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<b>Title 2. Agriculture</b>			
2 VAC 5-400-10	Amended	18:21 VA.R. 2768	8/1/02
2 VAC 5-400-20	Amended	18:21 VA.R. 2768	8/1/02
2 VAC 5-400-30	Amended	18:21 VA.R. 2768	8/1/02
2 VAC 5-400-50	Amended	18:21 VA.R. 2768	8/1/02
2 VAC 5-400-80	Amended	18:21 VA.R. 2768	8/1/02
2 VAC 5-400-90	Added	18:21 VA.R. 2768	8/1/02
2 VAC 5-610-10 through 2 VAC 5-610-80	Amended	18:21 VA.R. 2768	8/1/02
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-20-10	Amended	18:23 VA.R. 3094	8/28/02
3 VAC 5-20-60	Amended	18:23 VA.R. 3095	8/28/02
3 VAC 5-30-60	Amended	18:23 VA.R. 3095	8/28/02
3 VAC 5-50-170	Amended	18:23 VA.R. 3096	8/28/02
3 VAC 5-60-80	Amended	18:23 VA.R. 3096	8/28/02
3 VAC 5-70-20	Amended	18:23 VA.R. 3097	8/28/02
3 VAC 5-70-90	Amended	18:23 VA.R. 3097	8/28/02
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 5-35-10 through 4 VAC 5-35-50	Repealed	18:14 VA.R. 1800	4/25/02
4 VAC 5-36-10 through 4 VAC 5-36-210	Added	18:14 VA.R. 1800-1827	4/25/02
4 VAC 15-380-60 emer	Repealed	18:23 VA.R. 3102	7/1/02-6/30/03
4 VAC 15-380-120 emer	Added	18:23 VA.R. 3102	7/1/02-6/30/03
4 VAC 20-252-150	Amended	18:21 VA.R. 2836	5/29/02-6/27/02
4 VAC 20-252-150	Amended	18:22 VA.R. 2927	6/19/02
4 VAC 20-270-30	Amended	18:14 VA.R. 1827	3/5/02
4 VAC 20-270-40	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-270-55	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-270-56	Added	18:14 VA.R. 1828	3/5/02
4 VAC 20-430-50	Amended	18:18 VA.R. 2287	5/1/02
4 VAC 20-430-60	Amended	18:18 VA.R. 2287	5/1/02
4 VAC 20-560-20	Erratum	18:14 VA.R. 1911	--
4 VAC 20-560-20 emer	Amended	18:14 VA.R. 1904	3/4/02-3/31/02
4 VAC 20-560-20	Amended	18:16 VA.R. 2054	4/1/02
4 VAC 20-560-50 emer	Amended	18:14 VA.R. 1905	3/4/02-3/31/02
4 VAC 20-560-50	Amended	18:16 VA.R. 2055	4/1/02
4 VAC 20-562-10 through 4 VAC 20-562-50 emer	Added	18:25 VA.R. 3570	8/16/02-8/30/02
4 VAC 20-610-60	Amended	18:25 VA.R. 3548	8/1/02
4 VAC 20-620-20	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-620-40	Amended	18:12 VA.R. 1646	1/31/02
4 VAC 20-620-50	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-620-50	Amended	18:21 VA.R. 2836	6/1/02-6/30/02
4 VAC 20-620-50	Amended	18:22 VA.R. 2927	6/19/02
4 VAC 20-620-60	Amended	18:14 VA.R. 1829	3/5/02
4 VAC 20-620-60	Erratum	18:21 VA.R. 2846	--
4 VAC 20-620-60	Amended	18:21 VA.R. 2836	6/1/02-6/30/02
4 VAC 20-620-60	Amended	18:22 VA.R. 2928	6/19/02

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4 VAC 20-620-70	Amended	18:14 VA.R. 1829	3/5/02
4 VAC 20-620-70	Amended	18:21 VA.R. 2837	6/1/02-6/30/02
4 VAC 20-620-70	Amended	18:22 VA.R. 2928	6/19/02
4 VAC 20-670-30 emer	Amended	18:22 VA.R. 2935	6/20/02-7/20/02
4 VAC 20-670-30	Amended	18:25 VA.R. 3550	8/1/02
4 VAC 20-720-47 emer	Added	18:12 VA.R. 1697	2/1/02-2/28/02
4 VAC 20-752-10	Amended	18:21 VA.R. 2769	6/1/02
4 VAC 20-752-20	Amended	18:21 VA.R. 2769	6/1/02
4 VAC 20-752-20 emer	Amended	18:24 VA.R. 3300	7/15/02-8/14/02
4 VAC 20-752-30	Amended	18:21 VA.R. 2769	6/1/02
4 VAC 20-910-45	Amended	18:21 VA.R. 2769	6/1/02
4 VAC 20-910-45	Erratum	18:21 VA.R. 2846	--
4 VAC 20-950-30	Amended	18:14 VA.R. 1829	3/4/02
4 VAC 20-950-40	Amended	18:14 VA.R. 1829	3/4/02
4 VAC 20-950-45	Amended	18:12 VA.R. 1647	1/31/02
4 VAC 20-950-45	Amended	18:14 VA.R. 1830	3/4/02
4 VAC 20-950-45	Amended	18:16 VA.R. 2055	4/1/02
4 VAC 50-20-30	Amended	18:14 VA.R. 1831	7/1/02
4 VAC 50-20-50	Amended	18:14 VA.R. 1832	7/1/02
4 VAC 50-20-50	Erratum	18:17 VA.R. 2183	--
4 VAC 50-20-70	Amended	18:14 VA.R. 1832	7/1/02
4 VAC 50-20-120	Amended	18:14 VA.R. 1834	7/1/02
4 VAC 50-20-220	Amended	18:14 VA.R. 1834	7/1/02
4 VAC 50-20-320	Amended	18:14 VA.R. 1835	7/1/02
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6 VAC 15-40-10	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-40	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-90 through 6 VAC 15-40-130	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-150	Amended	18:20 VA.R. 2584	7/17/02
6 VAC 15-40-155	Added	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-160	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-280	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-290	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-360 through 6 VAC 15-40-390	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-393	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-395	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-400	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-410	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-450	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-460	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-470	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-490	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-520	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-540 through 6 VAC 15-40-580	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-620	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-640 through 6 VAC 15-40-670	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-690	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-740	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-800 through 6 VAC 15-40-830	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-833	Added	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-835	Added	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-840	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-870	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-900	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-910	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-920	Amended	18:20 VA.R. 2583	7/17/02

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6 VAC 15-40-940 through 6 VAC 15-40-970	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1020	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1030	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1040	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1070	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1080	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1100	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1110	Repealed	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1130	Repealed	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1190	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1193	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-1195	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-1200	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-1330	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1350	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 20-171-10	Amended	18:15 VA.R. 1955	5/10/02
6 VAC 20-171-50	Amended	18:15 VA.R. 1957	5/10/02
6 VAC 20-171-120	Amended	18:15 VA.R. 1958	5/10/02
6 VAC 20-171-200	Amended	18:15 VA.R. 1958	5/10/02
6 VAC 20-171-220	Amended	18:15 VA.R. 1959	5/10/02
6 VAC 20-171-230	Amended	18:15 VA.R. 1960	5/10/02
6 VAC 20-171-240	Amended	18:15 VA.R. 1961	5/10/02
6 VAC 20-171-250	Amended	18:15 VA.R. 1961	5/10/02
6 VAC 20-171-260	Amended	18:15 VA.R. 1962	5/10/02
6 VAC 20-171-280	Amended	18:15 VA.R. 1963	5/10/02
6 VAC 20-171-310	Amended	18:15 VA.R. 1964	5/10/02
6 VAC 20-171-320	Amended	18:15 VA.R. 1964	5/10/02
6 VAC 20-171-330	Amended	18:15 VA.R. 1965	5/10/02
6 VAC 20-171-340	Amended	18:15 VA.R. 1965	5/10/02
6 VAC 20-171-350	Amended	18:15 VA.R. 1966	5/10/02
6 VAC 20-171-350	Erratum	18:20 VA.R. 2680	--
6 VAC 20-171-445	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-450	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-480	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-520	Amended	18:15 VA.R. 1969	5/10/02
6 VAC 20-171-530	Amended	18:15 VA.R. 1969	5/10/02
6 VAC 20-171-540	Amended	18:15 VA.R. 1969	5/10/02
6 VAC 35-60-10	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-20	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-30	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-40	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-170	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-215	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-225	Added	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-236	Added	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-237	Added	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-280	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-290	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-320	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-330	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-390	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-400	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-410	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-415	Added	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-440	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-450	Amended	18:25 VA.R. 3552	11/1/02

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
6 VAC 35-60-460	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-480	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-490	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-495	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-500	Amended	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-575	Added	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-580	Amended	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-600	Amended	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-605	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-150-10	Amended	18:24 VA.R. 3284	10/1/02
6 VAC 35-150-35	Added	18:24 VA.R. 3285	10/1/02
6 VAC 35-150-55	Amended	18:24 VA.R. 3285	10/1/02
6 VAC 35-150-70 through 6 VAC 35-150-165	Amended	18:24 VA.R. 3285-3286	10/1/02
6 VAC 35-150-170	Repealed	18:24 VA.R. 3286	10/1/02
6 VAC 35-150-175	Amended	18:24 VA.R. 3286	10/1/02
6 VAC 35-150-180	Amended	18:24 VA.R. 3286	10/1/02
6 VAC 35-150-190	Amended	18:24 VA.R. 3286	10/1/02
6 VAC 35-150-200 through 6 VAC 35-150-350	Amended	18:24 VA.R. 3286-3288	10/1/02
6 VAC 35-150-360	Repealed	18:24 VA.R. 3288	10/1/02
6 VAC 35-150-370 through 6 VAC 35-150-420	Amended	18:24 VA.R. 3288	10/1/02
6 VAC 35-150-427	Added	18:24 VA.R. 3288	10/1/02
6 VAC 35-150-430	Amended	18:24 VA.R. 3288	10/1/02
6 VAC 35-150-435	Amended	18:24 VA.R. 3288	10/1/02
6 VAC 35-150-440	Amended	18:24 VA.R. 3289	10/1/02
6 VAC 35-150-450	Amended	18:24 VA.R. 3289	10/1/02
6 VAC 35-150-460	Amended	18:24 VA.R. 3289	10/1/02
6 VAC 35-150-490 through 6 VAC 35-150-540	Amended	18:24 VA.R. 3289	10/1/02
6 VAC 35-150-620 through 6 VAC 35-150-650	Amended	18:24 VA.R. 3289	10/1/02
6 VAC 35-150-670 through 6 VAC 35-150-720	Amended	18:24 VA.R. 3289	10/1/02
<b>Title 8. Education</b>			
8 VAC 20-21-10	Amended	18:12 VA.R. 1648	3/28/02
8 VAC 20-21-40	Amended	18:12 VA.R. 1649	3/28/02
8 VAC 20-21-50	Amended	18:12 VA.R. 1650	3/28/02
8 VAC 20-21-90	Amended	18:12 VA.R. 1651	3/28/02
8 VAC 20-21-100	Amended	18:12 VA.R. 1651	3/28/02
8 VAC 20-21-120	Amended	18:12 VA.R. 1652	3/28/02
8 VAC 20-21-170	Amended	18:12 VA.R. 1653	3/28/02
8 VAC 20-21-590	Amended	18:12 VA.R. 1653	3/28/02
8 VAC 20-21-660	Amended	18:12 VA.R. 1655	3/28/02
8 VAC 20-21-680	Amended	18:12 VA.R. 1656	3/28/02
8 VAC 20-80-30	Amended	18:12 VA.R. 1657	3/27/02
8 VAC 20-80-40	Amended	18:12 VA.R. 1660	3/27/02
8 VAC 20-80-54	Amended	18:12 VA.R. 1661	3/27/02
8 VAC 20-80-56	Amended	18:12 VA.R. 1664	3/27/02
8 VAC 20-80-60	Amended	18:12 VA.R. 1666	3/27/02
8 VAC 20-80-66	Amended	18:12 VA.R. 1668	3/27/02
8 VAC 20-80-70	Amended	18:12 VA.R. 1671	3/27/02
8 VAC 20-80-76	Amended	18:12 VA.R. 1676	3/27/02
8 VAC 20-630-10 through 8 VAC 20-630-70	Added	18:12 VA.R. 1683-1684	3/28/02
8 VAC 40-70-10 through 8 VAC 40-70-50	Amended	18:21 VA.R. 2770-2773	7/1/02
8 VAC 40-120-10 through 8 VAC 40-120-50	Amended	18:21 VA.R. 2774-2778	7/31/02
8 VAC 40-120-55	Added	18:21 VA.R. 2778	7/31/02
8 VAC 40-120-60 through 8 VAC 40-120-140	Amended	18:21 VA.R. 2778-2787	7/31/02
8 VAC 40-120-190	Amended	18:21 VA.R. 2787	7/31/02
8 VAC 40-120-210 through 8 VAC 40-120-230	Amended	18:21 VA.R. 2787-2788	7/31/02
8 VAC 40-120-250	Amended	18:21 VA.R. 2788	7/31/02



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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 40-120-270	Amended	18:21 VA.R. 2788	7/31/02
8 VAC 40-120-280	Amended	18:21 VA.R. 2788	7/31/02
8 VAC 40-130-10	Amended	18:21 VA.R. 2789	7/1/02
8 VAC 40-130-25	Added	18:21 VA.R. 2790	7/1/02
8 VAC 40-130-30	Amended	18:21 VA.R. 2790	7/1/02
8 VAC 40-130-50	Amended	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-70	Amended	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-90	Amended	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-100	Repealed	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-120	Amended	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-130	Amended	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-140	Repealed	18:21 VA.R. 2792	7/1/02
8 VAC 40-130-150 through 8 VAC 40-130-180	Amended	18:21 VA.R. 2792	7/1/02
8 VAC 40-130-200	Amended	18:21 VA.R. 2792	7/1/02
8 VAC 40-130-220	Amended	18:21 VA.R. 2793	7/1/02
<b>Title 9. Environment</b>			
9 VAC 5-10-10	Amended	18:21 VA.R. 2793	8/1/02
9 VAC 5-10-20	Amended	18:21 VA.R. 2794	8/1/02
9 VAC 5-20-180	Amended	18:21 VA.R. 2800	8/1/02
9 VAC 5-40-10	Amended	18:21 VA.R. 2802	8/1/02
9 VAC 5-40-20	Amended	18:21 VA.R. 2803	8/1/02
9 VAC 5-40-30	Amended	18:21 VA.R. 2807	8/1/02
9 VAC 5-40-40	Amended	18:21 VA.R. 2808	8/1/02
9 VAC 5-40-50	Amended	18:21 VA.R. 2809	8/1/02
9 VAC 5-40-160 through 9 VAC 5-40-230	Repealed	18:14 VA.R. 1836-1840	5/1/02
9 VAC 5-50-10	Amended	18:21 VA.R. 2810	8/1/02
9 VAC 5-50-20	Amended	18:21 VA.R. 2810	8/1/02
9 VAC 5-50-30	Amended	18:21 VA.R. 2813	8/1/02
9 VAC 5-50-40	Amended	18:21 VA.R. 2814	8/1/02
9 VAC 5-50-50	Amended	18:21 VA.R. 2815	8/1/02
9 VAC 5-50-160 through 9 VAC 5-50-230	Repealed	18:14 VA.R. 1840-1844	5/1/02
9 VAC 5-50-240	Amended	18:20 VA.R. 2586	9/1/02
9 VAC 5-50-250	Amended	18:20 VA.R. 2586	9/1/02
9 VAC 5-50-260	Amended	18:20 VA.R. 2587	9/1/02
9 VAC 5-50-320	Amended	18:20 VA.R. 2587	9/1/02
9 VAC 5-50-390	Amended	18:20 VA.R. 2587	9/1/02
9 VAC 5-60-10	Amended	18:21 VA.R. 2816	8/1/02
9 VAC 5-60-20	Amended	18:21 VA.R. 2816	8/1/02
9 VAC 5-60-30	Amended	18:21 VA.R. 2817	8/1/02
9 VAC 5-60-200 through 9 VAC 5-60-270	Added	18:14 VA.R. 1836-1840	5/1/02
9 VAC 5-60-200	Erratum	18:17 VA.R. 2183	--
9 VAC 5-60-300 through 9 VAC 5-60-370	Added	18:14 VA.R. 1840-1844	5/1/02
9 VAC 5-60-300	Erratum	18:17 VA.R. 2183	--
9 VAC 5-80-10	Repealed	18:20 VA.R. 2587	9/1/02
9 VAC 5-80-11	Repealed	18:20 VA.R. 2608	9/1/02
9 VAC 5-80-1100 through 9 VAC 5-80-1320	Added	18:20 VA.R. 2587-2612	9/1/02
9 VAC 5-80-1250	Erratum	18:23 VA.R. 3136	--
9 VAC 5-80-2000 through 9 VAC 5-80-2090	Amended	18:14 VA.R. 1845-1852	5/1/02
9 VAC 5-80-2100	Repealed	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2110	Amended	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2120	Amended	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2150	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2160	Repealed	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2180	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2190	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2200	Added	18:14 VA.R. 1853	5/1/02

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-80-2210	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2220	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2230	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2240	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-91-20	Amended	18:20 VA.R. 2613	10/1/02
9 VAC 5-91-30	Amended	18:20 VA.R. 2619	10/1/02
9 VAC 5-91-41	Repealed	18:20 VA.R. 2621	10/1/02
9 VAC 5-91-50	Amended	18:20 VA.R. 2621	10/1/02
9 VAC 5-91-70	Amended	18:20 VA.R. 2622	10/1/02
9 VAC 5-91-120	Amended	18:20 VA.R. 2622	10/1/02
9 VAC 5-91-160 through 9 VAC 5-91-230	Amended	18:20 VA.R. 2622-2623	10/1/02
9 VAC 5-91-260	Amended	18:20 VA.R. 2623	10/1/02
9 VAC 5-91-270	Amended	18:20 VA.R. 2623	10/1/02
9 VAC 5-91-290 through 9 VAC 5-91-340	Amended	18:20 VA.R. 2623-2625	10/1/02
9 VAC 5-91-360	Amended	18:20 VA.R. 2625	10/1/02
9 VAC 5-91-370	Amended	18:20 VA.R. 2625	10/1/02
9 VAC 5-91-380	Amended	18:20 VA.R. 2626	10/1/02
9 VAC 5-91-410 through 9 VAC 5-91-450	Amended	18:20 VA.R. 2626-2636	10/1/02
9 VAC 5-91-460	Repealed	18:20 VA.R. 2636	10/1/02
9 VAC 5-91-470	Repealed	18:20 VA.R. 2636	10/1/02
9 VAC 5-91-480 through 9 VAC 5-91-620	Amended	18:20 VA.R. 2636-2639	10/1/02
9 VAC 5-91-650 through 9 VAC 5-91-720	Amended	18:20 VA.R. 2639-2641	10/1/02
9 VAC 5-91-680	Erratum	18:23 VA.R. 3136	--
9 VAC 5-91-740	Amended	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-750	Amended	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-770	Repealed	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-780	Repealed	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-790	Amended	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-800	Amended	18:20 VA.R. 2642	10/1/02
9 VAC 5-140-10 through 9 VAC 5-140-940	Added	18:20 VA.R. 2654-2657	7/17/02
9 VAC 5-140-20	Erratum	18:22 VA.R. 2953	--
9 VAC 5-140-60	Erratum	18:22 VA.R. 2953	--
9 VAC 5-140-430	Erratum	18:22 VA.R. 2953	--
9 VAC 5-140-860	Erratum	18:22 VA.R. 2953	--
9 VAC 5-140-870	Erratum	18:22 VA.R. 2953	--
9 VAC 10-20-40	Erratum	18:13 VA.R. 1763	--
9 VAC 10-20-130	Erratum	18:13 VA.R. 1764	--
9 VAC 10-20-181	Erratum	18:13 VA.R. 1764	--
9 VAC 10-20-191	Erratum	18:13 VA.R. 1764	--
9 VAC 20-60	Erratum	18:12 VA.R. 1714	--
9 VAC 20-60-1285 emer	Amended	18:21 VA.R. 2837	7/1/02-6/30/03
9 VAC 20-60-1285	Erratum	18:25 VA.R. 3607	--
Appendix 3.1 of 9 VAC 20-90 emer	Amended	18:21 VA.R. 2838	7/1/02-6/30/03
9 VAC 20-120-10	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-20	Repealed	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-40 through 9 VAC 20-120-100	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-120	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-130	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-150 through 9 VAC 20-120-180	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-200 through 9 VAC 20-120-310	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-330	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-340	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-360	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-370	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-380	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-390	Amended	18:18 VA.R. 2287	6/19/02

