be exempt from this article.

"Research and development facility" means all the following as applied to any stationary source:

- a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge;
- b. The source is operated under the close supervision of technically trained personnel; and
- c. The source is not engaged in the manufacture of products for commercial sale in commerce in any manner inconsistent with clause a (i) or (ii) of this definition.

An analytical laboratory that primarily supports a research and development facility is considered to be part of that facility.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated 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 persons (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., if they have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9 VAC 5-20-21). Any research and development facility shall be considered a separate stationary source from the manufacturing or other facility with which it is co-located.

9 VAC 5-80-330. General.

A. The owner of any source subject to this article shall pay an annual permit program fee.

B. Permit program fees collected pursuant to this article for sources subject to Article 1 (9 VAC 5-80-50 et seq.) of this chapter shall not be used for any purpose other than as provided in Title V of the federal Clean Air Act and associated regulations and policies.

C. The owner shall be exempt from paying the annual permit program fee ~~in~~ for any year for which the fee is assessed at ~~\$300~~ during which the total actual emissions are 10 tons or less.

9 VAC 5-80-340. Annual permit program fee calculation.

A. The annual permit program fee shall not exceed the base year amount as specified in § 10.1-1322 B of the Virginia Air Pollution Control Law and shall be adjusted annually by the Consumer Price Index as provided in § 10.1-1322 B of the Virginia Air Pollution Control Law.

1. The annual permit program fee shall be increased (consistent with the need to cover reasonable costs) each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the U.S. Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

2. The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

B. The annual permit program fee described in subsection A of this section and the amount billed to the owner as provided in subsection A of 9 VAC 5-80-350 for a given year shall be calculated in accordance with the following formulae:

$$B = (A)(F)$$

$$F = X (1 + \Delta \text{CPI})$$

$$\Delta \text{CPI} = \frac{\text{CPI} - 122.15}{122.15}$$

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where:

B = the amount billed to the owner during the year after the year in which the actual emissions occurred, expressed in dollars

A = actual emissions covered by permit fees, expressed in tons

F = the maximum adjusted fee per ton for the calendar year in which the actual emissions occurred, expressed in dollars per ton

X = 25, expressed in dollars per ton

Δ CPI = the difference between the CPI and 122.15 (the average of the Consumer Price Index for all-urban consumers for the 12-month period ending on August 31, 1989).

CPI = the average of the Consumer Price Index for all-urban consumers for the 12-month period ending on August 31 of the year in which the emissions actually occurred, expressed as a percentage

C. The actual emissions covered by the permit program fees for the preceding year shall be calculated by the owner and submitted to the department by April 15 of each year. The calculations and final amount of emissions are subject to verification and final determination by the department.

D. If the assessment of the annual permit program fee calculated in accordance with subsections A, B, and C of this section results in a total amount of fee revenue in excess of the amount necessary to fund the permit program costs, a lesser annual permit program fee shall instead be calculated and assessed according to the formula specified in subsection E of this section. Any adjustments made to the annual permit program fee shall be within the constraints of 40 CFR 70.9 and § 10.1-1322 of the Virginia Air Pollution Control Law.

E. The lesser annual permit program fee shall be calculated according to the following formula: estimated permit program costs divided by estimated actual emissions = lesser annual permit program fee. The estimated permit program costs and estimated actual emissions shall be determined from the data specified in subdivisions ~~1~~ and ~~2~~ of this section subsection, incorporating any anticipated adjustments to the data.

1. The current permit program costs shall be determined from the most recent available annual expenditure record of the amount spent by the department on permit program costs.

2. The current actual emissions shall be determined from the most recent available annual emissions inventory of the actual emissions for each regulated pollutant subject to fees from all sources subject to the annual permit program fee.

9 VAC 5-80-350. Annual permit program fee payment.

A. Upon determining that the owner owes an annual permit program fee, the department shall mail a bill for the fee to that owner no later than August 1, or in the case of the initial bill

no later than 60 days after federal program approval, unless the governor determines that fees are needed earlier for Virginia to maintain primacy over the program, as provided in § 10.1322 B of the State Air Pollution Control Law.

B. Within 30 days following the date of the postmark on the bill, the owner shall respond in one of the following ways:

1. The owner [~~may shall~~] pay the fee in full. ~~The fee shall be paid by check or money order made payable to "Department of Environmental Quality" and mailed to the address specified by the department.~~

[~~2. The owner may elect to pay the fee in equal quarterly payments and shall pay one quarter of the fee. The first payment shall be accompanied by a written statement that the second quarter of the fee shall be paid no later than December 1 of the year of the issuance of the bill, the third quarter of the fee shall be paid no later than March 1 of the year following the issuance of the bill, and the fourth quarter of the fee shall be paid no later than June 1 of the year following the issuance of the bill. If an owner fails to pay a quarterly payment by the deadline, the department may, in addition to other remedies available under the law, issue to the owner a notice of failure to pay. The notice shall require payment of the entire remainder of the annual fee payment within 30 days of the date of the notice, or inform the owner that he shall be ineligible to opt for the quarterly payment schedule established in this subdivision until eligibility is reinstated by written notice from the department, or both.~~

~~2. 3.] The owner may make a written request to the department to authorize an alternative payment schedule. The deadline for payment of the fee shall be held in abeyance pending the department's response. The owner may file a request that the fee amount be revised if he can document that the emissions estimate on which the fee was based is in error. This request shall include appropriate source identification data, the revised emissions estimate, the revised fee amount, adequate supporting documentation, and other information as the board may require. The owner shall file the request with the appropriate regional office in a form acceptable to the board. If the department approves the request, the revised fee amount shall be paid in [~~full within 30 days of the date of rejection.~~ one of two ways:~~

a. In full within 30 days of the date of approval; or

b. In quarterly payments, with the first payment being paid within 30 days of the date of approval and the other payments being paid according to the schedule set out in subdivision B 2 of this section.]

C. ~~The fee shall be paid by check or money order made payable to the Treasurer of Virginia and mailed to the address specified by the department. [Failure of the owner to respond within 90 days following the date of the postmark on the bill in one of the two ways specified in subsection B of this section shall be grounds to institute a collection action against the owner by the Attorney General or to initiate appropriate enforcement action as provided in the Virginia Air Pollution Control Law.]~~

~~9 VAC 5-80-355. Review and confirmation of this article by board. (Repealed.)~~

* * * * *

~~A. Within three years following the approval by the U.S. Environmental Protection Agency of this article, the department shall provide the board with an analysis to include (i) an assessment of the effectiveness of this article; (ii) the status of any specific federal requirements and the identification of any provisions more stringent than the federal requirements; (iii) the federal approval status of this article; and (iv) an assessment of the need for continuation of this article.~~

~~B. Upon review of the department's analysis, the board shall confirm (i) the continuation of this article; (ii) the repeal of this article; or (iii) the need to amend this article. If a decision is made in either of the latter two cases, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

VA.R. Doc. No. R98-44; Filed May 30, 2001, 10:59 a.m.

TITLE 12. HEALTH

STATE BOARD OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Title of Regulation: 12 VAC 35-110-10 et seq. Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (REPEALED).

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Effective Date: July 18, 2001.

Summary:

The board is repealing the current Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. This regulation, along with two other human rights regulations, is being consolidated into a newly proposed regulation (Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services, 12 VAC 35-115-10 et seq.).

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Margaret Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988.

VA.R. Doc. No. R00-68; Filed May 25, 2001, 3:59 p.m.

Title of Regulation: 12 VAC 35-115-10 et seq. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Effective Date: July 18, 2001.

Summary:

The proposed regulation replaces three separate regulations: (i) Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 35-110-10 et seq.); (ii) Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 35-120-10 et seq.); and (iii) Rules and Regulations to Assure the Rights of Clients in Community Programs Licensed or Funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 35-130-10 et seq.).

The regulation will protect the legal and human rights of individuals who receive treatment in programs and facilities operated, funded and licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, excluding those operated by the Department of Corrections. To the extent that it is within the reasonable capabilities of the department or licensee, each individual is assured adequate care consistent with sound therapeutic treatment. The regulation will protect the rights of individuals with respect to the assurance of legal rights; evaluation, treatment, and discharge; treatment under the least restrictive conditions; participation in treatment decisions, research, and work activities; and disclosure of confidential information. The regulation also will delineate the process and remedies individuals can pursue to address violations of these rights.

Since the proposed regulation was published, there have been substantive revisions made in response to public comments regarding the requirements for seclusion, restraint, and time out; the process for filing complaints, reporting requirements for providers; and the rules of State Human Rights Committee (SHRC) and the Local Human Rights Committee (LHRC). In addition, requirements for "consent" versus "informed consent" were clarified. Changes have also been made to clarify the criteria under which the commissioner may exempt individuals under forensic status and individuals who are committee to the custody of the commissioner as sexually violent predators from certain human rights protections.

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

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Agency Contact: Copies of the regulation may be obtained from Margaret Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988.

CHAPTER 115.

RULES AND REGULATIONS TO ASSURE THE RIGHTS OF INDIVIDUALS RECEIVING SERVICES FROM PROVIDERS OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES.

PART I.

GENERAL PROVISIONS.

12 VAC 35-115-10. Authority and applicability.

A. The Code of Virginia authorizes these regulations to [further define and to] protect the rights of individuals receiving services from providers of mental health, mental retardation and substance abuse services in the Commonwealth of Virginia. The regulations require providers of services to take specific actions to protect the rights of each individual. [The regulations establish remedies when rights are violated or in dispute, and provide a structure for support of these rights.]

B. Providers subject to these regulations include:

1. Facilities operated by the department under Article 1 (§ 37.1-1 et seq.) of Chapter 1 of Title 37.1 of the Code of Virginia;
2. Sexually violent predator programs created under § 37.1-70.10 of the Code of Virginia;
3. Community services boards that provide services under Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia;
4. Behavioral health authorities that provide services under Chapter 15 (§ 37.1-242 et seq.) of Title 37.1 of the Code of Virginia;
5. Providers, public or private, that operate programs or facilities licensed by the department under Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia [except those operated by the Department of Corrections] ; and
6. Any other providers receiving funding from or through the department.

C. Unless another law takes priority, these regulations apply to all individuals who are receiving services [in from] a public or private [program provider of services] operated, licensed or funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services, except those operated by the Department of Corrections.

[D.] These regulations apply to individuals [in forensics units under forensic status] and individuals committed to the custody of the commissioner as sexually violent predators, except to the extent that the commissioner [has determined that forensics units and the sexually violent predator unit are exempt.] may determine these regulations are not applicable to them. The exemption must be in writing and based solely

on the need to protect individuals receiving services, employees, or the general public. Thereafter, the commissioner shall submit the exemption to the State Human Rights Committee (SHRC) for its information. The commissioner shall give the SHRC chairperson prior notice regarding all exemptions. Such exemptions shall be time limited and services shall not be compromised.]

12 VAC 35-115-20. Policy.

A. Each individual who receives services shall be assured:

1. Protection to exercise his legal, civil, and human rights related to the receipt of those services;
2. Respect for basic human dignity; and
3. Services that are provided [within professionally acceptable parameters of clinical consistent with sound therapeutic] practice.

B. Providers shall not deny any person his legal rights, privileges or benefits solely because he has been voluntarily or involuntarily admitted, certified or committed to services. These legal rights include, but are not limited to, the right to:

1. Acquire [and ,] retain [, and dispose of] property;
2. Sign legal documents;
3. Buy or sell;
4. Enter into contracts;
5. Register and vote;
6. Get married, separated, divorced, or have a marriage annulled;
7. Hold a professional, occupational, or vehicle operator's license;
8. Make a will; and
9. Have access to lawyers and the courts.

12 VAC 35-115-30. Definitions.

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or [mental psychological] harm, injury, or death to an individual receiving services. Examples of abuse include but are not limited to the following:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods or property;

5. Use of excessive force when placing a person in physical or mechanical restraint;

6. Use on a person of physical or mechanical restraints that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice or the person's individualized services plan; and

7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan. [See § 37.1-1 of the Code of Virginia.]

[~~"Advocate" or "human rights advocate" means a person employed by the State Human Rights Director to help individuals exercise their rights under this chapter. See 12 VAC 35-115-230 G.~~]

[~~"Behavioral Behavior" management" means [the use of verbal interactions and physical restraint approved by the provider to manage an individual's behavior when it is potentially dangerous to self or others those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized service plan and written policies and procedures governing service expectations, treatment goals, safety and security] .~~

"Behavioral treatment program" means [a written set of procedures that are developed to address serious problem behaviors that interfere with an individual's personal goals, prevent him from benefiting from services, or keep the individual from participating in community life. A behavioral treatment plan is a part of the individualized services plan and it is designed, implemented, and monitored by professionals who have been specially trained to perform these tasks. any set of documented procedures that are an integral part of the interdisciplinary treatment plan and are developed on the basis of a systemic data collection such as a functional assessment for the purpose of assisting an individual receiving services to achieve any or all of the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of serious behaviors.

A behavioral treatment program can also be referred to as a behavioral treatment plan or behavioral support plan.]

"Board" means the State Mental Health, Mental Retardation and Substance Abuse Services Board.

"Caregiver" means an employee or contractor [~~trained to provide~~ who provides] care and support services; medical services; or other treatment, rehabilitation, or habilitation services.

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Community services board (CSB)" means a citizens' board established pursuant to § 37.1-195 of the Code of Virginia that provides or arranges for the provision of mental health, mental retardation and substance abuse programs and services to consumers within the political [~~subdivision(s) which establishes~~ subdivision or subdivisions establishing] it.

["Complaint" is an expression of dissatisfaction, grievance, or concern by, or on behalf of, an individual receiving services that has been brought to the attention of the provider, an employee of the provider, a human rights advocate, or the protection and advocacy agency, and alleges a violation or potential violation of these regulations or program policies and procedures related to these regulations. A complaint is "informal" when a resolution is pursued prior to contact with the human rights advocate. See 12 VAC 35-115-160.]

"Consent" means the voluntary and expressed agreement of an individual, or that individual's legally authorized representative if the individual has one. [Informed] consent is needed to disclose information that identifies an individual receiving services. [Informed] consent is also needed before a provider may provide treatment to an individual which poses risk of harm greater than that ordinarily encountered in daily life or during the performance of routine physical or psychological examinations, tests, or treatments, or before an individual participates in human research. Informed consent is [~~generally~~] required for surgery, [~~intrusive aversive~~] treatment [, electroconvulsive treatment,] and use of [~~anti-psychotic~~ psychoactive and other] medications. Consent [is "informed" only when the provider gives the individual or the individual's legally authorized representative enough information concerning the proposed treatment, including its risks and benefits, to make a real choice to receive or not receive the treatment or participate in the research. to any action for which consent is required under these regulations must be voluntary. To be voluntary, the consent must be given by the individual receiving services, or his legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or any form of constraint or coercion. To be informed, consent must be based on disclosure and understanding by the individual or legally authorized representative, as applicable, of the following kinds of information:

1. A fair and reasonable explanation of the proposed action to be taken by the provider and the purpose of the action. If the action involves research, the provider shall describe the research and its purpose, and shall explain how the results of the research will be disseminated and how the identity of the individual will be protected;
2. A description of any adverse consequences and risks to be expected and, particularly where research is involved, an indication whether there may be other significant risks not yet identified;
3. A description of any benefits that may reasonably be expected;
4. Disclosure of any alternative procedures that might be equally advantageous for the individual together with their side effects, risks, and benefits;

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5. An offer to answer any inquiries by the individual, or his legally authorized representative;

6. Notification that the individual is free to refuse or withdraw his consent and to discontinue participation in any prospective service requiring his consent at any time without fear of reprisal against or prejudice to him;

7. A description of the ways in which the resident or his legally authorized representative can raise concerns and ask questions about the service to which consent is given;

8. When the provider proposes human research, an explanation of any compensation or medical care that is available if an injury occurs;

9. Where the provider action involves disclosure of records, documentation must include:

a. The name of the organization and the name and title of the person to whom the disclosure is made;

b. A description of the nature of the information to be disclosed, the purpose of the disclosure, and an indication whether the consent extends to information placed in the individual's record after the consent was given but before it expires;

c. A statement of when the consent will expire, specifying a date, event, or condition upon which it will expire; and

d. An indication of the effective date of the consent.]

"Department" means the Department of Mental Health, Mental Retardation and Substance Abuse Services [(DMHMRSAS)].

"Director" means the chief executive officer of any program delivering services.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and coordinates planning for aftercare services.

"Emergency" means a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual receiving services or to others, or to avoid substantial property damage.

~~"Exploitation" means the [use of an individual or the individual's property for another person's advantage if the use is illegal or if the individual or his legally authorized representative did not give permission. misuse or misappropriation of the individual's assets, goods, or property. Exploitation is a type of abuse. (See § 37.1-1 of the Code of Virginia.) Exploitation also includes the use of position of authority to extract personal gain from an individual receiving services. Exploitation includes but is not limited to violations of 12 VAC 35-115-120 (Work) and 12 VAC 35-115-130 (Research). Exploitation does not include the billing of an individual's third party payer for services. Exploitation also does not include instances of use or appropriation of an individual's assets, goods or property when permission is given by the individual or his legally authorized representative:~~

1. With full knowledge of the consequences;

2. With no inducements; or

3. Without force, misrepresentation, fraud, deceit, duress of any form, constraint or coercion.]

"Governing body of the provider" means the person or group of persons who have final authority to set policy and hire and fire directors.

["Habilitation" refers to the provision of services that enhance the strengths of, teach functional skills to, or reduce or eliminate problematic behaviors of an individual receiving services. These services occur in an environment that suits the individual's needs, responds to his preferences, and promotes social interaction and adaptive behaviors. In order to be considered sound and therapeutic, habilitation must conform to current acceptable professional practice.]

"Historical research" means the review of information that identifies individuals receiving services for the purpose of evaluating or otherwise collecting data of general historical significance. [See 12 VAC 35-115-80 C 2 j (Confidentiality).]

"Human research" means any systematic investigation that uses human participants who may be exposed to potential physical or psychological injury if they participate and which departs from established and accepted therapeutic methods appropriate to meet the participants' needs. [Human research shall be conducted in compliance with §§ 32.1-162.16 through 32.1-162.20 and 37.1-24.01 of the Code of Virginia, and 12 VAC 35-180-110 et seq., or any applicable federal policies and regulations.]

["Human rights advocate" means a person employed by the commissioner upon recommendation of the State Human Rights Director to help individuals receiving services exercise their rights under this chapter. See 12 VAC 35-115-250 C.]

"Individual" means a person who is receiving services. This term includes the terms "consumer," "patient," "resident," ["recipient,"] and "client."

"Inspector General" means a person appointed by the Governor to provide oversight [~~through inspections of activities undertaken by the department at department facilities~~ by inspecting, monitoring, and reviewing the quality of services that providers deliver].

["Investigating authority" means any person or entity that is approved by the provider to conduct investigations of abuse and neglect.]

"Legally authorized representative" means a person permitted by law or these regulations to give [informed] consent for disclosure of information and give informed consent to treatment, including medical treatment, and participation in human research for an individual who lacks the mental capacity to make these decisions.

"Local Human Rights Committee (LHRC)" means a group of at least [~~seven~~ five] people appointed by the State Human Rights Committee. See [~~42 VAC 35-115-230 D~~ 12 VAC 35-115-250 D] for membership and duties.

"Neglect" means the failure by an individual, program or facility responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to

the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or substance abuse. [See § 37.1-1 of the Code of Virginia.]

["Next friend" means a person whom a provider may appoint in accordance with 12 VAC 35-115-70 B 9 c to serve as the legally authorized representative of an individual who has been determined to lack capacity to give consent when required under these regulations.]

[~~"Probation" means the issuance of a provisional license, containing specific terms and conditions.~~

~~"Probationary status" means that a provisional license containing specific terms and conditions has been issued and that the terms are currently in effect and will remain in effect for a specific period of time.]~~

"Protection and advocacy agency" means the state [~~designated~~] agency [designated] under the federal Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act and the Developmental Disabilities (DD) Act [~~to provide external oversight of individuals' rights~~]. The protection and advocacy agency is the Department for the Rights of Virginians with Disabilities (DRVD).

"Provider" means any [person,] entity [,] or organization [~~that provides offering~~] services [~~to individuals with mental illness, mental retardation, or problems with substance abuse that is licensed, funded, or operated by the department~~].

["Research review committee" or "institutional review board" means a committee of professionals to provide complete and adequate review of research activities. The committee shall be sufficiently qualified through maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. (See § 37.1-24.01 of the Code of Virginia and 12 VAC 35-180-110 et seq.)]

"Residential setting" means a place where an individual lives and services are available from a provider on a 24-hour basis. This includes hospital settings.

[~~Restraint" means the restriction of any part of an individual's body from free movement for any purpose. The term includes mechanical devices, medical or surgical devices, protective devices and caregiver "holds."~~

~~1. Mechanical restraint is a device designed to limit the movement of a client during an emergency.~~

~~2. Physical restraint means holding a client manually to limit the client's freedom of movement.~~

~~3. Protective device means a mechanical device used for a specific protective purpose or supportive purpose to maintain body position or balance, prevent injury, or assist the movement of an individual whose mobility is impaired by a physical disorder.~~

"Restraint" means the use of an approved mechanical device, physical intervention or hands-on hold, or pharmacological agent to involuntarily prevent an individual receiving services from moving his body to engage in a behavior that places him

or others at risk. The term includes restraints used for behavioral, medical, or protective purposes.

1. A restraint used for "behavioral" purposes means the use of an approved physical hold, a psychotropic medication, or a mechanical device that is used for the purpose of controlling behavior or involuntarily restricting the freedom of movement of the individual in an instance (i) in which there is an imminent risk of an individual harming himself or others, including staff; (ii) when nonphysical interventions are not viable; and (iii) when safety issues require immediate response.

2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the individual for medical, diagnostic, or surgical purposes and related post-procedure care processes when the use of such device is not a standard practice for the individual's condition.

3. A restraint used for "protective" purposes means the use of a mechanical device to compensate for a physical deficit when the individual does not have the option to remove the device. The device may limit an individual's movement and prevent possible harm to the individual (e.g., bed rail or gerichair) or it may create a passive barrier to protect the individual (e.g., helmet).

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his physical activities when the individual receiving services does not have the ability to remove the device.

5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not a standard treatment for the individual's medical or psychiatric condition.

6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent an individual from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands-on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes:

a. To intervene in or redirect a potentially dangerous encounter in which the individual may voluntarily move away from the situation or hands-on approach; or

b. To quickly de-escalate a dangerous situation that could cause harm to the individual or others.]

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Seclusion" means the [~~placement of an individual in an area secured or locked in a manner that the individual cannot freely leave~~] involuntary placement of an individual receiving services alone, in a locked room or secured area from which he is physically prevented from leaving].

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"Serious injury" means any injury [resulting in bodily hurt, damage, harm, or loss] [~~which that~~] requires [~~the medical~~] attention [~~of by~~] a licensed [~~health professional as defined in Subtitle III (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia physician~~].

"Services" means [~~medical care and~~] mental health, mental retardation and substance abuse care [;] treatment [;] training [;] habilitation [;] or other supports [, including medical care,] delivered by a provider.

"Services plan" means a plan [~~of services that is designed to meet the needs of a specific individual.~~] that defines and describes measurable goals and objectives and expected outcomes of service and is designed to meet the needs of a specific individual. The term "services plan" also includes, but is not limited to, individualized services plan, treatment plan, habilitation plan or plan of care.]

"Services record" means all written information a provider keeps about an individual who receives services.

[~~"Special order" means an administrative order issued to any provider licensed or funded by the department that has a stated duration of not more than 12 months and that may include a civil penalty that shall not exceed \$500 per violation per day, prohibition of new admissions or reduction of licensed capacity for violations of § 37.1-84.1 of the Code of Virginia, the human rights regulations, or licensing statutes or regulations contained in or promulgated under Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia.~~]

"State Human Rights Committee (SHRC)" means a committee of nine members appointed by the board that is accountable for the duties prescribed in 12 VAC 35-115-230 E. See [~~12 VAC 35-115-230E~~ 12 VAC 35-115-250 E] for membership and duties.

"State Human Rights Director" means the person employed by and reporting to the commissioner who is responsible for carrying out the functions prescribed in [~~12 VAC 35-115-230 F~~ 12 VAC 35-115-250 F].

"Time out" means [~~verbally or gesturally directing an individual to move to a different, open location without a closed door contingent upon the individual's exhibiting problematic behaviors~~] assisting an individual to regain emotional control by removing the individual from his immediate environment to a different, open location until he is calm or the problem behavior has subsided].

["Treatment" means individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services in those areas that show impairment as the result of mental disability, substance addiction, or physical impairment. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.]

PART II. ASSURANCE OF RIGHTS.

12 VAC 35-115-40. Assurance of rights.

A. These regulations protect the rights established in § 37.1-84.1 of the Code of Virginia.

[~~B. Individuals are entitled to know what their rights are under these regulations; therefore, providers shall take the following actions:~~

~~1. Display, in areas most likely to be noticed, a document listing the rights of individuals under these regulations and how individuals can contact a human rights advocate.~~

~~2. Notify each individual and his authorized representative, as applicable, about these rights and how to file a complaint. The notice shall be in writing and in any other form most easily understood by the individual. The notice shall tell an individual how he can contact the human rights advocate and give a short description of the human rights advocate's role. The provider shall give this notice at the time an individual begins services and every year thereafter.~~

~~3. Ask the individual or legally authorized representative as applicable to sign the notice of rights. File the signed notice in the individual's services record. If the individual or legally authorized representative cannot or will not sign the notice, the person who gave the notice shall document that fact in the individual's services record.~~

~~4. Give a complete copy of these regulations to anyone who asks for one.~~

~~5. Display and provide information as requested by the protection and advocacy agency director that informs individuals of their right to contact the protection and advocacy agency.~~

~~6. Display and provide written notice of rights in the most frequently used languages.]~~

[~~B. C.] Every individual [receiving services] has a right to [seek informal resolution and] file a [human rights] complaint. Any individual [receiving services] or anyone acting on his behalf who thinks that a provider has violated any of his rights under these regulations may [~~find out how to~~] file a complaint and get help in filing the complaint in Part IV (12 VAC 35-115-140 et seq.) of this chapter.~~

[~~G. D.] Other rights and remedies may be available. These regulations shall not prevent any individual from pursuing any other legal right or remedy to which he may be entitled under [federal or state] law.~~

[~~D. Individuals are entitled to know what their rights are under these regulations; therefore, providers shall take the following actions:~~

~~1. Display, in areas most likely to be noticed, a document listing the rights of individuals under these regulations and how individuals can contact an advocate.~~

~~2. Notify each individual and his authorized representative about these rights and how to file a complaint. The notice shall be in writing and in any other form needed to make sure the individual understands it. The notice shall tell an individual how he can contact the advocate and give a short description of the advocate's role. The provider shall give this notice at the time an individual begins services and every year thereafter.~~

~~3. Ask the individual to sign the notice of rights. File the signed notice in the individual's services record. If the individual cannot or will not sign the notice, the person who gave the notice shall document that fact in the individual's services record.~~

~~4. Give a copy of these regulations to anyone who asks for one.~~

~~5. Display and provide information as requested by the protection and advocacy agency director that informs individuals of their right to contact the protection and advocacy agency.]~~

PART III.

EXPLANATION OF INDIVIDUAL RIGHTS AND PROVIDER DUTIES.

12 VAC 35-115-50. Dignity.

A. Each individual [receiving services] has a right to exercise his legal, civil, and human rights, including constitutional rights, statutory rights, and the rights contained in these regulations [except as specifically limited herein]. Each individual also has the right to be protected, respected, and supported in exercising these rights. Providers shall not [partially or totally] take away or limit these rights [~~partially or totally~~, solely] because an individual has a mental illness, mental retardation [,] or substance abuse [~~problems or~~ problem and] is receiving services for these conditions [or has any physical or sensory condition that may pose a barrier to communication or mobility].

B. In receiving all services, each individual has the right to:

1. Use his preferred or legal name.
2. Be protected from harm [~~and~~ including] abuse, neglect, and exploitation.
3. Have help in [learning about,] applying for [,] and fully using any public service or benefit to which he may be entitled. These services and benefits include but are not limited to educational or vocational services, housing assistance, services or benefits under Titles II, XVI, XVIII, and XIX of the Social Security Act, [United States Veterans Benefits,] and services from legal and advocacy agencies.
4. Have opportunities to [~~talk~~ communicate] in private with lawyers, judges, legislators, clergy, licensed health care practitioners, legally authorized representatives, advocates, the Inspector General, and employees of the protection and advocacy agency.
5. Be provided with general information about program services and policies [in a manner easily understood by the individual].

C. In services provided in residential settings, each individual has the right to:

1. Have sufficient and suitable clothing [for his exclusive use].
2. Receive a nutritionally adequate, varied, and appetizing diet prepared and served under sanitary conditions and served at appropriate times and temperatures.

3. Live in a safe, sanitary, and humane physical environment that gives each individual, at a minimum:

- a. Reasonable privacy and private storage space;
- b. An adequate number and design of private, operating toilets, sinks, showers, and tubs;
- c. Direct outside air provided by a window that opens or by an air conditioner;
- d. Windows or skylights in all major areas used by individuals;
- e. Clean air, free of bad odors; and
- f. Room temperatures that are comfortable year round [and compatible with health requirements].

~~4. [Choose to attend or not attend religious services held within the program setting and to engage or not engage in any recognized religious practices. Practice a religion and participate in religious services subject to their availability, provided that such services are not dangerous to self or others and do not infringe on the freedom of others.]~~

5. Have paper, pencil and stamps provided free of charge for at least one letter every day upon request.

6. Have help in writing or reading mail as needed.

7. Communicate privately with any person by mail or telephone and get help in doing so.

8. Have or refuse visitors.

D. The provider's duties.

1. Providers shall recognize, respect, support, and protect the dignity rights of each individual at all times.

2. Providers shall develop, carry out, and regularly monitor policies and procedures that assure the protection of each individual's rights.

~~[E. Abuse, neglect and exploitation.]~~ 3. Providers shall assure the following relative to abuse, neglect, and exploitation.]

[~~4. a.] Policies and procedures governing harm, abuse, neglect and exploitation of individuals receiving their services shall require that, [at a minimum,] as a condition of employment or volunteering, any employee, volunteer, consultant, or student who knows of or has reason to believe that an individual may have been abused, neglected, or exploited [at any location covered by these regulations,] shall immediately report this information directly to the director.~~

[~~2. b.] The director shall immediately take necessary steps to protect the individual [receiving services] until an investigation is complete. This may include the following:~~

[~~a. (1)] Direct the employee or employees involved to have no further contact with the individual.~~

[~~b. (2)] Temporarily reassign or transfer the employee or employees involved to a position that has no direct contact with individuals receiving services.~~

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[~~6.~~ (3)] Temporarily suspend the involved employee or employees pending completion of an investigation.

[~~3.~~ c.] The director shall immediately notify the [human rights] advocate [~~within 24 hours.~~ and the legally authorized representative, as applicable. In no case shall notification exceed 24 hours from the receipt of the initial allegation of abuse, neglect, or exploitation.]

[d. In no case shall the director punish or retaliate against an employee, volunteer, consultant, or student for reporting an allegation of abuse, neglect, or exploitation to an outside entity.]

[~~4.~~ e.] The director shall initiate [~~or cooperate in~~] an impartial investigation within 24 hours. The investigation shall be conducted by a person trained to do investigations and who is not involved in the issues under investigation.

[~~a.~~ (1) The investigator shall make a final report to the director [or the investigating authority] and to the [human rights] advocate within 10 working days of appointment. [Exceptions to this timeframe may be requested and approved by the department if submitted prior to the close of the sixth day.]

[~~b.~~ (2)] The director or investigating authority shall, based on the investigator's report and any other available information, decide whether the abuse, neglect or exploitation occurred. [Unless otherwise provided by law, the standard for deciding whether abuse, neglect, or exploitation has occurred is preponderance of evidence.]

[~~6.~~ (3)] If abuse, neglect or exploitation occurred, the director shall take any action required to protect the individual and other individuals. All actions must be documented and reported as required by [~~42 VAC 35-415-240-A~~ 12 VAC 35-115-230].

[~~4.~~ (4)] In all cases, the director shall provide written notice [, within seven working days following the completion of the investigation] of the decision and [all] actions taken to the individual or the individual's legally authorized representative, the [human rights] advocate, [the investigating authority,] and the involved employee or employees.

[~~e.~~ (5) If the individual affected by the alleged abuse, neglect or exploitation or his legally authorized representative is not satisfied with the director's actions, he or his legally authorized representative [, or anyone acting on his behalf,] may file a petition for an LHRC hearing under [~~42 VAC 35-115-160~~ 12 VAC 35-115-180].

[f. The director shall cooperate with any external investigation including those conducted by the Inspector General, the protection and advocacy agency, or other regulatory and enforcement agencies.]

[~~5.~~ g. If] at any time the director has reason to suspect that an individual may have been abused [, or] neglected, [~~or exploited,~~] the director shall immediately report this information to the appropriate local

Department of Social Services (see §§ 63.1-55.3 and 63.1-248.3 of the Code of Virginia) and cooperate fully with any investigation that results.

[~~6.~~ h. If] at any time the director has reason to suspect that the abusive, neglectful or exploitive act is a crime, the director shall immediately contact the appropriate law-enforcement authorities and cooperate fully with any investigation that results.

[~~F.~~ E.] Exceptions and conditions to the provider's duties.

1. If an individual has funds for clothing and to buy paper, pencils, and stamps to send a letter every day, the provider does not have to pay for them.

2. The provider may prohibit any religious services or practices that present a danger of bodily injury to any individual or interfere with another individual's religious beliefs or practices. [Participation in religious services or practices may be reasonably limited by the provider in accordance with other general rules limiting privileges or times or places of activities.]

3. If a provider has reasonable cause to believe that an individual's mail contains illegal material or anything dangerous, the director may open the mail, but not read it, in the presence of the individual. The director shall inform the individual of the reasons for the concern. [An individual's ability to communicate by mail may also be limited if, in the judgment of a licensed physician or doctoral level psychologist (in the exercise of sound therapeutic practice), the individual's communication with another person or persons will result in demonstrable harm to the individual's mental health. The reasons for the restriction shall be documented in the individual's service record, the human rights advocate shall be notified, and the LHRC shall approve the restriction prior to implementation.]

4. Providers may limit the use of a telephone in the following ways:

a. Providers may limit use to certain times and places to make sure that other individuals have equal access to the telephone and that they can eat, sleep, or participate in an activity without being disturbed.

b. Providers may limit use by individuals receiving services for substance abuse, but only if [~~professionally accepted parameters of clinical~~ sound therapeutic] practice [~~require~~ requires] the restriction [and the LHRC has approved the restriction].

[c. Providers may limit an individual's access to the telephone if communication with another person or persons will result in demonstrable harm to the individual and is significantly impacting treatment in the judgment of a licensed physician or doctoral level psychologist. The reasons for the restriction shall be documented in the individual's service record, the human rights advocate shall be notified, and the LHRC shall approve the restriction prior to implementation.]

[5. Providers may limit or supervise an individual's visitors when, in the judgment of a licensed physician or doctoral level psychologist, the visits result in demonstrable harm to

the individual and significantly impact the individual's treatment, or when the visitors are suspected of bringing contraband or in any other way are threatening harm to the individual. The reasons for such restriction shall be documented in the individual's service record, the human rights advocate shall be notified, and the LHRC shall approve the restriction prior to implementation.]

[5. 6.] Providers may stop, report or intervene to prevent any criminal act.

12 VAC 35-115-60. Services.

A. Each individual receiving services shall receive those services according to law and [~~professionally accepted parameters of clinical~~ sound therapeutic] practice.

B. The provider's duties.

1. [~~Providers shall comply with all state and federal laws, including the Americans with Disabilities Act (42 USC § 12101 et seq.), that prohibit discrimination on the basis of race, color, religion, ethnicity, age, sex, disability, or ability to pay.~~] Providers shall develop, carry out, and regularly monitor policies and procedures governing discrimination in the provision of services. [~~Providers shall comply with all state and federal laws, including any applicable provisions of the Americans with Disabilities Act (42 USC § 12101 et seq.), that prohibit discrimination on the basis of race, color, religion, ethnicity, age, sex, disability, or ability to pay.~~] These policies and procedures shall require, at a minimum, the following:

a. An individual [or anyone acting on his behalf] may complain [~~in writing~~] to the director if he believes that his services have been limited or denied [~~on an unlawful basis due to discrimination~~].

b. If an individual makes a complaint [of discrimination], the director shall assure that an appropriate investigation is conducted immediately. The director shall make a decision, take action, and document the action within 10 working days of receipt of the complaint.

c. A written copy of the decision and the director's action shall be forwarded to the individual, the [human rights] advocate, and any employee or employees involved.

d. If the individual [or his legally authorized representative, as applicable,] is not satisfied with the director's decision or action, he may file a petition for an LHRC hearing under [~~12 VAC 35-115-160~~ 12 VAC 35-115-180].

2. Providers shall ensure that all clinical services, including medical services and treatment, are at all times delivered within [~~professionally accepted parameters of clinical~~ sound therapeutic] practice.

[3. Providers shall develop and implement policies and procedures that address emergencies. These policies and procedures shall:

a. Identify what caregivers may do to respond to an emergency.

b. Identify qualified clinical staff who are accountable for assessing emergency conditions and determining the appropriate intervention.

c. Require that the director immediately notify the individual's legally authorized representative, if there is one, and the advocate if an emergency results in harm or injury to any individual.

d. Require documentation in the individual's services record of all facts and circumstances surrounding the emergency.]

[3. 4.] Providers shall assign a specific person or group of persons to carry out each of the following activities:

a. Medical, mental and behavioral [screenings and] assessments [, as applicable,] upon admission and during the provision of services;

b. Preparation, implementation, [~~ongoing reviews,~~] and appropriate changes in an individual's services plan [based on the ongoing review of the medical, mental, and behavioral needs of the individual receiving services] ; and

c. Preparation and implementation of an individual's discharge plan.

[4. 5.] Providers shall not prepare or deliver any service for any individual without a services plan that is tailored specifically to the needs and [expressed] preferences of [~~that the~~] individual [receiving services. Responses to emergencies or crises shall be considered as part of the services plan and thereafter documented in the individual's services plan].

[5. 6.] Providers shall write the services plan and discharge plan in clear, understandable language.

[6. 7.] When preparing and changing an individual's services or discharge plan, providers shall ensure that all services received by the individual are integrated.

[7. 8.] Providers shall ensure that the entries in an individual's services record are at all times authentic, accurate, complete, timely and pertinent.

C. Exceptions and conditions to the provider's duties.

1. Providers may deny or limit an individual's access to a service or services if [~~professionally accepted parameters of clinical~~ sound therapeutic] practice [~~require~~ requires] limiting the service to individuals of the same sex, or similar age, disability [,] or legal status.

2. With the individual's [or legally authorized representative's] consent, providers may involve family members in services and discharge planning. [When the individual or the legally authorized representative requests such involvement, the provider shall take all reasonable steps to do so.]

12 VAC 35-115-70. Participation in decision making.

A. Each individual has a right to participate meaningfully in [~~a~~] decisions [regarding all aspects of services] affecting him. This includes the right to:

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1. Participate meaningfully in the preparation, implementation and any changes to the individual's services and discharge plans.
 2. Express his preferences and have them incorporated into the services and discharge plans consistent with his condition and need for services and the provider's ability to provide.
 3. Object to any part of a proposed services or discharge plan.
 4. Give or not give consent for treatment, including medical treatment. [See 12 VAC 35-115-30.]
 - [5. Give or not give informed consent for electroconvulsive treatment.
 - a. A second opinion shall be obtained from a qualified physician who is not involved in the treatment and services that are provided to the individual.
 - b. The Local Human Rights Committee shall review the decision face to face with the individual to determine that a second opinion has been obtained and that fully informed consent has been obtained from the individual or the individual's legally authorized representative.]
 - [~~6.~~ 6.] Give or not give [informed] consent for participation in human research.
 - [~~6.~~ 7.] Give or not give consent to the disclosure of information the provider keeps about him. [See 12 VAC 35-115-80.]
 - [~~7.~~ 8.] Have a legally authorized representative make decisions for him in cases where the individual [~~is unable to do so~~ lacks capacity to give informed consent].
 - [~~8.~~ 9.] Object to any decision that allows a legally authorized representative to make decisions for him. This includes having a professional assessment of capacity to consent and, at the individual's own expense, an independent assessment of capacity.
 - [10. Be accompanied by someone the individual trusts as his representative when participating in services planning.
 11. Indicate by signature in the service record, the individual's participation in and agreement to services plan, discharge plan, changes to these plans, and all other significant aspects of treatment and services he receives.]
 - [~~9.~~ 12.] Request admission to or discharge from any service any time.
- B. The provider's duties.
1. Providers shall respect, protect, and help develop each individual's ability to participate meaningfully in [~~all~~] decisions [regarding all aspects of services] affecting him [. This shall be done] by involving the individual, to the extent permitted by his capacity, in decision making regarding all aspects of services.
 2. Providers shall ask the individual to express his preferences about [~~all~~] decisions [regarding all aspects of services] that affect him and shall honor these preferences [whenever they are consistent with the individual's condition and need for services and the provider's ability to provide to the extent possible].
 3. Providers shall give each individual the opportunity, and any help he needs, to participate meaningfully in the preparation of his services plan, discharge plan, and changes to these plans, and all other aspects of services he receives. Providers shall document these opportunities in the individual's services record.
 4. Providers shall obtain and document in the individual's services record the individual's consent prior to disclosing any information about him. See 12 VAC 35-115-80 for the rights, duties, exceptions, and conditions relating to disclosure.
 5. Providers shall obtain and document in the individual's services record the individual's consent for any treatment, including medical treatment, before the treatment begins. If the individual is a minor in the legal custody of a natural or adoptive parent, the provider shall obtain this consent from at least one parent. [The consent of a parent is not needed] if a court has ordered or consented to treatment or services pursuant to § 16.1-241 D, 16.1-275, or 54.1-2969 B of the Code of Virginia, [~~the consent of the parent is not needed~~ or a local department of social services with custody of the minor has provided consent]. Reasonable efforts must be made, however, to notify the parent or legal custodian promptly following the treatment or services. Additionally, a competent minor may independently consent to treatment of sexually transmitted diseases, family planning, or outpatient services or treatment for mental illness, emotional disturbance, or addictions pursuant to § 54.1-2969 [~~D E~~] of the Code of Virginia.
 6. Providers shall obtain and document in the individual's services record the individual's informed consent to continue any treatment initiated in an emergency that lasts longer than 24 hours after the emergency began.
 7. If the capacity of an individual to give consent is in doubt, the provider shall make sure that a [qualified] professional [qualified by expertise, training, education, or credentials and] not [~~currently~~ directly] involved with the individual conducts an evaluation and makes a determination of the individual's capacity.
 8. If the individual or his family objects to the results of the [qualified] professional's determination, the provider shall immediately inform the [human rights] advocate.
 - a. If the individual or family member wishes to obtain an independent evaluation of the individual's capacity, he may do so at his own expense [and within reasonable timeframes consistent with his circumstances]. The provider shall take no action for which consent is required, except in an emergency, pending the results of the independent evaluation. The provider shall take no steps to designate a legally authorized representative until the independent evaluation is complete.
 - b. If the independent evaluation is consistent with the provider's evaluation, the evaluation is binding, and the provider shall implement it accordingly.

c. If the independent evaluation is not consistent with the provider's evaluation, the matter shall be referred to the LHRC for review and decision under Part IV [~~(42 VAC 35-115-140 et seq.)~~ (12 VAC 35-115-150 et seq.)] of this chapter.

9. When it is determined that an individual lacks the capacity to give consent, the provider shall designate a legally authorized representative. The director shall have the primary responsibility for determining the availability of and designating a legally authorized representative in the following order of priority:

a. An attorney-in-fact currently authorized to give consent under the terms of a durable power of attorney, a health care agent appointed by an individual under an advance directive pursuant to § 54.1-2983 of the Code of Virginia, a legal guardian [~~or committee~~] of the individual not employed by the provider and currently authorized to give consent, or, if the individual is a minor, a parent having legal custody of the individual.

b. The individual's next of kin. In designating the next of kin, the director shall select the best qualified person, if available, according to the following order of priority [unless, from all information available to the director, another person in a lower priority is clearly better qualified] : spouse, an adult child, a parent, an adult brother or sister, any other relative of the individual. If the individual expresses a preference for one family member over another in the same category, the director shall appoint that family member.

c. [If no other person specified in subdivisions a and b is available and willing to serve,] a provider may appoint a next friend of the individual, after a review and finding by the LHRC that the proposed next friend has [~~held~~ share a residence] with or provided [~~ongoing~~] support and assistance to the individual for a period of at least six months prior to the designation, the proposed next friend has appeared before the LHRC and agreed to accept these responsibilities, and the individual has no objection to this proposed next friend being appointed authorized representative [~~and is a qualified person within the meaning of these regulations to serve in this capacity~~].

10. No provider, director, or employee of a provider or director may serve as legally authorized representative for any individual receiving services delivered by that provider or director [unless the employee is a relative or legal guardian].

11. If a provider documents [~~according to professionally accepted parameters of clinical practice, that an individual's lack of capacity to consent is perpetual, or when that the individual lacks capacity and~~] no person is available or willing to act as a legally authorized representative, the provider shall:

[~~a. Ask a court to appoint a guardian to provide consent; or~~

~~b. Ask a court to authorize treatment (e.g., see § 37.1-134.21 of the Code of Virginia).~~

a. Attempt to identify a suitable person who would be willing to serve as guardian and ask the court to appoint said person to provide consent; or

b. Ask a court to authorize treatment. See § 37.1-134.21 of the Code of Virginia.]

12. If the individual who has a legally authorized representative objects to the disclosure of specific information or a specific proposed treatment, the director shall immediately notify the [human rights] advocate [and the legally authorized representative, as applicable]. A petition for a LHRC review may be filed under [~~42 VAC 35-115-160~~ 12 VAC 35-115-180].

13. Providers shall make sure that an individual's capacity to consent is reviewed [~~periodically and~~ at least every six months or] as the individual's condition warrants according to [~~accepted clinical~~ sound therapeutic] practice to assess the continued need for a surrogate decision [-] maker. Such reviews [, or decisions not to review,] shall be documented in the individual's services record and communicated in writing to the surrogate decision [-] maker. [Providers shall also consider an individual's request for review in a timely manner.]

14. Providers shall respond to an individual's request for discharge according to requirements set forth in statute and shall make sure that the individual is not subject to punishment, reprisal, or reduction in services because he makes a request.

[a. Voluntary admissions.]

[~~a.~~ (1)] Individuals admitted under § 37.1-65 of the Code of Virginia to mental health facilities operated by the department who notify the director of their intent to leave shall be released when appropriate, but no later than eight hours after notification, unless another law authorizes the director to detain the individual for a longer period.

[~~b.~~ (2)] Minors admitted under § 16.1-338 or 16.1-339 of the Code of Virginia shall be released to the parent's (or legal guardian's) custody within 48 hours of the consenting parent's (or legal guardian's) notification of withdrawal of consent, unless a petition for continued hospitalization pursuant to § 16.1-340 or 16.1-345 of the Code of Virginia is filed.

[b. Involuntary commitment.]

[(1)] When a minor involuntarily committed under § 16.1-345 of the Code of Virginia no longer meets the commitment criteria, the director shall take appropriate steps to arrange the minor's discharge.

[~~However, if an individual leaves a service "against medical advice," any subsequent billing of the individual by his private third-party payor shall not constitute punishment or reprisal on the part of the provider.~~

~~If an individual certified for admission under § 37.1-65.1 or 37.1-65.3 of the Code of Virginia requests discharge, the director will determine whether the individual continues to meet the criteria for certification. If the director denies the~~

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~~request for discharge, the individual and the individual's legally authorized representative shall be notified in writing of the reasons for denial and of the individual's right to seek relief in the courts. The request and reasons for denial shall be included in the individual's services record.~~

~~When an individual involuntarily committed under § 37.1-67.3 of the Code of Virginia has been receiving services for more than 30 days and makes a written request for discharge, the director shall determine whether the individual continues to meet the criteria for involuntary commitment. If the director denies the request for discharge, he shall notify the individual in writing of the reasons for denial and of the individual's right to seek relief in the courts. The request and reasons for denial shall be included in the individual's services record. Anytime an individual meets any of the criteria for discharge set out in § 37.1-98 A of the Code of Virginia, the director shall take all necessary steps to arrange the individual's discharge.~~

~~If at any time it is determined that an individual involuntarily admitted under Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of the Code of Virginia no longer meets the criteria upon which the individual was admitted and retained, the director, or where appropriate the commissioner, shall immediately inform the individual, the advocate, and the appropriate court of this determination and shall seek judicial authorization to discharge or transfer the individual. Further, pursuant to § 19.2-182.6 of the Code of Virginia, the commissioner shall petition the committing court for conditional or unconditional release at any time he believes the acquittee no longer needs hospitalization.~~

(2) When an individual involuntarily committed under § 37.1-67.3 of the Code of Virginia has been receiving services for more than 30 days and makes a written request for discharge, the director shall determine whether the individual continues to meet the criteria for involuntary commitment. If the director denies the request for discharge, he shall notify the individual in writing of the reasons for denial and of the individual's right to seek relief in the courts. The request and reasons for denial shall be included in the individual's services record. Anytime an individual meets any of the criteria for discharge set out in § 37.1-98 A of the Code of Virginia, the director shall take all necessary steps to arrange the individual's discharge.

(3) If at any time it is determined that an individual involuntarily admitted under Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of the Code of Virginia no longer meets the criteria upon which the individual was admitted and retained, the director shall notify the commissioner who shall seek judicial authorization to discharge or transfer the individual. Further, pursuant to § 19.2-182.6 of the Code of Virginia, the commissioner shall petition the committing court for conditional or unconditional release at any time he believes the acquittee no longer needs hospitalization.

c. Certified admissions. If an individual certified for admission under § 37.1-65.1 or 37.1-65.3 of the Code of

Virginia requests discharge, the director will determine whether the individual continues to meet the criteria for certification. If the director denies the request for discharge, the individual and the individual's legally authorized representative shall be notified in writing of the reasons for denial and of the individual's right to seek relief in the courts. The request and the reasons for denial will be included in the individual's services record.]

C. Exceptions and conditions to the provider's duties.

1. Providers [, in an emergency,] may initiate, administer [,] or undertake a proposed treatment without the consent of the individual or the individual's legally authorized representative [in an emergency in order to prevent serious harm, injury, or death to an individual receiving services or to others, or to avoid substantial property damage . All emergency treatment shall be documented in the individual's services record within 24 hours] .

[a. Providers shall immediately notify the legally authorized representative, as applicable, of the provision of treatment without consent during an emergency.

b. Providers shall continue emergency treatment without consent beyond 24 hours only following a review of the individual's condition and if a new order is issued by a professional who is authorized by law and the provider to order the treatment.

c. Providers shall notify the human rights advocate if emergency treatment without consent continues beyond 24 hours.

d. Providers shall develop and integrate treatment strategies to address and prevent future such emergencies to the extent possible, into the individual's services plan, following the provision of emergency treatment without consent.]

2. Providers may provide treatment without consent in accordance with a court order or in accordance with other provisions of law that authorize such treatment [including the Health Care Decisions Act (§ 54.1-2981 et seq.). The provisions of these regulations are not intended to be exclusive of other provisions of law but are cumulative] (e.g., see § 54.1-2970 of the Code of Virginia).

12 VAC 35-115-80. Confidentiality.

A. Each individual is entitled to have all information that a provider maintains or knows about him remain confidential. Each individual has a right to give his consent before the provider shares information about him or his care unless another law [, federal regulation,] or these regulations specifically require or permit the provider to disclose certain specific information.