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 20-120-410 through 9 VAC 20-120-480	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-500	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-530	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-540	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-560	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-590	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-640	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-680 through 9 VAC 20-120-760	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-770 through 9 VAC 20-120-800	Repealed	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-810	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-835	Added	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-840	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-880	Amended	18:18 VA.R. 2287	6/19/02
Appendix 10.1	Repealed	18:18 VA.R. 2287	6/19/02
Appendix 10.4	Repealed	18:18 VA.R. 2287	6/19/02
9 VAC 20-160-10 through 9 VAC 20-160-40	Amended	18:18 VA.R. 2288-2290	7/1/02
9 VAC 20-160-50	Repealed	18:18 VA.R. 2290	7/1/02
9 VAC 20-160-60 through 9 VAC 20-160-120	Amended	18:18 VA.R. 2290-2292	7/1/02
9 VAC 20-160-130	Repealed	18:18 VA.R. 2292	7/1/02
9 VAC 25-20-110 emer	Amended	18:21 VA.R. 2839	7/1/02-6/30/03
9 VAC 25-20-120 emer	Amended	18:21 VA.R. 2840	7/1/02-6/30/03
9 VAC 25-20-130 emer	Amended	18:21 VA.R. 2841	7/1/02-6/30/03
9 VAC 25-31-50	Amended	18:25 VA.R. 3552	9/25/02
9 VAC 25-31-100	Amended	18:25 VA.R. 3553	9/25/02
9 VAC 25-60	Repealed	18:20 VA.R. 2657	7/17/02
9 VAC 25-194-10	Amended	18:19 VA.R. 2452	10/15/02
9 VAC 25-194-40 through 9 VAC 25-194-70	Amended	18:19 VA.R. 2452	10/15/02
9 VAC 25-194-80	Repealed	18:19 VA.R. 2452	10/15/02
9 VAC 25-260-5	Amended	18:20 VA.R. 2658	*
9 VAC 25-260-50	Amended	17:16 VA.R. 2381	6/5/02**
9 VAC 25-260-55	Added	17:16 VA.R. 2381	6/5/02**
9 VAC 25-260-140	Amended	18:24 VA.R. 3289	*
9 VAC 25-260-140	Erratum	18:25 VA.R. 3607	--
9 VAC 25-260-155	Amended	18:24 VA.R. 3289	*
9 VAC 25-260-160	Amended	18:20 VA.R. 2658	*
9 VAC 25-260-170	Amended	18:20 VA.R. 2658	*
9 VAC 25-260-310	Amended	18:20 VA.R. 2659	*
9 VAC 25-260-390	Amended	18:20 VA.R. 2661	*
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-160-50	Added	18:19 VA.R. 2453	5/15/02
10 VAC 5-200-10 through 10 VAC 5-200-80	Added	18:24 VA.R. 3296-3299	7/22/02
<b>Title 11. Gaming</b>			
11 VAC 10-20-260 through 11 VAC 10-20-310	Amended	18:20 VA.R. 2661-2664	5/22/02
11 VAC 10-20-330	Amended	18:20 VA.R. 2664	5/22/02
11 VAC 10-20-340	Amended	18:20 VA.R. 2671	5/22/02
11 VAC 10-100-80	Amended	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-100	Amended	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-110	Repealed	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-140	Repealed	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-150	Amended	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-150	Erratum	18:23 VA.R. 3136	--

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

\*\* Notice of effective date published in 18:17 VA.R. 2174

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
11 VAC 10-100-151	Added	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-152	Added	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-170	Amended	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-190	Amended	18:23 VA.R. 3097	7/1/02
11 VAC 10-110-10	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-20	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-40	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-60	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-80	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-90	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-150	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-180	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-20	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-40	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-50	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-80	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-90	Repealed	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-100	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-130-10	Amended	18:20 VA.R. 2672	5/22/02
11 VAC 10-130-20	Amended	18:20 VA.R. 2673	5/22/02
11 VAC 10-130-51	Amended	18:20 VA.R. 2674	5/22/02
11 VAC 10-130-52	Added	18:20 VA.R. 2674	5/22/02
11 VAC 10-130-60	Amended	18:20 VA.R. 2674	5/22/02
11 VAC 10-140-10	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-30	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-40	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-60	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-130	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-140	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-170	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-180	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-310	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-150-130	Amended	18:23 VA.R. 3099	7/1/02
11 VAC 10-150-130	Erratum	18:23 VA.R. 3136	--
11 VAC 10-150-140	Amended	18:23 VA.R. 3099	7/1/02
11 VAC 10-150-190	Added	18:23 VA.R. 3099	7/1/02
11 VAC 10-150-200	Added	18:23 VA.R. 3099	7/1/02
11 VAC 10-160-10	Amended	18:23 VA.R. 3099	7/1/02
11 VAC 10-160-20	Amended	18:23 VA.R. 3099	7/1/02
11 VAC 10-160-90	Repealed	18:23 VA.R. 3099	7/1/02
11 VAC 10-160-120 through 11 VAC 10-160-150	Amended	18:23 VA.R. 3099	7/1/02
11 VAC 10-180-10	Amended	18:19 VA.R. 2453	5/10/02
11 VAC 10-180-20	Amended	18:19 VA.R. 2454	5/10/02
11 VAC 10-180-40 through 11 VAC 10-180-90	Amended	18:19 VA.R. 2455-2462	5/10/02
11 VAC 10-180-60	Erratum	18:20 VA.R. 2681	--
<b>Title 12. Health</b>			
12 VAC 5-65	Repealed	18:12 VA.R. 1685	3/27/02
12 VAC 5-66-10 through 12 VAC 5-66-80	Added	18:12 VA.R. 1685-1688	3/27/02
12 VAC 5-66-10 through 12 VAC 5-66-80	Erratum	18:13 VA.R. 1764	--
12 VAC 5-120-10 through 12 VAC 5-120-90	Added	18:16 VA.R. 2057-2058	5/22/02
12 VAC 5-475-10 through 12 VAC 5-475-90	Added	18:12 VA.R. 1691	3/27/02
12 VAC 5-520-10	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-20	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-30	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-30	Erratum	18:18 VA.R. 2369	--
12 VAC 5-520-40 through 12 VAC 5-520-70	Repealed	18:15 VA.R. 1969	5/8/02

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-520-80	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-90 through 12 VAC 5-520-120	Repealed	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-130 through 12 VAC 5-520-210	Added	18:15 VA.R. 1969	5/8/02
12 VAC 5-590-10	Amended	18:19 VA.R. 2462	7/3/02
12 VAC 5-590-370	Amended	18:19 VA.R. 2468	7/3/02
12 VAC 5-590-370	Erratum	18:22 VA.R. 2953	--
12 VAC 5-590-410	Amended	18:19 VA.R. 2474	7/3/02
12 VAC 5-590-420	Amended	18:19 VA.R. 2477	7/3/02
12 VAC 5-590-420	Erratum	18:22 VA.R. 2954	--
12 VAC 5-590-440	Amended	18:19 VA.R. 2490	7/3/02
12 VAC 5-590-500	Amended	18:19 VA.R. 2496	7/3/02
12 VAC 5-590-530	Amended	18:19 VA.R. 2496	7/3/02
12 VAC 5-590-540	Amended	18:19 VA.R. 2502	7/3/02
12 VAC 5-590-550	Amended	18:19 VA.R. 2504	7/3/02
12 VAC 5-590 Appendix B	Amended	18:19 VA.R. 2505	7/3/02
12 VAC 5-590 Appendix F	Amended	18:19 VA.R. 2506	7/3/02
12 VAC 5-615-10 through 12 VAC 5-615-470	Added	18:18 VA.R. 2293-2300	7/1/02
12 VAC 30-40-220	Amended	18:18 VA.R. 2304	7/1/02
12 VAC 30-40-280	Amended	18:18 VA.R. 2307	7/1/02
12 VAC 30-40-280	Amended	18:23 VA.R. 3099	9/1/02
12 VAC 30-40-290	Amended	18:18 VA.R. 2307	7/1/02
12 VAC 30-40-345	Amended	18:18 VA.R. 2308	7/1/02
12 VAC 30-50-190	Amended	18:18 VA.R. 2309	7/1/02
12 VAC 30-50-210	Amended	18:18 VA.R. 2310	7/1/02
12 VAC 30-60-300	Amended	18:18 VA.R. 2312	6/20/02
12 VAC 30-60-303	Added	18:18 VA.R. 2313	6/20/02
12 VAC 30-60-307	Added	18:18 VA.R. 2315	6/20/02
12 VAC 30-60-312	Added	18:18 VA.R. 2315	6/20/02
12 VAC 30-60-316	Added	18:18 VA.R. 2316	6/20/02
12 VAC 30-60-318	Added	18:18 VA.R. 2316	6/20/02
12 VAC 30-70-221 emer	Amended	18:22 VA.R. 2936	7/1/02-6/30/03
12 VAC 30-70-281 emer	Amended	18:22 VA.R. 2938	7/1/02-6/30/03
12 VAC 30-70-351 emer	Amended	18:22 VA.R. 2939	7/1/02-6/30/03
12 VAC 30-70-425 emer	Added	18:25 VA.R. 3571	8/1/02-7/31/03
12 VAC 30-70-426 emer	Added	18:25 VA.R. 3571	8/1/02-7/31/03
12 VAC 30-80-20	Amended	18:21 VA.R. 2818	8/1/02
12 VAC 30-80-20 emer	Amended	18:22 VA.R. 2939	7/1/02-6/30/03
12 VAC 30-80-20 emer	Amended	18:25 VA.R. 3571	8/1/02-7/31/03
12 VAC 30-80-25	Added	18:21 VA.R. 2820	8/1/02
12 VAC 30-80-30 emer	Amended	18:25 VA.R. 3573	8/1/02-7/31/03
12 VAC 30-80-30 emer	Amended	18:25 VA.R. 3576	8/1/02-7/31/03
12 VAC 30-80-40 emer	Amended	18:22 VA.R. 2941	7/1/02-6/30/03
12 VAC 30-90-10	Amended	18:18 VA.R. 2319	7/1/02
12 VAC 30-90-18 emer	Added	18:25 VA.R. 3575	8/1/02-7/31/03
12 VAC 30-90-19 emer	Amended	18:25 VA.R. 3575	8/1/02-7/31/03
12 VAC 30-90-20	Amended	18:18 VA.R. 2320	7/1/02
12 VAC 30-90-38	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-40	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-41	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-41.1 emer	Added	18:23 VA.R. 3103	7/1/02-6/30/03
12 VAC 30-90-60	Amended	18:18 VA.R. 2324	7/1/02
12 VAC 30-90-271	Amended	18:18 VA.R. 2324	7/1/02
12 VAC 30-90-272	Amended	18:18 VA.R. 2325	7/1/02
12 VAC 30-90-280	Amended	18:18 VA.R. 2325	7/1/02
12 VAC 30-90-300	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-301	Repealed	18:18 VA.R. 2327	7/1/02

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-90-302	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-303	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-304	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-305	Added	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-306	Added	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-306	Erratum	18:20 VA.R. 2681	--
12 VAC 30-90-307	Added	18:18 VA.R. 2328	7/1/02
12 VAC 30-110-720	Amended	18:21 VA.R. 2821	8/1/02
12 VAC 30-110-741	Amended	18:21 VA.R. 2823	8/1/02
12 VAC 30-110-831	Added	18:21 VA.R. 2823	8/1/02
12 VAC 30-120-10 emer	Amended	18:12 VA.R. 1698	2/1/02-1/31/03
12 VAC 30-120-40 emer	Amended	18:12 VA.R. 1699	2/1/02-1/31/03
12 VAC 30-120-50 emer	Amended	18:12 VA.R. 1701	2/1/02-1/31/03
12 VAC 30-120-55 emer	Added	18:12 VA.R. 1702	2/1/02-1/31/03
12 VAC 30-120-60 emer	Amended	18:12 VA.R. 1704	2/1/02-1/31/03
12 VAC 30-135-10 through 12 VAC 30-135-80 emer	Added	18:25 VA.R. 3579-3580	10/1/02-9/30/03
12 VAC 30-141-90	Erratum	18:18 VA.R. 2369	--
12 VAC 30-141-10 through 12 VAC 30-141-650 emer	Added	18:25 VA.R. 3580-3590	8/1/02-7/31/03
12 VAC 30-150-10 through 12 VAC 30-150-100	Added	18:17 VA.R. 2174	6/6/02
12 VAC 30-150	Erratum	18:18 VA.R. 2370	--
12 VAC 35-20	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-102	Repealed	18:18 VA.R. 2330	9/19/02
12 VAC 35-105-10 through 12 VAC 35-105-1410	Added	18:18 VA.R. 2331-2365	9/19/02
12 VAC 35-105-20 emer	Amended	18:25 VA.R. 3591	9/19/02-9/18/03
12 VAC 35-105-30 emer	Amended	18:25 VA.R. 3597	9/19/02-9/18/03
12 VAC 35-105-280 emer	Amended	18:25 VA.R. 3598	9/19/02-9/18/03
12 VAC 35-105-590 emer	Amended	18:25 VA.R. 3598	9/19/02-9/18/03
12 VAC 35-105-660 emer	Amended	18:25 VA.R. 3598	9/19/02-9/18/03
12 VAC 35-105-800 emer	Amended	18:25 VA.R. 3599	9/19/02-9/18/03
12 VAC 35-140	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-150	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-160	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-170	Repealed	18:18 VA.R. 2330	9/19/02
12 VAC 35-200-10	Amended	18:16 VA.R. 2059	5/22/02
12 VAC 35-200-20	Amended	18:16 VA.R. 2060	5/22/02
12 VAC 35-200-30	Amended	18:16 VA.R. 2061	5/22/02
<b>Title 13. Housing</b>			
13 VAC 5-51-11	Amended	18:22 VA.R. 2928	8/15/02
13 VAC 5-51-180	Amended	18:22 VA.R. 2929	8/15/02
13 VAC 5-51-181	Amended	18:22 VA.R. 2929	8/15/02
13 VAC 5-51-182	Amended	18:22 VA.R. 2930	8/15/02
<b>Title 14. Insurance</b>			
14 VAC 5-70-10 through 14 VAC 5-70-40	Amended	18:22 VA.R. 2931-2932	7/1/02
14 VAC 5-70-80	Amended	18:22 VA.R. 2932	7/1/02
14 VAC 5-70-130	Amended	18:22 VA.R. 2933	7/1/02
14 VAC 5-80-160 through 14 VAC 5-80-190	Repealed	18:14 VA.R. 1896	3/31/02
14 VAC 5-140-20 through 14 VAC 5-140-90	Amended	18:21 VA.R. 2824	7/1/02
14 VAC 5-390-20	Amended	18:12 VA.R. 1692	2/1/02
14 VAC 5-390-30	Amended	18:12 VA.R. 1692	2/1/02
14 VAC 5-390-40	Amended	18:12 VA.R. 1692	2/1/02
14 VAC 5-395-20	Amended	18:21 VA.R. 2825	6/3/02
14 VAC 5-395-30 through 14 VAC 5-395-60	Amended	18:21 VA.R. 2825	6/3/02
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 41-20-10 through 18 VAC 41-20-280 emer	Added	18:23 VA.R. 3103-3113	7/2/02-7/1/03
18 VAC 45-10-10	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-20	Amended	18:19 VA.R. 2508	7/8/02