B. The provider's duties [: .]

1. Providers shall maintain the confidentiality of any information that identifies an individual receiving services from the provider. If an individual's services record pertains in whole or in part to referral, diagnosis or treatment of substance abuse, providers shall release information only

according to applicable federal regulations (see 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records).

2. Providers shall tell each individual, and his legally authorized representative if he has one, about the individual's confidentiality rights. This shall include how information can be disclosed and how others might get information about the individual without his consent.

3. Providers shall prevent unauthorized disclosures of information from services records [and shall convey the information in a secure manner].

4. If consent to disclosure is required, providers shall get the written consent of the individual [or the legally authorized representative, as applicable,] before disclosing information. In the case of a minor, the [~~concurrent~~] consent of [~~both~~] the [custodial] parent [~~and the minor is required, except in the case of treatment for outpatient substance abuse for which the minor alone may provide consent.~~] or other person authorized to consent to the minor's treatment under § 54.1-2969 is required, except as provided below:]

a. Section 54.1-2969 [~~D E~~] of the Code of Virginia permits a minor to authorize the release of records related to medical or health services for a sexually transmitted disease or family planning but requires parental consent for release of records related to outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

b. A minor may [~~authorized~~ authorize] the release of outpatient substance abuse records without parental consent in programs governed by 42 CFR Part 2.

5. When providers disclose information, they shall attach a statement that informs the person receiving the information that it must not be disclosed to anyone else unless the individual consents or unless the law allows or requires further disclosure without consent.

6. Upon request, providers shall tell individuals the sources of information contained in their services records and the names of anyone, other than employees of the provider, who has received information about them from the provider. Individuals receiving services [~~from a CSB or private provider~~] should be informed that the department may have [~~had~~] access to their records.

C. Exceptions and conditions to the provider's duties.

1. Providers may encourage individuals to name family members, friends, and others who may be told of their presence and general condition or well-being. [Consent must be obtained and documented in the services record for the provider to contact family members, friends, or others.]

2. Providers may disclose the following information without consent [or violation of the individual's confidentiality], but only under the conditions specified in this subdivision and in subdivision 3 of this subsection. Providers should always consult 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, if applicable, because

these federal regulations may prohibit some of the disclosures addressed in this section. See also § 32.1-127.1:03 of the Code of Virginia for a list of circumstances under which records may be disclosed without consent.

a. *Emergencies:* Providers may disclose information to any person who needs that particular information for the purpose of preventing injury, death or substantial property destruction in an emergency. The provider shall not disclose any information that is not needed for these specific purposes.

b. *Employees:* Providers may disclose to any full- or part-time employee, consultant, agent, or contractor of the provider, or to the department or CSB, information required to give services to the individual or to get payment for the services.

c. *Insurance companies and other third party payers:* Disclosure may be made to insurance companies and other third party payers according to Chapter 12 (§ 37.1-225 et seq.) of Title 37.1 of the Code of Virginia.

d. *Court proceedings:* If the individual, or someone acting for him, introduces any aspect of his mental condition or services as an issue before a court, administrative agency, or medical malpractice review panel, the provider may disclose any information relevant to that issue. The provider may also disclose any records if they are properly subpoenaed, if a court orders them to be produced, or if involuntary commitment or certification is being proposed or conducted.

e. *Legal counsel:* Providers may disclose information to their own legal counsel, or to anyone working on behalf of their legal counsel, in providing representation to the provider. Providers of state-operated services may disclose information to the Office of the Attorney General, or to anyone working on behalf of that office, in providing representation to the Commonwealth of Virginia.

f. *Human rights committees:* Providers may disclose to the LHRC and the SHRC any information necessary for the conduct of their responsibilities under these regulations.

g. *Others authorized or required by the commissioner, CSB or private program director:* Providers may disclose information to other persons if authorized or required by the commissioner, CSB or private program director for the following activities:

(1) Licensing, human rights, certification or accreditation reviews;

(2) Hearings, reviews, appeals or investigations under these regulations;

(3) Evaluation of provider performance and individual outcomes (see § 37.1-98.2 of the Code of Virginia);

(4) Statistical reporting;

(5) Preauthorization, utilization reviews, financial and related administrative services reviews and audits; or

(6) Similar [oversight and review] activities.

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h. *Preadmission screening, services and discharge planning:* Providers may disclose to the department, the CSB or to other providers information necessary to prescreen individuals or to prepare and carry out a comprehensive individualized services or discharge plan (see § 37.1-98.2 of the Code of Virginia).

i. *Protection and advocacy agency:* Providers may disclose to the protection and advocacy agency any information that may establish probable cause to believe that an individual receiving services has been abused or neglected and any information concerning the death or serious injury of any individual while receiving services, whatever the suspected cause of the death.

j. *Historical research:* Providers may disclose information to persons engaging in bona fide historical research if [all of the following conditions are met]:

(1) The commissioner, CSB executive director [,] or private program director authorizes the research;

(2) The individual or individuals who are the subject of the disclosure are deceased;

(3) There are no known living persons authorized by law to consent to the disclosure; and

(4) The disclosure would in no way reveal the identity of any person who is not the subject of the historical research.

k. A request for historical research shall include, at a minimum:

(1) A summary of the scope and purpose of the research;

(2) A description of the product to result from the research and its expected date of completion;

(3) A rationale explaining the need to access otherwise confidential records; and

(4) Specific identification of the type and location of the records sought.

l. *Protection of the public safety:* If a provider reasonably believes an individual receiving services is a present threat to [~~the safety of the public~~ a specifically identifiable person or the public], the provider may [~~disclose~~ communicate] only those facts necessary to [~~express the potential threat~~ alleviate the potential threat].

m. *Inspector General:* Providers may disclose to the Inspector General any individual services records and other information relevant to the provider's delivery of services.

n. *Virginia Patient Level Data System:* Providers may disclose financial and services information to Virginia Health Information as required by law (see Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia).

o. *Other statutes or regulations:* Providers may disclose information to the extent required or permitted by any other state or federal statute or regulations.

3. If information is disclosed without consent to anyone other than employees of the department, CSB or other provider, providers shall take the following steps before the disclosure (or, in an emergency, promptly afterward):

a. Put a written [~~summary~~ notation] of the information disclosed, the name of the person who received the information, the purpose of disclosure, and the date of disclosure permanently in the individual's services record.

b. Give the individual or his legally authorized representative written notice of the disclosure, including the name of each person who received the information and the nature of the information.

[4.] If the disclosure is not required by law, give strong consideration to any objections from the individual or his legally authorized representative [in making the decision to release information] (see Chapter 26 (§ 2.1-377 et seq.) of Title 2.1 of the Code of Virginia).

12 VAC 35-115-90. Access to and correction of services records.

A. Each individual has a right to see, read, and get a copy of his own services record [~~(see §§ 2.1-342.01 A 5 and 32.1-127.1:03 of the Code of Virginia)~~]. Minors must have their parent or guardian's permission first. If this right is restricted according to law, the individual has a right to let [certain] other people see his record. Each individual has a right to challenge, correct or explain anything in his record. Whether or not corrections are made as a result, each individual has a right to let anyone who sees his record know that he tried to correct or explain his position and what happened as a result. An individual's legally authorized representative has the same rights as the individual himself has (see § 2.1-382 of the Code of Virginia).

B. The provider's duties []:

1. Providers shall tell each individual, and his legally authorized representative if he has one, how he can access and [~~correct~~ provide corrections to] his own services records.

2. Providers shall permit each individual to see [~~and correct~~] his records when he requests them [and to provide corrections if necessary].

3. Providers shall, without charge, give individuals any help they may need to read and understand their services records and [~~make~~ provide] corrections to them.

4. If the provider limits or refuses to let an individual see his services records, the provider shall notify the advocate and tell the individual that he can ask to have a lawyer, physician, or psychologist of his choice see his records. If the individual makes this request, the provider shall disclose the record to that lawyer, physician, or psychologist (see §§ 2.1-342.01 A 5, 32.1-127.1:03 and 8.01-413 of the Code of Virginia).

[5. The provider shall document in the record the decision and reasons for the decision to limit or refuse access to the individual's medical record. The individual shall be notified of time limits and conditions for removal of the restriction. These time limits and conditions shall also be specified in the record.]

[~~5.~~ 6.] If an individual asks to challenge, correct, or explain any information contained in his services record, the provider shall investigate and file in the services record a written report concerning the individual's request.

a. If the report finds that the services record is incomplete, inaccurate, not pertinent, not timely, or not necessary, the provider shall:

(1) Either mark that part of the services record clearly to say so, or else remove that part of the services record and file it separately [with an appropriate cross reference to indicate that the information was removed].

(2) Not disclose the original services record without separate specific consent or legal authority (e.g., if compelled by subpoena or other court order).

(3) Promptly notify in writing all persons who have received the incorrect information that the services record has been corrected and request that recipients acknowledge the correction.

b. If the report does not result in action satisfactory to the individual, the provider shall, upon request, file in the services record the individual's statement explaining his position. If needed, the provider shall help the individual to write this statement. If a statement is filed, the provider shall:

(1) Give all persons who have copies of the record a copy of the individual's statement.

(2) Clearly note in any later disclosure of the record that it is disputed and include a copy of the statement with the disputed record.

C. Exceptions and conditions to the provider's duties. A provider may deny access to all or a part of an individual's services record only if a physician or a licensed psychologist involved in providing services to the individual talks to the individual, looks over the services record as a result of the individual's request for access, signs and puts in the services record permanently a written statement that he thinks access to the services records by the individual at this time would be physically or mentally harmful to the individual. The physician or licensed psychologist must also tell the individual as much about his services record as he can without risking harm to the individual (~~see §§ 2.1-342.01 A 5, 32.1-127.1-03 and 8.01-413 of the Code of Virginia~~).

12 VAC 35-115-100. Restrictions on freedoms of everyday life.

A. From admission until discharge from a service, each individual is entitled to:

1. Enjoy all the freedoms of everyday life that are consistent with his need for services, his protection, and the

protection of others, and that do not interfere with his services or the services of others. These freedoms include the following:

a. Freedom to move within the service setting, its grounds and the community.

b. Freedom to communicate, associate, and meet privately with anyone the individual chooses.

c. Freedom to have and spend personal money.

d. Freedom to see, hear, or receive television, radio, books, and newspapers whether privately owned or in a library or public area of the service setting.

e. Freedom to keep and use personal clothing and other personal items.

f. Freedom to use recreational facilities and enjoy the outdoors.

g. Freedom to make purchases in canteens, vending machines or stores selling a basic selection of food and clothing.

2. Receive services in that setting and under those conditions that are least restrictive of his freedom.

[~~3. Be completely free from any unnecessary restrictions, including restraint, seclusion, time out, and restrictions in behavioral treatment plans.]~~

B. The provider's duties.

1. Providers shall encourage each individual's participation in normal activities and conditions of everyday living and support each individual's freedoms.

2. Providers shall not limit or restrict any individual's freedom more than is needed to achieve a therapeutic benefit, maintain a safe and orderly environment, or intervene in an emergency.

3. Providers shall not impose any restriction on an individual unless the restriction is justified and carried out according to these regulations.

4. Providers shall make sure that a qualified professional regularly reviews every restriction and that the restriction is discontinued when the individual has met the criteria for removal.

[~~5. Providers shall report all restrictions involving the use of seclusion or restraint which do not comply with these regulations, an approved variance, or that result in harm to an individual to the advocate within 24 hours of their imposition.]~~

[~~6.~~ 5.] Providers shall not place any restriction on the physical or personal freedom of any individual solely because criminal or delinquency charges are pending against that individual [, except in the situation where the individual is transferred directly from jail or detention for the purpose of receiving an evaluation or treatment] .

[~~7. Providers shall develop and implement policies and procedures that address emergencies. These policies and procedures must:~~

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~~a. Identify what caregivers may do to respond to an emergency.~~

~~b. Identify qualified clinical staff who are accountable for assessing emergency conditions and determining the appropriate intervention.~~

~~c. Require that the director immediately notify the individual's legally authorized representative, if there is one, and the advocate if an emergency results in harm or injury to any individual.~~

~~d. Require documentation in the individual's services record of all facts and circumstances surrounding the emergency.~~

~~8. Providers who use restraint or seclusion shall develop written restraint and seclusion policies and procedures that comply with professionally accepted parameters of clinical practice and include the following requirements at a minimum:~~

~~a. Providers shall get approval of all proposed restraint and seclusion policies and procedures from the LHRC before they are implemented, when changes are proposed, and upon request by the advocate or the LHRC.~~

~~b. Providers shall make sure that each individual who requires restraint or seclusion is given the opportunity to eat at normal meal times and take fluids, use the restroom, and bathe as needed.~~

~~c. Providers shall make sure that the medical and mental condition of each individual in restraint or seclusion is continuously monitored by trained, qualified staff for the duration of the restriction.~~

~~d. Each use of restraint or seclusion shall end immediately when the criteria for removal is met.~~

~~e. Incidents of seclusion and restraint, including the rationale, type and duration of the restraint, shall be reported to the department as provided in 12 VAC 35-115-210.~~

~~9. Providers shall not consider the use of restraint or seclusion unless other less restrictive techniques have been considered and documented in the individual's services record to demonstrate that these less restrictive techniques did not or would not succeed in reducing or eliminating behaviors that are self-injurious or dangerous to other people.~~

~~10. Providers of services delivered in settings other than inpatient hospital settings shall not use seclusion unless authorized by an approved variance.]~~

C. Exceptions and conditions on the provider's duties.

~~[1. Providers may impose a restriction in an emergency, but only to the extent necessary to stop the emergency and only if:~~

~~a. Less restrictive measures have been exhausted; or~~

~~b. The emergency is so sudden that no less restrictive measure is possible.~~

~~2. Providers may use time out, but only according to policies and procedures which comply with professionally accepted parameters of clinical practice. These policies and procedures shall require, at a minimum:~~

~~a. Documentation in the individual's services record of the justification and purpose for using time out instead of other less restrictive techniques.~~

~~b. Regular physical checks on the individual and opportunities for motion, exercise, and personal hygiene, and documentation of these checks and opportunities in the individual's services record.~~

~~3. Providers may impose restrictions if a qualified professional involved in providing services to the individual has, in advance:~~

~~a. Assessed and documented all possible alternatives to the proposed restriction, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently;~~

~~b. Determined that the proposed restriction is necessary for effective treatment of the individual or to protect him or others from personal harm, injury or death;~~

~~c. Documented in the individual's services record the specific reasons for the restriction; and~~

~~d. Explained, so that the individual can understand, the reason for restriction, the criteria for its removal, and the individual's right to a fair review of whether the restriction is permissible.~~

~~4. 1.] Providers may impose a restriction if a court has ordered the provider to impose the restriction or if the provider is otherwise required by law to impose such restriction [, such as forensic patients]. Such restriction shall be documented in the individual's services record.~~

~~[5. Providers may use restrictions in a behavioral treatment plan, but only if the plan has been developed according to policies and procedures approved by the LHRC. Such procedures shall ensure that:~~

~~a. Plans are initiated, developed, carried out, and monitored within professionally accepted parameters of clinical practice.~~

~~b. Individual plans are submitted to and approved by the treating professionals, an independent external review committee, and the LHRC, and that these approvals are documented in the individual's services record before implementation.~~

~~c. Information about individual plans or aggregate data about all plans is available anytime:~~

~~(1) Upon request by the advocate, the LHRC, the SHRC, and the department; and~~

~~(2) According to any relevant reporting requirements.~~

~~d. Seclusion and restraints are not included as part of the plan.~~

~~6.~~ 2.] Providers may develop and enforce written rules of conduct, but only if the rules do not conflict with these regulations or any individual's services plan, and the rules are needed to maintain a safe and orderly environment.

[~~7.~~ 3.] Providers shall [, in the development of these rules of conduct]:

a. Get as many suggestions as possible from all individuals who are expected to obey the rules [~~and developing the rules~~].

b. Apply these rules in the same way to each individual.

c. Give the rules to and review them with each individual [and his legally authorized representative] in a way that the individual can understand them. This includes explaining possible consequences for violating the rules.

[~~d. Prohibit restraint or seclusion as any type of punishment.~~]

[~~e.~~ d.] Post the rules in summary form in all areas to which individuals and their families have regular access.

[~~f.~~ e.] Submit the rules to the LHRC for review and approval before putting them into effect, before any changes are made to the rules, and upon request of the advocate or LHRC.

[~~g.~~ f.] Prohibit individuals from disciplining other individuals, except as part of an organized self-government program conducted according to a written policy approved in advance by the LHRC.

[12 VAC 35-115-110. Use of seclusion, restraint, and time out.

A. Each individual is entitled to be completely free from any unnecessary use of seclusion, restraint, and time out.

B. The provider's duties.

1. Providers shall not use seclusion or restraint as punishment, reprisal, or for the convenience of staff.

2. Providers shall limit each written order for seclusion or restraint to four hours for individuals 18 and older, two hours for children and adolescents ages 9 to 17, and one hour for children under age 9.

3. Providers shall monitor the combined use of seclusion and restraint by a continuous face-to-face observation, not by an electronic surveillance device.

4. Providers shall ensure that seclusion and restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of seclusion and restraint techniques.

5. Providers shall not utilize seclusion or restraint unless it is justified and carried out according to these regulations.

a. The justification for any seclusion or restraint procedure must be documented in the individual's services plan.

b. The authorization for the use of seclusion or restraint must be documented in the individual's services plan and include behavioral criteria the individual must meet for release.

c. The authorization for the use of seclusion or restraint must be time-limited. Authorizations for the use of seclusion or restraint procedures may not be given on an as needed basis.

d. The authorizing professional must document that he has taken into account any physical or psychological conditions that would place the individual at greater risk during restraint or seclusion.

6. Providers shall make sure that a qualified professional regularly reviews every use of seclusion or restraint and that the procedure is discontinued when the individual has met the criteria for removal.

7. Providers shall not use seclusion or restraint solely because criminal or delinquency charges are pending against the individual.

8. Providers who use seclusion or restraint shall develop written seclusion and restraint policies and procedures that comply with applicable federal and state statutes and regulations, accreditation standards, third party payer requirements, and sound therapeutic practice. These policies and procedures shall include the following requirements at a minimum:

a. Providers shall submit all proposed seclusion and restraint policies and procedures to the LHRC for review and comment before they are implemented, when changes are proposed, and upon request by the human rights advocate or the LHRC. The SHRC may request these policies and procedures be transmitted to the SHRC for review.

b. Providers shall make sure that each individual who requires seclusion or restraint is given the opportunity for motion and exercise, to eat at normal meal times and take fluids, to use the restroom, and bathe as needed.

c. Providers shall make sure that the medical and mental condition of each individual in seclusion or restraint is continuously monitored by trained, qualified staff for the duration of the restriction.

d. Each use of seclusion or restraint shall end immediately when criteria for removal is met.

e. Incidents of seclusion and restraint, including the rationale, type and duration of the restraint, shall be reported to the department as provided in 12 VAC 35-115-230.

9. Providers shall not consider the use of seclusion or restraint unless other less restrictive techniques have been considered and documented in the individual's services plan to demonstrate that these less restrictive techniques did not or would not succeed in reducing or eliminating behaviors that are self-injurious or dangerous to other people.

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10. Providers of services delivered in settings other than inpatient hospital settings shall not use seclusion.

11. Providers shall comply with all applicable state and federal laws and regulations, accreditation standards, and third party payer requirements as they relate to seclusion and restraint. Whenever an inconsistency exists between these regulations and federal regulations, accreditation standards, or the requirements of third party payers, the provider will be held to the higher standard.

12. Providers shall notify the department whenever a regulatory or accreditation agency or third party payer identifies problems in the provider's compliance with any applicable seclusion or restraint standard.

13. Providers shall ensure that no individual is in time out for more than 30 minutes per episode and that the instruction to the individual to move or remain in the alternative location may not take the form of a threat.

14. Providers shall ensure that isolated time out as defined by the U.S. Health Care Financing Administration (HCFA) may be used only in compliance with HCFA requirements. Isolated time out may only be used as part of a behavioral treatment program that has been approved by the LHRC and incidents of isolated time out shall be limited to one hour.

C. Exceptions and conditions on the provider's duties.

1. Providers may impose seclusion or restraint in an emergency, but only to the extent necessary to stop the emergency and only if:

- a. Less restrictive measures have been exhausted; or
- b. The emergency is so sudden that no less restrictive measure is possible.

2. Providers may use seclusion or restraint if a qualified professional involved in providing services to the individual has, in advance:

- a. Assessed and documented why alternatives to the proposed use of seclusion or restraint have not been successful in changing the behavior or not attempted, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently;
- b. Determined that the proposed seclusion or restraint is necessary for effective treatment of the individual or to protect him or others from personal harm, injury, or death;
- c. Documented in the individual's service record the specific reasons for the seclusion or restraint; and
- d. Explained, so that the individual can understand, the reason for using restraint or seclusion, the criteria for its removal, the individual's right to a fair review of whether the restriction is permissible.

3. Providers may use restraint or seclusion in a behavioral treatment plan, but only if the plan has been developed according to policies and procedures. All plans involving

the use of restraints for behavioral purposes and all plans involving the use of seclusion shall be reviewed in advance by the LHRC. Such procedures shall ensure that:

a. Plans are initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education or credential.

b. Individual plans are submitted to and approved by the treating professionals; an independent review committee, comprised of professionals with training and experience in applied behavior analysis, which shall assess the technical adequacy of the plan and data collection procedures; and the LHRC, which shall review the plans to ensure that the rights of the individuals are protected. All approvals shall be documented in the individual's services record before implementation.

c. Information about the individual plans or aggregate data about all plans is available anytime:

(1) Upon request by the human rights advocate, the LHRC, the SHRC, the Inspector General, and the department; and

(2) According to relevant reporting requirements.

d. Seclusion and restraint shall only be included in plans:

(1) To address behaviors that present an immediate danger to the individual or others, but only after it has been demonstrated by a detailed and systematic analysis of the behavior itself and the situations in which the behavior occurs. Providers shall document the lack of success or of probable success of less restrictive procedures attempted and that the risks associated with not treating the behavior are greater than any risks associated with the use of restraint or seclusion.

(2) After review by the LHRC. If the LHRC finds that a behavioral treatment plan that utilizes seclusion or restraint violates or has the potential to violate the rights of the individual, the LHRC will notify and make recommendations to the director.

(3) If the plans include nonrestrictive procedures and environmental modifications that address the targeted behavior.

e. Plans that include the use of seclusion and restraint shall also be reviewed quarterly by the independent review committee and by the LHRC to assess if the use of restrictions has resulted in improvements in functioning.

4. Providers may use time out, but only according to policies and procedures that comply with sound therapeutic practice. These policies and procedures shall be documented in the individual's services plan with the justification and purpose for using time out instead of other less restrictive techniques.]

~~[42 VAC 35-115-110 12 VAC 35-115-120]~~. **Work.**

A. Individuals have a right to engage or not engage in work [or work-related activities consistent with their service needs] while receiving services.

B. The provider's duties.

1. Providers shall not require, entice, persuade, or permit any individual or his family member to perform labor for the provider as a condition of receiving services. If an individual voluntarily chooses to perform labor for the provider, the labor must be consistent with his individualized services plan. All policies and procedures, including pay, must be consistent with the Fair Labor Standards Act (29 USC § 201 et seq.).

2. Providers shall consider individuals who are receiving services for employment opportunities on an equal basis with all other job applicants and employees according to the Americans with Disabilities Act (42 USC § 12101 et seq.).

3. Providers shall give individuals and employers information, training, and copies of policies affecting the employment of individuals receiving services upon request.

~~[4. In residential settings, providers may request that an individual keep his immediate living area clean, but shall not withhold or stop services because an individual refuses to perform work, including personal maintenance or personal housekeeping.]~~

~~[5. 4.]~~ If vocational training, extended employment services, or supportive employment services are [used offered], providers shall establish procedures for documenting the decision on employment and training and the methodology for establishing consumer wages. Providers shall give a copy of the procedures and information about possible consequences for violating the procedures to all individuals and their legally authorized representatives.

~~[6. 5.]~~ Providers [who employ individuals receiving services] shall not deduct the cost of services from an individual's wages [unless ordered to do so by a court].

~~[7. 6.]~~ Providers shall not sell to or purchase goods or services from an individual receiving services except through established governing body policy that is consistent with U.S. Department of Labor standards].

[C. Exceptions and conditions on the provider's duties. In residential settings, providers may request that an individual keep his immediate living area clean, but shall not withhold or stop services because an individual refuses to perform personal maintenance or personal housekeeping tasks.]

~~[42 VAC 35-115-120 12 VAC 35-115-130]~~. **Research.**

A. Each individual has a right to choose to participate or not participate in human research.

B. The provider's duties.

1. Providers shall get prior, written, informed consent of the individual or his legally authorized representative before any individual begins to participate in human research.

2. Providers shall comply with all other applicable state and federal laws and regulations regarding human research, including the provisions under Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia and the regulations promulgated under that statute.

3. Providers shall solicit consultation [and review by an institutional review board or research review committee] prior to participation in human research.

4. All providers shall [~~inform~~ obtain permission from] the Local Human Rights Committee [~~of a client's participation~~ before an individual receiving services may participate] in any human research project and provide periodic updates [on the status of the individual's participation] to the committee.

~~[42 VAC 35-115-130 12 VAC 115-140]~~. **Complaint and fair hearing.**

A. Each individual has a right to [:

1.] Complain that his provider has violated any of the rights assured under these regulations.

~~[Each individual has a right to 2. Have]~~ a timely and fair review of any complaint according to the procedures in Part IV ([~~42 VAC 35-115-140 12 VAC 35-115-150]~~ et seq.) of this chapter.

~~[Individuals do not have to use these procedures. They have a right to 3. Have someone file a complaint on his behalf.~~

4. Use these and other complaint procedures.

5.] Complain under any other applicable law [, including complain to the protection and advocacy agency] .

B. The provider's duties.

1. If an individual makes a complaint, his provider shall make every attempt to resolve the complaint to the individual's satisfaction at the earliest possible step [~~according to the procedures in Part IV (12 VAC 35-115-140 et seq.) of this chapter~~].

2. Providers shall not take, threaten to take, permit, or condone any action to retaliate against or prevent anyone from filing a complaint or helping an individual to file a complaint.

[3. Providers shall assist the complainant in understanding the full process of complaint, the options for resolution, and the elements of confidentiality involved.]

PART IV.
COMPLAINT RESOLUTION, HEARING, AND APPEAL PROCEDURES.

~~[42 VAC 35-115-140 12 VAC 35-115-150]~~. **General provisions.**

A. The parties to any complaint are the individual and the director. Each party can also have [~~someone~~ anyone] else to represent him during complaint resolution.

B. Meetings, reviews and hearings will generally be closed to other people unless the individual making the complaint

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requests that other people attend or if an open meeting is required by the Virginia Freedom of Information Act.

[1.] The LHRC and SHRC may conduct a closed hearing to protect the confidentiality of persons who are not a party to the complaint, but only if a closed meeting is otherwise allowed under the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia).

[2.] If any person alleges that implementation of an LHRC recommendation would violate the individual's rights or those of other individuals, the person may file a petition for a hearing with the SHRC according to [~~12 VAC 35-115-190~~ 12 VAC 35-115-210] .

C. In no event shall a pending hearing, review or appeal prevent a director from taking corrective action based on the advice of the provider's legal counsel that such action is required by law or he otherwise thinks such action is correct and justified.

D. [~~Except in the case of emergency proceedings, the LHRC and SHRC may, for good cause, extend any time periods governing their own proceedings, either before or after the time period has ended. The LHRC or SHRC, on the motion of any party or on its own motion, may, for good cause, extend any time periods either before or after the expiration of that time period.] No [~~provider or~~] director may extend any time periods for any actions [~~the provider or director~~ he] is required to take under these procedures [without prior approval of the LHRC or SHRC].~~

E. Except in the case of emergency proceedings, if a time period in which action must be taken under this part is not extended by the LHRC or SHRC, the failure of a [~~person~~ party] to act within that time period shall waive that [~~person's~~ party's] further rights under these procedures.

[~~F. Upon request of the advocate, provider, director, an individual or individuals receiving services, or on its own initiative, an LHRC may review any existing or proposed policies, procedures, or practices that could jeopardize the rights of one or more individuals receiving services from the provider with which the LHRC is affiliated. In conducting this review, the LHRC may consult with any advocate, employee of the director, or anyone else. After this review, the LHRC shall make recommendations to the director concerning changes in these policies, procedures, and practices.]~~

[~~G. F.] In making their recommendations [regarding complaint resolution], the LHRC and the SHRC shall identify any rights or regulations that the provider violated and any policies, practices, or conditions that contributed to the violations. They shall also recommend appropriate corrective actions, including changes in policies, practices, or conditions, to prevent further violations of the rights assured under these regulations.~~

[~~H. G.] If it is impossible to carry out the recommendations of the LHRC or the SHRC within a specified time, the LHRC or the SHRC, as appropriate, shall recommend any necessary interim action that gives appropriate and possible immediate remedies.~~

[~~I. H.] Any action plan submitted by the director or commissioner in the course of these proceedings shall fully~~

address both final and interim recommendations made by the LHRC or the SHRC and identify financial or other constraints, if any, which prevent efforts to fully remedy the violation.

[12 VAC 35-115-160. Informal complaint process.

A. Step 1. Anyone who believes that a provider has violated an individual's rights under these regulations may report the alleged violation to the director or the director's designee.

B. Step 2. The director or his designee shall attempt to resolve the complaint immediately. If the complaint is resolved to the individual's or legally authorized representative's satisfaction, no further action is required.

C. Step 3. The director or his designee shall refer any complaint that is not resolved to the individual's or legally authorized representative's satisfaction, within five working days, to the human rights advocate per 12 VAC 35-115-170.

D. Step 4. If the individual or his legally authorized representative, as applicable, is not satisfied with the resolution then the director or the director's designee shall immediately notify the human rights advocate per 12 VAC 35-115-170.

E. The individual or the legally authorized representative, as applicable, may contact the human rights advocate at any time to pursue a formal complaint per 12 VAC 35-115-170.

F. The human rights advocate shall have access to information regarding all informal complaints upon request.

G. Complaints made under this section will not be reported to the department under 12 VAC 35-115-230.]

[~~12 VAC 35-115-150. Informal complaint resolution.~~ 12 VAC 35-115-170. Formal complaint resolution process.]

A. Step 1: Anyone who believes that a provider has violated an individual's rights under these regulations may report it to the director and the [human rights] advocate, or either of them, for [~~informal~~] resolution.

1. If the report is made only to the director [or his designee], the director shall immediately notify the [human rights] advocate. [If the report is made on a weekend or holiday, then the director or his designee shall notify the human rights advocate on the next business day.]

2. If the report is made only to the [human rights] advocate, the [human rights] advocate [~~may~~ shall immediately] notify the director [or his designee]. [If the report is made on a weekend or holiday, then the human rights advocate shall notify the director or his designee on the next business day.] The [human rights] advocate [or the director or his designee] shall notify the individual of his right to pursue his complaint through all available means under this part.

3. If the [human rights] advocate concludes, after an initial investigation, that there is substantial risk that serious and irreparable harm will result if the complaint is not resolved immediately, the [human rights] advocate shall inform the director, the provider, the provider's governing body, and the LHRC. Steps 2 through 6 below shall not be followed. Instead, the LHRC shall conduct a hearing according to the

special procedures for emergency hearings in [~~42-VAC-35-445-470~~ 12 VAC 35-115-190].

B. Step 2: The director [or his designee] shall try to resolve the complaint [~~informally~~] by meeting [within 24 hours of receipt of the complaint] with the individual, any representative the individual chooses, the [human rights] advocate, and others as appropriate, and by conducting an investigation if necessary.

C. Step 3: The director [or his designee] shall give the individual and his chosen representative a written decision and an action plan within 10 working days of receiving the complaint.

D. Step 4: If the individual is not satisfied at this step, he can respond to the director in writing within 5 working days after receiving the director's [or the designee's] written decision and action plan.

E. Step 5: The director shall investigate further as appropriate and shall make a final decision regarding the complaint. The director shall forward a written copy of his final decision and action plan to the individual, his chosen representative, and the [human rights] advocate within 10 working days after the director received the individual's written response.

F. Step 6: If the individual is not satisfied with the director's final decision or action plan, he may file a petition for a hearing by the LHRC using the procedures prescribed in [~~42-VAC-35-445-460~~ 12 VAC 35-115-180].

[~~42-VAC-35-445-460~~ 12 VAC 35-115-180]. **Local Human Rights Committee hearing and review procedures.**

A. Any individual [or legally authorized representative as applicable] who is not satisfied with (i) a director's final decision and action plan resulting from [~~informal~~ the] complaint resolution; (ii) a director's final action following a report of abuse, neglect or exploitation; or (iii) a director's final decision following a complaint of discrimination in the provision of services may request an LHRC hearing by following the steps provided in subsections B through I of this section.

B. Step 1: The petition must be filed within 10 working days of the director's action or final decision for which there is a complaint.

1. The petition for hearing must be in writing. It should contain all facts and arguments surrounding the complaint and reference any section of the regulations that the individual believes the provider violated.

2. The [human rights] advocate or any person the individual chooses may help the individual in filing the petition. If the individual chooses a person other than the [human rights] advocate to help him, he and his chosen representative may request the [human rights] advocate's assistance in filing the petition.

C. Step 2: The LHRC chair shall forward a copy of the petition to the director and the [human rights] advocate as soon as he receives it. A copy of the petition shall also be forwarded to the provider's governing body.

D. Step 3: Within five working days, the director shall submit the following to the LHRC:

1. A written response to everything contained in the petition.

2. A copy of the entire written record of the complaint.

E. Step 4: The LHRC shall hold a hearing within 15 working days of receiving the petition.

1. The parties shall have at least five working days' notice of the hearing.

2. The director or his chosen representative [~~should~~ shall] attend the hearing. The individual [or legally authorized representative, as applicable,] making the complaint shall attend the hearing. [~~If this is not possible, the individual's chosen representative shall attend the hearing.~~]

3. At the hearing, the parties and their chosen representatives have the right to present witnesses and other evidence and the opportunity to be heard.

F. Step 5: Within 10 working days after the hearing ends, the LHRC shall give, in writing, its findings of fact and recommendations to the parties and their representatives. [Whenever appropriate, the LHRC shall identify information that it believes the director shall take into account in making decisions concerning discipline or termination of personnel.]

G. Step 6: Within five working days of receiving the LHRC's findings and recommendations, the director shall give the individual, the individual's chosen representative, the [human rights] advocate, the governing body, and the LHRC a written action plan he [~~wants~~ intends] to take to respond to the LHRC's findings and recommendations. The plan shall not be implemented for five working days after it is submitted, unless the [~~client~~ individual receiving services] agrees to its implementation sooner.

H. Step 7: The individual, his chosen representative, the [human rights] advocate, or the LHRC may object to the action plan within five working days by stating what the objection is and what the director can do to resolve the objection.

1. If an objection is made, the director may not implement the action plan, or may implement only that portion of the plan that the individual making the complaint agrees to, until he resolves the objection as requested or until he appeals to the SHRC for a decision under [~~42-VAC-35-445-490~~ 12 VAC 35-115-210].

2. If no one objects to the action plan, the director shall begin to implement it on the sixth working day after he submitted it.

I. Step 8: If the director does not resolve the objection to the action plan to the individual's satisfaction within two working days following the objection, the individual may appeal to the SHRC under [~~42-VAC-35-445-490~~ 12 VAC 35-115-210] .

[~~42-VAC-35-445-470~~ 12 VAC 35-115-190]. **Special procedures for emergency hearings by the LHRC.**

A. Step 1: If the [human rights] advocate informs the LHRC of a substantial risk that serious and irreparable harm will

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result if a complaint is not resolved immediately, the LHRC shall hold and conclude a preliminary hearing within 72 hours of receiving this information.

1. The director and the [human rights] advocate shall attend the hearing. [The individual and the legally authorized representative may attend the hearing.]

2. The hearing shall be conducted according to the procedures in [~~42 VAC 35-115-160~~ 12 VAC 35-115-180], but it shall be concluded on an expedited basis.

B. Step 2: At the end of the hearing, the LHRC shall make preliminary findings and, if a violation is found, shall make preliminary recommendations to the director, the provider, and the provider's governing body.

C. Step 3: The director shall formulate and carry out an action plan within 24 hours of receiving the LHRC's preliminary recommendations. A copy of the plan shall be sent to the [human rights] advocate, the individual, and the governing body.

D. Step 4: If the individual or the [human rights] advocate objects within 24 hours to the LHRC findings or recommendations or to the director's action plan, the LHRC shall conduct a full hearing within five working days of the objection, following the procedures outlined in [~~42 VAC 35-115-160~~ 12 VAC 35-115-180].

E. Step 5: Either party may appeal the LHRC's decision to the SHRC under [~~42 VAC 35-115-190~~ 12 VAC 35-115-210].

[~~42 VAC 35-115-180~~ 12 VAC 35-115-200]. Special procedures for LHRC reviews involving consent.

A. Step 1: The LHRC may be requested, in writing, to review whether an individual's personal consent is required in the following situations.

1. If an individual objects at any time to a specific treatment, participation in specific human research, or disclosure of specific confidential information, for which consent is required and has been given by his legally authorized representative, other than a legal guardian, he may ask the LHRC to decide whether his personal consent is required for that treatment, participation in research, or disclosure of information.

2. If an individual or his family member has obtained an independent evaluation of the individual's capacity to give any informed consent to treatment or participation in human research under 12 VAC 35-115-70, and the opinion of that evaluator conflicts with the opinion of the provider's evaluator, the LHRC may be requested to decide whether the individual's personal consent is required for any treatment or participation in research.

3. If a director makes a decision that affects an individual and the individual believes that the decision requires his personal consent or that of his legally authorized representative, he may object and ask the LHRC to decide whether consent is required.

NOTE: If the individual is a minor, the consent of the parent or legal guardian must be obtained, unless the treatment provided is for treatment referenced under § 54.1-2969 [~~§~~

E] of the Code of Virginia, including outpatient medical or health services for substance abuse, or mental illness or emotional disturbance, in which case the minor alone may provide the consent as if an adult. If treatment involves admission to an inpatient treatment program, the consent of a minor 14 years of age and older, in addition to that of the parent, must also be obtained in accordance with § 16.1-338 of the Code of Virginia.

B. Step 2: The LHRC may ask that a physician or licensed clinical psychologist not employed by the provider and at the provider's expense, evaluate the individual and give an opinion about his capacity to consent. The LHRC may not make a decision until it reviews the action proposed by the director, any determination of lack of capacity, the opinion of the independent evaluator if applicable, and the individual's reasons for objecting [to that determination].

C. Step 3: The LHRC shall issue its decision within 10 working days of the initial request.

1. If the LHRC agrees that the individual lacks the capacity to consent, the director may begin or continue treatment or research, or disclose the information, but only with the appropriate consent of the legally authorized representative. The LHRC shall advise the individual of his right to appeal this determination to the SHRC under [~~42 VAC 35-115-190~~ 12 VAC 35-115-210].

2. If the LHRC does not agree that the individual lacks the capacity to consent, the director shall not begin any treatment, research or information disclosure without the individual's consent, or shall [~~stop it immediately~~ take immediate steps to discontinue use of medication] if it has already begun. The director may appeal to the SHRC under [~~42 VAC 35-115-190~~ 12 VAC 35-115-210] but may not take any further action until the SHRC issues its opinion.

3. If, regardless of the individual's capacity to consent, the LHRC determines that a decision made by a director requires consent that was not obtained, the director shall immediately rescind the action unless and until such consent is obtained. The director may appeal to the SHRC under [~~42 VAC 35-115-190~~ 12 VAC 35-115-210] but may not take any further action until the SHRC issues its opinion.

[~~42 VAC 35-115-190~~ 12 VAC 35-115-210]. State Human Rights Committee appeals procedures.

A. Any party may appeal to the State Human Rights Committee if he is not satisfied with any of the following:

1. An LHRC's final findings of fact and recommendations following a hearing.

2. A director's final action plan following an LHRC hearing.

3. An LHRC's final decision regarding the capacity of an individual to consent to treatment, research, or disclosure of confidential information.

4. An LHRC's final decision concerning whether consent is needed for the director to take a certain action.

The steps for filing an appeal are provided in subsections B through I of this section.

B. Step 1: Appeals shall be filed in writing by a party within 10 working days of receipt of the final action.

1. The appeal shall explain the reasons the final action is not satisfactory.
2. The [human rights] advocate or any other person may help in filing the appeal. If the individual chooses a person other than the [human rights] advocate to help him, he and his chosen representative may request the [human rights] advocate's help in filing the appeal.
3. The party appealing must give a copy of the appeal to the other party, the [human rights] advocate, and the LHRC.
4. If the director is the party appealing, he shall first request and get written permission to appeal from the commissioner or governing body of the provider, as appropriate. If the director does not get this written permission and note the appeal within 10 working days, his right to appeal is waived.

C. Step 2: If the director is appealing, the individual may file a written statement with the SHRC within five working days after receiving a copy of the appeal. If the individual is appealing, the director shall file a written statement with the SHRC within five working days after receiving a copy of the appeal.

D. Step 3: Within five working days of noting or being notified of an appeal, the director shall forward a complete record of the LHRC hearing to the SHRC. The record shall include, at a minimum:

1. The original petition or information filed with the LHRC and any statement filed by the director in response.
2. Parts of the individual's services record that the LHRC considered and any other parts of the services record [submitted to, but not considered by the LHRC that] either party considers relevant [, but which the LHRC did not consider] .
3. All written documents and materials [presented to and] considered by the LHRC, including any independent evaluations conducted.
4. A tape or word-for-word transcript of the LHRC proceedings.

[5. The LHRC's findings of fact and recommendations.]

[~~5~~. 6.] The director's action plan, if any.

[~~6~~. 7.] Any written objections to the action plan or its implementation.

E. Step 4: The SHRC shall hear the appeal within 20 working days after the chair receives the appeal.

1. The SHRC shall give the parties at least 10 days' notice of the appeal hearing.
2. The following rules govern appeal hearings:

a. The SHRC shall not hear any new evidence.

b. The SHRC is bound by the LHRC's findings of fact [subject to subdivision D 2 (Step 3, Part 2) of this subsection] .

c. The SHRC shall limit its review to whether the facts, as found by the LHRC, establish a violation of these regulations and a determination of whether the LHRC's recommendations or the action plan adequately address the alleged violation.

d. All parties and their representatives shall have the opportunity to appear before the SHRC to present their position and answer questions the SHRC may have.

e. The SHRC will notify the Inspector General of the appeal.

3. If the SHRC decides that the LHRC's findings of fact are clearly wrong or that the hearing procedures employed by the LHRC were inadequate, the SHRC may either:

a. Send the case back to the LHRC for another hearing to be completed within a time period specified by the SHRC; or

b. Conduct its own fact-finding hearing. If the SHRC chooses to conduct its own fact-finding hearing, it may appoint a subcommittee of at least three of its members as fact finders. The fact-finding hearing shall be conducted within 30 working days of the SHRC's initial hearing.

In either case, the parties shall have 15 working days' notice of the date of the hearing and the opportunity to be heard and to present witnesses and other evidence.

F. Step 5: Within 20 working days after the SHRC appeal hearing, the SHRC shall submit a report, its findings of fact, if applicable, and recommendations to the commissioner and to the provider's governing body, with copies to the parties, the LHRC, and the [human rights] advocate.

G. Step 6: Within 10 working days after receiving the SHRC's report, in the case of appeals involving a state facility, the commissioner shall submit an outline of actions to be taken in response to the SHRC's recommendations. In the case of appeals involving CSBs and private providers, both the commissioner and the provider's governing body shall each outline in writing the action or actions they will take in response to the recommendations of the SHRC. They shall also explain any reasons for not carrying out any of the recommended actions. Copies of their responses shall be forwarded to the SHRC, the LHRC, the director, the [human rights] advocate, and the individual.

H. Step 7: If the SHRC objects in writing to the commissioner's or governing body's proposed actions, or both, their actions shall be postponed. The commissioner or governing body, or both, shall meet with the SHRC at its next regularly scheduled meeting to attempt to arrange a mutually agreeable resolution.

I. Step 8: In the case of services provided directly by the department, the commissioner's action plan shall be final and binding on all parties. However, when the SHRC believes the

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commissioner's action plan is incompatible with the purpose of these regulations, it shall notify the board [~~and,~~] the [Virginia] protection and advocacy agency [, and the Inspector General] .

In the case of services delivered by all other providers, the action plan of the provider's governing body shall be reviewed by the commissioner. If the commissioner determines that the provider has failed to develop and carry out an acceptable action plan, the commissioner shall notify the protection and advocacy agency and shall inform the SHRC what sanctions the department will impose against the provider.

PART V. VARIANCES.

~~[12 VAC 35-115-200]~~ 12 VAC 35-115-220 . Variances.

A. Variances to these regulations shall be requested and approved only when the provider has tried to implement the relevant requirement without a variance and can provide objective, documented information that continued operation without a variance is not feasible or will prevent the delivery of effective and appropriate services and supports to individuals.

B. Only directors may apply for variances, and they must first be approved by the provider, the governing body of the provider, or the commissioner, as appropriate, before consideration by an LHRC or the SHRC.

C. Upon receiving approval from the [~~provider, the commissioner or the~~] governing body, and after notifying the [human rights] advocate and other interested persons, the director shall file a formal application for variance with the LHRC. This application shall reference the specific part of these regulations to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for seeking a variance. [The application shall also describe time limits and other conditions for duration and the circumstances that will end the applicability of the variance.]

1. When the LHRC receives the application, it shall invite, and provide ample time to receive, oral or written statements about the application from the [human rights] advocate and other interested persons.

2. The LHRC shall review the application and prepare a written report of facts, which shall include its recommendation for approval, disapproval, or modification. The LHRC shall send its report, recommendations, and a copy of the original application to the State Human Rights Director, the SHRC, and the director making application for the variance.

D. When the SHRC receives the application and the LHRC's report, the SHRC shall do the following:

1. Invite oral or written statements about the application from the applicant director, LHRC, advocate, and other interested persons by publishing the request for variance in the next issue of the Virginia Register of Regulations.

2. Notify the Inspector General of the request for variance.

3. After considering all available information, prepare a written decision deferring, disapproving or modifying, or

approving the application. [All variances shall be approved for a specific time period and must be reviewed annually.]

a. A copy of this decision [including conditions, time frames, circumstances for removal,] and the reasons for the decision shall be given to the applicant director, the commissioner or governing body, where appropriate, the State Human Rights Director, the [human rights] advocate, any person commenting on the request at any stage, and the LHRC.

b. The decision and reasons shall also be published in the next issue of the Virginia Register of Regulations.

E. Directors shall implement any approved variance in strict compliance with the written application as amended, modified, or approved by the SHRC.

F. Providers shall develop policies and procedures for monitoring the implementation of any approved variances. [These policies and procedures shall specify that at no time can a variance approved for one individual be extended to general applicability.] These policies and procedures shall assure the ongoing collection of any data relevant to the variance and the presentation of any later report concerning the variance as requested by the commissioner, the State Human Rights Director, the [human rights] advocate, the LHRC or the SHRC.

G. The decision of the SHRC granting or denying a variance shall be final.

PART VI. REPORTING REQUIREMENTS.

~~[12 VAC 35-115-210. Reporting requirements for providers.]~~ 12 VAC 35-115-230. Provider requirements for reporting to the department.]

A. Providers shall collect, maintain and report the following information concerning abuse, neglect and exploitation:

1. The director of a facility operated by the department shall report allegations of abuse and neglect in accordance with all applicable operating instructions issued by the commissioner or his designee.

2. The director of a [facility/program service] licensed [or funded] by the department shall report each allegation of abuse or neglect to the assigned [department] human rights advocate within 24 hours [from the receipt of the allegation] (see 12 VAC 35-115-50).

3. The [director of a facility/program licensed by the department investigating authority] shall provide a written report of the results of the investigation of abuse or neglect to the [department director and human rights] advocate within 10 [business working] days from the date the investigation began [unless an exemption has been granted by the department] (see 12 VAC 35-115-50). This report shall include but not be limited to the following:

a. Whether abuse, neglect or exploitation occurred;

b. Type of abuse; [and]

c. Whether the act resulted in physical or psychological injury [; and.]

[~~d.~~ Action(s) taken.

~~A copy of the investigative report and the corrective action plan developed as a result shall be made available to the Office of Human Rights, the Office of Licensing, and the Inspector General, upon request.~~

~~4. At any time the director of the facility/program licensed by the department has reason to suspect that an individual may have been abused, neglected, or exploited, the director shall immediately report this information to the appropriate local Department of Social Services (see 12 VAC 35-115-50).~~

~~5. At any time the director of the facility/program licensed by the department has reason to suspect that the abusive, neglectful, or exploitive act is a crime, the director shall immediately report this information to the appropriate law enforcement authorities (see 12 VAC 35-115-50).]~~

B. Providers shall collect, maintain and report the following information concerning deaths and serious injuries:

1. The director of a facility operated by the department shall report to the department deaths and serious injuries in accordance with all applicable operating instructions issued by the commissioner or his designee.

2. The director of a [~~facility/program~~ service] licensed [or funded] by the department shall report deaths and serious injuries in writing to the [~~department's Office of Licensing~~ department] within 24 hours of [~~occurrence~~ discovery and by telephone to the legally authorized representative, as applicable, within 24 hours] .

3. All reports of death and serious injuries shall include but not be limited to the following:

a. Date and place of death/injury;

[~~b. Whether the death was expected or unexpected;~~]

[~~e. b.~~] Nature of injuries and treatment required; and

[~~d. c.~~] Circumstances of death/serious injury.

[~~4. At any time the director has reason to suspect that a death or serious injury resulted from abuse or neglect, the director shall immediately report this information to the appropriate local Department of Social Services.~~

~~5. At any time the director has reason to suspect that the death or serious injury resulted from a criminal act, the director shall immediately report this information to the appropriate law enforcement authorities.]~~

C. Providers shall collect, maintain and report the following information concerning seclusion and restraint:

1. The director of a facility operated by the department shall report each instance of seclusion [and/] or restraint [~~to the Quality Manager of the department's Office of Health and Quality Care within 24 hours of occurrence~~ or both in accordance with all applicable operating instructions issued by the commissioner or his designee] .

2. The director of a [~~facility/program~~ service] licensed [or funded] by the department shall [submit an annual] report

[of] each instance of seclusion [and/] or restraint [~~to the Quality Manager of the department's Office of Health and Quality Care at least monthly~~ or both by the 15th of January each year, or more frequently if requested by the department] .

3. Each [~~report~~ instance] of seclusion [and or] restraint [or both] shall [be compiled on a monthly basis and the report shall] include but not be limited to the following:

a. Type(s) [; to include:]

[(1) Physical restraint (manual hold).

(2) Mechanical restraint.

(3) Pharmacological (chemical restraint).

(4) Seclusion.

b. Rationale for the use of seclusion or restraint to include:

(1) Behavioral purpose.

(2) Medical purpose.

(3) Protective purpose.]

[~~b. c.~~] Duration [; and of the seclusion or restraint, as follows:

(1) The duration of seclusion and restraint used for behavioral purposes is defined as the actual time the individual is in seclusion or restraint from the time of initiation of seclusion or restraint until the individual is released.

(2) The duration of restraint for medical and protective purposes is defined as the length of the episode as indicated in the order.]

[~~e. Rationale for use.~~]

4. Any instance of seclusion or restraint that does not comply with these regulations or approved variances, or that results in injury to an individual, shall be reported to [the legally authorized representative, as applicable, and] the assigned [~~department~~] human rights advocate within 24 hours.

D. Providers shall collect, maintain and report the following information concerning human rights activities:

1. The director shall provide to the [~~department~~ human rights] advocate, at least monthly, information on the type, resolution level and findings of each complaint of a human rights violation; reports shall be made to the LHRC upon request.