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 45-10-30	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-50	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-90	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 60-20-10 emer	Amended	18:24 VA.R. 3301	7/19/02-7/18/03
18 VAC 60-20-90 emer	Amended	18:24 VA.R. 3303	7/19/02-7/18/03
18 VAC 60-20-106 emer	Added	18:24 VA.R. 3303	7/19/02-7/18/03
18 VAC 60-20-200 emer	Amended	18:24 VA.R. 3302	7/19/02-7/18/03
18 VAC 60-20-210 emer	Amended	18:24 VA.R. 3302	7/19/02-7/18/03
18 VAC 60-20-220 emer	Amended	18:24 VA.R. 3302	7/19/02-7/18/03
18 VAC 85-20-225 emer	Added	18:24 VA.R. 3307	7/19/02-7/18/03
18 VAC 85-20-280 emer	Amended	18:22 VA.R. 2943	6/19/02-6/18/03
18 VAC 85-20-285 emer	Added	18:22 VA.R. 2944	6/19/02-6/18/03
18 VAC 85-20-290 emer	Amended	18:22 VA.R. 2944	6/19/02-6/18/03
18 VAC 85-20-300 emer	Amended	18:22 VA.R. 2944	6/19/02-6/18/03
18 VAC 85-40-55 emer	Added	18:24 VA.R. 3307	7/19/02-7/18/03
18 VAC 85-50-10 emer	Amended	18:24 VA.R. 3309	7/19/02-7/18/03
18 VAC 85-50-35	Added	18:21 VA.R. 2826	7/31/02
18 VAC 85-50-40 emer	Amended	18:24 VA.R. 3309	7/19/02-7/18/03
18 VAC 85-50-56	Amended	18:21 VA.R. 2826	7/31/02
18 VAC 85-50-59 emer	Added	18:24 VA.R. 3309	7/19/02-7/18/03
18 VAC 85-50-101 emer	Amended	18:24 VA.R. 3309	7/19/02-7/18/03
18 VAC 85-50-110 emer	Amended	18:24 VA.R. 3310	7/19/02-7/18/03
18 VAC 85-50-115	Amended	18:21 VA.R. 2826	7/31/02
18 VAC 85-50-115 emer	Amended	18:24 VA.R. 3310	7/19/02-7/18/03
18 VAC 85-50-170	Repealed	18:21 VA.R. 2826	7/31/02
18 VAC 85-80-65 emer	Added	18:24 VA.R. 3307	7/19/02-7/18/03
18 VAC 85-101-145 emer	Added	18:24 VA.R. 3308	7/19/02-7/18/03
18 VAC 85-110-145 emer	Added	18:24 VA.R. 3308	7/19/02-7/18/03
18 VAC 85-120-85 emer	Added	18:24 VA.R. 3308	7/19/02-7/18/03
18 VAC 90-20-200	Amended	18:21 VA.R. 2826	7/31/02
18 VAC 90-20-210	Amended	18:21 VA.R. 2826	7/31/02
18 VAC 90-20-271 emer	Added	18:24 VA.R. 3311	7/19/02-7/18/03
18 VAC 90-30-20	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-100	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-105	Added	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-220	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-40-20	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-50	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-55	Added	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-60	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-130	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 105-20-75 emer	Added	18:24 VA.R. 3311	7/19/02-7/18/03
18 VAC 110-20-20	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-75 emer	Added	18:24 VA.R. 3312	7/19/02-7/18/03
18 VAC 110-20-240 emer	Amended	18:24 VA.R. 3314	7/19/02-7/18/03
18 VAC 110-20-255 emer	Added	18:24 VA.R. 3315	7/19/02-7/18/03
18 VAC 110-20-270	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-275 emer	Added	18:24 VA.R. 3315	7/19/02-7/18/03
18 VAC 110-20-280	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-285	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 110-20-320 emer	Amended	18:24 VA.R. 3316	7/19/02-7/18/03
18 VAC 110-20-400 emer	Amended	18:24 VA.R. 3316	7/19/02-7/18/03
18 VAC 110-20-430	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 110-20-430 emer	Repealed	18:24 VA.R. 3316	7/19/02-7/18/03
18 VAC 110-20-530 emer	Amended	18:24 VA.R. 3316	7/19/02-7/18/03
18 VAC 110-20-730 emer	Added	18:24 VA.R. 3317	7/19/02-7/18/03

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 125-10-10	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 125-10-20	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 125-10-30	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-40	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-60	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-70	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-80	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-100	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-30 (Forms)	Amended	18:15 VA.R. 1985	--
18 VAC 125-30-10 through 18 VAC 125-30-50	Amended	18:13 VA.R. 1753-1754	4/10/02
18 VAC 125-30-60	Repealed	18:13 VA.R. 1754	4/10/02
18 VAC 125-30-80	Amended	18:13 VA.R. 1755	4/10/02
18 VAC 125-30-90	Amended	18:13 VA.R. 1755	4/10/02
18 VAC 150-20-135 emer	Added	18:24 VA.R. 3320	7/19/02-7/18/03
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-300-90	Amended	18:21 VA.R. 2832	6/7/02
20 VAC 5-312-90	Erratum	18:23 VA.R. 3136	--
20 VAC 5-423-10 through 20 VAC 5-423-90	Added	18:14 VA.R. 1899-1902	3/6/02
<b>Title 22. Social Services</b>			
22 VAC 15-10-10	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-30	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-40	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-50	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-60	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-70	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 40-41-10	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-20	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-40	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-50	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-55	Added	18:12 VA.R. 1696	4/1/02
22 VAC 40-685-10 emer	Added	18:24 VA.R. 3320	9/1/02-8/31/03
22 VAC 40-685-20 emer	Added	18:24 VA.R. 3321	9/1/02-8/31/03
22 VAC 40-685-30 emer	Added	18:24 VA.R. 3321	9/1/02-8/31/03
22 VAC 40-690 (Forms)	Amended	18:22 VA.R. 2945	--
22 VAC 40-880-10	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-30	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-60	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-80	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-110	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-120	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-130	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-170	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-190	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-200 through 22 VAC 40-880-300	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-270	Erratum	18:17 VA.R. 2183	--
22 VAC 40-880-290	Erratum	18:17 VA.R. 2183	--
22 VAC 40-880-320	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-330	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-340	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-360	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-380	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-385	Added	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-410	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-430	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-440	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-480 through 22 VAC 40-880-520	Amended	18:14 VA.R. 1903	4/24/02



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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-880-550	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-560	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-650	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-670	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-680	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-700	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-720	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-910-10 through 22 VAC 40-910-100 emer	Added	18:24 VA.R. 3322-3325	9/1/02-8/31/03
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 15-100	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-110	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-120	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-130	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-140	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-150	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-160	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-170	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-180	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-190	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-200	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-210	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 30-550-10	Amended	18:23 VA.R. 3100	7/2/02

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

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

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## TITLE 2. AGRICULTURE

### PESTICIDE CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Pesticide Control Board intends to consider amending regulations entitled: **2 VAC 20-30. Rules and Regulations Governing the Pesticide Fees Charged By the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including amendments relating to pesticide fees charged. The agency invites comment on whether there should be an advisor.

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

Statutory Authority: §§ 3.1-249.30, 3.1-249.35, 3.1-249.36, 3.1-249.47, and 3.1-249.55 of the Code of Virginia.

Public comments may be submitted until October 14, 2002.

**Contact:** Marvin A. Lawson, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, Richmond, VA 23219, telephone (804) 371-6558, FAX (804) 371-8598, or e-mail [mlawson@vdacs.state.va.us](mailto:mlawson@vdacs.state.va.us).

VA.R. Doc. No. R02-298; Filed July 23, 2002, 1:28 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Pesticide Control Board intends to consider amending regulations entitled: **2 VAC 20-40. Rules and Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Department of Agriculture and Consumer Services Operating Under the Authority of the Virginia Pesticide Control Act.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including making the regulation up to date and consistent with statute. The agency invites comment on whether there should be an advisor.

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

Statutory Authority: §§ 3.1-249.30, 3.1-249.46, 3.1-249.49, and 3.1-249.50 of the Code of Virginia.

Public comments may be submitted until October 14, 2002.

**Contact:** Marvin A. Lawson, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, Richmond, VA 23219, telephone (804) 371-6558, FAX (804) 371-8598, or e-mail [mlawson@vdacs.state.va.us](mailto:mlawson@vdacs.state.va.us).

VA.R. Doc. No. R02-299; Filed July 23, 2002, 1:28 p.m.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF MINES, MINERALS AND ENERGY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-10. Public Participation Guidelines.** The purpose of the proposed action is to amend the Department of Mines, Minerals and Energy's Public Participation Guidelines. This regulation states how the department, the Board of Coal Mining Examiners, the Board of Mineral Mining Examiners and the Virginia Gas and Oil Board will (i) respond to petitions for rulemaking; (ii) maintain a regulatory mailing list; (iii) notify and include interested persons in the regulatory development process; and (iv) comply with the requirements for adopting regulations under the Administrative Process Act.

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

Statutory Authority: §§ 2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

Public comments may be submitted until September 12, 2002.

**Contact:** Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth St., 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237, or e-mail [saw@mme.state.va.us](mailto:saw@mme.state.va.us).

VA.R. Doc. No. R02-293; Filed July 19, 2002, 3:39 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-20. Board of Coal Mining Examiners Certification Requirements.** The purpose of the proposed action is to amend and update the regulation to be consistent with federal requirements and current industry practices. These regulations help to ensure that there are knowledgeable and qualified miners employed to perform specialized tasks required to mine coal in the coal mining industry. The amended subject matter will improve current instructor requirements. It will also amend miner application and examination requirements, certification requirements necessary of miners, operators and engineers in specific positions, reciprocity between states, continuing education,

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# Notices of Intended Regulatory Action

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certification renewals, and first aid requirements of miners employed at underground and surface coal mines.

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

Statutory Authority: §§ 45.1-161.28, 45.1-161.29, 45.1-161.34, and 45.1-161.35 of the Code of Virginia.

Public comments may be submitted until September 12, 2002.

**Contact:** Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth St., 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237 or e-mail saw@mme.state.va.us.

VA.R. Doc. No. R02-266; Filed July 18, 2002, 3:54 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-35. Certification Requirements for Mineral Miners.** The purpose of the proposed action is to amend and update the regulations to be consistent with federal requirements and current industry practices. These regulations help to ensure that there are knowledgeable and qualified miners employed in the mineral mining industry. The amended subject matter will improve current mineral mining application and examination requirements, certification requirements necessary of miners in specific positions, reciprocity between states, certification renewals, and first aid requirements of miners employed at underground and surface mineral mines.

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

Statutory Authority: § 45.1-161.46 of the Code of Virginia.

Public comments may be submitted until September 12, 2002.

**Contact:** Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth St., 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237 or e-mail saw@mme.state.va.us.

VA.R. Doc. No. R02-267; Filed July 18, 2002, 3:56 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider promulgating regulations entitled: **4 VAC 25-125. Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities.** The purpose of the proposed action is to develop regulations that will serve to protect mine workers from potential health and safety hazards through the implementation of equipment use procedures and by controlling the use of heavy equipment around coal and material stockpiles and bulk storage and handling facilities located at coal mine facilities that use underlying coal feeders.

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

Statutory Authority: §§ 45.1-161.3, 45.1-106, 45.1-161.107, and 45.1-254 of the Code of Virginia.

Public comments may be submitted until September 12, 2002.

**Contact:** Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth St., 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237, or e-mail saw@mme.state.va.us.

VA.R. Doc. No. R02-268; Filed July 18, 2002, 3:55 p.m.

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-40. Existing Stationary Sources.** Section 111(d) of the Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to establish procedures under which states submit plans to control certain existing sources of certain pollutants. EPA implemented § 111(d) by promulgating Subpart B of 40 CFR Part 60, which establishes procedures and requirements for adoption and submittal of state plans for control of "designated pollutants" from "designated facilities." Designated pollutants are pollutants that are not included on a list published under § 108(a) of the Clean Air Act (National Ambient Air Quality Standards) or § 112(b)(1)(A) (hazardous air pollutants), but for which standards of performance for new sources have been established under § 111(b). A designated facility is an existing facility that emits a designated pollutant and that would be subject to a standard of performance for that pollutant if the existing facility were new. (See 18:24 VA.R. 3178-3180 August 12, 2002, for more detailed information.)

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

Statutory Authority: § 10.1-1308 of the Code of Virginia and §§ 110, 111, 123, 129, 171, 172 and 182 of the Clean Air Act, 40 CFR Parts 51 and 60.

Public comments may be submitted until September 11, 2002.

**Contact:** Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, or e-mail kgsabastea@deq.state.va.us.

VA.R. Doc. No. R02-294; Filed July 22, 2002, 2:28 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-40. Existing Stationary Sources.** The purpose of the proposed action is to achieve the necessary VOC emissions

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# Notices of Intended Regulatory Action

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reductions to stay within the budget limit in order to safeguard federal approval of transportation projects in Northern Virginia. (See 18:24 VA.R. 3180-3183 August 12, 2002, for more detailed information.)

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

Statutory Authority: § 10.1-1308 of the Code of Virginia and §§ 110, 111, 123, 129, 171, 172 and 182 of the Clean Air Act, 40 CFR Parts 51 and 60.

Public comments may be submitted until September 11, 2002.

**Contact:** Kathleen R. Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, or e-mail krsands@deq.state.va.us.

VA.R. Doc. No. R02-295; Filed July 22, 2002, 2:28 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **9 VAC 5-230. Regulation for On-Road Heavy-Duty Diesel Engines.** The purpose of the proposed action is to establish testing and certification procedures for manufacturers of on-road heavy-duty diesel engines sold in Virginia. This action is being taken pursuant to Virginia's gubernatorial commitment to the other states of the Ozone Transport Commission for the Northeast United States. (See 18:24 VA.R. 3183-3186 August 12, 2002, for more detailed information.)

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

Statutory Authority: § 10.1-1308 of the Code of Virginia and §§ 110, 111, 123, 129, 171, 172 and 182 of the Clean Air Act, 40 CFR Parts 51 and 60.

Public comments may be submitted until September 11, 2002.

**Contact:** Kathleen R. Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, or e-mail krsands@deq.state.va.us.

VA.R. Doc. No. R02-296; Filed July 22, 2002, 2:28 p.m.

## STATE WATER CONTROL BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-91. Facility and Aboveground Storage Tank (AST) Regulations.** The purpose of this regulation is to: (i) establish requirements for registration of facilities and individual petroleum aboveground storage tanks (AST) located within the Commonwealth; (ii) develop standards and procedures to prevent pollution from new and existing ASTs; and (iii) provide requirements for the development of facility oil discharge contingency plans for facilities with an aggregate capacity of 25,000 gallons or

greater of oil. (See 18:25 VA.R. 3393-3394 August 26, 2002, for more detailed information.)

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

Statutory Authority: §§ 62.1-44.15, 62.1-44.34:15, 62.1-44.35:15.1, 62.1-44.34:19.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m., October 9, 2002.

**Contact:** Sam Lillard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4276, FAX (804) 698-4266, or e-mail slillard@deq.state.va.us.

VA.R. Doc. No. R02-307; Filed July 30, 2002, 8:29 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-580. Underground Storage Tanks: Technical Standards and Corrective Action Requirements.** The purpose of the proposed action is to amend the regulation in response to a periodic review. At a minimum the amendments will incorporate changes in the law and clarify that UST systems that missed the deadline for upgrade must be closed in accordance with the requirements of the regulation. (See 18:25 VA.R. 3394-3395 August 26, 2002, for more detailed information.)

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

Statutory Authority: §§ 62-1.44.15 and 62.1-44.34:8-9 of the Code of Virginia and 40 CFR Parts 280 and 281.

Public comments may be submitted until 5 p.m., October 9, 2002.

**Contact:** Fred Cunningham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4285, FAX (804) 698-4266 or e-mail fkcunningh@deq.state.va.us.

VA.R. Doc. No. R02-308; Filed July 30, 2002, 8:28 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-590. Petroleum Underground Storage Tank Financial Responsibility Requirements.** The purpose of the proposed action is to propose administrative changes, to incorporate ways to reduce the cost of compliance with the existing requirements and such other amendments necessary in response to public comment. (See 18:25 VA.R. 3395-3396 August 26, 2002, for more detailed information.)

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

Statutory Authority: § 62.1-44.15 and 62.1-44.34:12 of the Code of Virginia and 40 CFR Part 280.

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# Notices of Intended Regulatory Action

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Public comments may be submitted until 5 p.m., October 9, 2002.

**Contact:** Cara L. Kail, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4053, FAX (804) 698-4327 or e-mail: [clkail@deq.state.va.us](mailto:clkail@deq.state.va.us).

VA.R. Doc. No. R02-309; Filed July 30, 2002, 8:27 a.m.

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## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-40. Eligibility Conditions and Requirements.** The purpose of the proposed action is to simplify Medicaid eligibility requirements for counting income for aged, blind, and disabled individuals and by conforming methods for counting certain resources of Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs) and Qualified Individuals (Qis) with the methods for counting the resources of other Medicaid aged, blind, and disabled recipients. Current Medicaid policy requires that the value of in-kind support and maintenance be counted as income in determining the financial eligibility of individuals under the Aged, Blind, or Disabled Categorically Needy and Medically Needy groups. This regulatory change would eliminate the difficulty in and subjective nature of determining the fair market value of in-kind support and maintenance for all aged, blind, and disabled covered groups with the exception of the special income level group for institutionalized individuals, simplifying and more accurately assessing the financial eligibility criteria for such groups. In addition, the methods for counting specific types of real and personal property differ depending on the covered group for which the aged, blind, or disabled individual qualifies. This regulatory action proposes to remove this disparity. Also, the regulatory amendments will clarify exemptions for the former home of an institutionalized recipient, household goods and personal effects, and cemetery plots. Additionally, the regulations will clarify that financial eligibility can be met anytime during a month if resources are within the applicable limits on any day in such month.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Patricia Sykes, Manager, Policy Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23239, telephone (804) 786-7958, FAX (804) 786-1680 or e-mail [psykes@dmass.state.va.us](mailto:psykes@dmass.state.va.us).

VA.R. Doc. No. R02-262; Filed July 11, 2002, 12:02 p.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-70. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care.** The purpose of the proposed action is to comply with the 2002 legislative mandate to reduce reimbursements to inpatient hospitals across the Commonwealth.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia

Public comments may be submitted until October 9, 2002.

**Contact:** N. Stanley Fields, Director, Division of Cost Settlement and Reimbursement, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-5590, FAX (804) 786-1680 or e-mail [sfields@dmass.state.va.us](mailto:sfields@dmass.state.va.us).

VA.R. Doc. No. R02-332; Filed August 8, 2002, 10:40 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-70, Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care; 12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care; and 12 VAC 30-90, Methods and Standards for Establishing Payment Rates for Long-Term Care.** The purpose of the proposed action is to conform to changes in the appropriation act. Items 325 CC, 325 DD and 325 RR of the 2002 Acts of Assembly (Chapter 899) authorized the Department of Medical Assistance Services to increase reimbursement for government-owned public nursing homes, hospital and clinics consistent with the maximum amount allowed under federal laws and regulations. Federal regulations (42 CFR 447.272 and 42 CFR 477.321) allow aggregate payments for government-owned or operated hospitals, nursing homes, intermediate care facilities for the mentally retarded (ICFs-MR) or clinics up to 100% of a reasonable estimate of the amount that would be paid by Medicare. For periods prior to May 16, 2002, federal regulations allow aggregate payments for nonstate-owned or operated hospitals up to 150% of a reasonable estimate of the amount that would be paid by Medicare.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until September 25, 2002.

**Contact:** William Lessard, Reimbursement Analyst, Division of Reimbursement and Cost Settlement, Department of

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# Notices of Intended Regulatory Action

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Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-4593 or FAX (804) 786-1680.

VA.R. Doc. No. R02-317; Filed July 30, 2002, 12:26 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of this action is to revise the estimated acquisition cost used by the agency (the Average Wholesale Price) to discount it by 10.25% and to redefine the Virginia Maximum Allowable Cost. Both of these changes respond to legislative mandates contained in the appropriation act.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Chapter 899 of the 2002 Acts of Assembly.

Public comments may be submitted until September 25, 2002.

**Contact:** William Lessard, Reimbursement Analyst, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-4593 or FAX (804) 786-1680.

VA.R. Doc. No. R02-230; Filed June 26, 2002, 2:48 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of the proposed action is to comply with Chapter 899 of the 2002 Acts of Assembly, Item 325 EE to reimburse state academic health systems and academic health systems that operate under a state authority for services provided by affiliated physician groups based on the lesser of billed charges or the Medicare fee schedule.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until September 25, 2002.

**Contact:** William Lessard, Reimbursement Analyst, Division of Reimbursement and Cost Settlement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-4593 or FAX (804) 786-1680.

VA.R. Doc. No. R02-318; Filed July 30, 2002, 12:21 p.m.

## † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Department of Medical Assistance Services has WITHDRAWN the Notice of Intended Regulatory Action for **12 VAC 30-141, Family Access to Medical Insurance Security Plan**, which was published in 17:25 VA.R. 3651 August 27, 2001.

**Contact:** Victoria Simmons, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-7959.

VA.R. Doc. No. 01-263, Filed August 19, 2002, 11:37 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider promulgating regulations entitled: **12 VAC 30-141. Family Access to Medical Insurance Security Plan.** The purpose of the proposed action is to promulgate permanent regulations for the FAMIS program. While all areas of the FAMIS program and the existing emergency regulations will be subject to review, the department will focus its review on covered services, copayment policies, and policies for quality assurance reimbursement. Further, the department will focus on developing permanent regulations following its review, as well as regulations that would increase access to the FAMIS program for citizens of the Commonwealth, improve outreach and simplify the application process. This action is taken as a result of the need to adopt permanent regulations to replace the emergency regulations currently in place.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until September 25, 2002.

**Contact:** Cynthia B. Jones, Deputy Director, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-4626 or FAX (804) 376-1680.

VA.R. Doc. No. R02-319; Filed July 30, 2002, 12:30 p.m.

## STATE BOARD OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Mental Health, Mental Retardation and Substance Abuse Services intends to consider amending regulations entitled: **12 VAC 35-105. Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to incorporate licensing provisions for licensed day support, crisis stabilization, and in-home support services funded

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# Notices of Intended Regulatory Action

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through the Individual and Family Developmental Disabilities (IFDDS) Waiver.

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

Statutory Authority: §§ 37.1-10, 37.1-179 and 51.5-14.1 of the Code of Virginia.

Public comments may be submitted until September 26, 2002.

**Contact:** Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885 or FAX (804) 692-0066.

VA.R. Doc. No. R02-322; Filed August 2, 2002, 10 a.m.

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## TITLE 16. LABOR AND EMPLOYMENT

### DEPARTMENT OF LABOR AND INDUSTRY

#### Safety and Health Codes Board

##### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Safety and Health Codes Board intends to consider promulgating regulations entitled: **16 VAC 25-145. Safety Standards for Fall Protection in Steel Erection, Construction Industry.** The purpose of the proposed action is to establish in regulation the current VOSH administrative policy regarding fall protection for steel erection workers from falls at or above 10 feet.

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

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

Public comments may be submitted until September 12, 2002.

**Contact:** Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418 or e-mail rlc@doli.state.va.us.

VA.R. Doc. No. R02-257; Filed July 11, 2002, 2:39 p.m.

### VIRGINIA WORKERS' COMPENSATION COMMISSION

##### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Workers' Compensation Commission intends to consider amending regulations entitled: **16 VAC 30-50. Rules of the Virginia Workers' Compensation Commission.** The purpose of the proposed action is to comply with the General Assembly's mandate

(Chapter 538 of the 2002 Acts of Assembly), directing that the commission promulgate rules and regulations by July 1, 2003, "instituting an expedited calendar for the administration of claims under the Virginia Workers' Compensation Act in which the employer's denial of benefits satisfies criteria establishing that delays will cause an injured employee to incur severe economic hardship."

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

Statutory Authority: § 65.2-201 (A) of the Code of Virginia; Chapter 538 of the 2002 Acts of Assembly.

Public comments may be submitted until 5 p.m. on October 9, 2002.

**Contact:** Mary Ann Link, Chief Deputy Commissioner, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-8664, FAX (804) 367-9740, or e-mail maryann.link@vwc.state.va.us.

VA.R. Doc. No. R02-333; Filed August 19, 2002, 3:19 p.m.

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## TITLE 17. LIBRARIES AND CULTURAL RESOURCES

### DEPARTMENT OF HISTORIC RESOURCES

##### † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Department of Historic Resources has WITHDRAWN the Notice of Intended Regulatory Action for **17 VAC 10-30, Historic Rehabilitation Tax Credit Regulations**, which was published in 14:14 VA.R. 1454 February 2, 1998.

**Contact:** Catherine Slusser, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 367-2323.

VA.R. Doc. No. 98-181; Filed August 15, 2002, 1:16 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR BARBERS AND COSMETOLOGY

##### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 that the Board for Barbers and Cosmetology intends to consider promulgating regulations entitled: **18 VAC 41-40. Wax Technician Regulations.** The purpose of the proposed action is to promulgate regulations governing the licensure and

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# Notices of Intended Regulatory Action

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practice of waxing as directed by 2002 Acts of Assembly, Chapter 797.

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

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

Public comments may be submitted until September 25, 2002.

**Contact:** William H. Ferguson, II, Assistant Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295 or e-mail [barbercosmo@dpor.state.va.us](mailto:barbercosmo@dpor.state.va.us).

VA.R. Doc. No. R02-326; Filed August 7, 2002, 11:25 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 that the Board for Barbers and Cosmetology intends to consider promulgating regulations entitled: **18 VAC 41-50. Tattooing and Body-Piercing Regulations**. The purpose of the proposed action is to promulgate regulations governing the licensure and practice of tattooing and body-piercing as directed by 2002 Acts of Assembly, Chapter 869.

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

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

Public comments may be submitted until September 25, 2002.

**Contact:** William H. Ferguson, II, Assistant Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295 or e-mail [barbercosmo@dpor.state.va.us](mailto:barbercosmo@dpor.state.va.us).

VA.R. Doc. No. R02-327; Filed August 7, 2002, 11:25 a.m.

## BOARD OF DENTISTRY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health Professions intends to consider amending regulations entitled: **18 VAC 60-20. Virginia Board of Dentistry Regulations**. The purpose of the proposed action is to amend regulations for an out-of-state practitioner to be licensed to volunteer services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute. The proposed amendments will also expand the use of temporary permits to allow eligible graduates to serve as clinicians in public and charitable dental clinics. The board is replacing emergency regulations currently in effect.

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

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

Public comments may be submitted until September 11, 2002.

**Contact:** Sandra Reen, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-9943, or e-mail [sandra.reen@dhp.state.va.us](mailto:sandra.reen@dhp.state.va.us).

VA.R. Doc. No. R02-281; Filed July 19, 2002, 10:46 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health Professions intends to consider amending regulations entitled: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to amend regulations to implement provisions of Chapter 170 of the 2002 Acts of Assembly, permitting certain practices of a dental hygienist to be performed under general supervision. The enactment clause requires the board to adopt regulations within 280 days, which authorizes the adoption of emergency regulations, and it is the board's intent to replace those regulations with permanent regulations.

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

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

Public comments may be submitted until September 11, 2002.

**Contact:** Sandra Reen, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-9943, or e-mail [sandra.reen@dhp.state.va.us](mailto:sandra.reen@dhp.state.va.us).

VA.R. Doc. No. R02-279; Filed July 19, 2002, 10:46 a.m.

## BOARD FOR GEOLOGY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to consider amending regulations entitled: **18 VAC 70-20. Rules and Regulations for the Virginia Board for Geology**. The purpose of the proposed action is to make clarifying changes, review renewal and reinstatement requirements and review fees.

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

Statutory Authority: §§ 54.1-201 and 54.1-1402 of the Code of Virginia

Public comments may be submitted until September 11, 2002.

**Contact:** Karen W. O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, or e-mail [oneal@dpor.state.va.us](mailto:oneal@dpor.state.va.us).

VA.R. Doc. No. R02-265; Filed July 18, 2002, 11:46 a.m.



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# Notices of Intended Regulatory Action

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## DEPARTMENT OF HEALTH PROFESSIONS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health Professions intends to consider adopting regulations entitled: **18 VAC 76-30. Regulations Governing the Public Participation Guidelines**. The purpose of the proposed action is to promulgate regulations to establish public participation guidelines in accordance with the Administrative Process Act.

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

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

Public comments may be submitted until September 11, 2002.

**Contact:** Robert Nebiker, Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9919, FAX (804) 662-9114 or e-mail robert.nebiker@dhp.state.va.us.

VA.R. Doc. No. R02-261; Filed July 11, 2002, 3:38 p.m.

## BOARD FOR HEARING AID SPECIALISTS

### † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board for Hearing Aid Specialists has WITHDRAWN the Notice of Intended Regulatory Action for **18 VAC 80-20, Board for Hearing Specialists Regulations**, which was published in 14:1 VA.R. 18 September 29, 1997.

**Contact:** William H. Ferguson, II, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8510.

VA.R. Doc. No. R98-03; Filed August 9, 2002, 10:38 a.m.

## BOARD OF MEDICINE

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic**. The purpose of the proposed action is to promulgate regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-282; Filed July 19, 2002, 10:45 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-40. Regulations Governing the Practice of Respiratory Care**. The purpose of the proposed action is to promulgate regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-283; Filed July 19, 2002, 10:45 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-50. Regulations Governing the Practice of Physician Assistants**. The purpose of the proposed action is to promulgate regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute. The board also intends to amend the regulations to implement provisions related to the supervision of a physician assistant and the protocol between the assistant and the physician. In accordance with the statute, the regulations provide for continuous supervision but do not require the physical presence of the physician. Enactment clauses in both chapters required the board to adopt emergency regulations, and it is the board's intent to replace those regulations with permanent regulations.

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

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

Public comments may be submitted until September 11, 2002.

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# Notices of Intended Regulatory Action

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**Contact:** Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-284; Filed July 19, 2002, 10:45 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-80. Regulations Governing the Practice of Occupational Therapy.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-285; Filed July 19, 2002, 10:46 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-101. Regulations Governing the Practice of Radiologic Technology.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-286; Filed July 19, 2002, 10:46 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-110. Regulations Governing the Practice of Licensed Acupuncturists.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-287; Filed July 19, 2002, 10:46 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-120. Regulations Governing the Certification of Athletic Trainers.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-288; Filed July 19, 2002, 10:46 a.m.

## BOARD OF NURSING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled: **18 VAC 90-20. Regulations**

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# Notices of Intended Regulatory Action

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**Governing the Practice of Nursing.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

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

Public comments may be submitted until September 11, 2002.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or e-mail nancy.durrett@dhp.state.va.us.

VA.R. Doc. No. R02-289; Filed July 19, 2002, 10:45 a.m.

## BOARD OF OPTOMETRY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled: **18 VAC 105-20. Regulations Governing the Practice of Optometry.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3202 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-7098 or e-mail elizabeth.carter@dhp.state.va.us.

VA.R. Doc. No. R02-290; Filed July 19, 2002, 10:46 a.m.

## BOARD OF PHARMACY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to facilitate current pharmacy practice by providing more appropriate methods of practice and eliminating unnecessary barriers to best care and

efficiencies in practice. The amendments implement the changes in requirements for pharmacy practice to allow chart orders for hospice or home infusion, to permit different methods of keeping dispensing records and to allow for delivery of prescription drugs to alternative sites. The amendments will also expand the availability of drugs to indigent patients by allowing a nursing home to donate unused drugs or a physician to dispense donated drugs provided basis requirements for security, storage, labeling and recordkeeping have been observed to protect the safety, integrity and efficacy of the drugs.

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

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

Public comments may be submitted until September 11, 2002.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9943 or e-mail scottirussell@dhp.state.va.us.

VA.R. Doc. No. R02-280; Filed July 19, 2002, 10:46 a.m.

## BOARD OF COUNSELING

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3301 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9943 or e-mail scottirussell@dhp.state.va.us.

VA.R. Doc. No. R02-291; Filed July 19, 2002, 10:46 a.m.

## BOARD OF COUNSELING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled: **18 VAC 115-20. Regulations Governing the Practice of Counseling.** The purpose of the proposed action is to develop continuing competency requirements for licensure renewal of

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# Notices of Intended Regulatory Action

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professional counselors, marriage and family therapists, and licensed substance abuse treatment practitioners.

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

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

Public comments may be submitted until September 11, 2002.

**Contact:** Ben Foster, Deputy Executive Director, Board of Counseling, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-7250 or e-mail ben.foster@dhp.state.va.us.

VA.R. Doc. No. R02-259; Filed July 11, 2002, 3:38 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled: **18 VAC 115-50. Regulations Governing the Practice of Marriage and Family Therapy.** The purpose of the proposed action is to develop continuing competency requirements for licensure renewal of professional counselors, marriage and family therapists, and licensed substance abuse treatment practitioners.

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

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

Public comments may be submitted until September 11, 2002.

**Contact:** Ben Foster, Deputy Executive Director, Board of Counseling, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-7250 or e-mail ben.foster@dhp.state.va.us.

VA.R. Doc. No. R02-260; Filed July 11, 2002, 3:38 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled: **18 VAC 115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Professionals.** The purpose of the proposed action is to develop continuing competency requirements for licensure renewal of professional counselors, marriage and family therapists, and licensed substance abuse treatment practitioners.

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

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

Public comments may be submitted until September 11, 2002.

**Contact:** Ben Foster, Deputy Executive Director, Board of Counseling, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-7250 or e-mail ben.foster@dhp.state.va.us.

VA.R. Doc. No. R02-258; Filed July 11, 2002, 3:38 p.m.

## REAL ESTATE BOARD

### † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Real Estate Board has WITHDRAWN the Notice of Intended Regulatory Action for **18 VAC 135-60, Common Interest Community Management Information Fund Regulations**, which was published in 14:3 VA.R. 402 October 27, 1997.

**Contact:** Karen O'Neal, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8537.

VA.R. Doc. No. R98-54; Filed August 20, 2002, 1:26 p.m.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Professional Soil Scientists and Wetland Professionals intends to consider promulgating regulations entitled: **18 VAC 145-30. Wetland Delineators Certification Regulations.** The purpose of the proposed action is to promulgate regulations to implement a regulatory program for wetland professionals in accordance with Chapter 784 of the 2002 Acts of Assembly.

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

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

Public comments may be submitted until September 12, 2002.

**Contact:** Karen W. O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, or e-mail oneal@dpor.state.va.us.

VA.R. Doc. No. R02-264; Filed July 18, 2002, 11:46 a.m.

## BOARD OF VETERINARY MEDICINE

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Veterinary Medicine intends to consider amending regulations entitled: **18 VAC 150-20. Regulations Governing the Practice of Veterinary Medicine.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

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# Notices of Intended Regulatory Action

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Statutory Authority: §§ 54.1-2400 and 54.1-3801 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9915, FAX (804) 662-7098 or e-mail [elizabeth.carter@dhp.state.va.us](mailto:elizabeth.carter@dhp.state.va.us).

VA.R. Doc. No. R02-292; Filed July 19, 2002, 10:46 a.m.

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## TITLE 22. SOCIAL SERVICES

### DEPARTMENT OF REHABILITATIVE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Rehabilitative Services intends to consider amending regulations entitled: **22 VAC 30-20. Provision of Vocational Rehabilitation Services.** The purpose of the proposed action is to allow the department to enter into an Order of Selection to provide services to eligible individuals in an efficient and economical manner. This will allow for an Order of Selection to be implemented in the event that the full range of vocational rehabilitation services cannot be provided to all persons determined to be eligible because of unavailable resources.

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

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

Public comments may be submitted until September 12, 2002.

**Contact:** Elizabeth E. Smith, Department of Rehabilitative Services, 8004 Franklin Farms Drive, P.O. Box K300, Richmond, VA 23288-0300, telephone (804) 662-7612, FAX (804) 662-7696 or toll-free 1-800-552-5019.

VA.R. Doc. No. R02-297; Filed July 22, 2002, 3:33 p.m.

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider promulgating regulations entitled: **22 VAC 40-685. Home Energy Assistance Program Regulations.** The purpose of the proposed action is to promulgate regulations to implement the Home Energy Assistance Program. The Home Energy Assistance Program was established pursuant to Chapter 676 of the 2001 Acts of Assembly (House Bill 2473). These regulations replace emergency regulations.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 63.1-25 and Chapter 22 (§ 63.1-336 et seq.) of Title 63.1 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Margaret Friedenberg, Energy Assistance Program Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1728, FAX (804) 692-1704 or e-mail [mjf900@dcse.dss.state.va.us](mailto:mjf900@dcse.dss.state.va.us).

VA.R. Doc. No. R02-300; Filed July 24, 2002, 9:17 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Social Services intends to consider adopting regulations entitled: **22 VAC 40-910. General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance and Social Services Records.** The purpose of the proposed action is to establish a regulation in accordance with Chapter 518 of the 2001 Acts of Assembly that establishes separate sections for the confidentiality of public assistance and social services programs administered by the Department of Social Services and local departments of social services. Except as provided by federal and state law and regulation, no records or information concerning applicants for and recipients of public assistance are accessible except for purposes directly connected with the administration of the public assistance program. Social services records and information are confidential except that they are accessible to persons having a legitimate interest in accordance with federal and state law and regulation.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 63.1-25, 63.1-53, 63.1-209, and 63.1-209.1 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Lynette Isbell, Policy and Planning Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1821, FAX (804) 692-1694 or e-mail [lwi2@email1.dss.state.va.us](mailto:lwi2@email1.dss.state.va.us).

VA.R. Doc. No. R02-301; Filed July 24, 2002, 9:18 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Social Services intends to consider amending regulations entitled: **22 VAC 40-11. Public Participation Guidelines.** The purpose of the proposed action is to make editorial changes throughout the regulation to improve clarity. Code of Virginia citations will be corrected to reflect the recodification of Title 2.2 and Title 63.2. Amendments will be proposed to (i) reflect the provisions of Chapter 241 of the 2002 Acts of Assembly; (ii) provide for electronic transmission of information to include e-mail notifications, receiving public comment by e-mail and use of the Internet for dissemination and collection of comment on regulatory actions; and (iii) reflect the statutory changes of Chapter 717 of the 1995 Acts of Assembly, which make

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## Notices of Intended Regulatory Action

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publication of proposed regulations in a newspaper of general circulation discretionary rather than mandatory.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 2.2-4007 and 63.1-25 of Code of Virginia.

Public comments may be submitted until September 11, 2002.

**Contact:** Richard Martin, Regulatory Coordinator, Department of Social Services, Legislative Affairs, 730 E. Broad St., Room 930, Richmond, VA 23219-1849, telephone (804) 692-1825, FAX (804) 692-1814, or e-mail lrm2@email1.dss.state.va.us.

VA.R. Doc. No. R02-302; Filed July 24, 2002, 9:18 a.m.



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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see Information Page.

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## Symbol Key

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

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## TITLE 2. AGRICULTURE

### STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Regulation: **2 VAC 5-320. Regulations for the Enforcement of the Endangered Plant and Insect Species Act (amending 2 VAC 5-320-10).**

Statutory Authority: § 3.1-1025 of the Code of Virginia.

Public Hearing Date: March 13, 2003 - 10 a.m.

Public comments may be submitted until 5 p.m. on December 9, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 703, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793 or e-mail [ffulgham@vdacs.state.va.us](mailto:ffulgham@vdacs.state.va.us).

Basis: Section 3.1-1025 of the Code of Virginia gives the board the authority to "prescribe and adopt regulations including, but not limited to, the listing of endangered or threatened species, their taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, protecting, or any other need in furtherance of the purposes of the Virginia Endangered Plant and Insect Species Act."