2. The director shall provide to the [~~department~~ human rights] advocate and the LHRC, at least monthly, reports regarding the implementation of any variances.

E. Reports required under this section shall be submitted to the department on forms [and/] or in an automated format [or both] developed by the department.

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~~[F. The department and the Inspector General may access any nonprivileged information related to any data reported in subsections A through D of this section.]~~

~~[G. F.] The department shall compile [, on a quarterly basis,] all data reported under this section and make this data available to the public and the Inspector General upon request. [This data shall be provided to LHRGs and the SHRC on a quarterly basis.]~~

- ~~1. The department shall provide the compiled data in writing or by electronic means.~~
- ~~2. The department shall remove all provider-identifying information and all information that could be used to identify a person as an individual receiving services.~~

~~[H. G.] In the reporting, compiling and releasing of information and statistical data provided under this section, the department and all providers shall take all measures necessary to ensure that any consumer-identifying information is not released to the public, including encryption of data transferred by electronic means.~~

~~[I. H.] Nothing in this section is to be construed as requiring the reporting of proceedings, minutes, records, or reports of any committee or nonprofit entity providing a centralized credentialing service which are identified as privileged pursuant to § 8.01-581.17 of the Code of Virginia.~~

~~[J. I.] Providers shall report to the Department of Health Professions, Enforcement Division, violations of these regulations that constitute reportable conditions under § 54.1-2906 of the Code of Virginia.~~

PART VII. ENFORCEMENT AND SANCTIONS.

~~[12 VAC 35-115-220 12 VAC 35-115-240] . **Human rights enforcement and sanctions.**~~

~~A. The [department commissioner] may invoke the sanctions enumerated in § 37.1-85.1 of the Code of Virginia upon receipt of information that a provider licensed or funded by the department is:~~

- ~~1. In violation of (i) the provisions of § 37.1-84.1 [and §§ 37.1-179 through 37.1-189.1] of the Code of Virginia; (ii) these regulations; or (iii) [the] provisions of the [Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services, 12 VAC 35-102-10 et seq. licensing regulations promulgated pursuant to §§ 37.1-179.1 and 37.1-182 of the Code of Virginia] ; and~~
- ~~2. Such violation adversely impacts the human rights of [consumers individuals receiving services] or poses an imminent and substantial threat to the health, safety or welfare of [consumers individuals receiving services] .~~

~~The [department commissioner] shall notify the provider in writing of the specific [violations(s) violation or violations] found and of [his his] intention to convene an informal conference pursuant to § 9-6.14:11 of the Code of Virginia at which the presiding officer will be asked to recommend issuance of a special order.~~

~~[B. If the provider does not provide evidence that the violations have been corrected, an informal conference pursuant to § 9-6.14:11 of the Code of Virginia will be convened within 30 days of the date of the original notification. An individual who does not report to either the director of the Office of Human Rights or the director of the Office of Licensing will be appointed to serve as the presiding officer at the informal conference.~~

~~C. If, at the conclusion of the informal conference, the presiding officer believes that the provider is in violation of applicable statutes or regulations in accordance with subsection A of this section, he shall recommend to the commissioner that a special order, as provided in § 37.1-185.1 of the Code of Virginia, be issued.~~

~~D. If, after considering the recommendation of the presiding officer and reviewing evidence submitted at the informal conference, the commissioner concludes that the requirements of subsection A of this section are satisfied, he shall issue a special order which may include one or more of the sanctions specified in § 37.1-185.1 A of the Code of Virginia.~~

- ~~1. Any sanction imposed by the commissioner pursuant to a special order shall be designed to reduce existing health and safety risks, address the cause of the violation, and initiate prompt corrective action by the provider.~~
- ~~2. Imposition of probation or probationary status on a provider shall be for a fixed period of time, not to exceed a 12-month period.~~
- ~~3. The commissioner shall have the authority to modify the sanctions imposed by the special order as the requirements in the special order are satisfied.]~~

~~[E. B.] The sanctions contained in the special order shall remain in effect during the pendency of any appeal of the special order.~~

PART VIII. RESPONSIBILITIES AND DUTIES.

~~[12 VAC 35-115-230 12 VAC 35-115-250] . **Offices, composition and duties.**~~

~~A. Providers and their directors shall:~~

- ~~1. Identify a person or persons accountable for helping individuals to exercise their rights and resolve complaints regarding services.~~
- ~~2. Comply with all state laws governing the reporting of abuse and neglect and all procedures set forth in these regulations for reporting allegations of abuse, neglect, or exploitation.~~
- ~~[3. Require competency-based training on these regulations upon employment and at least annually thereafter. Documentation of such competency shall be maintained in the employee's personnel file.]~~

~~[3. 4.] Take all steps necessary to assure compliance with these regulations in all services provided.~~

[~~4.~~ ~~Assure~~ 5. Communicate information about] the availability of a [~~department~~ human rights] advocate and an LHRC to all individuals receiving services.

[6. Assure that appropriate staff attend all LHRC meetings to report on human rights activities as directed by the human rights advocate or the LHRC bylaws.]

[~~6.~~ 7.] Cooperate with the [human rights] advocate and the LHRC to investigate and correct conditions or practices interfering with the free exercise of individuals' rights and make sure that all employees cooperate with the [human rights] advocate and the LHRC in carrying out their duties under these regulations.

[~~6.~~ 8.] Provide the advocate unrestricted access to individuals and individual services records whenever the [human rights] advocate deems access necessary to carry out rights protection, complaint resolution, and advocacy.

[~~7.~~ 9.] Submit to the [human rights] advocate for review and comment any proposed policies, procedures, or practices that may affect individual rights.

[~~8.~~ 10.] Comply with requests by the SHRC, LHRC, and [human rights] advocate for information [, policies, procedures,] and written reports regarding compliance with these regulations.

[~~9.~~ 11.] Name a liaison to the LHRC, who shall give the LHRC suitable meeting accommodations, clerical support and equipment, and assure the availability of records and employee witnesses upon the request of the LHRC. [Oversight and assistance with the LHRC's substantive implementation of these regulations shall be provided by the SHRC. See subsection E of this section.]

[~~10.~~ 12.] Submit applications for variances to these regulations only as a last resort.

[~~11.~~ 13.] Post in program locations information about the existence and purpose of the human rights program.

[~~12.~~ 14.] Not influence or attempt to influence the appointment of any person to an LHRC associated with the provider or director.

[~~13.~~ 15.] Perform any other duties required under these regulations.

B. Employees of the provider shall, as a condition of employment:

1. Become familiar with these regulations, comply with them in all respects, and help individuals understand and assert their rights.

2. Protect individuals from any form of abuse, neglect and exploitation (i) by not abusing, neglecting or exploiting any individual; (ii) by not permitting or condoning anyone else to abuse, neglect, or exploit any individual; and (iii) by reporting all suspected abuse to the program director. Protecting [~~clients~~ individuals receiving services] from abuse also includes using the minimum force necessary to restrain an individual.

3. Cooperate with any investigation, meeting, hearing, or appeal held under these regulations. Cooperation includes, but is not limited to, giving statements or sworn testimony.

4. Perform any other duties required under these regulations.

C. The [human rights] advocate shall:

1. Represent any individual making a complaint or, upon request, consult with and help any other representative the individual chooses.

2. Monitor the implementation of an advocacy system for individuals receiving services from the provider or providers to which the advocate is assigned.

3. Promote and monitor provider compliance with these and other applicable individual rights laws, regulations and policies.

4. Investigate and try to prevent or correct, informally or formally, any alleged rights violations by interviewing, mediating, negotiating, advising, and consulting with providers and their respective governing bodies, directors, and employees.

5. Whenever necessary, file a [written] complaint with the LHRC for an individual receiving services or, where general conditions or practices interfere with individuals' rights, for the group of individuals.

6. Investigate and examine all conditions or practices which may interfere with the free exercise of individuals' rights.

7. Help the individual or the individual's chosen representative during any meeting, hearing, appeal or other proceeding under these regulations unless the individual or his chosen representative chooses not to involve the [human rights] advocate.

[8. Provide orientation, training, and technical assistance to the LHRCs for which they are responsible.]

[~~8.~~ 9.] Tell the LHRC about any recommendations made to the director, the provider, the provider's governing body, the State Human Rights Director, or the department for changes in policies, procedures, or practices that have the potential to adversely affect the rights of individuals.

[~~9.~~ 10.] Make recommendations to the State Human Rights Director concerning the employment and supervision of other advocates where appropriate.

[~~10.~~ 11.] Submit regular reports to the State Human Rights Director, the LHRC and the SHRC about provider implementation of and compliance with these regulations.

[~~11.~~ 12.] Provide [~~training for~~ consultation to] individuals, providers and their governing bodies, directors and employees regarding individuals' rights, providers' duties, and complaint resolution.

[~~12.~~ 13.] Perform any other duties required under these regulations.

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D. The Local Human Rights Committee shall:

1. Consist of ~~seven~~ five] or more members appointed by the SHRC.

a. Membership shall be broadly representative of professional and consumer interests. At least one-third of the members shall be individuals who are receiving services and family members of similar individuals with at least two individuals who are receiving services [or who have received within the five years of their initial appointment public or private mental health, mental retardation, or substance abuse treatment or habilitation services] on each committee.

b. No member shall be an employee of the department or an employee [or board member] of the [~~CSB or~~] provider for which the LHRC provides oversight.

c. Initial appointments to an LHRC shall be staggered, with approximately one-third of the members appointed for a term of three years, approximately one-third for a term of two years, and the remainder for a term of one year. After that, all appointments shall be for a term of three years.

d. A person may be appointed for no more than two consecutive terms. A person appointed to fill a vacancy may serve out that term, and then be eligible for two additional consecutive terms.

e. Nominations for membership to LHRCs shall be submitted directly to the SHRC through the State Human Rights Director at the department's Office of Human Rights.

2. Receive complaints of alleged rights violations filed by or for individuals receiving services from providers with which the LHRC is associated and hold hearings according to the procedures set forth in Part IV ([~~42 VAC 35-115-140~~ 12 VAC 35-115-150] et seq.) of this chapter.

3. Conduct investigations as requested by the SHRC.

[4. Upon the request of the human rights advocate, provider, director, an individual or individuals receiving services, or on its own initiative, an LHRC may review any existing or proposed policies, procedures, or practices that could jeopardize the rights of one or more individuals receiving services from the provider with which the LHRC is affiliated. In conducting this review, the LHRC may consult with any human rights advocate, employee of the director, or anyone else. After this review, the LHRC shall make recommendations to the director concerning changes in these policies, procedures, and practices.]

[4. 5.] Receive, review, and act on applications for variances to these regulations according to [~~42 VAC 35-115-200~~ 12 VAC 35-115-220] .

[6. Receive, review and comment on all restrictive behavioral treatment programs and seclusion and restraint policies for affiliated providers.]

[~~5. 7.] Adopt written bylaws that address procedures for conducting business, electing the chair [, secretary] and other officers, designating standing committees, and setting the frequency of meetings.~~

[~~6. 8.] Elect from its own members a chair to coordinate the activities of the LHRC and to preside at regular committee meetings and any hearings held pursuant to these regulations.~~

[~~7. 9.] Conduct [at least six regular meetings per year a meeting every quarter or more frequently as necessary to adhere to all time lines as set forth in these regulations] .~~

[~~8. Publicize in a newspaper of general local or regional circulation, at least once a year, information that tells about the existence and purpose of the human rights program and encourages persons to contact the department's Office of Human Rights if they are interested in being appointed to the LHRC.]~~

[10. Require members to recuse themselves from all cases wherein they have a financial, family or other conflict of interest.]

[~~9. 11.] Perform any other duties required under these regulations.~~

E. The State Human Rights Committee (SHRC) shall:

1. Consist of nine members appointed by the board.

a. Members shall be broadly representative of professional and consumer interests and of geographic areas in the Commonwealth. At least two members shall be individuals who are receiving services [or have received within five years of their initial appointment public or private mental health, mental retardation, or substance abuse treatment or habilitation services] . At least one-third shall be consumers or family members of similar individuals.

b. No member can be an employee [or board member] of the department or [~~CSB~~ provider] .

c. All appointments after the effective date of these regulations shall be for a term of three years.

d. If there is a vacancy, interim appointments may be made for the remainder of the unexpired term.

e. A person may be appointed for no more than two consecutive terms. A person appointed to fill a vacancy may serve out that term, and then be eligible for two additional consecutive terms.

2. Elect a chair from its own members who shall:

a. Coordinate the activities of the SHRC;

b. Preside at regular meetings, hearings and appeals; and

c. Have direct access to the commissioner and the board in carrying out these duties.

[3. Upon request of the commissioner, human rights advocate, provider, director, an individual or individuals receiving services, or on its own initiative, a SHRC may review any existing or proposed policies, procedures, or practices that could jeopardize the rights of one or more individuals receiving services from any provider. In conducting this review, the SHRC may consult with any human rights advocate, employee of the director, or anyone else. After this review, the SHRC shall make recommendations to the director or commissioner concerning changes in these policies, procedures, and practices.]

[~~3.~~ 4.] Determine the appropriate number and geographical boundaries of LHRCs and consolidate LHRCs serving only one provider into regional LHRCs whenever consolidation would assure greater protection of rights under these regulations.

[4. 5.] Appoint members of LHRCs with the advice of and consultation with the commissioner and the State Human Rights Director.

[~~5.~~ 6.] Advise and consult with the commissioner in the employment of the State Human Rights Director and [human rights] advocates.

[~~6.~~ 7.] Conduct at least eight regular meetings per year.

[~~7.~~ 8.] Review decisions of LHRCs and, if appropriate, hold hearings and make recommendations to the commissioner, the board, and providers' governing bodies regarding alleged violations of individuals' rights according to the procedures specified in these regulations.

[9. Provide oversight and assistance to LHRCs in the performance of their duties hereunder.]

[~~8.~~ 10.] Notify the commissioner and the State Human Rights Director whenever it determines that its recommendations in a particular case are of general interest and applicability to providers, [human rights] advocates, or LHRCs and assure the availability of the opinion or report to providers, [human rights] advocates, and LHRCs as appropriate. No document made available shall identify the name of individuals or employees in a particular case.

[~~9.~~ 11.] Grant or deny variances according to the procedures specified in Part V ([~~42-VAC-35-115-200~~ 12 VAC 35-115-220] et seq.) of this chapter and review approved variances at least once every year.

[~~10.~~ 12.] Make recommendations to the board concerning proposed revisions to these regulations.

[~~11.~~ 13.] Make recommendations to the commissioner concerning revisions to any existing or proposed laws, regulations, policies, procedures, and practices to ensure the protection of individuals' rights.

[~~12.~~ 14.] Review the scope and content of training programs designed by the department to promote responsible performance of the duties assigned under these regulations by providers, employees, [human rights]

advocates, and LHRC members, and, where appropriate, make recommendations to the commissioner.

[~~13.~~ 15.] Evaluate the implementation of these regulations and make any necessary and appropriate recommendations to the board, the commissioner, and the State Human Rights Director concerning interpretation and enforcement of the regulations.

[~~14.~~ 16.] Submit a report on its activities to the board each year.

[~~15.~~ 17.] Adopt written bylaws that address procedures for conducting business; making membership recommendations to the board; electing a chair [, vice chair, secretary] and other officers; appointing members of LHRCs; designating standing committees and their responsibilities; establishing ad hoc committees; and setting the frequency of meetings.

[~~16.~~ 18.] Review and approve the bylaws of LHRCs.

[19. Publish an annual report of the status of human rights in the mental health, mental retardation, and substance abuse treatment and services in Virginia and make recommendations for improvement.

20. Require members to recuse themselves from all cases where they have a financial, family or other conflict of interest.]

[~~17.~~ 21.] Perform any other duties required under these regulations.

F. The State Human Rights Director shall:

1. Lead the implementation of the statewide human rights program and make ongoing recommendations to the commissioner, the SHRC, and the LHRCs for continuous improvements in the program.

2. Advise the commissioner concerning the employment and retention of [human rights] advocates.

3. Advise providers, directors, advocates, LHRCs, the SHRC, and the commissioner concerning their responsibilities under these regulations and other applicable laws, regulations and departmental policies that protect individuals' rights.

4. Organize, coordinate and oversee training programs designed to promote responsible performance of the duties assigned under these regulations.

5. Periodically visit service settings to monitor free exercise of those rights enumerated in these regulations.

6. Supervise [human rights] advocates in the performance of their duties under these regulations.

7. Support the SHRC and LHRCs in carrying out their duties under these regulations.

8. [~~Maintain a current and regularly updated database and perform regular trend analyses to identify the need for corrective action in the areas of abuse, neglect and exploitation; seclusion and restraint; behavioral treatment programs; complaints; deaths and serious incidents; and~~

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~~variance applications. Review LHRC decisions and recommendations for general applicability and provide suggestions for training to appropriate entities.]~~

9. Monitor implementation of corrective action plans approved by the SHRC.

10. Perform any other duties required under these regulations.

G. The commissioner shall:

1. Employ the State Human Rights Director after advice and consultation with the SHRC.

2. Employ advocates following consultation with the State Human Rights Director.

3. Provide or arrange for assistance and training necessary to carry out and enforce these regulations.

4. Cooperate with the SHRC and the State Human Rights Director to investigate providers and correct conditions or practices that interfere with the free exercise of individuals' rights.

5. Advise and consult with the SHRC and the State Human Rights Director concerning the appointment of members of LHRCs.

[6. Maintain current and regularly updated data and perform regular trend analyses to identify the need for corrective action in the areas of abuse, neglect, and exploitation; seclusion and restraint; complaints; deaths and serious incidents; and variance applications.]

[~~6. 7.] Assure regular monitoring and enforcement of these regulations, including authorizing unannounced compliance reviews at any time.~~

[~~7. 8.] Perform any other duties required under these regulations.~~

H. The board shall:

1. Promulgate regulations defining the rights of individuals receiving services from providers covered by these regulations.

2. Appoint members of the SHRC.

3. Review and approve the bylaws of the SHRC.

4. Perform any other duties required under these regulations.

VA.R. Doc. No. R00-39; Filed May 25, 2001, 4 p.m.

Title of Regulation: 12 VAC 35-120-10 et seq. Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services (REPEALED).

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Effective Date: July 18, 2001.

Summary:

The board is repealing the current Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. This regulation, along with two other human rights regulations, is being consolidated into a newly proposed regulation (Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services, 12 VAC 35-115-10 et seq.).

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Margaret Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988.

VA.R. Doc. No. R00-141; Filed May 25, 2001, 3:59 p.m.

Title of Regulation: 12 VAC 35-130-10 et seq. Rules and Regulations to Assure the Rights of Clients in Community Programs (REPEALED).

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Effective Date: July 18, 2001.

Summary:

The board is repealing the current rules and regulations to assure the rights of clients in community programs. This regulation, along with two other human rights regulations, is being consolidated into a newly proposed regulation (Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services, 12 VAC 35-115-10 et seq.).

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Margaret Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988.

VA.R. Doc. No. R00-142; Filed May 25, 2001, 3:59 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Title of Regulations: 18 VAC 30-10-10 et seq. **Public Participation Guidelines** (amending 18 VAC 30-10-10, 18 VAC 30-10-20, 18 VAC 30-10-30, 18 VAC 30-10-40, 18 VAC 30-10-60, 18 VAC 30-10-70, 18 VAC 30-10-80, and 18 VAC 30-10-100).

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

Effective Date: July 18, 2001.

Summary:

The regulations set forth provisions for (i) a mailing list to receive documents related to the promulgation of regulations, (ii) procedures to be followed in a petition for rulemaking, (iii) notices, (iv) public hearings, (v) a periodic review of regulations, and (vi) advisory committees in the development of regulations.

The amendments clarify existing requirements and provide for electronic submissions by the agency and the affected parties.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Elaine Yeatts, Department of Health Professions, Southern States Building, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 17:12 VA.R. 2020-2023 February 26, 2001, without change. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R00-255; Filed May 30, 2001, 11:12 a.m.

BOARD OF NURSING

Title of Regulation: 18 VAC 90-10-10 et seq. **Public Participation Guidelines** (amending 18 VAC 90-10-10, 18 VAC 90-10-20, 18 VAC 90-10-30, 18 VAC 90-10-40, 18 VAC 90-10-60, 18 VAC 90-10-70, 18 VAC 90-10-80, and 18 VAC 90-10-100).

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

Effective Date: July 18, 2001.

Summary:

The regulations set forth provisions for (i) a mailing list to receive documents related to the promulgation of regulations, (ii) procedures to be followed in a petition for rulemaking, (iii) notices, (iv) public hearings, (v) a periodic review of regulations, and (vi) advisory committees in the development of regulations.

The amendments clarify existing requirements and provide for electronic submissions by the agency and the affected parties.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Elaine Yeatts, Department of Health Professions, Southern States Building, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 17:12 VA.R. 2020-2023 February 26, 2001, without change. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R00-261; Filed May 30, 2001, 11:13 a.m.

REGISTRAR'S NOTICE: The Board of Nursing has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Board of Nursing will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18 VAC 90-20-10 et seq. **Regulations Governing the Practice of Nursing** (amending 18 VAC 90-20-210).

Statutory Authority: §§ 54.1-2400 and 54.1-3001 of the Code of Virginia.

Effective Date: July 18, 2001.

Summary:

The amendments conform the regulations to Chapters 244 and 251 of the 2001 Acts of Assembly, which mandate that foreign-trained nurses who have met the requirements of the Commission on Graduates of Foreign Nursing Schools and have had their application approved by the board may practice in certain settings for a maximum of 90 days prior to sitting for the national examination.

Agency Contact: Copies of the regulation may be obtained from Nancy K. Durrett, Board of Nursing, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909.

18 VAC 90-20-210. Licensure of applicants from other countries.

A. Applicants whose basic nursing education was received in, and who are duly licensed under the laws of, another country, shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in subsections B and C D of this section.

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B. Such applicants for registered nurse licensure shall:

1. Submit evidence of passing the Commission on Graduates of Foreign Nursing Schools Qualifying Examination; and
2. Submit the required application and fee for licensure by examination.

C. *An applicant for licensure as a registered nurse who has met the requirements of subsections A and B of this section may practice for a period not to exceed 90 days from the date of approval of an application submitted to the board when he is working as a nonsupervisory staff nurse in a licensed nursing home or certified nursing facility.*

1. *Applicants who practice nursing as provided in this subsection shall use the designation "foreign nurse graduate" on nametags or when signing official records.*
2. *During the 90-day period, the applicant shall take and pass the licensing examination in order to remain eligible to practice nursing in Virginia.*
3. *Any person practicing nursing under this exemption who fails to pass the licensure examination within the 90-day period may not thereafter practice nursing until he passes the licensing examination.*

C. D. Such applicants for practical nurse licensure shall:

1. Submit evidence from a recognized agency that reviews credentials of foreign-educated nurses that the secondary education, nursing education, and license are comparable to those required for licensed practical nurses in the Commonwealth;
2. Request that the credentialing agency, in the country where licensed, submit the verification of licensure form directly to the board office; and
3. Submit the required application and fee for licensure by examination.

NOTICE: The forms used in administering 18 VAC 90-20-10 et seq., Regulations Governing the Practice of Nursing, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Application for Licensure by Endorsement - Registered Nurse (with Instructions) (rev. 6/98)

Application for Licensure by Endorsement - Licensed Practical Nurse (rev. 8/99)

Instructions for Filing Application for Licensure by Examination for Registered Nurses (8/97)

Application for Licensure by Examination - Registered Nurse (rev. 8/99)

Instructions for Filing Application for Licensure by Examination for Practical Nurses (rev. 11/96)

Application for Licensure by Examination - Licensed Practical Nurses (rev. 8/99)

Instructions for Filing Application for Licensure by Repeat Examination for Registered Nurses (rev. 8/97)

Application for Licensure by Repeat Examination for Registered Nurse (rev. 8/99)

Instructions for Filing Application for Licensure by Repeat Examination for Practical Nurses (rev. 8/97)

Application for Licensure by Repeat Examination for Licensed Practical Nurse (rev. 8/99)

Instructions for Filing Application for Licensure by Examination for Nurses Educated in Other Countries (rev. 8/97)

Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. 8/99)

Temporary Exemption To Licensure (eff. 5/01)

Instructions for Filing Application by Practical Nurses from Other Countries (rev. 1/94)

Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. 8/99)

Application for Reinstatement of License as a Registered Nurse (rev. 8/99)

Application for Reinstatement of License as a Licensed Practical Nurse (rev. 8/99)

Verification of Licensure or Registration (rev. 11/95)

Renewal Notice and Application (rev. 2/00)

Application for Registration as a Clinical Nurse Specialist (rev. 2/98)

Survey Visit Report.

Annual Report for Registered Nursing Programs.

Annual Report for Practical Nursing Programs.

Certified Nurse Aide Renewal Notice and Application (rev. 2/00)

Application for Reinstatement of Nurse Aide Certification (rev. 8/99)

Application for Nurse Aide Certification by Endorsement

Nurse Aide Certification Verification Form.

Application to Establish Nurse Aide Education Program (rev. 5/99)

Program Evaluation Report (rev. 5/99)

On-Site Review Report (rev. 5/99)

Evaluation of On-Site Visitor.

Request for Statistical Information.

COMMONWEALTH OF VIRGINIA
 DEPARTMENT OF HEALTH PROFESSIONS
 BOARD OF NURSING
 6606 WEST BROAD STREET - 4TH FLOOR
 RICHMOND, VIRGINIA 23230-1717
 (804) 662-9909
 (804) 662-9512 - FAX

TEMPORARY EXEMPTION TO LICENSURE

A recent change in the law allows the practice of nursing by graduates of foreign nursing schools who have received a certificate from the Commission on Graduates of Foreign Nursing Schools for a period not to exceed ninety days from the date of approval of an application submitted to the Board of Nursing. Such nurse must be working as a non-supervisory staff nurse in a licensed nursing home or certified nursing facility. During the ninety-day period, this nurse shall take and pass the licensing examination (NCLEX).