Whether the regulation is mandated by state law or not is not clear. There appears to be a conflict in the authorizing statute. Subsection A of § 3.1-1025 of the Code of Virginia states that:

"the Board may prescribe and adopt regulations including, but not limited to, the listing of endangered or threatened species..." (emphasis added)

However, subsection D of § 3.1-1025 of the Code of Virginia states that as a result of investigations by the Commissioner of Agriculture and Consumer Services and recommendations of the Department of Conservation and Recreation:

"...the Board shall approve proposed species to be added to or deleted from the list of endangered species or the list of threatened species, or to be transferred from one list to the other." (emphasis added)

For the purpose of this statement, deference is given to authority contained in § 3.1-1025 D that the regulation is mandated by state law.

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation.

VDACS has reviewed recommendations provided by the Department of Conservation and Recreation and agrees that

the regulation should be amended. We concur with the recommendation to remove three plant species from the regulation. We believe there is merit in listing sixteen of the recommended plant and insect species as threatened or endangered; however, there is not evidence of sufficient global rarity for the remaining eleven plants and insects to be considered for listing at this time even though the species may be rare in Virginia.

Purpose: The goal of this regulation is twofold. First, the protection of the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth, and second, the affording of protection to endangered and to threatened plant species and insect species in Virginia.

Listing a species as threatened or endangered under the regulation offers protection to plants and insects that are of aesthetic, ecological, educational, scientific, economic, or other value to the Commonwealth of Virginia. Listing a species provides for the development and implementation of biologically sound and economically feasible protection, recovery, and conservation measures to ensure the survival of listed species while allowing citizens and businesses to conduct building projects in the most economically feasible manner with the least disruption to projects that potentially impact threatened or endangered species. More specifically, listing the species as endangered or threatened offers the following benefits for the species:

1. Restriction on the take and trafficking in listed species,
2. Federal aid to state conservation departments with cooperative endangered species agreements for conservation and recovery of the species or for surveys,
3. Greater recognition of the species' precarious status, encouraging voluntary conservation efforts by other agencies, organizations and individuals,
4. Establishment of programs for the management and conservation of listed species to help assure survival of the species,
5. Protects the landowner, on whose property a listed species occurs, from unauthorized collecting, taking, cutting, etc., and
6. Allows for the legal harvest and export of threatened species under an approved management plan.

Substance: The listed ranking of known biological rarity of plant and insect species was supplied by the Virginia Department of Conservation and Recreation's Natural Heritage Division.

Ranking Key: G=Global Population Rarity, S=State Population Rarity, T=Subspecies

# Proposed Regulations

1=Extremely Rare/Critically Imperiled, 2=Very Rare/Imperiled, 3=Rare/Uncommon, 4=Common/Apparently Secure, 5=Very Common/Demonstrably Secure

The following plant species are recommended for removal from the regulation:

SCIENTIFIC NAME	COMMON NAME	RANKING
Bacopa stragula	Mat-forming Water Hyssop	G5/S2
Buckleya distichophylla	Piratebush	G3/S2
Carex polymorpha	Variable Sedge	G3/S2

The following plant species are recommended for addition to the regulation as endangered:

SCIENTIFIC NAME	COMMON NAME	RANKING
Cardamine micranthera	Small-anthered bittercress	G1/S1
Trifolium calcaricum	Running glade clover	G1/S1

The following plant species are recommended for addition to the regulation as threatened:

SCIENTIFIC NAME	COMMON NAME	RANKING
Aeschynomene virginica	Sensitive-joint vetch	G2/S2
Echinacea laevigata	Smooth coneflower	G2/S2
Juncus caesariensis	New Jersey Rush	G2/S2
Lycopodiella margueritiae	Northern prostrate clubmoss	G2/S1
Nuphar sagittifolia	Narrow-leaved spatterdock	G2/S1
Platanthera leucophaea	Eastern prairie fringed orchid	G2/S1
Rhus michauxii	Michaux's sumac	G2/S2
Scirpus flaccidifolius	Reclining bulrush	G2/S1

The following insect species are recommended for addition to the regulation as endangered:

SCIENTIFIC NAME	COMMON NAME	RANKING
Puto kosztarabi	Buffalo Mountain mealybug	G1/S1
Pseudanophthalmus holsingeri	Holsinger's cave beetle	G1/S1
Sigara depressa	Virginia Piedmont water boatman	G1/S1

The following insect species are recommended for addition to the regulation as threatened:

SCIENTIFIC NAME	COMMON NAME	RANKING
Cicindela dorsalis dorsalis	Northeastern beach tiger beetle	G4T2/S2
Neonympha mitchellii	Mitchell's satyr butterfly	G2/S1
Pyrgus wyandot	Appalachian grizzled skipper	G2/S2

Note: In the case of the Northeastern beach tiger beetle, Cicindela dorsalis dorsalis, while the species is only rated common globally, the subspecies listed is rated very rare

globally. Both the species and the subspecies are very rare in Virginia.

Issues: The primary advantage of the proposed amended regulation is to protect designated threatened or endangered plant and insect species that are considered rare both globally and in this Commonwealth. This regulation truly protects the rarest of the rare. Once plants or insects are listed, the regulation allows the department to work with land developers in minimizing the impact on protected populations while allowing the development to proceed in most instances. This impact on land development is considered necessary to protect rare plants and insects. When developed, the Virginia Endangered Plant and Insect Species Act and Regulation were specifically designed to ensure a balance between economic agricultural production and species conservation. A procedure was included in the statute for the removal or destruction of a state listed species, when good cause is shown and when necessary, to alleviate damage to property, impact on progressive development, or to protect human health.

Often, species protected by the Virginia Endangered Plant and Insect Species Act are also subject to federal guidelines if federal funds or federal lands are involved in land development. The developer must work with the United States Fish and Wildlife Service to mitigate impacts on listed species. Whereas federal protection of threatened and endangered plant and insect species is limited to federal lands or development utilizing federal funds, the Virginia Endangered Plant and Insect Species Act protects listed plants and insects on all Virginia public and private lands while exempting the landowner from its provisions. This exemption to Virginia's statute offers protection to landowners by protecting designated species on their property from other individuals while not restricting the rights of the landowner.

To ensure landowners have every opportunity to comment on the proposed changes to the threatened and endangered plant and insect species list and in accordance with directions from the Virginia Department of Agriculture and Consumer Services' Board, no plant or insect species will be considered for addition to Virginia's threatened or endangered species list unless all known property owners of sites containing known populations of any candidate species have been notified by certified mail that the potential threatened or endangered species exists on their property.

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



Summary of the proposed regulation. The Virginia Department of Agriculture and Consumer Services (VDACS) proposes to: (i) remove three plant species from the endangered list, (ii) add two different plant species to the endangered list, (iii) add eight plant species to the threatened list, (vi) add three insect species to the endangered list, and (v) add three insect species to the threatened list.

Estimated economic impact. Pursuant to § 3.1-1025 of the Code of Virginia, VDACS maintains lists of endangered and threatened plant and insect species in Virginia, and under certain circumstances requires developers of public and private lands to take specified actions to avoid the destruction of the listed endangered and threatened plant and insect species. Any major construction projects conducted on public lands or on private lands for the purpose of sale (subdivisions, retail or industrial buildings, etc.) are subject to review by VDACS to determine whether the proposed construction would take place on land that is within an area that is known to have species on the endangered or threatened lists in the vicinity. According to the agency, less than one percent of the over 1,000 proposed construction projects presented to VDACS annually are deemed to be on land that is within an area that is known to have species on the endangered or threatened lists in the vicinity. For these projects, the developer must hire a qualified individual<sup>1</sup> to conduct a survey for the endangered and threatened species on the site of the proposed construction. These surveys typically cost several hundred dollars.<sup>2</sup> Less than one percent of these surveys detect protected plants or insects that require the developer to incorporate mitigating practices into their project.<sup>3</sup>

According to VDACS, the following are examples of circumstances where mitigating practices are necessary and implemented. A locality or the Virginia Department of Transportation (VDOT) is in the early planning stages concerning the construction of a new road. Several routes are considered. It is determined by the process described above that one of the routes would harm an endangered or threatened species. The locality or VDOT chooses a different route for the road. Or if no viable route avoids the endangered or threatened species, then an accommodation such as an overpass may be built to minimize the harm. Another example would be that of a private developer where it is determined by the process described above that construction of homes for a subdivision would harm an endangered or threatened species. In such a circumstance VDACS would likely strike an agreement with the developer so that part of the land would be preserved, while the rest could be developed.<sup>4</sup>

VDACS' proposal to add sixteen new species and subtract three current species from the lists of endangered and threatened species would likely increase the frequency that developers must hire surveyors to determine the presence of

endangered or threatened species, and the frequency endangered or threatened species are found on the site proposed for development. But, according to the agency, the frequencies will remain very low. Nevertheless, for those additional developers who must hire surveyors due to the species added to the lists, the proposed list additions will cost several hundred dollars and potentially significantly more if the survey shows endangered or threatened species on the site to be developed. For example, the private developer would lose the potential profits garnered from developing the land that he must leave undeveloped due to his agreement with VDACS. The benefits of adding species to the lists involve the value placed on the preservation of endangered or threatened species, and the species' contributions to their ecosystems. As designed, the program does seem to reduce the likelihood that endangered or threatened species will be driven to extinction or at least may slow that trend. Currently, neither the species to be added to the lists or the species proposed for deletion are known to be commercially valuable.<sup>5</sup> Whether the costs incurred by public and private developers, and potentially passed on to taxpayers and consumers through potentially higher taxes, reduced services, or higher housing or commercial rental costs, exceed the benefits associated with reducing the negative pressures on endangered or threatened species populations depends upon how much value is placed on the preservation of endangered or threatened species. Since little or no data exists concerning the magnitude of the expected costs or benefits, it is not possible to draw any reliable conclusion about the net economic impact of this change.

Businesses and entities affected. Due to the proposed changes, 15 to 20 additional individuals will be listed as qualified to survey for at least one species on the endangered and threatened species lists. Property owners containing populations of species proposed for addition to the lists, property owners containing populations of species proposed for deletion to the lists, developers, and some building contractors will be affected as well.

Localities particularly affected. The proposed changes to the endangered and threatened species lists will affect at least one or two sites in all regions of the Commonwealth.

Projected impact on employment. Individuals qualified to survey for endangered and threatened plant and insect species may receive a small additional amount of work due to the proposed changes. Even with the net additions to the lists, occurrences where mitigating actions are required appear to still be very infrequent. Thus, beyond the surveyors, employment should not be significantly affected by the proposed changes.

Effects on the use and value of private property. Individuals qualified to survey for endangered and threatened plant and insect species will likely earn some additional revenue. Developers that will need to employ these surveyors will see their costs rise commensurately. In the rare occasions where developers must take mitigating actions, the commercial net value of their property will be negatively affected.

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<sup>1</sup> The United States Fish and Wildlife Service (USFWS) and the Virginia Department of Conservation and Recreation, Division of Natural Heritage maintain a list of qualified individuals.

<sup>2</sup> Source: VDACS.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

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<sup>5</sup> Ibid.

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# Proposed Regulations

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

Summary:

The proposed amendments (i) remove the currently named plants that are no longer considered globally rare and (ii) add those threatened or endangered plant and insect species that are considered rare both globally and in Virginia.

CHAPTER 320.

RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE ENDANGERED PLANT AND INSECT SPECIES ACT.

**2 VAC 5-320-10. ~~Protection~~ Listing of endangered and threatened plant and insect species.**

~~Under authority of the Endangered Plant and Insect Species Act (§§ 3.1-1020 through 3.1-1030 of the Code of Virginia), A.~~ The Board of Agriculture and Consumer Services hereby adopts the following regulation in order to protect designated plant and insect species that exist in this Commonwealth. All designated species are subject to all sections of the Virginia Endangered Plant and Insect Species Act (§§ 3.1-1020 through 3.1-1030 of the Code of Virginia).

B. The following *plant and insect* species are hereby declared an endangered species ~~as defined in § 3.1-1021 of the Virginia Endangered Plant and Insect Species Act:~~

1. *Arabis serotina*, shale barren rock cress.
- ~~*Bacopa stragula*, mat forming water hyssop.~~
- ~~*Buckleya distichophylla*, piratebush.~~
- ~~*Carex polymorpha*, variable sedge.~~
2. *Cardamine micranthera*, small-anthered bittercress.
3. *Fimbristylis perpusilla*, Harper's fimbristylis.
4. *Helenium virginicum*, Virginia sneezeweed.
5. *Helonias bullata*, swamp-pink.
6. *Ilex collina*, long-stalked holly.
7. *Iliamna corei*, Peter's mountain mallow.
8. *Isotria medeoloides*, small whorled pogonia.
9. *Nestronia umbellula*, nestronia.
10. *Puto kosztarabi*, Buffalo Mountain mealybug.
11. *Pseudanophthalmus holsingeri*, Holsinger's cave beetle.
12. *Scirpus ancistrochaetus*, Northeastern bulrush.
13. *Sigara depressa*, Virginia Piedmont water boatman.
14. *Spiraea virginiana*, Virginia spiraea.
15. *Trifolium calcaricum*, running glade clover.

C. The following *plant and insect* species are hereby declared a threatened species:

1. *Aeschynomene virginica*, sensitive-joint vetch.

2. *Cicindela dorsalis dorsalis*, Northeastern beach tiger beetle.
3. *Echinacea laevigata*, smooth coneflower.
4. *Juncus caesariensis*, New Jersey rush.
5. *Lycopodiella margueritiae*, Northern prostrate clubmoss.
6. *Neonympha mitchellii*, Mitchell's satyr butterfly.
7. *Nuphar sagittifolia*, narrow-leaved spatterdock.
8. *Platanthera leucophaea*, Eastern prairie fringed orchid.
9. *Pyrgus wyandot*, Appalachian grizzled skipper.
10. *Rhus michauxii*, Michaux's sumac.
11. *Scirpus flaccidifolius*, reclining bulrush.

VA.R. Doc. No. R00-271; Filed August 16, 2002, 11:52 a.m.

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Title of Regulation: **2 VAC 5-360. Regulations for the Enforcement of the Virginia Commercial Feed Act (amending 2 VAC 5-360-10 through 2 VAC 5-360-100; repealing 2 VAC 5-360-110 through 2 VAC 5-360-140).**

Statutory Authority: § 3.1-828.4 of the Code of Virginia.

Public Hearing Date: March 13, 2003 - 10 a.m.

Public comments may be submitted until 5 p.m. on December 9, 2002.

(See Calendar of Events section for additional information)

Agency Contact: J. Alan Rogers, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 402, Richmond, VA 23219, telephone (804) 786-2476, FAX (804) 786-1571 or e-mail jrogers@vdacs.state.va.us.

Basis: Section 3.1-828.4 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to promulgate regulations necessary for the efficient enforcement of the Commercial Feed Act. The Commercial Feed Act mandates the establishment of investigational procedures, assessments, definitions, records review, manufacturing practices, distribution and storage of regulated products before final sale. The regulation, as currently written, meets the minimum requirements of the state mandate.

Purpose: The regulation is essential to the health and welfare of Virginia citizens. Commercial feed is the primary source of nutrition for animals produced for human consumption. The economic imperative to the animal producer is that the feed ingredients are of a quality and quantity that ensure the animal's health, growth, and development. Residuals (pesticides/medications) from improper feed ingredients may adulterate the food products used by humans. This regulation helps to ensure a safe food supply.

The regulation assures commercial feed users that the label plainly and conspicuously represents the intended purpose. Label claims represent the percentage of nutrients and ingredients guaranteed and indicate that the feed is free of unsafe drug levels, pesticides and chemical residues. In the

absence of this regulation, the commercial feed purchaser would have no reasonable way to determine if the feed will satisfy the nutritional needs of the animal or that the feed contains what the label claims.

The proposed regulatory action will remove obsolete sections and clarify the intent of the regulation making it compatible with the amendments to the Commercial Feed Law enacted by the 1994 General Assembly.

**Substance:** Delete the following sections that have been replaced or made obsolete by changes to the statute enacted by the 1994 General Assembly:

- 2 VAC 5-360-110. Cancellation of registration and license.
- 2 VAC 5-360-120. Additives.
- 2 VAC 5-360-130. Crude fiber standards.
- 2 VAC 5-360-140. Application for registration of commercial feeds.

Amend the following sections to clarify the regulation and make the intent and meaning of the regulation compatible with the changes enacted by the 1994 General Assembly.

- 2 VAC 5-360-10. Definitions.
- 2 VAC 5-360-20. Brand Names.
- 2 VAC 5-360-30. Expression of Guarantees.
- 2 VAC 5-360-40. Ingredient Statement.
- 2 VAC 5-360-50. Labeling.
- 2 VAC 5-360-60. Minerals.
- 2 VAC 5-360-70. Nonprotein nitrogen.
- 2 VAC 5-360-80. Ingredients.
- 2 VAC 5-360-90. Methods of sampling and analysis.
- 2 VAC 5-360-100. Definitions and standards.

**Issues:** The advantages of the amendment include increased public access to regulated products that are more precisely labeled for the protection of the health of domestic and companion animals. Industry will be able to market products without being burdened by unnecessary regulation. The proposed amended regulation is easier to comprehend by industry and regulators and compliments other states' regulations, allowing for increased interstate industry competition.

There are no disadvantages to the public or the Commonwealth.

### Department of Planning and Budget's Economic Impact

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

Summary of the proposed regulation. The Virginia Department of Agriculture and Consumer Services (the agency) proposes

to amend the current regulations to incorporate the changes made to the commercial feed industry standards by the Association of American Feed Control Officials (AAFCO) in the last decade and the statutory changes made to Virginia's Commercial Feed Law in 1994. Some of the proposed amendments are intended to improve the clarity of the regulation as well as providing consistency in naming brands among Virginia and other national or international feed manufacturers. Changes under another category are proposed to provide consistency with national feed labeling and ingredient standards. The final category of the changes will remove feed registration and license cancellation requirements, application requirements for registration, and the requirements on the use of additives and crude fiber in feed production because the Virginia Commercial Feed Law as amended in 1994 supersedes these requirements.

**Introduction.** These regulations establish standards for commercial feed product brand names, expression of guarantees, ingredients, ingredient statements, and labels. The types of products produced, distributed, and sold in the commercial feed industry include agricultural feeds for cattle, sheep, and horses, foods for traditional pets such as dogs and cats, and foods for specialty pets such as fish, birds, and hamsters.

Virginia's commercial feed industry is large. The agency estimates that about 5 million tons of agricultural feed reaching a market value of approximately \$1 billion have been sold in the Commonwealth every year. Although the sales in the pet food industry are not known, they add to the total market activity. There are over 10,000 commercial feed products produced in Virginia or imported from other states.

Two causes of market failure may be present in the commercial feed industry: asymmetric information and product externalities. Asymmetric information refers to the information discrepancies between the producers and customers regarding the characteristics of a product. The producers of commercial feed have incentives to provide information on labels for customers as long as the information promotes their product. However, not all the characteristics of a product are desirable. Some characteristics may be harmful to animal health and productivity, or may have the potential to contaminate the derived products such as milk or meat from the animals, which may be consumed by humans. Also, most consumers are unlikely to have necessary means to find out about these negative qualities on their own. In the presence of asymmetric information, private market forces may be impaired and fail to produce the best economic outcome. Uninformed or misinformed consumers are unlikely to make the right choices reflecting their preferences among many alternative feeds. Commercial feeds with undesirable characteristics are likely to be over-produced and commercial feeds with desirable characteristics are likely to be under-produced. Thus, asymmetric information can cause misallocation of resources that are not optimal.

Misallocation of resources can also be caused by product externalities. Product externalities exist when market participants do not incur the full costs or benefits of their own consumption and production decisions. For example, a commercial feed may transmit diseases between animals and

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# Proposed Regulations

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species. This would impose costs on the public health system. The commercial feed producer who spreads the disease may not incur all of the associated costs and the production of contaminated feed would be more than the optimal level had the producer incurred the full costs. In short, commercial feeds may have negative or positive externalities. When an individual does not incur the full cost (benefit) of his own decisions, his consumption is likely to be more (less) than the socially optimal consumption level. Thus, product externalities can also cause misallocation of resources that are not socially optimal.

Commercial feed labeling has the potential to mitigate the misallocation of resources stemming from asymmetric information and product externalities. Golan, et al (2000)<sup>1</sup> identify a list of circumstances from the food labeling research literature when labeling is believed to be appropriate. According to this study, economic theory suggests that labeling is appropriate when no political consensus on regulation exists, consumer preferences differ widely, information on product enhances safety, information is clear and concise, labeling requirement can be enforced, and costs and benefits of consumption are borne by the consumer.

Mandatory disclosure of pertinent information through a regulation may reduce potential asymmetric information and product externality problems and result in better allocation of resources. Well-informed consumers are likely to make better choices among many alternative feeds according to their preferences. Thus, misallocation of resources due to overproduction of commercial feed with undesirable characteristics and due to underproduction of commercial feed with desirable characteristics would be mitigated. This adjustment process is likely to bring the feed production closer to the socially optimum level.

In general, the benefits and costs of human food labeling also apply to commercial feed.<sup>2</sup> The costs of labeling include administrative and enforcement costs on the agency and other third parties involved, compliance costs on the commercial feed industry, and the potential transmission of compliance costs to consumers in terms of higher prices. The potential benefits include increasing consumers' access to information, achieving socially desirable changes in consumption behavior, increasing competition between producers by providing homogeneous information, improving animal health and safety which may have direct impacts on humans through the food chain, and reformulating products to eliminate negative characteristics. These costs and benefits are difficult to quantify and their sizes depend on many specific factors in each case.

One significant factor is the involvement of the third parties in standard setting, certification, testing, and enforcement.<sup>3</sup> In commercial feed industry, AAFCO is the dominant entity that sets the standards on the use of terms, format of ingredient

statements, expression of guarantees, and ingredient contents that are determined through federal and state agencies, universities, and industry research. The decision making body of AAFCO is made up of state regulatory officials. Each state has one vote in AAFCO rulings. This service is valuable to the producers and the local governments as it may not be economically feasible for each manufacturer or local governments to develop all of their own standards independently. Instead, each AAFCO member contributes to costs of providing this service through membership fees and purchase of publications. This probably results in much lower costs due to sharing of information. The presence of uniform standards has the potential to reduce costly negotiations to establish the quality of a product and allow customers to compare different products based on a uniform set of characteristics.

AAFCO is not a regulatory entity and is not involved in certifications, testing, or enforcement. The state authorities provide these services. Certification, testing, and enforcement of the established standards are administered by the agency. These services are likely to contribute to the benefits of commercial feed labeling. Certification helps ensure that the product information is correct. Also, testing and enforcement services bolster the credibility of claims made in the product labels.

Estimated economic impact. The proposed amendments to the commercial feed regulations are numerous. However, the current language in the regulation that will be changed by this regulatory action has not been enforced and the industry has been in compliance with the proposed rules for more than three years. Thus, no significant economic impact is expected from the proposed regulations at this time. This analysis rather provides information on the costs and benefits of the proposed changes that may have occurred several years ago as the commercial feed industry started complying with the proposed changes.

Brand Names. Some of the changes are intended to improve the clarity of the regulation as well as providing consistency in naming brands among Virginia feed manufacturers and other national or international feed manufacturers.

(1) One group of the proposed changes under this category is adding new language to reinforce the current requirement that the product brand name may not misrepresent the product's ingredients or mislead the consumer. A brand name of a product made of several ingredients will not be allowed to be dominated by a single ingredient name that may falsely de-emphasize the presence of other ingredients contained in the product. If an ingredient name is desired to be used in the brand name, possibly to affect the consumer preferences, a quantitative guarantee for that ingredient must be provided in the label.

(2) Another group of changes are related to the restricted use of certain terms. For instance, a brand name will not be allowed to contain the term "protein" if the product contains added non-protein nitrogen. Similarly, the animal name will be required to qualify the terms "meat" or "meat by-product" used in the brand name if the meat is derived from an animal other than cattle, swine, sheep, or goat.

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<sup>1</sup> Golan, Elise, et al., 2000, "Economics of food labeling," U.S. Department of Agriculture, Agricultural Economic Report No. 793.

<sup>2</sup> These costs and benefits are identified in Golan, et al. (2000) and are applicable to feed labeling.

<sup>3</sup> Golan, et al. (2000).

(3) Finally, restrictions on a number of terms will be deleted to be consistent with the changes in the national feed industry. One example is removing the requirement that the products with the terms “candy” or “sweet” in the brand name have at least 5% sugar content.

The compliance with the requirements under this category can be achieved by either modifying the brand name to reflect the actual product characteristics as defined in the proposed regulation or by making changes in the production process to be consistent with the brand name. Individual manufacturers are likely to adopt the least cost option.

The main benefit of these changes is to improve the homogeneity in product brand names nationwide. Homogeneous product information is likely to enhance the competition among commercial feed suppliers. Also, greater consistency in brand names will likely allow consumers to compare product brand names uniformly and reduce potential consumer manipulation. The consumers are likely to make better consumption decisions according to their preferences.

**Feed Labeling and Ingredient Standards.** Changes under this category are proposed to provide consistency in labeling and ingredient standards between Virginia feed manufacturers and other national or international feed manufacturers. These changes include the following:

(1) The units of measure for vitamins A, D and E will be changed from United States Pharmacopoeia (USP) units to International Units (IU) per pound. This is likely to improve the consistency in label information provided by Virginia, national, and international feed manufacturers without imposing significant costs. According to the agency, potential buyers expect to see vitamin contents expressed in terms of IU, as it has been the industry norm since 1950s. This change is likely to allow consumers and producers to easily compare products and to determine efficacy between products.

(2) It will be required that the voluntary guarantees for salt, calcium, and sodium be stated in terms of a range between the minimum and maximum content instead of a point guarantee. The reason for this change is that these minerals interact with each other and may increase or decrease the guaranteed amount. For example, sodium may easily bind with other elements such as chloride and chemically create more salt. Thus, a range may more accurately represent the actual mineral levels and inform the customer about the uncertainty involved.

For manufacturers, this change is likely to afford more flexibility in the production process to meet the stated guarantees and increase compliance. The consistency in presenting this information on the label is likely to promote competition. There may be guarantee analysis costs associated with producing the information in the required format.

Consumers are likely to make better consumption decisions, which may affect health and safety of their animals. Inadequate levels of these minerals can be harmful to the animals. Accurate information on salt, calcium, and sodium contents is useful to the consumers. Salt is a basic elemental need for all animals and affects their overall

performance. Inadequate quantity of salt can cause ill effects on animals such as edema, kidney failure, weight loss, and reproductive damage. Similarly, calcium plays an important role in growth and organ development. This mineral affects animal structures such as bone and soft tissue, affects their metabolism, and prevents structural diseases such as rickets. If calcium and phosphorus ratio is unbalanced, other adverse effects may develop. Finally, inappropriate levels of sodium can affect digestion of proteins, energy levels, weight, reproduction, and may have many other adverse effects.

It seems that providing the contents of these minerals in terms of a range instead of a point guarantee has the potential to better inform the consumer about the mineral content uncertainty in the feed product. Thus, informed feed consumption is likely to increase, which would improve animal health and safety. The direction of the changes in consumption behavior is also likely to be socially desirable. However, since this information is pertinent to customers, some manufacturers may have been already providing information on the level of uncertainty involved with the mineral content. Thus, the significance of this change in practice is not known.

(3) The use of collective terms for the grouping of ingredients will be allowed. Official grouping of ingredients is published by AAFCO. This amendment will allow using the same label for different feeds as long as the products use any of the ingredients within the same group. For example, the collective term “plant protein product” covers both corn and soybean. The manufacturer is able to use either corn or soybean as an input, whichever is cheap at the time, without the need to change the label. This change is likely to produce cost savings in label production and allow manufacturers to take advantage of price differentials among the ingredients under the same collective term without additional costs. The manufacturer may also avoid interruptions in supply by substituting one input for the other when a specific ingredient is not available. However, the consumers’ access to information may be compromised, as the exact ingredient information may be pertinent to some of them.

(4) The requirement that the ingredient statement of feed containing inert mineral matter and charcoal include the information on the kind and percentage of ingredients will be deleted. Since this type of feed is not produced any longer, this requirement is obsolete. Thus, this proposed change is unlikely to have any economic impact.

(5) A quantity statement on the label will be required instead of a weight statement. The quantity of some of the products may be stated in terms of other measurements. For instance, the quantity of liquid feed is stated in volumes rather than weight. This change is likely to improve the information content of the label without introducing any significant costs. Thus, consumers are likely to be able to make their decisions based on the measurable quantity that is relevant to the product.

(6) Designation of species and animal classes on the label for feeds will be required. This change intends to prevent the consumption of feed by animals that may be adversely

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affected. For example, some cow feeds can kill sheep and some diseases could be transmitted between the species through feed mixing. This additional information is likely to reduce the misuse of the feed among different animals, protect their health, prevent disease transmission between different animal classes, and allow consumers to make informed decisions. These consumption decisions are likely to be socially desirable. According to the agency, there is sufficient information readily available from National Academy of Sciences, universities, and other published material to determine the appropriate designation for species and classes. Thus, the compliance costs of this requirement do not seem to be significant.

(7) The maximum fluorine and phosphate contents will be established separately for breeding and dairy cattle, slaughter cattle, sheep, and lambs. Currently, there is no distinction among cattle categories and among sheep categories. The proposed varying standards are developed by AAFCO and are believed to be scientifically more appropriate for different classes of cattle and sheep. Fluorine is important for teeth and bone development. However, the amounts over the animals' safety levels can cause irreversible harm to bones, teeth, growth, reproduction, lactation, and reduced feed consumption. Phosphorus is also critical for animal development. Inadequate phosphorus consumption has adverse effects on milk production, reproduction, weight gain, and physical performance.

This change is likely to be beneficial for feed consumers. Consumers will be able to make informed purchasing decisions for different classes of cattle and sheep, and possibly avoid many adverse effects on their animals, which would also be socially desirable. There is likely to be additional costs of presenting this information in the required format. However, the significance of this change in practice is not known.

(8) The proposed amendments will allow adulteration of feed by noxious weed seeds that are restricted in use as long as the amounts of weed seeds are in accordance with the applicable seed regulation. Adulteration by noxious weed seeds has the potential to undermine the efforts to control aggressive weeds in agriculture applications. The use of appropriate limits on noxious weed seeds is likely to reduce the need to eradicate weeds that pass through the animals' digestive tract and grow in the animals' environment without completely prohibiting their use in feed production. This amendment is simply a clarification of the applicable standards and is not expected to have a significant economic impact.

(9) The proposed amendments will also require that guarantees for microorganisms and enzymes be specified on the label and that microorganisms/enzymes be listed in order of predominance. According to the agency, some products entered the market with little or no research and some contained fraudulent and misleading claims regarding microorganisms/enzymes content. Many claims were made concerning the use of these products in lieu of veterinary drugs or treatments. As a result, animals did not receive proper medical attention. Some animals received under-

treatment or were not treated at all. Also, under-treatment for diseases has the potential to develop resistance. Furthermore, there is the chance that unhealthy products from ill animals reach the human food supply. The required information is likely to improve animal health and reduce human exposure to unhealthy animal products. Consumers are likely to be better informed and make socially desirable consumption decisions.

Required disclosure of microorganism and enzyme information may alter the mix of ingredients used in production as the manufacturers determine the optimal amounts of these inputs given more informed consumers. These requirements are also likely to bolster competition. Additionally, including an extra phrase to the label to comply with the proposed requirement will introduce labeling costs to feed producers.

Providing microorganism and enzyme information in order of predominance has the potential to further benefit consumers. For example, a product may claim a desirable feature, a listed ingredient is known to produce, but its predominance may not be of a sufficient amount to actually produce the desired outcome. Without the proposed requirement, it may be difficult to identify these types of products. The listing of the microorganisms and enzymes in order of predominance will likely allow consumers to make more informed decisions and reduce purchase of products that are not likely to produce desired results.

(10) The amendments will prohibit the use of soybean and vegetable meals having been extracted with trichlorethylene or other chlorinated solvents. According to the agency, recent discoveries indicate that these extraction methods leave toxic, even carcinogenic, residues in feeds. The toxic/carcinogenic residues can move through the food chain. These methods are not only harmful to the animals, but also harmful to other animals and humans in the food chain.

Although most consumers are likely to adjust their consumption decisions if this information is available to them, some may not be aware of the potential consequences. Given the consumers' tendency to avoid such products, rational producers would have incentives to use safer extraction methods. The proposed prohibition of these methods is likely to protect mainly uninformed consumers. Exposure of animals and humans to toxic and carcinogenic residues is likely to be reduced and some of the potential social costs may be avoided. On the other hand, the prohibition of these extraction methods is likely to impose significant costs on producers as they may be required to switch to more costly methods.

(11) Sulfurous acids will no longer be used as a significant source of vitamin B1. The agency indicates that sulfurous acids may contain vitamin B1, but animals are unable to absorb these vitamins. Prior to recent scientific evidence in this area, both producers and consumers were under the assumption that sulfurous acids could provide essential amount of vitamin B1. New scientific information is likely to have changed the customer preferences and production decisions even in the absence of regulatory requirements. Consumers may have reduced their consumption of these

types of feed while producers may have reduced sulfurous acids in feed production. Thus, the significance of this change in practice cannot be determined.

Overall economic effects of these labeling requirements in this category are similar to the costs and benefits of the proposed brand name provisions. The compliance with the most proposed labeling standards can be achieved by either modifying the label to reflect the actual product characteristics as defined in the proposed labeling requirements or by making changes in the production process to be consistent with the information on the labels. Individual manufacturers are likely to adopt the least cost option. The main benefit of these changes is to improve the homogeneity in commercial feed labels nationwide. Homogeneous product information provided in the labels is also likely to enhance the competition among commercial feed suppliers. Furthermore, greater consistency in label information will likely allow consumers to compare products more effectively. The consumers are likely to make better consumption decisions according to their preferences.

Finally, some of the changes in this category are related to ingredient standards and may have direct effects on animal health and food supply safety. For example, prohibition of toxic/carcinogenic extraction methods, limitations on the use of sulfurous acids, and disclosure of microorganism and enzyme information may have direct effects on animals, which may be transmitted to humans. The proposed ingredient standards have a greater potential to reduce the misallocation of resources stemming from asymmetric information and the negative product externalities. It seems that in most cases, the consumers' potential reaction to most of the changes are also socially desirable. Thus, these proposed changes have the potential to improve not only consumers' welfare, but also society's welfare. On the other hand, required changes in the production process is likely to introduce additional costs on manufacturers.

**Statutory Changes.** The changes in the final category are proposed because the Virginia Commercial Feed Law as amended in 1994 supersedes the current language. These changes are the following.

(1) Provisions on the cancellation of a registration of commercial feed and of a license to manufacture and distribute commercial feed will be deleted as the amended feed law supersedes the current requirements. The agency is not proposing to amend the regulations to be consistent with the statutory amendments, but rather proposing to remove the current language completely from the regulations, and planning to operate directly under the statutory language. According to the agency, the amendments of 1994 contain, at a minimum, the same cancellation requirements as currently written in the regulations, and a broader set of enforcement actions. There should be no economic impact regarding the current requirements in the regulations since they will still be enforced under the statute. There seems to be potential economic impacts in practice because of broader statutory requirements, however, these changes are not proposed in the regulations. Thus, potential economic impacts due to the changes in the statute are not addressed in this analysis.

(2) Provisions on the commercial feed registration application will be deleted as the amended feed law supersedes the current requirements. Similarly, the agency is not proposing to amend the regulations to be consistent with the statutory amendments, but rather proposing to remove them completely from these regulations, and planning to operate directly under the statutory language. According to the agency, the amendments of 1994 contain similar application requirements, but require submission of only one copy of the product label instead of two copies as currently required. In practice, applicants will be required to provide only one copy of the label with their applications instead of two. This is not expected to produce any significant benefits for the applicants, as the cost savings from a copy of the label is minimal.

(3) The language on the use of additives such as preservatives and artificial color will be deleted as the statute no longer requires the approval of the Virginia Commissioner of Agriculture and Consumer Services and allows companies to use AAFCO approved additives. The agency indicates that the amendments to the feed law in 1994 supersede the current requirements and allow firms to use a greater amount of additives than what the current rule would allow. Since, at a minimum, the statute allows the use of the same additives as the current regulations allow, there should be no economic impact regarding the current requirements in the regulations. There seems to be potential economic impacts in practice because the feed companies will be able to avoid costs associated with research and approval by simply using AAFCO approved standards and because they will be able to use a broader set of additives in the production process. However, these changes are not proposed in the regulations. Thus, potential economic impacts due to the changes in the statute are not addressed in this analysis.

(4) The language that crude fiber standards apply whenever screenings such as nutshells are added to animal feeds will be deleted. According to the agency, the amended statute adopted the national crude fiber standards. More importantly, screenings have not been used in feed production for decades. This requirement is believed to be obsolete and all the effects are likely to already be in place in practice. Thus, this proposed amendment is not expected to have a significant economic impact.

**Businesses and entities affected.** There are 150 licensed commercial feed manufacturers in Virginia. In addition, there are 780 out-of-state licensed firms. The number of consumers that may be affected is not known.

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

**Projected impact on employment.** The proposed regulations are not expected to have any significant impact on current employment because the commercial feed industry has already been in compliance with the proposed requirements, and the requirements have been already enforced by the agency for several years.

**Effects on the use and value of private property.** Similarly, since the proposed requirements have been complied in

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practice, no significant impact on the current use and value of private property is expected.

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

Summary:

*This regulation establishes labeling guidelines for commercial feed manufacturers as to claims for animal nutrients, including guarantees for crude protein, crude fat, crude fiber, minerals and vitamins; ingredients; methods of sampling and analysis; definitions and standards; and application for and cancellation of registrations and licenses. The regulation serves as a reference and instructional guide for manufacturers and provides compliance expectations for products merchandised within the Commonwealth. The proposed amendments delete obsolete sections and clarify the intent and meaning of the regulation making it compatible with changes to the Commercial Feed Act enacted by the 1994 General Assembly.*

CHAPTER 360.