Graduates of foreign nursing schools who do not intend to work as described above may not practice nursing in Virginia until they pass the licensing examination (NCLEX) and are licensed.

Applicants who wish to take advantage of the exemption should return this form along with the application for licensure by examination for registered nurses educated in other countries.

| FOR OFFICE USE ONLY | | | | | | |
|--------------------------|--------|----------|----------------|----------------|-------------|-------------|
| Class | File # | Suffix | Program Code # | Fee | CGFNS Rec'd | Ack. Sent |
| 0001- | | T | | | | |
| Date Determined Eligible | | Approved | | License Number | | Date Issued |
| | | | | 0001- | | |

| APPLICANT - Please print or type the information requested below. | | | | | |
|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|-------|--------|---------------------------------|--|
| Name: Use full name, not initials. | | | | | |
| Last | Suffix | First | Middle | Maiden | |
| Street Address | | | | Area Code & Telephone Number | |
| City | | State | | Zip Code | |
| Date of Birth (M/D/Y) | Social Security Number or Virginia DMV Control Number | | | Date Expect Employment to Begin | |
| Name of Licensed Nursing Home or Certified Nursing Facility Which Has Offered Employment: | | | | | |
| Address of Licensed Nursing Home or Certified Nursing Facility Which Has Offered Employment: Street Address: | | | | | |
| City | | State | | Zip Code | |

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TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Division of Securities and Retail Franchising

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **Securities Act Regulations.**

21 VAC 5-10-10 et seq. General Administration--Securities Act (amending forms list).

21 VAC 5-20-10 et seq. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer: Registration, Expiration, Renewal, Updates and Amendments, Termination, Changing Connection, Merger or Consolidation, Examinations/Qualification, Financial Statements and Reports (amending 21 VAC 5-20-10, 21 VAC 5-20-30, 21 VAC 5-20-40, 21 VAC 5-20-60 through 21 VAC 5-20-90, 21 VAC 5-20-120, 21 VAC 5-20-130, 21 VAC 5-20-220, 21 VAC 5-20-240, 21 VAC 5-20-280, and 21 VAC 5-20-290; adding 21 VAC 5-20-85 and 21 VAC 5-20-155).

21 VAC 5-30-10 et seq. Securities Registration (amending 21 VAC 5-30-80 and 21 VAC 5-30-90; repealing 21 VAC 5-30-30 and 21 VAC 5-30-60).

21 VAC 5-80-10 et seq. Investment Advisors (amending 21 VAC 5-80-10, 21 VAC 5-80-30 through 21 VAC 5-80-70, 21 VAC 5-80-90 through 21 VAC 5-80-110, 21 VAC 5-80-160, 21 VAC 5-80-200, and 21 VAC 5-80-210).

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Effective Date: July 1, 2001.

Summary:

Areas of changes include the requirement that all applications and fees for registration and renewal of broker-dealers and agents that are NASD members be filed with the NASDR's CRD system and repeals the requirement for certain paper filings with the commission; the adoption of NASAA's proposal for limited registration of Canadian broker-dealers and their agents; the repeal of the requirement for broker-dealer and investment advisor Y2K disclosures; the repeal of the provision for refund of fees paid by unit investment trusts; the repeal of the requirement for renewal applications filed pursuant to § 13.1-512 of the Securities Act; the repeal of the provision for consent to Service of Process on Form S.A.14.; the change of the term corporate to company to the term SCOR offering; the clarification that the examination waiver is being only applicable to examination waivers for SCOR offerings; and the repeal of the rule for failure of paying fee required by

this rule; the adoption of the NASAA proposal for the application and fees for registration and renewal of investment advisor, federal covered investment advisor and representatives to be filed with the NASDR's IARD system; the investment advisor or federal covered advisor filing of Form ADV-W with the IARD system for termination of registration or notice of filing; the removal for filing of an agreement with the commission for inspection and production of records and the creation of a rule instituting the requirement to immediately allow inspection or production of records by broker-dealers and investment advisors; the addition of reorganization to mergers and consolidations as a basis for a new or surviving entity filing a new application or notice filing and fees for broker-dealers, investment advisors or federal covered advisors; and the definition of when a certified public accountant is not considered an investment advisor.

Additional language was added to the proposed regulation regarding small company offering registrations and registered offerings not made to the general public. Additional language also added the form requirement. Other changes include deleting the Y2K reporting requirements and typographical and grammatical changes.

Agency Contact: Copies of the regulation may be obtained from Thomas M. Gouldin, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9755 or FAX (804) 371-9911. The charge for copies is \$1.00 for the first two pages and \$.50 for each additional page.

AT RICHMOND, MAY 25, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In Re CASE NO. SEC010033
Amendments to Securities
Act Rules

ORDER ADOPTING AMENDED RULES

On April 20, 2001, the Division of Securities and Retail Franchising ("Division") mailed notice of proposed amendments to the Commission's Securities Act Rules ("Rules") and forms to all issuer agents, broker-dealers, and investment advisors pending registration or registered under the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia, and to other interested parties. Notice of the proposed amendments was also published in several newspapers in general circulation throughout Virginia and in the "Virginia Register of Regulations" on April 23, 2001. The notices describe the proposed amendments and afford interested parties an opportunity to file written comments or requests for hearing.

Written comments were filed by The Financial Planning Association of Central Virginia. After considering the comments received, comments were addressed informally and no substantive changes were necessary. In addition, the Division addressed some minor inconsistencies. The Commission, upon consideration of the proposed amendments as modified, the written comment filed, the

recommendation of the Division and the record in this case, finds that the proposed modified amendments should be adopted. Accordingly,

IT IS ORDERED THAT:

(1) The evidences of mailing and publication of notice of the proposed Rules and forms amendments shall be filed in and made part of the record in this case.

(2) The proposed Rules and forms amendments are adopted effective July 1, 2001. A copy of the modified Rules and forms amendments is attached to and made part of this order.

(3) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent to each of the following by the Division: Commission's Division of Information Resources; Securities Regulation and Law Report, c/o The Bureau of National Affairs, 1231 25th Street, N.W., Washington, D.C. 20037; Blue Sky Law Reporter, c/o Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646; The Financial Planning Association of Central Virginia, P.O. Box 245, Chesterfield, Virginia 23832; and such other persons as the Division deems appropriate.

NOTICE: The proposed regulation was adopted as published in 17:16 VA.R. 2308-2331 April 23, 2001, with changes as identified below. Pursuant to § 9-6.14:22A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

21 VAC 5-10. Forms List. [No change from proposed]

21 VAC 5-20-10 through 21 VAC 5-20-80. [No change from proposed.]

21 VAC 5-20-85. Limited Canadian broker-dealer registration.

A. A broker-dealer that is resident in Canada and has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer is registered under this section, effect transactions in securities on behalf of a person:

1. Who is a Canadian, resident in the Commonwealth of Virginia, with whom the broker-dealer had a bona-fide broker-dealer-client relationship prior to the person entering the United States; and
2. Whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

B. Application for registration as a broker-dealer under this section shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

C. An application for registration as a broker-dealer under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.
2. Statutory fee payable to the Treasurer of Virginia in the amount of \$200 United States currency pursuant to § 13.1-505 F of the Act.
3. Evidence that the applicant is registered as a broker-dealer in good standing in the jurisdiction from which it is effecting the transactions.
4. Evidence that the applicant is a member of a self-regulatory organization or stock exchange in Canada.
5. Any other information the commission may require.

D. A broker-dealer registered under this section shall:

1. Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;
2. Provide the commission upon request with its books and records relating to its business in the Commonwealth of Virginia as a broker-dealer;
3. Immediately notify the commission of any criminal action taken against it, or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct;
4. Disclose to its clients in the Commonwealth of Virginia that the broker-dealer and its agents are not subject to the full regulatory requirements of the Act.

E. A broker-dealer's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F.

F. To renew its registration, a broker-dealer registered under this section shall file with the commission at its Division of Securities and Retail [~~Franchise~~ Franchising] the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its principle place of business, or if no such renewal application is required, the most recent application filed pursuant to subsection C 1 along with the statutory fee in the amount of \$200 United States currency pursuant to § 13.1-505 F of the Act.

G. A Canadian broker-dealer registered under this section is exempt from all other rules applicable to broker-dealers except 21 VAC 5-20-280.

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21 VAC 5-20-90 through 21 VAC 5-20-130. [No change from proposed.]

21 VAC 5-20-155. Limited Canadian broker-dealer agent registration.

A. An agent of a Canadian broker-dealer who has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer agent is registered under this section, effect transactions in securities as permitted for a broker-dealer registered under 21 VAC 5-20-81 on behalf of a person:

1. Who is a Canadian, resident in the Commonwealth of Virginia, with whom the broker-dealer had a bona fide broker-dealer-client relationship prior to the person entering the United States; and
2. Whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

B. Application for registration as a broker-dealer agent under this section shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

C. An application for registration as a broker-dealer agent under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.
2. Statutory fee payable to the Treasurer of Virginia in the amount of \$30 United States currency pursuant to § 13.1-505 G of the Act.
3. Evidence that the applicant is registered as a broker-dealer agent in good standing in the jurisdiction from which it is effecting the transactions.
4. Any other information the commission may require.

D. A broker-dealer agent registered under this section shall:

1. Maintain his provincial or territorial registration in good standing;
2. Immediately notify the commission of any criminal action taken against him, or of any finding or sanction imposed on him as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.

E. A broker-dealer agent's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.

F. To renew the registrations of its agents, a broker-dealer registered under this section shall file with the commission at its Division of Securities and Retail [~~Franchise~~ Franchising] the most recent renewal application, if any, filed in the

jurisdiction in which the broker-dealer maintains its [~~principle~~ principal] place of business, or if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of \$30 United States currency pursuant to § 13.1-505 G of the Act.

G. A Canadian broker-dealer agent registered under this section is exempt from all other rules applicable to a broker-dealer agent except 21 VAC 5-20-280.

21 VAC 5-20-220. Examination/qualification; waiver of examination requirement.

A. Except as described in subsection B of this section, an individual applying for registration as an agent of the issuer shall be required to provide evidence in the form of a NASD exam report of passing: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. The commission may, [*in a registered offering that is not being made to the general public or*] in a Small Company Offering Registration, waive the examination requirement for an officer or director of an issuer that is a corporation, or a general partner of an issuer that is a limited partnership or a manager of an issuer that is a limited liability company who:

1. Will receive no commission or similar remuneration directly or indirectly in connection with the offer or sale of the issuer's securities; and
2. [*In the case of a small company offering registration,*] agrees to deliver to each prospective purchaser of a security to be issued by such issuer, at or before the time the offering document is required to be delivered, a copy of "A Consumer's Guide to Small Business Investments" prepared by NASAA (see CCH NASAA Reports ¶13676) [~~;~~ ; and]
3. An application to register is accompanied by an executed Affidavit Regarding Offer of SCOR Securities by Issuer Agent.]

21 VAC 5-20-240. [No change from proposed.]

21 VAC 5-20-280. Prohibited business conduct.

A. No broker-dealer shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;
2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to

believe that the recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;

5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

7. Fail to segregate customers' free securities or securities held in safekeeping;

8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;

9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;

10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;

13. Offer to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and

under such conditions as are stated at the time of such offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

16. Guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

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19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer and/or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subsection shall comply with the provisions of § 13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member; or

22. Fail or refuse to furnish a customer, upon reasonable request, information to which such customer is entitled, or to respond to a formal written request or complaint; or

~~23. Fail to make a disclosure in a timely manner to clients or prospective clients that the broker-dealer has not substantially addressed year 2000 computer or equipment problems or is substantially uncertain of its ability to resolve these problems.~~

B. No agent shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;

3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;

4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of

securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; or

6. Engage in conduct specified in subdivisions A 2, 3, 4, 5, 6, 10, 15, 16, 17, or 18 of this section.

C. Failure to comply with any of the applicable continuing education requirements set forth in any of the following, if such failure has resulted in an agent's denial, suspension or revocation [~~or of~~] a license, registration or membership with a self regulatory organization, shall be deemed a demonstration of a lack of business knowledge by an agent insofar as such business knowledge is required for registration by § 13.1-505 A 3 of the Act.

1. Schedule C to the National Association of Securities Dealers By-Laws, Part XII of the National Association of Securities Dealers, as such provisions existed on July 1, 1995;

2. Rule 345 A of the New York Stock Exchange, as such provisions existed on July 1, 1995;

3. Rule G-3(h) of the Municipal Securities Rulemaking Board, as such provisions existed on July 1, 1995;

4. Rule 341 A of the American Stock Exchange, as such provisions existed on July 1, 1995;

5. Rule 9.3A of the Chicago Board of Options Exchange, as such provisions existed on July 1, 1995;

6. Article VI, Rule 9 of the Chicago Stock Exchange, as such provisions existed on July 1, 1995;

7. Rule 9.27(C) of the Pacific Stock Exchange, as such provisions existed on July 1, 1995; or

8. Rule 640 of the Philadelphia Stock Exchange, as such provisions existed on July 1, 1995.

Each or all of the education requirements standards listed above may be changed by each respective entity and if so changed will become a requirement if such change does not materially reduce the educational requirements expressed above or reduce the investor protection provided by such requirements.

D. No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes such security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

E. The purpose of this subsection is to identify practices in the securities business which are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers and/or sales agents.

1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.
3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, non-public information which would affect the value of the security.
4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.
5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.
6. Although nothing in this subsection precludes application of the general anti-fraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities:
 - a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.
 - b. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.
 - c. Conducting sales contests in a particular security.
 - d. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.
 - e. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.
 - f. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.
7. Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.
8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.
9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.
10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.
11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued.
12. Failing to comply with any applicable provision of the Rules of Fair Practice of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.
13. In connection with the solicitation of a purchase or sale of a designated security:
 - a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or
 - b. Failing to include with the confirmation, the notice disclosure contained in subsection F of this section, except the following shall be exempt from this requirement:
 - (1) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more.
 - (2) Transactions that are not recommended by the broker-dealer or agent.
 - (3) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the immediately preceding three months, and during

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11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding 12 months.

(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

c. For purposes of this section, the term "designated security" means any equity security other than a security:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(3) Issued by an investment company registered under the Investment Company Act of 1940;

(4) That is a put option or call option issued by The Options Clearing Corporation; or

(5) Whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated less than 15 months previously that the broker or dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

(a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2.02 under the Securities Exchange Act of 1934; or

(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 241.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

F. Customer notice requirements follow:

IMPORTANT CUSTOMER NOTICE--READ CAREFULLY

You have just entered into a solicited transaction involving a security which may not trade on an active national market. The following should help you understand this transaction and be better able to follow and protect your investment.

Q. What is meant by the BID and ASK price and the spread?

A. The BID is the price at which you could sell your securities at this time. The ASK is the price at which you bought. Both are noted on your confirmation. The difference between these prices is the "spread," which is also noted on the confirmation, in both a dollar amount and a percentage relative to the ASK price.

Q. How can I follow the price of my security?

A. For the most part, you are dependent on broker-dealers that trade in your security for all price information. You may be able to find a quote in the newspaper, but you should keep in mind that the quote you see will be for dealer-to-dealer transactions (essentially wholesale prices and will not necessarily be the prices at which you could buy or sell).

Q. How does the spread relate to my investments?

A. The spread represents the profit made by your broker-dealer and is the amount by which your investment must increase (the BID must rise) for you to break even. Generally, a greater spread indicates a higher risk.

Q. How do I compute the spread?

A. If you bought 100 shares at an ASK price of \$1.00, you would pay \$100 (100 shares X \$1.00 = \$100). If the BID price at the time you purchased your stock was \$.50, you could sell the stock back to the broker-dealer for \$50 (100 shares X \$.50 = \$50). In this example, if you sold at the BID price, you would suffer a loss of 50%.

Q. Can I sell at any time?

A. Maybe. Some securities are not easy to sell because there are few buyers, or because there are no broker-dealers who buy or sell them on a regular basis.

Q. Why did I receive this notice?

A. The laws of some states require your broker-dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.

Q. Where do I go if I have a problem?

A. If you cannot work the problem out with your broker-dealer, you may contact the Virginia State Corporation Commission or the securities commissioner in the state in which you reside, the United States Securities and Exchange Commission, or the National Association of Securities Dealers, Inc.

G. Engaging in or having engaged in conduct specified in subsection A, B, C, D, or E of this section, or other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall be grounds under the Act for imposition of a penalty, denial of a pending application or refusal to renew or revocation of an effective registration.

21 VAC 5-20-290. [No change from proposed.]

21 VAC 5-30-30 through 21 VAC 5-30-90. [No change from proposed.]

21 VAC 5-80-10 though 21 VAC 5-80-210. [No change from proposed.]

VA.R. Doc. No. R01-160; Filed May 30, 2001, 8:48 a.m.



EMERGENCY REGULATIONS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Title of Regulation: 4 VAC 20-890-10 et seq. **Pertaining to Channeled Whelk (amending 4 VAC 20-890-10, 4 VAC 20-890-20, 4 VAC 20-890-25, and 4 VAC 20-890-40).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: May 25, 2001, through June 24, 2001.

Summary:

The amendments prohibit the setting, placing or fishing of a conch pot of any type in an area extending 250 yards from either span of the Chesapeake Bay Bridge-Tunnel. This action was taken in order to promote general welfare of the seafood industry by avoiding gear conflicts proximate to the Chesapeake Bay Bridge-Tunnel.

Agency Contact: Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, 2600 Washington Avenue, Newport News, VA 23607-0756, telephone (757) 247-2200.

4 VAC 20-890-10. Purpose.

The purpose of this ~~regulation~~ *emergency chapter* is to establish a viable commercial fishery for channeled whelk in Virginia waters while minimizing the potential for overfishing of Virginia channeled whelk stocks.

4 VAC 20-890-20. Definitions.

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

"Bait bag" means a bag, box, or other container that is designed for the purposes of containing the bait within a conch pot.

"Bushel" means a Virginia bushel with a volumetric measure equivalent to 1.4 U.S. standard bushels or 3003.9 cubic inches.

"Channeled whelk" means any whelk of the species *Busycotypus canaliculatus*.

"Land" or *"landing"* means to enter port with channeled whelk on board any boat or vessel, to begin offloading channeled whelk, or to offload channeled whelk.

"Length" means the total length of a channeled whelk, measured from the tip of the apex to the outer tip of the shell opening.

4 VAC 20-890-25. Entry limitation; transfers; prohibitions.

A. The sale of commercial conch pot licenses shall be limited to registered commercial fishermen, solely for the harvest of channeled whelk from Virginia waters described in this section, who meet either of the following requirements:

1. The fisherman shall have held a provisional Virginia conch pot permit in 1999 and reported in accordance with the requirements of 4 VAC 20-610-60 and the 1999 conch pot permit; or

2. The fisherman shall provide the commission with proof of having harvested channeled whelk from federal waters during the January 1, 1997, through October 1, 1999, period.

B. Any person licensed for commercial conch pot under the provisions of this section may transfer such license to any registered commercial fisherman when said transfer is documented on the form provided by the commission and approved by the Commissioner of Marine Resources. Upon approval, the person entering the Virginia commercial conch pot fishery shall purchase a commercial conch pot license in his own name. No commercial conch pot license shall be transferred more than once per calendar year.

C. It shall be unlawful for any person licensed under the provisions of subsection A of this section as a commercial conch pot fisherman to do any of the following, unless otherwise specified:

1. Place, set or fish any conch pot within any channel.

2. Fail to be on board the vessel when that vessel is operating in a commercial conch pot harvesting capacity within Virginia tidal waters;

3. Fail to display the commercial conch pot license plate prominently on the starboard side of the vessel;

4. Fail to inscribe each conch pot buoy with the last four numbers of the commercial fisherman registration license preceded by the letter "W," which correspond to the lawful conch pot licensee;

5. Place, set or fish more than 200 conch pots within Virginia tidal waters;

6. Retain by-catch of any other species caught by conch pots; and

7. Fail to report harvest-related data from harvests in Virginia waters on a monthly basis on forms supplied by the commission.

8. *It shall be unlawful for any person to set, place, or fish a conch pot of any type in an area extending 250 yards from either span of the Chesapeake Bay Bridge-Tunnel. For purposes of this section, the distance shall be measured from the outer edges of each span and shall extend from the low water mark on Fishermans Island to the one-mile marker on the south end of the bridge-tunnel.*

D. It shall be unlawful for any person to take or catch channeled whelk with conch pots from the tidal waters of Virginia without first having purchased a conch pot license from the commission or its agent.

The fee for the conch pot license shall be \$48.

No person may purchase a conch pot license unless he is a registered commercial fisherman as described in § 28.2-241 of the Code of Virginia.

4 VAC 20-890-40. Gear restrictions.

A. It shall be unlawful for any person to possess channeled whelk harvested from Virginia waters by any means other than by hand, licensed conch dredge, licensed crab dredge, or licensed conch pot.

B. Except as provided in subsection C of this section, it shall be unlawful for any person to place, set, or fish, or attempt to place, set, or fish any conch pot that does not contain a bait bag.

C. Any person not utilizing horseshoe crabs as bait for channeled whelk shall be exempt from the provisions of subsection B of this section, provided that the possession of any quantity of horseshoe crabs on board the vessel of such person shall constitute prima facie evidence of a violation of this ~~chapter~~ *emergency regulation*. Further, the presence of any quantity of horseshoe crab in any conch pot not equipped with a bait bag shall constitute prima facie evidence of a violation of this ~~chapter~~ *emergency regulation*.

D. It shall be unlawful for any person to place, set, or fish or attempt to place, set, or fish any conch pot that contains more than one-half of a female horseshoe crab or more than two halves of male horseshoe crabs.

E. It shall be unlawful for any person to land, attempt to land, or possess channeled whelk that were harvested by pots that do not meet the provisions of this ~~chapter~~ *emergency regulation*.

VA.R. Doc. No. R01-210; Filed May 25, 2001, 2:08 p.m.



GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice of Opportunity to Comment on Regulations

The Department of Agriculture and Consumer Services invites comment from the public on certain of its existing regulations, listed below, as a part of a review of its regulations being conducted under Executive Order Number Twenty-five (98), Development and Review of Regulations Proposed by State Agencies. Comments should be addressed to the person identified below as the contact person for the regulation. The deadline for receipt of comment is 10 a. m., July 10, 2001.

2 VAC 5-10, Public Participation Guidelines--Contact Lawrence Redford

2 VAC 5-20, Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law--Contact Lawrence Redford

2 VAC 5-50, Rules and Regulations Governing the Prevention, Control and Eradication of Brucellosis of Cattle in Virginia--Contact Marian Kimball

2 VAC 5-80, Requirements Governing the Branding of Cattle in Virginia--Contact Marian Kimball

2 VAC 5-130, Rules and Regulations Governing Laboratory Fees for Services Rendered or Performed--Contact Bruce Akey

2 VAC 5-150, Rules and Regulations Governing the Transportation of Companion Animals--Contact Marian Kimball

2 VAC 5-220, Virginia Horse Breeder Incentive Program--Contact Andrea Heid

2 VAC 5-260, Regulations Establishing the Virginia Quality Label--Contact William F. Bedwell

2 VAC 5-350, Rules and Regulations for the Enforcement of the Virginia Commission Merchant Law--Contact Alan Rogers

2 VAC 5-370, Rules and Regulations for Enforcement of the Virginia Animal Remedies Law--Contact Alan Rogers

2 VAC 5-390, Rules and Regulations for the Enforcement of the Virginia Seed Law--Contact Alan Rogers

2 VAC 5-420, Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law--Contact Alan Rogers

2 VAC 5-520, Rules and Regulations Governing Testing of Milk for Milkfat, Protein, and Lactose Content by Automated Instrument Methods--Contact John A. Beers

2 VAC 5-540, Rules and Regulations Pertaining to Carbonated and Still Water Bottling Plants and Beverages--Contact James A. Morano

2 VAC 5-550, Rules and Regulations Pertaining to Tolerances and Prohibitions Applicable to Sausage--Contact James A. Morano

2 VAC 20-10, Public Participation Guidelines, Pesticide Control Board--Contact Marvin A. Lawson

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TDD (800) 828-1120
E-mail: lredford@vdacs.state.va.us

Alan Rogers, Program Manager
1100 Bank St.
Room 402
Richmond, VA 23219
Telephone: (804) 786-2476
FAX: (804) 786-1571
TDD: (800) 828-1120
E-mail: jrogers@vdacs.state.va.us

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load (TMDL) for PCBs in the South Fork Shenandoah River/Shenandoah River and the North Fork Shenandoah River

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 PCBs in the South Fork Shenandoah River/Shenandoah River and the North Fork Shenandoah River. The first stream segment is located in the towns of Front Royal and Berryville. The segment is 36.45 miles in length: it begins at the Rt. 619 bridge over the S.F. Shenandoah River in Front Royal and ends at the VA/WVA state line. The second segment is 5.33 miles in length: it begins at the Passage Creek confluence with the N.F. Shenandoah River and ends at the N.F. Shenandoah River's confluence with the S.F. Shenandoah River in Front Royal. The segments are identified as impaired in Virginia's 1998 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for PCBs.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

The second public meeting on the development of the PCB TMDL for the two Shenandoah segments will be held on Tuesday, July 17, 2001, 7 p.m. at the Warren County Government Center, 220 N. Commerce Avenue, Front Royal, VA.

The public comment period will end on July 31, 2001. A fact sheet on the development of the TMDL for PCBs on S.F. Shenandoah/Shenandoah River and N.F. Shenandoah River is available upon request. Questions or information requests should be addressed to Rod Bodkin. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to

Rod Bodkin, Department of Environmental Quality, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 574-7801, FAX (540) 574-7878 or e-mail rvbodkin@deq.state.va.us.

DEPARTMENT OF GAME AND INLAND FISHERIES

Requirement for Initial Registration of Deer Enclosures

The owners of enclosures holding deer must register such enclosures with the Virginia Department of Game and Inland Fisheries initially no later than August 1, 2001. Legislation passed by this year's General Assembly, Senate Bill 1339, provides that "it is unlawful to erect a fence that prevents or impedes the free egress (outward movement) of deer from an enclosed area with the intent to confine deer" and provides further "that it is unlawful to hunt deer inside a fenced area that prevents or impedes the free egress of deer."