~~RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE VIRGINIA COMMERCIAL FEED LAW ACT.~~

**2 VAC 5-360-10. Definitions.**

A. Words used in the singular form in this chapter shall include the plural, and vice versa, as appropriate.

B. All terms used in this chapter shall have the meaning set forth for such in the ~~law~~ Act. In addition, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

*"Act" means Chapter 28.1 (§ 3.1-828.1 et seq.) of Title 3.1 of the Code of Virginia, hereinafter known as the Virginia Commercial Feed Act.*

*"Animal" means any animate being which is not human.*

*"Adulteration" means a commercial feed is adulterated if:*

1. Enough of any harmful or non-nutritive ingredient has been added to endanger animal health when used according to labeling directions.
2. Any part of an essential component has been omitted, removed, or replaced with an inferior substance.
3. The composition or quality of the feed fails to conform to its representation in the labeling.
4. It was prepared or held under unsanitary conditions.
5. It contains any filthy, putrid, decomposed, tainted, unsound or unwholesome substance.
6. Its container is composed of any substance which may cause the feed to endanger animal health.

*"Board" means the Virginia Board of Agriculture and Consumer Services.*

*"Brand" means the term, design, or trademark and other specific designation under which an individual commercial feed is distributed in Virginia.*

*"Canned animal food" means all materials packed in any airtight container with a moisture content of 70% or more which are distributed for use as food for animals other than humans.*

*"Commercial feed" means all mixed or unmixed feed including concentrates, supplements, molasses, minerals, mineral mixtures, and all other materials used for their nutritional or physical properties for feeding to animals except those materials exempted by ~~Law~~ the Act.*

*"Commissioner" means the Virginia Commissioner of Agriculture and Consumer Services or his delegated assistant or agent.*

*"Distribute" means to offer or expose for sale, sell, or warehouse, exchange, barter, furnish or otherwise supply.*

*"Distributor" means a person who ~~offers for sale, sells, or barter~~s distributes commercial feeds.*

*"Feed ingredient" means each of the constituent materials making up a commercial feed.*

*"Inert mineral matter" means mineral matter that has no nutritional value.*

*"Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed. The invoice or delivery slip with which a commercial feed is distributed in bulk is the label.*

*"Labeling" means any written, printed, graphic, ~~electronic~~, or advertising information pertaining to the commercial feed which is:*

1. On the commercial feed or any of its containers,
2. On the invoice or delivery slip, or
3. Accompanying the commercial feed at any time, or
4. *Otherwise provided to the consumer.*

~~*"Law" means Chapter 28.1 of Title 3.1 of the Code of Virginia, hereinafter known as the Virginia Commercial Feed Law.*~~

~~*"Materials of little or no feeding value" means organic or inorganic materials which, in the proportions present, are recognized by nutritionists as having little or no nutritional value.*~~

*"Medicated feed" means a product obtained by mixing a drug, as defined in § 3.1-828.2 of the Code of Virginia, and a commercial feed. It is subject to all provisions of the Virginia Commercial Feed ~~Law~~ Act.*

*"Misbranding" means a commercial feed is misbranded if:*

1. The label does not include:
  - a. The name and principal address of the manufacturer, distributor, or person responsible for placing the commercial feed on the market.



- b. The name, brand or trademark under which the commercial feed is sold.
- c. An accurate *quantity* statement ~~of the net weight~~ of the contents.
- d. An accurate statement of the minimum percentage of crude protein.
- e. An accurate statement of the minimum percentage of crude fat.
- f. An accurate statement of the maximum percentage of crude fiber.
- g. *An accurate statement of the maximum percentage of moisture for all dog and cat foods.*
- ~~h. The English name of each ingredient or the statement, "Ingredients as filed with the State," in lieu of the list of ingredients conform to the requirements of 2 VAC 5-360-40.~~
- ~~h. i. Adequate warnings against use under normal or pathological conditions where its use may endanger animal health, or against unsafe use or application as necessary for the protection of animals.~~

- 2. Labeling is false or misleading in any particular.
- 3. It is distributed under the name of another commercial feed.
- 4. Its container is so made, formed or filled as to be deceptive or misleading as to the amount of contents.
- 5. Its labeling bears any reference to registration or license under the ~~Law~~ Act.
- 6. It is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition prescribed by regulation of the board.
- 7. Any word, statement or other information required by ~~Law~~ the Act is not prominently placed upon the label so conspicuously (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

"Official sample" means any sample of feed taken by the commissioner and designated as "Official" by the commissioner.

"Person" means an individual, partnership, association, corporation, firm, agent or authorized group of individuals whether incorporated or not.

"Prohibited noxious-weed seeds" means the seeds of perennial weeds which not only reproduce by seed but which also spread by underground roots and stems; and which, when established, are highly destructive and are not controlled in the Commonwealth by commonly used cultural practices. These include but are not limited to the seeds of *Balloonvine-Cardiospermum halicacabum*, Field bindweed-*Convolvulus arvensis*, Quackgrass-*Agropyron repens*, Canada thistle-*Cirsium arvense*, Johnson grass-*Sorghum* spp., perennial, and Plumeless thistle, which

includes Musk thistle and Curled thistle *Carduus* spp., *Serrated tussock-Nassella trichotoma*, and *Sicklepod-Senna obtusifolia*.

"Restricted noxious-weed seeds" means the seeds of weeds which are very objectionable in fields, lawns and gardens in this Commonwealth and are difficult to control by commonly used cultural practices. These include but are not limited to seeds of Dodder *Cuscuta* spp., Bermudagrass *Cynodon dactylon*, Wild onion bulblets, Wild garlic bulblets *Allium* spp., Wild mustard *Brassica* spp., Giant foxtail-*Setaria faberia*, radish-*Raphanus*, and Annual bluegrass-*Poa annua*.

"Sell" means sales, barter, or exchange.

"Ton" means a net weight of 2,000 pounds, *avoirdupois*.

**2 VAC 5-360-20. Brand names.**

A. The name of a brand shall not tend to mislead the purchaser with respect to any quality of the feed. If the brand name indicates that the feed is made for a specific use, the character of the feed shall conform to that use. A mixture labeled "dairy feed," for example shall be adapted for that purpose.

B. A brand name shall not be derived from one or more ingredients of a mixture *to the exclusion of other ingredients*. A distinctive name shall not represent any component of a mixture *unless all components are included in the name, provided that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product that is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name if the ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand name is not otherwise false or misleading.*

C. The word "vitamin" or a contraction thereof, or any word suggesting vitamin, may be used in the brand name of a feed only in the case of a feed represented solely to be a vitamin supplement, and which is labeled with the minimum vitamin content guaranteed as specified in subsection B of 2 VAC 5-360-30.

D. The term "mineralized" shall not be used in the brand name of a feed except for "trace mineralized salt." When so used, the product shall contain significant amounts of trace minerals which are recognized as essential for the nutrition of animals. The mineral compound source of each mineral except salt (NaC1) shall be stated in the ingredient statement.

E. When the brand name carries a percentage value, it shall be understood to signify minimum crude protein content. If any other percentage values are used in brand names, they shall be followed by the proper description.

~~F. If the brand name of a feed includes the word "candy," "sweet," or some comparable term, the product shall contain a minimum of 5.0% total sugars, calculated as invert sugar. If molasses is used, the type shall be declared.~~

~~G. "Screenings." If screenings, either ground or unground, bolted or unbolted, are added to any unmixed by-product feed, the brand shall be labeled clearly to indicate this fact. The~~

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word "Screenings" shall appear as part of the name or brand and shall be printed in the same size and face of type as the rest of the brand name.

~~H. "Labels for Wheat Bran and Wheat Shorts Containing Screenings." The admixture of any proportion of wheat screenings requires a declaration to that effect in the brand name, which shall be printed in the same size and type face as the rest of the brand name. In no case shall the admixture exceed mill run of screenings.~~

~~1. Wheat Bran with Ground Wheat Screenings.~~

~~2. Wheat Shorts with Ground Wheat Screenings.~~

*F. The word "protein" shall not be permitted in the brand name of a feed that contains added nonprotein nitrogen.*

*G. The term "meat" or "meat byproduct" in a brand name shall be qualified in the brand name to designate the animal from which the meat or meat byproduct is derived unless the meat or meat byproduct is made from cattle, swine, sheep or goats.*

*H. Single ingredient feeds shall have a brand name in accordance with the designated definition of feed ingredients as recognized by the Official Publication of the Association of American Feed Control Officials, Inc., 2002.*

## **2 VAC 5-360-30. Expression of guarantees.**

A. The sliding scale method of expressing guarantees (for example, "Protein 15-18%") is prohibited, except as specifically allowed in the law Act or in this chapter.

B. Vitamins, when guaranteed, shall be expressed in milligrams per pound of feed, except that:

1. Vitamin A shall be stated in *USP International Units per pound*, except for precursors of Vitamin A.

2. Vitamin D, when used in products for poultry feeding, shall be expressed in International Chick Units.

3. Vitamin D for other uses shall be expressed in *USP International Units per pound*.

4. Vitamin E shall be expressed in ~~USP or~~ International Units per pound of feed.

C. The common feed or mineral guarantees are not required for any product represented solely to be a vitamin supplement which is labeled with a minimum vitamin guarantee as specified in subsection D of 2 VAC 5-360-40.

~~D. Calcium." When a minimum and maximum percent of calcium is guaranteed, the maximum percent of calcium shall not exceed by more than 20% the minimum percent of calcium. (Example: Calcium minimum, 10%, maximum 12%) provided that in the event that the minimum percent of calcium is 5.0% or less, the maximum percent of calcium may exceed the minimum by 1.0% of calcium. (Example: Calcium minimum 3.0%, maximum 4.0%).~~

*D. When calcium, salt, and sodium guarantees are given in the guaranteed analysis, such shall be stated and conform to the following:*

1. When the minimum is below 2.5%, the maximum shall not exceed the minimum by more than 0.5 percentage point.

2. When the minimum is 2.5% but less than 5.0%, the maximum shall not exceed the minimum by more than one percentage point.

3. When the minimum is 5.0% or greater, the maximum shall not exceed the minimum by more than 20% of the minimum and in no case shall the maximum exceed the minimum by more than five percentage points.

E. When stated, guarantees for minimum and maximum total calcium, salt, and sodium; minimum potassium, magnesium, sulfur, phosphorus; and maximum fluorine shall be in terms of percentage. Other minimum mineral guarantees shall be stated in parts per million (ppm) when the concentration is less than 10,000 ppm and in percentage when the concentration is 10,000 ppm (1.0%) or greater. All guaranteed, minerals except salt (NaCl), shall be stated in terms of ~~percentage~~ of the element.

## **2 VAC 5-360-40. Ingredient statement.**

A. The term "dehydrated" may precede the name of any product that has been artificially dried.

B. No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

~~C. "Inert Mineral Matter and Charcoal." In the case of feeds containing inert grit, other added inert mineral matter or charcoal, the ingredient statement must include the kind and percentage of grit or other added inert mineral matter, charcoal, etc. In case the percentage of inert grit, other mineral matter or charcoal, separately or together, is 5.0% or more, the brand name shall also include the name and percent of such matter, such as "With . . . % Grit," "With . . . % Charcoal," and "With . . . % Charcoal and Bentonite," etc.~~

*C. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients as published in the Official Publication of the Association of American Feed Control Officials, Inc., 2002, or the common or usual name for ingredients that do not have official definitions or that do not require definitions (example: corn).*

D. No declaration of vitamin potency of a feed or feed supplement shall appear in the ingredient statement or any other part of the label, excepting that such statement is a guarantee of minimum vitamin potency of the entire product given in terms as specified in subsection B of 2 VAC 5-360-30.

## **2 VAC 5-360-50. Labeling.**

A. The information required in § 3.1-828.5 of the Code of Virginia, with the exception of the ~~net weight quantity statement~~, shall appear in its entirety on one side of a label or on one side of the container. However, in case a tag is used, the directions for use and warnings against misuse may appear on the other side of the tag.

B. When ingredients are listed, the names of all feed ingredients shall be shown in letters or type of the same size.

C. When feeds carry label information in more than one position on the container, there shall be no variance with respect to name, ingredients, or guaranteed composition.

D. The term "degermed" must precede the name of any product from which the germ has been wholly or partially removed.

E. All printed or written information attached to or packed with feed must conform in all respects to the information printed on the principal label.

F. Labeling which implies that added enzyme-bearing materials improve the utilization of a product is prohibited unless the claims are substantiated by scientific evidence.

G. The term "Bond Phosphate of Lime," "Bone Phosphate of Lime (BPL)," or "BPL" shall not be used in connection with the labeling of feed ingredients.

*H. The label of a commercial feed, other than an individual ingredient or supplement with directions for further mixing, shall designate the species and may designate the animal class for which the feed is intended. For the purpose of this subsection, animal class may include, but is not limited to, weight range, sex, or age of the animal for which the feed is manufactured.*

## 2 VAC 5-360-60. Minerals.

A. When the word "Iodized" is used in connection with a feed ingredient, the ingredient shall contain not less than 0.007% of iodine, uniformly distributed.

B. Phosphatic materials for feeding purposes shall be labeled with a guarantee of the minimum and maximum percentages of calcium (*when present*), the minimum percentage of phosphorous, and the maximum percentage of fluorine.

C. The fluorine content of any mineral or mineral mixture which is to be used directly for feeding of animals shall not exceed 0.20% for breeding and dairy cattle; 0.30% for slaughter cattle; 0.30% for sheep; 0.35% for ~~sheep~~ lambs; 0.45% for swine; and 0.60% for poultry.

D. Soft phosphate with colloidal clay, rock phosphates, or other fluorine-bearing ingredients may be used only in such amounts that will not raise the fluorine concentration of the ~~feed total ration~~ (*exclusive or roughage*) above the following amounts: 0.004% for breeding and dairy cattle; 0.009% for slaughter cattle; 0.006% for sheep; 0.01% for ~~sheep~~ lambs; ~~0.014~~ 0.015% for swine; and ~~0.035~~ 0.03% for poultry.

*E. Fluorine-bearing ingredients may not be used in any feed that is fed directly to cattle, sheep or goats consuming roughage with or without limited amounts of grain, that result in a daily fluorine intake in excess of 50 milligrams of fluorine per 100 pounds of body weight.*

## 2 VAC 5-360-70. Nonprotein nitrogen.

Urea, ammonium salts of carbonic and phosphoric acids, and ammoniated products defined by the *Official Publication of the Association of American Feed Control Officials, Inc., 2002*, are acceptable ingredients in ~~proprietary commercial~~ cattle,

sheep, and goat feeds only. These materials shall be considered adulterants in ~~proprietary commercial~~ feeds for other animals and for birds. The maximum percentage of equivalent protein from nonprotein nitrogen shall appear immediately below the crude protein in the ~~chemical guarantees~~ *guaranteed analysis*; and the name of the substance supplying the nonprotein nitrogen shall appear in the ingredient list. If the equivalent protein from nonprotein nitrogen in a feed exceeds 1/3 of the total crude protein, or if more than 8.75% equivalent protein is from nonprotein nitrogen, the label shall ~~bear a statement of proper usage~~ *contain adequate directions for use*. The label shall also ~~bear~~ *contain* the following statement in conspicuous type:

WARNING: This feed should be used only in accordance with the directions furnished on the label.

## 2 VAC 5-360-80. Ingredients.

~~A. Commercial feed shall not be adulterated with any of the following materials: Chaff or Dust, Cocoa Meal, Moldy Grain, Dirt, Elevator Chaff, Flax Plant Refuse, Coconut Shell, Humus, Peat, Sand, Sawdust, Screening Refuse, Sphagnum Moss, Leather, or any other material of little or no feeding value.~~

~~B.~~ A. Commercial feeds shall not be adulterated with any whole or viable prohibited noxious-weed seeds, nor with any whole or viable restricted noxious-weed seeds *in amounts exceeding the limits as specified in 2 VAC 5-390-20*.

*B. Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) when directions are for using the product in grams, or in colony forming units per pound (CFU/lb) when directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.*

*C. Guarantees for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified, such as: Protease (Bacillus subtilis) 5.5 mg amino acids liberated/min./milligram. If two or more sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided.*

*D. Commercial feeds shall not contain soybean meal, flakes or pellets or other vegetable meals, flakes or pellets that have been extracted with trichlorethylene or other chlorinated solvents.*

*E. Sulfur dioxide, sulfurous acid, and salts of sulfurous acid shall not be used in or on feeds or feed ingredients that are considered or reported to be a significant source of vitamin B1 (Thiamine).*

## 2 VAC 5-360-90. Methods of sampling and analysis.

Where applicable, the ~~latest printed~~ "Official Methods of Analysis" of the Association of Official Analytical Chemists, ~~Incorporated~~, of AOAC International (2000), 17th edition, shall be used for the sampling and analysis of commercial feeds.

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## 2 VAC 5-360-100. Definitions and standards.

The definitions, standards, and recommendations of the Association of American Feed Control Officials shall be followed in the administration of the law Act, except where they conflict with the provision of, or with regulations promulgated under the law Act.

## 2 VAC 5-360-110. Cancellation of registration and license. (Repealed.)

~~The following causes are sufficient to justify the cancellation of a registration of commercial feed and of a license to manufacture or distribute commercial feed. However, no registration or license shall be cancelled until the registrant, manufacturer, or distributor has been given an opportunity for a hearing by the commissioner when:~~

- ~~1. The brand name of the feed is found to be misleading in any respect.~~
- ~~2. The feed is found to contain enough of a harmful ingredient to endanger animal health when fed according to labeling directions.~~
- ~~3. The ingredients are incorrectly stated on the label.~~
- ~~4. The analyses of samples establish the fact of misbranding or adulteration.~~
- ~~5. Labels on packages contain any statement, design, or device which tends to mislead the purchaser.~~
- ~~6. False, fraudulent, or misleading claims concerning the feed are made by any means.~~

## 2 VAC 5-360-120. Additives. (Repealed.)

~~A. "Preservatives." No added preservative of any kind may be used in the manufacture of a feed until its use, and the condition of its use, has been approved by the commissioner.~~

~~B. "Artificial Color." No artificial color may be used in feeds unless the color has been shown to be harmless to animals, and has been approved by the Federal Food and Drug Administration.~~

~~No material shall be used to enhance the natural color of a feed or feed ingredient to conceal inferiority.~~

## 2 VAC 5-360-130. Crude fiber standards. (Repealed.)

~~Whenever crude fiber standards are designated in definitions of various grain or cereal products, such standards shall apply also if screenings are added.~~

## 2 VAC 5-360-140. Applications for registration of commercial feeds. (Repealed.)

~~Applications for registration of commercial feeds shall be accompanied by two copies of the proposed label. A statement of claims made or to be made which differ from the label submitted shall be filed with the commissioner before use.~~

**NOTICE:** The forms used in administering 2 VAC 5-360, Regulations for the Enforcement of the Virginia Commercial Feed Act, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

## FORMS

~~Application For Registration of Medicated Feed, eff. 10/13/94.~~

~~Application For Registration of Commercial Feeds Sold in Individual Packages of Ten (10) Pounds or Less, eff. 10/13/94.~~

~~Application For Registration of Commercial Feeds Sold in Individual Packages of Ten (10) Pounds or Less (Canned Foods), eff. 10/13/94.~~

~~Application For Registration of Specialty Pet Food Sold in Individual Packages of One (1) Pound or Less ONLY, eff. 10/13/94.~~

~~Application for Registration of Commercial Feeds and Animal Remedies (eff. 12/99).~~

## DOCUMENTS INCORPORATED BY REFERENCE

~~Official Publication of the Association of American Feed Control Officials, Inc., 2002.~~

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
P O BOX 526, RICHMOND, VA 23204-0526

NEW PRODUCTS \_\_\_\_\_  
RENEWALS \_\_\_\_\_  
DATE APPROVED \_\_\_\_\_  
APPROVED BY \_\_\_\_\_  
DATE KEYED \_\_\_\_\_  
KEYED BY \_\_\_\_\_

APPLICATION FOR REGISTRATION OF COMMERCIAL FEEDS  
AND ANIMAL REMEDIES  
(See Instructions on Back of Form)

DATE \_\_\_\_\_

Application is hereby made for registration of the following commercial feeds  
and/or Animal Remedies for the period ending December 31, 20\_\_.