The provisions of this law do not apply to:

1. Local, state or federal public lands on which fences are erected to protect public health or safety;
2. Enclosures permitted by the department as fallow deer farms or permitted exhibitors holding native deer for educational purposes;
3. Enclosures permitted by the U.S. Department of Agriculture as exhibitors, breeders, or dealers; or
4. Zoos accredited by the American Zoological Association.

Initial Registration Procedures: Owners of deer enclosures constructed prior to July 1, 2001, must register with the Virginia Department of Game and Inland Fisheries by certified mail postmarked no later than August 1, 2001, and mailed to VA Department of Game and Inland Fisheries, Wildlife Division, P.O. Box 11104, Richmond, VA 23230. Such notice of registration shall include the owner's name, address and telephone number, information on the location (county and street address) of such enclosures along with a general location map and the number of acres enclosed.

The prohibition against deer hunting inside deer enclosures shall not apply to those facilities constructed prior to July 1, 2001, that have properly registered with the department and that have complied with conditions approved by the director or his designee regarding the operation of these enclosures. Such registration is nontransferable.

For more information on the registration requirements contact the Department of Game and Inland Fisheries at (804) 367-9588.

DEPARTMENT OF TRANSPORTATION

Notice of Periodic Review of Regulations

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

General Notices/Errata

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 by statute or procedures established by the Registrar of Regulations.

A. VDOT seeks public comment regarding the following question: Does the regulation meet the following goals?

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. Is the regulation written clearly and understandably?

Regulation Title: 24 VAC 30-71-10 et seq. Minimum Standards of Entrances to State Highways.

Subject: This regulation sets forth the requirements approved by the Commonwealth Transportation Board, and implemented by VDOT, regarding commercial entrances joining state-owned highways.

Comments may be submitted until July 30, 2001, to S. D. Edwards, Transportation Engineer Senior, Department of Transportation - Traffic Engineering Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-0121, FAX (804) 225-4978 or e-mail edwards_sd@vdot.state.va.us.

B. VDOT seeks public comment regarding the following question: Does the regulation meet the following goals?

1. To permit sign owners to remove vegetation around signs in accordance with agency policies, procedures, and criteria concerning aesthetics and health of vegetation.
2. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
3. Is the regulation written clearly and understandably?

Regulation Title: 24 VAC 30-200-10 et seq. Vegetation Control Regulations on State Rights of Way.

Subject: This regulation sets forth the policies, criteria, and procedures that VDOT, on behalf of the Commonwealth Transportation Board (CTB), will follow in granting permits to allow vegetation to be removed from the vicinity of signs/structures on state property controlled by the CTB.

Comments may be submitted until July 30, 2001, to James R. Barrett, Environmental Program Manager, Department of Transportation - Environmental Division, 1201 E. Broad St., Richmond, VA 23219, telephone (804) 371-6826, FAX (804) 371-6827 or e-mail barrett_jr@vdot.state.va.us.

C. VDOT seeks public comment regarding the following question: Does the regulation meet the following goals?

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. Is the regulation written clearly and understandably?

Regulation Title: 24 VAC 30-210-10 et seq. Underground Utility Policy.

Subject: This policy prescribes the policies, procedures, and reimbursement provisions for the underground relocation of existing overhead utility facilities on selected transportation improvement projects.

APA Exemption: Section 9-6.14:4.1 B 3

Comments may be submitted until July 30, 2001, to Stuart A. Waymack, Director, Right of Way and Utilities Division, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2745, FAX (804) 786-1706 or e-mail waymack_sa@vdot.state.va.us.

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Periodic Review of Regulations

Pursuant to Executive Order Number Twenty-five (1998), the Department of Environmental Quality on behalf of the Virginia Waste Management Board, will review several regulations. The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number Twenty-five (1998).

The department and the board are seeking public comment on the review of any issue relating to these regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety or welfare of citizens or for the economical performance of important governmental functions; (iii) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (iv) the regulations are clearly written and easily understandable by the affected persons.

The regulations being reviewed and the staff contact for each are:

Schedule of Fees for Hazardous Waste Facility Site Certification (9 VAC 20-20-10 et seq.). The purpose of these regulations is to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to provide the minimum funds from a potential hazardous waste facility developer to allow for the thorough and efficient review of a proposed site by state and local governments designed to evaluate potential impact on public health, safety and welfare and on the environment. Comments should be sent to Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, telephone (804) 698-4213, FAX (804) 698-4327 or e-mail rgwickline@deq.state.va.us.

Technical Assistance Fund Administrative Procedures (9 VAC 20-30-10 et seq.). The purpose of these regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth; to provide for the efficient and effective utilization of funds collected from the developer of a proposed hazardous waste facility to allow for a thorough

and efficient review by the host community's local government of the proposed site's impact on public health, safety and welfare and on the environment; and to provide accountability of fund management and utilization. Comments should be sent to Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, telephone (804) 698-4213, FAX (804) 698-4327 or e-mail rgwickline@deq.state.va.us.

Administrative Procedures for Hazardous Waste Facility Site Certification (9 VAC 20-40-10 et seq.). The purpose of these regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth; to establish processes for evaluation of proposed hazardous waste facility site suitability, negotiation of siting issues and resolution of conflicts; to ensure that suitable new sites for hazardous waste facilities can be certified in a timely and efficient manner; and to protect public health, safety and welfare and the environment by limiting certification to sites that have been adequately evaluated and deemed suitable for use. Comments should be sent to Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, telephone (804) 698-4213, FAX (804) 698-4327 or e-mail rgwickline@deq.state.va.us.

Hazardous Waste Facility Siting Criteria (9 VAC 20-50-10 et seq.). The purpose of these regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish assessable criteria for the evaluation of new hazardous waste facility sites that are protective of public health, safety and welfare and the environment and do not erect an unreasonable barrier to the developer's use of the site in terms of cost, procedures or required physical features. Comments should be sent to Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, telephone (804) 698-4213, FAX (804) 698-4327 or e-mail rgwickline@deq.state.va.us.

Solid Waste Management Facility Permit Application Fees (9 VAC 20-90-10 et seq.). The purpose of these regulations is to protect the public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish appropriate management practices for facilities that manage only coal combustion residues. Comments should be sent to Michael J. Dieter, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, telephone (804) 698-4146, FAX (804) 698-4327 or e-mail mjdieter@deq.state.va.us.

Comments on the above regulations are welcome and will be accepted until July 9, 2001. (Note: Please include your full name and mailing address in the e-mail.)

STATE WATER CONTROL BOARD

Notice of Periodic Review of Regulations

Pursuant to Executive Order Number Twenty-five (1998), the Department of Environmental Quality on behalf of the State Water Control Board will review several regulations. The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number Twenty-five (1998).

The department and the board are seeking public comment on the review of any issue relating to these regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety or welfare of citizens or for the economical performance of important governmental functions; (iii) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (iv) the regulations are clearly written and easily understandable by the affected persons.

The regulations being reviewed and the staff contact for each are:

Facility and Aboveground Storage Tank (AST) Regulation (9 VAC 25-91-10 et seq.). The goals of this regulation are: (i) to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and (ii) to protect the environment and public health and safety from discharges of oil by providing procedures and requirements for registering tanks, developing facility and tank vessel oil discharge contingency plans and establishing pollution prevention standards. Comments should be sent to Samuel Lillard, Department of Environmental Quality, Office of Spill Response and Remediation/10th Floor, P.O. Box 10009, Richmond, Virginia 23240-0009, telephone (804) 698-4276, FAX (804) 698-4266 or e-mail slillard@deq.state.va.us.

Surface Water Management Area Regulation (9 VAC 25-220-10 et seq.). The purpose of this regulation is to (i) protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth, (ii) protect the beneficial uses of the streams of the Commonwealth by identifying areas that may be impacted by low flows during drought periods and by designating those areas as Surface Water Management Areas, (iii) provide a coordinated approach in managing and allocating the limited surface water resources of the Commonwealth during periods of low flow, and (iv) ensure that water supply sources are protected and managed wisely. Comments should be sent to Terry D. Wagner, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, telephone (804) 698-4043, FAX (804) 698-4032 or e-mail tdwager@deq.state.va.us.

Wetlands Policy (9 VAC 25-380-10 et seq.). The purpose of these regulations is to protect public health and welfare with the least possible costs and intrusiveness to the

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citizens and businesses of the Commonwealth and to establish a policy to preserve wetland ecosystems and protect them from destruction. Comments should be sent to Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.state.va.us.

Ocoquan Policy (9 VAC 25-410-10 et seq.). The purpose of these regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish a comprehensive pollution abatement and water quality management policy for the Ocoquan watershed. Comments should be sent to Thomas A. Faha, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193, telephone (703) 583-3846, FAX (703) 583-3801 or e-mail tafaha@deq.state.va.us.

Potomac River Embayments Policy (9 VAC 25-415-10 et seq.). The purpose of these regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to control point source discharges into Virginia embayment waters of the Potomac River in order to effectuate the proper and comprehensive protection of such waters. Comments should be sent to Thomas A. Faha, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193, telephone (703) 583-3846, FAX (703) 583-3801 or e-mail tafaha@deq.state.va.us.

Comments on the above regulations are welcome and will be accepted until July 9, 2001. (Note: Please include your full name and mailing address in the e-mail.)

Proposed Consent Special Order - S.I.L. Cleanwater, L.L.C.-North Fork Modular Reclamation and Reuse Facility

The State Water Control Board proposes to enter into a Consent Special Order with S.I.L. Cleanwater, L.L.C.-North Fork Modular Reclamation and Reuse Facility (S.I.L.) to resolve violations of the State Water Control Law and regulations at S.I.L.'s sewage treatment plant in Rockingham County. The facility discharges treated wastewater to the North Fork of the Shenandoah River in the Shenandoah River subbasin, Potomac River basin.

S.I.L. has experienced BOD and ammonia effluent limitation violations during April 2001. The facility has exceeded limitations for land application rates in March and April 2001 and has experienced operational problems since coming on line. In addition, S.I.L failed to submit required reports in a timely manner.

The proposed Consent Special Order settles the outstanding Notices of Violation and incorporates a schedule of compliance to return the facility to complete compliance with the permit. The order also assesses a civil charge for the violations.

The board will receive written comments relating to the proposed Consent Special Order for 30 days from the date of

publication of this notice. Comments should be addressed to Steven W. Hetrick, Department of Environmental Quality, Post Office Box 3000, Harrisonburg, VA 22801, and should refer to the Consent Special Order.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801. A copy of the order may be obtained in person or by mail from this office.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (804) 692-0625.

Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in The Virginia Register of Regulations. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other Virginia Register resources may be printed or downloaded from the Virginia Register web page: <http://legis.state.va.us/codecomm/register/regindex.htm>

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS - RR08

ERRATA

AUCTIONEERS BOARD

Title of Regulation: **18 VAC 25-21-10 et seq. Rules and Regulations of the Virginia Auctioneers Board.**

Publication: 17:18 VA.R. 2563-2569 May 21, 2001.

Correction to the Public Hearing Date:

Change public hearing date from "July 21, 2001," to "July 12, 2001."

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: 9 VAC 20-80-10 et seq. Solid Waste Management Regulations.

Publication: Summary published in 17:16 VA.R. 2349-2350 April 23, 2001; full text published at <http://legis.state.va.us/codecomm/register/vol17/vol17.htm>

Correction to Final Regulation:

Appendix 2.1 is deleted.

Appendix 2.2 is deleted and its reporting form requirement is incorporated in 9 VAC 20-80-115 D as follows:

D. The reporting form to be used to fulfill the reporting requirement of this part is DEQ Form 50-25, which is available in the Regulations for the Development of Solid Waste Management Plans (9 VAC 20-130-10 et seq.).



The following form is added to the Forms List:

Solid Waste Information and Assessment Program - Reporting Table, DEQ Form 50-25 (rev. 6/00).

References in 9 VAC 20-80-280 B 3 and E 3 and in the paragraph before subsection A are changed from "40 CFR Part 60, Subparts WWW and Cc" to "40 CFR 60.33 and 40 CFR Part 750."


CALENDAR OF EVENTS

Symbol Key

-  Location accessible to persons with disabilities
 Teletype (TTY)/Voice Designation

NOTICE


Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY , or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."


VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD FOR ACCOUNTANCY

† **June 28, 2001 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 5W, Richmond,
Virginia. 

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, Virginia 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail accountancy@dpor.state.va.us.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES


Virginia State Apple Board

† **July 17, 2001 - 9:30 a.m.** -- Open Meeting
Rowe's Restaurant, 74 Rowe Road (Intersection of I-81 and Rte. 250), Staunton, Virginia 

A meeting to approve the minutes of the last meeting and discuss any old business arising from the board meeting of May 1, 2001, and to discuss any new business to be brought before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: David Robishaw, Regional Marketing Development Manager, Department of Agriculture and Consumer Services, 900 Natural Resources Dr., Suite 300, Charlottesville, VA 22903, telephone (804) 984-0573, FAX (804) 984-4156.


Virginia Cattle Industry Board

July 31, 2001 - 10:30 a.m. -- Open Meeting
Holiday Inn, Woodrow Wilson Parkway, Staunton, Virginia. 

A regular business meeting to approve minutes from the April 2001 meeting, in addition to reviewing the financial statement for the period April 1 through July 1. Staff will give program updates for the state and national level. Committees will convene to review project proposals submitted by staff and other organizations for FY 01-02 Marketing Plan. Prior to the full board meeting, a new board orientation will be held beginning at 9 a.m. For directions to the board meeting please call 540-248-6020. 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Reginald B. Reynolds, Executive Director, Department of Agriculture and Consumer Services, P.O. Box 9, Daleville, VA 24083, telephone (540) 992-1992, FAX (540) 992-4632.

Virginia Small Grains Board

July 26, 2001 - 8 a.m. -- Open Meeting
Radisson Fort Magruder Hotel and Conference Center, 6945 Pocahontas Trail, Williamsburg, Virginia. 

A meeting to review FY 2000-01 project reports and receive 2001-02 project proposals. Minutes from the last board meeting and a current financial statement will be heard and approved. Additionally, action will be taken on any other new business that comes before the group. 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank Street, Room

1005, Richmond, VA, telephone (804) 371-6157, FAX (804) 371-7786.

ALCOHOLIC BEVERAGE CONTROL BOARD

June 19, 2001 - 9:30 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. 

A meeting of the Executive Staff to receive and discuss reports and activities. Other matters to be discussed are not yet determined.


Contact: W. Curtis Coleburn, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4442.

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


July 20, 2001 - 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 Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects intends to amend regulations entitled: **18 VAC 10-20-10 et seq. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations.** The board has clarified language, consolidated provisions, and modified wording to accord with the Code of Virginia. Substantive changes include requiring that regulants notify the board office when they leave as the responsible professional of a professional corporation, permitting use of electronic seals, signatures and dates, and adding various requirements and standards regarding land boundary surveying.

Statutory Authority: §§ 54.1-201, 54.1-404 and 54.1-411 of the Code of Virginia.


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

ART AND ARCHITECTURAL REVIEW BOARD

July 6, 2001 - 10 a.m. -- Open Meeting
August 3, 2001 - 10 a.m. -- Open Meeting
† September 7, 2001 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies.

Contact: Richard L. Ford, AIA, Chairman, Department of General Services, 1011 E. Main St., Room 221, Richmond,

VA 23219, telephone (804) 643-1977, FAX (804) 643-1981, (804) 786-6152/TTY 

VIRGINIA BOARD FOR ASBESTOS AND LEAD


July 9, 2001 - 2 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

July 20, 2001 - 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 Board for Asbestos and Lead intends to amend regulations entitled: **18 VAC 15-20-10 et seq. Virginia Asbestos Licensing Regulations.** The proposed regulation will revise definitions; delete roofing, flooring and siding provisions, which were abolished by House Bill 951, effective July 1, 1996; clarify fees for initial approval of accredited asbestos training programs; and create a biennial renewal requirement and fee for accredited asbestos training programs. Project monitors who also hold a valid supervisor or project designer license may renew their project monitor license by completing the supervisor or project designer refresher training. Language has been added to make clear that a refresher training certificate may be used only once to renew a license. The entry standards for inspectors, management planners and project designers have been changed to allow applicants to present evidence of specific minimal competence. Project monitors will be required on projects involving more than 260 linear feet or 160 square feet of asbestos containing materials. An additional option to qualify for an asbestos and analytical laboratory license has been added and performance standards for laboratory operation have been added.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Contact: Joseph Kossan, Regulatory Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648.

† August 15, 2001 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4W, Richmond, Virginia. 

A meeting to 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, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail asbestos@dpor.state.va.us.

Calendar of Events

ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY

June 21, 2001 - 10 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting of the Board of Directors. The public is welcome and invited to make comments or suggestions to the board. The board meets in closed session when reviewing confidential information pertaining to loan applications made by Virginians with disabilities.

Contact: Shilpa Joshi, Assistive Technology Loan Fund Authority, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-9000, FAX (804) 662-9533, toll-free (800) 552-5019, (804) 662-9000/TTY, e-mail loanfund@erols.com.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

State Executive Council

June 27, 2001 - 9 a.m. -- Open Meeting
July 25, 2001 - 9 a.m. -- Open Meeting
† August 29, 2001 - 9 a.m. -- Open Meeting
† September 26, 2001 - 9 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Lower Level, Training Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. An agenda will be posted on the web (<http://www.csa.state.va.us>) a week prior to the meeting.

Contact: Alan G. Saunders, Director, Comprehensive Services for At-Risk Youth and Families, 1604 Santa Rosa Rd., Suite 137, Richmond, VA 23229, telephone (804) 662-9815, FAX (804) 62-9831, e-mail AGS992@central.dss.state.va.us.

AUCTIONEERS BOARD

July 12, 2001 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

July 20, 2001 - 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 Auctioneers Board intends to amend regulations entitled: **18 VAC 25-21-10 et seq. Rules and Regulations of the Auctioneers Board.** The Auctioneers Board has clarified language, deleted duplicate and unutilized definitions, removed unnecessary requirements, and modified certain requirements in this chapter. Substantive changes include the following: the board has clarified that disciplinary action in another jurisdiction relating to auctioneering may prevent licensure in Virginia, has removed the option of substituting 25 auctions in lieu of educational requirements, has modified

reinstatement requirements, and has modified compliance requirements for schools.

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

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

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

July 17, 2001 - 10 a.m. -- Open Meeting
Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board for the blind and vision impaired is an advisory board responsible for advising the governor, the secretary of health and human resources, the commissioner, and the general assembly in the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budget and request for appropriations for the department. At this regular meeting, the board will review information regarding department activities and operations, review expenditures from the board's endowment fund, and discuss other issues raised for the board members.

Contact: Katherine C. Proffitt, Administrative Staff Assistant, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145, FAX (804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY, e-mail proffikc@dbvi.state.va.us.

CEMETERY BOARD

† July 18, 2001 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general meeting of the Regulatory Review Committee.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-2039, FAX (804) 367-2475, e-mail cemetery@dpor.state.va.us.

† July 18, 2001 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general meeting.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-2039, FAX (804) 367-2475, e-mail cemetery@dpor.state.va.us.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 18, 2001 - 10 a.m. -- Open Meeting
Henrico County Government Center, 4301 East Parham Road, Administration Building, 3rd Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting, including review of local Chesapeake Bay Preservation Area programs. Public comments will be taken during the meeting. A tentative agenda and map to the Henrico County Government Center will be available by June 1, 2001, from the Chesapeake Bay Local Assistance Department.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY, e-mail celliott@cblad.state.va.us.

COMPENSATION BOARD

June 26, 2001- 11 a.m. -- Open Meeting
† **July 24, 2001 - 11 a.m.** -- Open Meeting
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly board meeting.

Contact: Cindy Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

DEPARTMENT OF CONSERVATION AND RECREATION

June 18, 2001 - 10 a.m. -- Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

Falls of the James Scenic River Advisory Board

July 12, 2001 - Noon -- Open Meeting
City Hall, Planning Commission Conference Room, 900 East Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss river issues. Request for interpreter for the deaf should be filed two weeks prior to the meeting.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, e-mail rgibbons@dcr.state.va.us.

Goose Creek Scenic River Advisory Board

July 10, 2001 - 1:30 p.m. -- Open Meeting
Loudoun County Administration Building, 4th Floor Conference Room, Leesburg, Virginia. (Interpreter for the deaf provided upon request)

Discussion of river issues. Requests for interpreter for the deaf should be filed two weeks prior to the meeting.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, e-mail rgibbons@dcr.state.va.us.

BOARD FOR CONTRACTORS

† **July 18, 2001 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

A regular meeting of the Tradesman Committee to consider items of interest relating to the tradesmen/backflow workers and other appropriate matters pertaining to the tradesman section of the board for contractors.

Contact: David Dick, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-6166, FAX (804) 367-2474, (804) 367-9753/TTY, e-mail dick@dpor.state.va.us.

July 18, 2001 - 1 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

July 20, 2001 - 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 Contractors intends to amend regulations entitled: **18 VAC 50-30-10 et seq. Tradesman Rules and Regulations.** The Board for Contractors seeks to amend its current tradesman regulations to reflect statutory changes that respond to industry changes. The regulations have not been revised since July 7, 1999. Parts of the regulation text may be revised for clarity and ease of use.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TTY

BOARD OF CORRECTIONAL EDUCATION

† **June 22, 2001 - 10 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Calendar of Events

A meeting to discuss general business.

Contact: Patty Ennis, Board Clerk, Board of Correctional Education, James Monroe Bldg. 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314, FAX (804) 786-7642, (804) 371-8647/TTY ☎, e-mail paennis@dce.state.va.us.

BOARD OF COUNSELING

† **June 29, 2001 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia ♿

The Supervision Committee will consider issues related to supervision in counseling. Public comment will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

CRIMINAL JUSTICE SERVICES BOARD

June 19, 2001 - 10 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

A regular meeting of the Private Security Services Board.

Contact: Judith Kirkendall, Regulatory Coordinator, Criminal Justice Services Board, Eighth Street Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, e-mail jkirkendall@dcjs.state.va.us.

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

June 18, 2001 - 11 a.m. -- Open Meeting
Virginia War Memorial, 621 Belvidere Street, Auditorium, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

A monthly meeting to review requests submitted by localities to use design-build or construction management type contracts. Please contact the Division of Engineering and Buildings to confirm meeting.

Contact: Freddie M. Adcock, Administrative Assistant, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY ☎, e-mail fadcock@dgs.state.va.us.

BOARD OF EDUCATION

June 20, 2001 - 1 p.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 joint meeting with the State Council of Higher Education for Virginia and a business session.

Contact: Dr. Margaret N. Roberts, Office of Policy, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

July 26, 2001 - 9 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. Public comment will be received at this meeting.

Contact: Dr. Margaret N. Roberts, Office of Policy, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

June 20, 2001 - 9:30 a.m. -- Open Meeting
Henrico School Board Office, 3820 Nine Mile Road, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Accountability Advisory Committee. Unless otherwise notified in advance, sessions will be working sessions and public comment will not be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

Contact: Cam Harris, Department of Education, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2102, FAX (804) 225-2524.

June 20, 2001 - 5:30 p.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.

July 20, 2001 - Public comment 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 Education intends to adopt regulations entitled: **8 VAC 20-630-10 et seq. Standards for State-Funded Remedial Programs.** The proposed regulations will require the collection of the minimum data necessary to comply with the intent of the Code of Virginia.

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

Contact: Dr. Kathleen Smith, Specialist, Elementary Education, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 786-5819 or (804) 225-2524.

June 21, 2001 - 9 a.m. -- Open Meeting

June 22, 2001 - 9 a.m. -- Open Meeting

General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

An annual planning session. Persons requesting services of an interpreter for the deaf should do so in advance. This is a working session, and public comment will not be received.


Contact: Dr. Margaret N. Roberts, Office of Policy, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **June 27, 2001 - 7 p.m.** -- Public Hearing
Franklin City Library, North College Drive, Franklin, Virginia. 

A public hearing to receive comments regarding the technical merits of a draft permit amendment regarding establishment of groundwater protection standards for the Franklin City Sanitary Landfill located on the west side of State Route 616, two miles east of Franklin.


Contact: Geoff Christe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4283, e-mail gxchriste@deq.state.va.us.

† **July 10, 2001 - 8 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the Ground Water Protection Steering Committee to conduct a field trip to the Department of Environmental Quality and the U.S. Geological Survey research station in Mathews County, Virginia. Meeting minutes and agenda are available from the contact person.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, FAX (804) 698-4032, e-mail mamassie@deq.state.va.us.


BOARD OF FUNERAL DIRECTORS AND EMBALMERS

June 26, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A meeting to hold informal hearings. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9907, FAX (804) 662-9523, e-mail CEmma-Leigh@dhp.state.va.us.


BOARD OF GAME AND INLAND FISHERIES

† **June 25, 2001 - 7 p.m.** -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A public input meeting to receive and discuss public comments regarding season lengths and bag limits for the

2001-2002 dove, woodcock, snipe, rail, September Canada goose, and teal hunting seasons. All interested citizens are invited to attend. DGIF Wildlife Division staff will discuss the population status of these species, and present hunting season frameworks for them provided by the U.S. Fish and Wildlife Service. The public's comments will be solicited in the public hearing portion of the meeting. A summary of the results of this public hearing will be provided to the Virginia Board of Game and Inland Fisheries prior to its scheduled July 19, 2001, meeting. At the July 19 meeting the board will hold another public hearing, after which it intends to set 2001-2002 hunting seasons and bag limits for the above species.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail phil_smith@dgif.state.va.us.

† **July 19, 2001 - 9 a.m.** -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to adopt webless migratory game bird and September Canada goose seasons and bag limits based on frameworks provided by the U.S. Fish and Wildlife Service. The board will solicit the public's comments in a public hearing offered during this portion of the meeting, at which time any interested citizen present shall be heard. Pursuant to §§ 29.1-103 and 105 of the Code of Virginia, the board will also hold a public hearing on a proposed memorandum of agreement between the Department of Game and Inland Fisheries and Dogwood Development Group, LLC, regarding a proposed exchange of land in Frederick County, Virginia intended to provide continued and improved public recreational access to Lake Frederick within the context of planned commercial development of surrounding adjacent real estate. The proposed memorandum of agreement is available from the Department of Game and Inland Fisheries; requests for copies, inquiries, or written comments addressing the proposed memorandum should be directed to Jane Powell, 4010 West Broad Street, Richmond, Virginia 23230; phone 804-367-0811. Such written comments prior to the Board meeting will be accepted until 5 p.m. Thursday, July 12, 2001. The board may also discuss general and administrative issues. The board may elect to hold a dinner Wednesday evening, July 18, at a location and time to be determined; and it may hold a closed session before or after the open session on July 19.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail phil_smith@dgif.state.va.us.

STATE BOARD OF HEALTH

† **August 20, 2001 - 7 p.m.** -- Public Hearing
Henrico County Board of Supervisors Room, 4301 East Parham Road, Henrico County Complex, Richmond, Virginia.

Calendar of Events

† **August 23, 2001 - 7 p.m.** -- Public Hearing
Roanoke County Administration Building, 5204 Bernard Drive,
Roanoke, Virginia.

† **August 27, 2001 - 7 p.m.** -- Public Hearing
1 County Complex, McCoart Building, Prince William County
Board Chambers, Prince William, Virginia.

† **August 29, 2001 - 7 p.m.** -- Public Hearing
Virginia Beach Central Library, 4100 Virginia Beach
Boulevard, Auditorium, Virginia Beach, Virginia.

† **August 31, 2001** - 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 **repeal** regulations entitled: **12 VAC 5-420-10 et seq.
Rules and Regulations Governing Restaurants and
adopt** regulations entitled: **12 VAC 5-421-10 et seq.
Regulations Governing Restaurants.** The purpose of the
proposed action is to repeal the existing regulations and
adopt new regulations that comply with the 1997 FDA
Model Food Code. The proposed regulations address the
emergence of new strains of bacteria and other organisms
and incorporate new control measures for the prevention of
food borne disease.

Statutory Authority: §§ 35.1-11 and 35.1-14 of the Code of
Virginia.

Contact: Gary L. Hagy, Director, Division of Food and
Environmental Services, Department of Health, P.O. Box
2448, Richmond, VA 23218-2448, telephone (804) 225-4022.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **June 20, 2001 - 11 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor,
Richmond, Virginia.

† **July 17, 2001 - 9 a.m.** -- Open Meeting
State Council of Higher Education, James Monroe Building,
101 North 14th Street, 9th Floor, Richmond, Virginia.

A regular meeting. Agenda materials will be available on
the website approximately one week prior to the meeting at
www.schev.edu

Contact: Lee Ann Rung, State Council of Higher Education
for Virginia, 101 N. 14th St., Richmond, VA 23219, telephone
(804) 225-2602, FAX (804) 371-7911, e-mail
lrung@schev.edu.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

July 3, 2001 - 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 as
required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator,
300 N. Main Street, Hopewell, VA 23860, telephone (804)
541-2298.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

June 18, 2001 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, 501
North 2nd Street, Richmond, Virginia.

A regular business meeting of the board. Public comment
will be received.

Contact: Stephen W. Calhoun, Senior Policy Analyst,
Department of Housing and Community Development, 501 N.
2nd St., Richmond, VA 23219, telephone (804) 371-7015,
FAX (804) 371-7090, (804) 371-7089/TTY, e-mail
scalhoun@dhcd.state.va.us.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

June 19, 2001 - 9 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere
Street, Richmond, Virginia.

A regular meeting of the Board of Commissioners to (i)
review and, if appropriate, approve the minutes from the
prior monthly meeting; (ii) consider for approval and
ratification mortgage loan commitments under its various
programs; (iii) consider for approval amendments to the
authority's Rules and Regulations for Single Family
Mortgage Loans to Persons and Families of Low and
Moderate Income; (iv) review the authority's operations for
the prior month; and (v) consider such other matters and
take such other actions as they may deem appropriate.
Various committees of the board may also meet during the
day preceding the regular meeting and before and after the
regular meeting and may consider matters within their
purview. The planned agenda of the meeting will be
available at the offices of the authority one week prior to the
date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia
Housing Development Authority, 601 S. Belvidere St.,
Richmond, VA 23220, telephone (804) 343-5540, FAX (804)
783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY

COUNCIL ON INDIANS

† **June 19, 2001 - 6 p.m.** -- Open Meeting
State Capitol, Capital Square, House Room 1, Richmond,
Virginia.


A meeting to discuss issues pertinent to the Virginia Indian
communities.

Contact: Mary B. Wade, Secretary, Council on Indians, P.O.
Box 1475, Richmond VA 23218, telephone (804) 786-7765,
FAX (804) 786-6984, e-mail dovmonacan@aol.com.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

June 21, 2001 - 10 a.m. -- Open Meeting


Virginia Employment Commission, 700 East Main Street, 3rd Floor, Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Bev Donati, Assistant Program Manager, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail bgd@doli.state.va.us.

Virginia Migrant and Seasonal Farmworkers Board

† **July 11, 2001 - 10 a.m.** -- Open Meeting


Museum Auditorium, A. T. Johnson Human Services Bldg., 18849 Kings Highway (Rt. 3), Montross, Virginia.  (Interpreter for the deaf provided upon request)

A regular quarterly meeting of the board.


Contact: Betty B. Jenkins, Board Administrator, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2391, FAX (804) 371-6524, (804) 786-2376/TTY , e-mail bbj@doli.state.va.us.

VIRGINIA MANUFACTURED HOUSING BOARD

June 21, 2001 - 10 a.m. -- Open Meeting

The Jackson Center, 501 North 2nd Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting to address licensing issues, handle complaints and claims against licensees in the program, conduct fact-findings regarding complaints and claims, and carry out administration of the Manufactured Housing Licensing and Transaction Recovery Fund Regulations.


Contact: Curtis L. Mclver, Associate Director, Virginia Manufactured Housing Board, State Building Code Administrative Office, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY , e-mail cmclver@dhcd.state.va.us.

MARINE RESOURCES COMMISSION


June 26, 2001 - 9:30 a.m. -- Open Meeting

† **July 24, 2001 - 9:30 a.m.** -- Open Meeting

† **August 28, 2001 - 9:30 a.m.** -- Open Meeting

Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. 

A monthly meeting.

Contact: LaVerne Lewis, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., Newport News, VA 23607, telephone (757) 247-2261, FAX (757) 247-2020, toll-free (800) 541-4646, (757) 247-2292/TTY , e-mail llewis@mrc.state.va.us.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

July 21, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-20-10 et seq. Administration of Medical Assistance Services.** The purpose of the proposed amendment is to increase the amount of the copayment that Medicaid recipients are required to pay when their prescriptions are filled with brand name drugs instead of generics.

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

Public comments may be submitted until July 21, 2001, to Marianne Rollings, R.Ph., Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

BOARD OF MEDICINE

June 20, 2001 - 9:30 a.m. -- Open Meeting

Wyndham Roanoke Airport, 2801 Hershberger Road, Roanoke, Virginia.

June 28, 2001 - 9:30 a.m. -- Open Meeting

July 26, 2001 - 9:30 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.


† **July 11, 2001 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

July 12, 2001 - 9:30 a.m. -- Open Meeting

Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

A meeting of the Informal Conference Committee to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixson, Board of Medicine, 6606 West Broad Street, Richmond, VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY , e-mail PSadler@dhp.state.va.us.

† **July 9, 2001 - 9:30 a.m.** -- Open Meeting

Wyndham Roanoke Airport Hotel, 2801 Hershberger Road, Roanoke, Virginia.

A panel of the board will convene a formal hearing to inquire into allegations that a practitioner may have violated laws governing the practice of medicine. The panel will

Calendar of Events

meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixon, Staff, Board of Medicine, 6606 W. Broad St., Richmond VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail PSadler@dhp.state.va.us.

STATE MILK COMMISSION

† **August 15, 2001 - 10 a.m.** -- Public Hearing
General Assembly Building, 9th and Broad Streets, Senate Room A, First Floor, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

A public hearing to receive evidence and testimony related to Order 21 that was implemented on March 1, 2001, and terminates on August 31, 2001. The hearing will assist the commission in determining if the order should be terminated or extended and if existing regulations should be terminated, amended or retained in its current form. Written comments may be submitted until August 1, 2001, to Edward C. Wilson, Jr.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Ninth St. Office Bldg., 202 N. Ninth St., Room 915 Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us, homepage <http://www.state.va.us/milk/>.

† **August 15, 2001 - 1 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 of commissioners to consider industry issues, distributor licensing, base transfers, baseholder license amendment, fiscal matters, and to review reports from staff of the agency. Any persons requiring special accommodations in order to participate in the meeting should contact Edward C. Wilson, Jr. at least five days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Ninth St. Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

† **June 21, 2001 - Noon** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia ♿

An annual meeting for the Executive and Finance Committees to approve the museum's annual budget. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

BOARD OF NURSING

July 16, 2001 - 8:30 a.m. -- Open Meeting
July 18, 2001 - 8:30 a.m. -- Open Meeting
July 19, 2001 - 8:30 a.m. -- Open Meeting
† **September 24, 2001 - 8:30 a.m.** -- Open Meeting
† **September 26, 2001 - 8:30 a.m.** -- Open Meeting
† **September 27, 2001 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia ♿

A panel of the board will conduct formal hearings with licensees and certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

Special Conference Committee

June 18, 2001 - 8:30 a.m. -- Open Meeting
June 19, 2001 - 8:30 a.m. -- Open Meeting
June 20, 2001 - 8:30 a.m. -- Open Meeting
June 28, 2001 - 8:30 a.m. -- Open Meeting
† **August 2, 2001 - 8:30 a.m.** -- Open Meeting
† **August 7, 2001 - 8:30 a.m.** -- Open Meeting
† **August 13, 2001 - 8:30 a.m.** -- Open Meeting
† **August 16, 2001 - 8:30 a.m.** -- Open Meeting
† **August 28, 2001 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Rooms 3 and 4, Richmond, Virginia ♿

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, will conduct informal conferences with licensees or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

BOARD OF OPTOMETRY

† **July 13, 2001 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad St., 5th Floor, Conference Room 1, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

An informal conference hearing. This is a public meeting; however, public comment will not be received.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail cstamey@dhp.state.va.us.

† **July 13, 2001 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

Formal Hearings - 10 a.m., 11:30 a.m., and 1:30 p.m. This is a public meeting; however, public comment will not be received.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail cstamey@dhp.state.va.us.

VIRGINIA OUTDOORS FOUNDATION

June 27, 2001 - 10 a.m. -- Open Meeting
Woodstock Town Hall, Woodstock, Virginia. ♿

A meeting of the Region I Advisory Board to review funding applications to the Open Space Lands Preservation Trust Fund.

Contact: Faye Cooper, Virginia Outdoors Foundation, 11 E. Beverley Street, Staunton, VA 24401, telephone (540) 886-2460.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

June 18, 2001 - 10 a.m. -- Public Hearing
Virginia Department of Forestry, Natural Resources Building, 900 Natural Resources Drive, Charlottesville, Virginia. ♿
(Interpreter for the deaf provided upon request)

A public hearing regarding the need for state regulation of foresters and the need for state regulation of arborists. Interested parties are encouraged to attend and provide testimony and/or written comments. The board will receive written comments until 5 p.m. on July 31, 2001. Comments may be mailed to Debra Vought at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, e-mailed to vought@dpor.state.va.us or FAXED to (804) 367-9537. Please call (804) 367-8519 if you have questions regarding the study.

Contact: Judith A. Spiller, Administrative Assistant, Board for Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519, FAX (804) 367-9537, (804) 367-9753/TTY ☎, e-mail spiller@dpor.state.va.us.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

† **June 21, 2001 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general meeting of the Professional Boxing and Wrestling Task Force.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475.

VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

June 21, 2001 - 10 a.m. -- Open Meeting
Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting. Public comments are welcome.

Contact: Terry Raney, Coordinator, Public Guardianship Program, Virginia Public Guardian and Conservator Advisory Board, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-7049.

REAL ESTATE APPRAISER BOARD

† **July 17, 2001 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039, FAX (804) 367-2475, e-mail reappraiser@dpor.state.va.us.

REAL ESTATE BOARD

† **July 11, 2001 - 4 p.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting of the Real Estate Education Committee.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, e-mail reboard@dpor.state.va.us.

† **July 12, 2001 - 8 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting of the Fair Housing Committee.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, e-mail reboard@dpor.state.va.us.


† **July 12, 2001 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.


Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, e-mail reboard@dpor.state.va.us.

Calendar of Events


SCIENCE MUSEUM OF VIRGINIA

June 21, 2001 - 3 p.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street,
Richmond, Virginia.  (Interpreter for the deaf provided upon
request)

A quarterly meeting of the Board of Trustees.

Contact: Karen Raham, Administrative Assistant, Science
Museum of Virginia, 2500 W. Broad St., Richmond, VA
23221, telephone (804) 864-1499, FAX (804) 864-1560, toll-
free (800) 659-1727, (804) 828-1140/TTY , e-mail
kraham@smv.org.


VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **June 26, 2001 - 10 a.m.** -- Open Meeting
Department of Business Assistance, 707 East Main Street,
3rd Floor, Board Room, Richmond, Virginia. 

A meeting to review applications for loans submitted to the
Authority for approval and general business of the board.
Time is subject to change depending upon the agenda of
the board.

Contact: Scott E. Parsons, Executive Director, Department
of Business Assistance, P.O. Box 446, Richmond, VA 23218-
0446, telephone (804) 371-8254, FAX (804) 225-3384, e-mail
sparsons@dba.state.va.us.

STATE BOARD OF SOCIAL SERVICES

June 20, 2001 - 9 a.m. -- Open Meeting
June 21, 2001 - 9 a.m. -- Open Meeting
Holiday Inn, 1500 East Market Street, Leesburg, Virginia. 
(Interpreter for the deaf provided upon request)

A work session and formal business meeting. Public
comment begins at 1:30 p.m. on June 20 only.

Contact: Pat Rengnerth, State Board Liaison, State Board of
Social Services, 730 E. Broad St., Richmond, VA 23219-
1849, telephone (804) 692-1826, FAX (804) 692-1962.

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August 3, 2001 - 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 repeal regulations entitled: **22 VAC 40-790-10 et
seq. Minimum Standards for Local Agency Operated
Volunteer Respite Child Care Programs.** The purpose of
the proposed action is to repeal this regulation, which was
originally promulgated to provide standards for local
departments of social services that chose to operate
volunteer respite child care programs. The Department of
Social Services has not received any requests to operate
this type of program since the regulation became effective
in 1998 and does not anticipate receiving any such
requests in the future.

Statutory Authority: §§ 63.1-25 and 63.1-55 of the Code of
Virginia.

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

COUNCIL ON TECHNOLOGY SERVICES

July 12, 2001 - 9 a.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street,
Auditorium, Richmond, Virginia.  (Interpreter for the deaf
provided upon request)


† **September 24, 2001 - 9 a.m.** -- Open Meeting
VMI, Lexington, Virginia.

A group meeting of the Council on Technology Services.

Contact: Jenny Wootton, Council on Technology Services,
Washington Bldg., 1100 Bank St., Suite 901, Richmond, VA
23219, telephone (804) 786-0744, FAX (804) 371-7952, e-
mail jwootton@egov.state.va.us.

DEPARTMENT OF TECHNOLOGY PLANNING

Virginia Geographic Information Network Advisory Board

† **September 6, 2001 - 1:30 p.m.** -- Open Meeting
Location to be announced. 

A regular quarterly meeting.

Contact: William Shinar, VGIN Coordinator, Department of
Technology Planning, 110 S. 7th St., Suite 135, Richmond,
VA 23219, telephone (804) 786-8175, FAX (804) 371-2795,
e-mail bshinar@vgin.state.va.us.

COMMONWEALTH TRANSPORTATION BOARD

June 20, 2001 - 2 p.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street,
Auditorium, Richmond, Virginia. 

A work session of the Commonwealth Transportation Board
and the Department of Transportation staff.

Contact: Cathy M. Ghidotti, Assistant Secretary to the
Board, Commonwealth Transportation Board, 1401 E. Broad
St., Richmond, VA 23219, telephone (804) 786-6675, FAX
(804) 786-6683, e-mail ghidotti_cm@vdot.state.va.us.

June 21, 2001 - 10 a.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street,
Auditorium, Richmond, Virginia. 

A monthly meeting to vote on proposals presented
regarding bids, permits, additions and deletions to the
highway system, and any other matters requiring board
approval. Public comment will be received at the outset of
the meeting on items on the meeting agenda for which the
opportunity for public comment has not been afforded the
public in another forum. Remarks will be limited to five

minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

Contact: Cathy M. Ghidotti, Assistant Secretary to the Board, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675, FAX (804) 786-6683, e-mail ghidotti_cm@vdot.state.va.us.

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† **July 16, 2001 - 10 a.m.** -- Public Hearing
Department of Transportation, 1221 East Broad Street, 1st Floor, Front Auditorium, Richmond, Virginia.


† **August 20, 2001** - 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 Commonwealth Transportation Board intends to **repeal** regulations entitled: **24 VAC 30-40-10 et seq. Rules and Regulations Governing Relocation Assistance** and **adopt** regulations entitled: **24 VAC 30-41-10 et seq. Rules and Regulations Governing Relocation Assistance**. The purpose of the proposed regulatory action is to ensure adequate relocation services and provide moving, replacement housing, and other expense payments so that individuals will not suffer disproportionate injuries as a result of the highway improvement program. VDOT is repealing the existing regulation and promulgating a replacement regulation, which is intended to streamline procedures to improve operational efficiency and effectiveness. The text is revised and reformatted to make the policies and procedures more understandable to both displacees eligible for these services, as well as the VDOT personnel who will implement and interpret the regulation.

Statutory Authority: §§ 25-253 and 33.1-12 of the Code of Virginia, 42 USC § 4601 et seq.

Contact: Beverly D. Fulwider, Relocation Program Manager, Department of Transportation, Right of Way and Utilities Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-4366 or (804) 786-1706.


VIRGINIA VOLUNTARY FORMULARY BOARD

June 26, 2001 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Conference Room, Richmond, Virginia. 


A meeting to review public hearing comments and product data for drug products being considered for inclusion in the Virginia Voluntary Formulary.


Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA RETIREMENT SYSTEM


August 15, 2001 - 3 p.m. -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. 

Regular meetings of the Audit and Compliance Committee and the Benefits and Actuarial Committee.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dkestner@vrs.state.va.us.


August 16, 2001 - 8 a.m. -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. 

The regular meeting of the Virginia Retirement System's Administration and Personnel Committee.


Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dkestner@vrs.state.va.us.

August 16, 2001 - 9 a.m. -- Open Meeting
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. 


A regular meeting of the Board of Trustees.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dglazier@vrs.state.va.us.

VIRGINIA BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **June 21, 2001 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. 

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail waterwasteoper@dpor.state.va.us.

LEGISLATIVE

VIRGINIA CODE COMMISSION

June 28, 2001 - 10 a.m. -- Open Meeting
July 26, 2001 - 10 a.m. -- Open Meeting
August 30, 2001 - 10 a.m. -- Open Meeting

Calendar of Events

General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿

A meeting to continue with the recodification of Title 63.1 of the Code of Virginia and to conduct any other business that may come before the commission. Public comment will be received at the end of the meeting.

Contact: Jane Chaffin, Registrar of Regulations, General Assembly Bldg., 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591 FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

† **June 28, 2001 - 1 p.m.** -- Open Meeting

General Assembly Bldg., 9th and Broad Streets, 6th Floor, Speakers Conference Room, Richmond, Virginia ♿

A meeting of the Subcommittee Studying Code Publication to discuss publication options regarding the Code of Virginia. The meeting will convene after adjournment of the regular Code Commission meeting. Public comment will be received.

Contact: Jane Chaffin, Registrar of Regulations, Virginia Code Commission, General Assembly Bldg., 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

June 20, 2001 - 10 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.

Contact: Maria Everett, Executive Director, Virginia Freedom of Information Advisory Council, General Assembly Building, 910 Capitol Street, 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail meverett@leg.state.va.us.

HAMPTON ROADS THIRD CROSSING BRIDGE-TUNNEL COMMISSION

June 19, 2001 - 10 a.m. -- Open Meeting

Crumbley House, Norfolk International Terminal, Norfolk, Virginia.

A regular meeting. Questions regarding the agenda should be referred to Alan Wambold, Division of Legislative Services, at (804) 786-3591.

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

† **June 21, 2001 - 1 p.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

First meeting of the 2001 Interim.

Contact: Mitchell P. Goldstein, Director, Joint Commission on Technology and Science, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail MGoldstein@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

June 18

Chesapeake Bay Local Assistance Board
Conservation and Recreation, Department of
Design-Build/Construction Management Review Board
Housing and Community Development, Board of
Nursing, Board of
- Special Conference Committee

June 19

Alcoholic Beverage Control Board
Criminal Justice Services Board
- Private Security Services Board
Hampton Roads Third Crossing Bridge Tunnel Commission
Housing Development Authority, Virginia
- Board of Commissioners
† Indians, Council on
Nursing, Board of
- Special Conference Committee

June 20

Education, Board of
- Accountability Advisory Committee
Freedom of Information Advisory Council
† Higher Education for Virginia, State Council of
Medicine, Board of
- Informal Conference Committee
Nursing, Board of
- Special Conference Committee
Social Services, State Board of
Transportation Board, Commonwealth

June 21

Assistive Technology Loan Fund Authority
- Board of Directors
Education, Board of
Labor and Industry, Department of
- Virginia Apprenticeship Council
Manufactured Housing Board, Virginia
† Museum of Fine Arts, Virginia
- Executive and Finance Committee
† Professional and Occupational Regulation, Department of
- Professional Boxing and Wrestling Task Force
Public Guardian and Conservator Advisory Board, Virginia
Science Museum of Virginia
- Board of Trustees
Social Services, State Board of

- † Technology and Science, Joint Commission on Transportation Board, Commonwealth
- † Waterworks and Wastewater Works Operators, Virginia Board for

June 22

- † Correctional Education, Board of Education, Board of

June 25

- † Game and Inland Fisheries, Department of

June 26

- Compensation Board
- Funeral Directors and Embalmers, Board of Marine Resources Commission
- † Small Business Financing Authority, Virginia Voluntary Formulary Board, Virginia

June 27

- At-Risk Youth and Families, Comprehensive Services for
 - State Executive Council
- Outdoors Foundation, Virginia

June 28

- † Accountancy, Board for
- † Code Commission, Virginia
 - Subcommittee Studying Code Publication
- Medicine, Board of
 - Informal Conference Committee
- Nursing, Board of
 - Special Conference Committee

June 29

- † Counseling, Board of
 - Supervision Committee

July 3

- Hopewell Industrial Safety Council

July 6

- Art and Architectural Review Board

July 9

- † Medicine, Board of

July 10

- Conservation and Recreation, Department of
 - Goose Creek Scenic River Advisory Board
- † Environmental Quality, Department of
 - Virginia Ground Water Protection Steering Committee

July 11

- † Labor and Industry, Department of
 - Virginia Migrant and Seasonal Farmworkers Board
- † Medicine, Board of
 - Informal Conference Committee
- † Real Estate Board
 - Real Estate Education Committee

July 12

- Conservation and Recreation, Department of
 - Falls of the James Scenic River Advisory Board
- Medicine, Board of
 - Informal Conference Committee
- † Real Estate Board
 - Fair Housing Committee
- Technology Services, Council on

July 13

- † Optometry, Board of

July 16

- Nursing, Board of

July 17

- † Agriculture and Consumer Services, Department of

- Virginia State Apple Board
- Blind and Vision Impaired, Department for the
- † Higher Education for Virginia, State Council of
- † Real Estate Appraiser Board

July 18

- † Cemetery Board
 - Regulatory Review Committee
- † Contractors, Board for
 - Tradesman Committee
- Nursing, Board of

July 19

- † Game and Inland Fisheries, Board of Nursing, Board of

July 24

- † Compensation Board
- † Marine Resources Commission

July 25

- At-Risk Youth and Families, Comprehensive Services for
 - State Executive Council

July 26

- Agriculture and Consumer Services, Department of
 - Virginia Small Grains Board
- Code Commission, Virginia
- † Education, Board of Medicine, Board of
 - Informal Conference Committee

July 31

- † Agriculture and Consumer Services, Department of
 - Virginia Cattle Industry Board

August 2

- † Nursing, Board of
 - Special Conference Committee

August 3

- Art and Architectural Review Board

August 7

- † Nursing, Board of
 - Special Conference Committee

† August 13

- † Nursing, Board of
 - Special Conference Committee

August 15

- † Asbestos and Lead, Virginia Board for
- † Milk Commission, State Retirement System, Virginia

August 16

- † Nursing, Board of
 - Special Conference Committee
- Retirement System, Virginia

August 28

- † Marine Resources Commission
- † Nursing, Board of
 - Special Conference Committee

August 29

- † At-Risk Youth and Families, Comprehensive Services for
 - State Executive Council

August 30

- Code Commission, Virginia

September 6

- † Technology Planning, Department of
 - Virginia Geographic Information Network Advisory Board

Calendar of Events

September 7

† Art and Architectural Review Board

September 24

† Nursing, Board of

† Technology Services, Council on

September 26

† At-Risk Youth and Families, Comprehensive Services for
- State Executive Council

† Nursing, Board of

September 27

† Nursing, Board of

PUBLIC HEARINGS

June 18

Professional and Occupational Regulation, Board for

June 20

Education, Board of

June 27

† Environmental Quality, Department of

July 9

Asbestos and Lead, Virginia Board for

July 12

Auctioneers Board

July 16

† Transportation Board, Commonwealth

July 18

Contractors, Board for

August 20

† Health, State Board of

August 23

† Health, State Board of

August 27

† Health, State Board of

August 29

† Health, State Board of