REGISTRANT NO: \_\_\_\_\_ SUBMITTED BY: \_\_\_\_\_  
FIRM NAME: \_\_\_\_\_ FIRM NAME: \_\_\_\_\_  
ATTENTION: \_\_\_\_\_ BY: \_\_\_\_\_  
STREET ADDRESS: \_\_\_\_\_ TITLE: \_\_\_\_\_ SIGN - DO NOT PRINT  
CITY STATE ZIP CODE: \_\_\_\_\_ PHONE NO: \_\_\_\_\_  
FIN or SSN: \_\_\_\_\_ FAX NO: \_\_\_\_\_  
E-MAIL ADDRESS: \_\_\_\_\_

**SUBMIT AN ORIGINAL APPLICATION FOR EACH PRODUCT TYPE CHECKED BELOW.**

Please duplicate form as needed.

TYPE OF FEED	TYPE OF FEED	TYPE OF FEED	TYPE OF FEED	TYPE OF FEED
<input type="checkbox"/> SMALL PACKAGE COMMERCIAL FEED REGISTRATION (includes Specialty Pet Food more than 1 lb packages)	<input type="checkbox"/> CANNED ANIMAL FOOD REGISTRATION	<input type="checkbox"/> SPECIALITY PET FOOD REGISTRATION (packages of 1 lb or less only)	<input type="checkbox"/> MEDICATED FEED REGISTRATION	<input type="checkbox"/> ANIMAL REMEDIES REGISTRATION
No. Products _____	No. Products _____	No. Products _____	No. Products _____	No. Products _____
Fees \$ _____ (\$50.00 per product)	Fees \$ _____ (\$50.00 per product)	Fees \$ _____ (\$50.00 per product)	Fees \$ _____ (\$50.00 per product)	Fees \$ _____ (\$25.00 per product)
Accounting Code (885-02201)	Accounting Code (885-02207)	Accounting Code (885-02208)	Accounting Code (885-02038)	Accounting Code (885-02212)

NO	PRODUCT NAME
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

A CERTIFICATE OF REGISTRATION will be forwarded upon application approval.

**INSTRUCTIONS FOR COMPLETING THE APPLICATION**

1. Fill in the date at the top of the application form.
2. "Firm" name and address to be same as appearing on label. Individual submitting application should sign on the line marked "By". If application is submitted by a different firm, please enter name and address on line marked "Submitted by".
3. Check the product type to be registered and fill in the number of products submitted for registration and the amount of fees. **SUBMIT AN ORIGINAL APPLICATION FOR EACH PRODUCT TYPE.** Submit your check payable to the **TREASURER OF VIRGINIA.**
4. List the complete brand names for all feeds and animal remedies for which registration is requested. If additional space is needed, attach a 8 1/2" x 11" sheet of paper.
5. Submit the application for registration and a label or label facsimile for each product to be considered for registration.
6. If labels have not been printed, and it is desired that a copy be reviewed by this office prior to printing, submit proposed copy of label in duplicate and one copy will be returned to you. A printed label must be submitted as soon as possible.
7. The registered label for any brand may be revised during the registration year by a letter or request accompanied by the proposed or revised label and no significant change in product guarantee has been made.
8. Each November, you will receive a computer generated Registration Renewal Application of all the products your firm registered for the year to be reviewed and returned to this office prior to January 1 of the next year along with the registration fees and copies of labels with any changes.

**PRODUCT REGISTRATION FORM**

**CLASSIFICATION OF FEED TYPES INCLUDING ANIMAL REMEDIES**

1. **SMALL PACKAGE COMMERCIAL FEED** - any non-medicated feed sold in individual packages of ten (10) pounds or less. If the same product is manufactured in different sizes (small, medium, large or extra large), each and every size of this product is required to be registered; however, *different package sizes* of this product must file only one registration fee and submit labels. **FEE: \$50.00 per product**
2. **CANNED ANIMAL FOOD** - any canned commercial food manufactured or distributed to be fed to animals. **FEE: \$50.00 per product**
3. **SPECIALTY PET FOOD** - includes all feeds manufactured or distributed for specialty pets which are distributed in packages of one pound or less *only*. **All products of this size must be registered** at \$35.00 per product; however, product fee shall not exceed \$700.00 per company (20 products of this size). **Specialty Pet Food products sold in packages greater than one pound must be registered as Small Package Commercial Feed and are subject to a \$50.00 fee per product (no limit).**
4. **MEDICATED FEEDS** - includes all feeds which contain drugs or antibiotics. Exceptions may be made for certain drugs at certain levels exempted by the Food and Drug Administration (FDA); however, labels must be submitted for all medicated feeds. **FEE: \$50.00 per product**
5. **ANIMAL REMEDIES** - includes all drugs, combination of drugs, proprietary medicines and combinations of drugs or ingredients other than for food purposes or cosmetic purposes, which are prepared or compound for animal use including Type A Medicated feed. If the same animal remedy is sold in different sizes with different guarantees, each and every size must be registered. **FEE: \$25.00 per product**

Feed & Animal Remedies Section  
8801 796-3014  
Rev. 12/13/99

\* \* \* \* \*

**Title of Regulation:** 2 VAC 5-440. Rules and Regulations for Enforcement of the Virginia Pest Law - Cotton Boll Weevil Quarantine (amending 2 VAC 5-440-10 through 2 VAC 5-440-60; repealing 2 VAC 5-440-80 and 2 VAC 5-440-90).

**Statutory Authority:** § 3.1-188.23 of the Code of Virginia.

**Public Hearing Date:** March 13, 2003 - 10 a.m.

Public comments may be submitted until 5 p.m. on December 9, 2002.

(See Calendar of Events section for additional information)

**Agency Contact:** Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 703, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793 or e-mail fulgham@vdacs.state.va.us.

**Basis:** The legal authority for this regulation is contained in § 3.1-188.23 of the Code of Virginia. The scope of the mandate is that the Board of Agriculture and Consumer Services must quarantine the Commonwealth or any portion thereof if the board determines that a quarantine is necessary to prevent or retard the spread of a pest into, within, or from the Commonwealth. This requires mandatory participation by all cotton operators in Virginia. Cotton operators must report all cotton acreage at their local USDA - Farm Service Agency office and pay a fee that is based on the reported cotton acreage. Noncommercial cotton shall not be planted unless the grower applies for and receives an exemption from VDACS. Movement of regulated articles must be approved by VDACS.

**Purpose:** The goal of this regulation is to prevent the reinfestation of Virginia's cotton crop by the cotton boll weevil. By conducting surveys in cooperation with the Southeastern Boll Weevil Eradication Foundation, VDACS is able to determine the efficacy of this regulation. Since 1997, there have been no boll weevils detected in Virginia.

The eradication of the cotton boll weevil and the enforcement of the quarantine, which ensures that the boll weevil does not reinfest Virginia, provide an alternate crop that enhances the economic conditions for growers in eastern and southern Virginia. Since the eradication of the boll weevil in Virginia, the acreage planted in cotton has increased from approximately 300 acres in 1978 to over 100,000 acres annually. The benefit of the eradication and continued exclusion of the boll weevil has been estimated by researchers at North Carolina State University at approximately \$75 per acre per year in increased land values, increased cotton yields, and reduced pesticide use.

The eradication and exclusion of the boll weevil enhances the quality of the environment by eliminating the need for approximately seven pesticide applications per year on cotton. Prior to the eradication of the boll weevil, there were more pesticides applied per acre of cotton than to any other crop.

The eradication and continued exclusion of the boll weevil is also responsible for the resurgence of the industry associated with cotton production. When the cotton boll weevil quarantine

was implemented in 1977, there were no cotton gins operating in Virginia. By 1999, the number of cotton gins in Virginia had increased to six. The reemergence of cotton has also been responsible for increases in economic activities for the purchase of cotton equipment and the contracting of services or equipment necessary to produce, gin and market cotton. If the quarantine were not in place, all cotton, lint, seeds or cotton harvesting equipment would have to be fumigated or treated in an approved manner before being transported into a regulated area.

The continued monitoring, required by the Virginia Cotton Boll Weevil Quarantine, is necessary to prevent the reestablishment of the pest and ensure Virginia cotton remains free of the boll weevil. The administration and enforcement of the quarantine will be necessary until the pest is eliminated from the United States and there is no threat of reintroduction. The continued resurgence of the cotton industry with the associated economic benefits is dependent upon the maintenance of a boll-weevil-free Commonwealth.

Setting a fixed date of July 1 of each year for the official reporting of acreage and payment of assessments will allow the cotton growers to better plan their planting activities since they will know the due dates each year. This resolves the problem of uncertainty by growers of when these due dates will occur each year.

Reducing the penalties from \$10 per acre to \$5.00 per acre will bring the penalties in-line with current program costs. When this regulation was instituted in 1986, a \$10 per acre penalty was appropriate since the program costs averaged \$8 - \$10 per acre. Over the past five years, the program costs have fallen to approximately \$3.00 - \$5.00 per acre. A penalty of \$5.00 per acre is now a more appropriate figure. Using this reduced penalty will prevent the disproportionate penalty fees that are now being assessed.

Eliminating the mandate for destruction of the cotton crop for nonpayment of program costs will allow the commissioner to consider other alternatives for the collection of fees that would not result in the loss of the cotton crop.

**Substance:** The following are the amendments of substance with respect to the proposed regulatory action:

1. The proposed amendment will reduce penalties assessed on farm operators for the late payment or nonpayment of fees from \$10 per acre to \$5.00 per acre.
2. The proposed amendment will eliminate the mandate for the destruction of the cotton crop when farm operators are found in violation of the Virginia Cotton Boll Weevil Quarantine for nonpayment of fees and assessments.
3. The proposed amendment establishes the fixed date of July 1 as the official reporting and payment date for acreage assessments rather than requiring the commissioner to set the date annually.

**Issues:** Currently, there are approximately 500 cotton growers in the state and all would be impacted by the amendments to the quarantine. The cost of the program, which is paid by the grower, would not change, but the penalties for late filing of acreage would be reduced. When this regulation was instituted in 1986, a \$10 per acre penalty was appropriate

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# Proposed Regulations

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since the program costs averaged \$8 - \$10 per acre. Over the past five years, the program costs have fallen to approximately \$3.00 - \$5.00 per acre. A penalty of \$5.00 per acre is now a more appropriate figure.

Amending the quarantine to eliminate the mandate for the destruction of the cotton crop for nonpayment of fees will allow the commissioner to pursue alternatives to crop destruction for individuals who do not pay the legally assessed program costs. Currently the only legal recourse in the quarantine is to destroy the cotton crop and bill the grower for the cost of destroying his crop. By pursuing established debt collection procedures, the agency would be assured the grower paid the program costs and the grower would not be faced with the destruction of his crop or significant legal fees.

Establishing the due date for acreage reporting and payment of assessments on July 1 for each year, removes any uncertainty by growers of when these due dates will occur each year. This allows the cotton growers to better plan their planting activities.

There are no disadvantages to the public or the Commonwealth associated with this proposed regulatory action.

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

Summary of the proposed regulation. The Virginia Department of Agriculture and Consumer Services (VDACS) proposes to: (i) eliminate the mandate for the destruction of a cotton crop for nonpayment of program fees, (ii) reduce penalties assessed on farm operators for the late payment or nonpayment of fees from \$10.00 per acre to \$5.00 per acre, and (iii) establish July 1 as the official reporting and payment date for acreage assessments.

Estimated economic impact. Under the current regulations when a farm operator fails to pay fees, VDACS is required to destroy his cotton crop and bill the grower for the cost of destroying his crop. VDACS proposes to amend the regulatory language so that the agency retains the option to destroy the cotton crop and bill the grower for the cost, but also to allow the agency to consider alternative actions aimed at the collection of fees that would not result in the loss of the cotton crop. For example, the agency could pursue traditional debt collection procedures prior to enforcing a threat of crop destruction. In practice, VDACS has only once come close to

destroying crops since the program's inception in 1986.<sup>1</sup> In that case the recalcitrant grower eventually relented and paid their assessed fees and penalty just prior to the enforcement of the crop destruction threat. Thus, the proposed language essentially describes the agency's actual policy as applied. Since the agency has not strictly followed the current language, the proposed change will not likely have a significant impact. To the extent that the language may have been strictly adhered to in the future, the proposed change could be beneficial in that solutions less costly than crop destruction can be reached to encourage payment of fees and penalties.

VDACS has found that the current \$10.00 per acre penalty assessed for the late payment or nonpayment of fees generates more revenue than is needed to run the boll weevil eradication and reintroduction prevention program. Thus, the agency proposes to reduce the penalty to \$5.00 per acre. The smaller penalty will clearly be beneficial for farm operators who are late paying fees. The lower penalty may increase the probability that farm operators are late paying fees. Assuming that the agency is correct in that the smaller penalty will provide sufficient funds to run the program, this proposed amendment will create a net benefit.

Under the current regulations, VDACS sets the due dates for the official reporting of acreage and payment of assessments on an annual basis. The agency proposes to establish July 1 as the official reporting and payment date for acreage assessments. Setting a fixed date in the regulations for the official reporting of acreage and payment of assessments allows the cotton growers to better plan their planting and financial activities multiple years in advance. Since there is no cost associated with setting a fixed date, this proposed change produces a net benefit.

Businesses and entities affected. The proposed amendments affect the estimated 500 cotton growers<sup>2</sup> in the Commonwealth.

Localities particularly affected. The proposed amendments primarily affect cotton growers, who are largely located in southeastern Virginia.

Projected impact on employment. The proposed amendments are unlikely to affect employment.

Effects on the use and value of private property. The reduced penalty for late fee payments may encourage more farm operators to pay their fees late. The reduced penalty may also slightly increase the value of some farms. The establishment of a set date for the official reporting and payment date for acreage assessments may improve or increase planning activities to a small degree.

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

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<sup>1</sup> Source: VDACS.

<sup>2</sup> Source: VDACS.



## Summary:

This regulation requires all cotton farm operators in Virginia to participate in the eradication program, which includes reporting of acreage planted in cotton and field locations, compliance with all cotton boll weevil regulations, and payment of per-acre fees to support the trapping of all cotton fields. This regulation also restricts the movement of regulated articles, such as seed cotton, gin trash, and used cotton harvesting equipment to prevent the reintroduction of the boll weevil into Virginia by the use of inspections, certificates, permits, compliance agreements, and treatments, if necessary.

The proposed amendments (i) establish the fixed date of July 1 as the official reporting and payment date for acreage assessments rather than requiring the commissioner to set the date annually, (ii) reduce penalties assessed on farm operators for the late payment or nonpayment of fees from \$10 per acre to \$5.00 per acre, (iii) eliminate the mandate for the destruction of the cotton crop for nonpayment of program fees, (iv) clarify that in addition to eradication, the regulation prevents reintroduction of the boll weevil into Virginia, and (v) combine certain sections to improve upon the clarity and intent of the regulation.

## 2 VAC 5-440-10. Definitions.

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

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

"Boll weevil" means the live insect, "Anthonomus grandis grandis" Boheman, in any stage of development.

~~"Board" means the Board of the Virginia Department of Agriculture and Consumer Services.~~

"Boll Weevil Eradication and Exclusion Program" means the program conducted by the Virginia Department of Agriculture and Consumer Services and the Southeastern Boll Weevil Eradication Foundation, Inc., to eradicate the boll weevil and subsequently prevent its reintroduction into areas where it has been eradicated.

"Certificate" means a document issued or authorized by an inspector to be issued under this chapter to allow the movement of regulated articles to any destination.

~~"CFSA" means United States Department of Agriculture, Consolidated Farm Service Agency.~~

~~"Compliance agreement" means a written agreement between a grower, dealer, or mover of regulated articles and the Virginia Department of Agriculture and Consumer Services, in which the former agrees to comply with conditions specified in the agreement by the inspector who executes the agreement on behalf of the department, to prevent the spread of the boll weevil.~~

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

"Compliance agreement" means a written agreement between a grower, dealer, or mover of regulated articles, and the Virginia Department of Agriculture and Consumer Services, United States Department of Agriculture, or both, wherein the former agrees to comply with the requirements of the compliance agreement.

"Cotton" means parts and products of plants of the genus "Gossypium," before processing.

"Cottonseed" means cottonseed from which the lint has been removed.

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

"FSA" means the United States Department of Agriculture, Farm Service Agency.

"Gin trash" means all of the material produced during the cleaning and ginning of seed cotton, bollies, or snapped cotton, except for the lint, cottonseed, and gin waste.

"Grower" means a farm operator or producer, whether the owner of the land or not.

"Infestation" means the presence of the boll weevil, or the existence of circumstances that make it reasonable to believe that boll weevil is present.

"Inspector" means any employee of the Virginia Department of Agriculture and Consumer Services, or other person authorized by the commissioner to enforce the provisions of the quarantine and regulations.

"Limited permit" means a document issued by an inspector to allow the movement of noncertifiable regulated articles to a specified destination for limited handling, use, processing, or treatment.

"Lint" means all forms of raw ginned cotton, either baled or unbaled, except linters and waste.

"Moved (movement, move)" means shipped; offered for shipment to a common carrier; received for transportation or transported by a common carrier; or carried, transported, moved, or allowed to be moved by any means.

"Person" means any individual, corporation, company, society, or association or other organized group.

~~"Regulated area" means the entire Commonwealth of Virginia any state or country in which the boll weevil is known to exist or areas where circumstances make it reasonable to believe that the boll weevil is present.~~

~~"Scientific permit" means a document issued by the Virginia Department of Agriculture and Consumer Services to authorize movement of regulated articles to a specified destination for scientific purposes.~~

"Seed cotton" means cotton as it comes from the field prior to ginning.

"Used cotton harvesting equipment" means equipment previously used to harvest, strip, transport or destroy cotton.

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## 2 VAC 5-440-20. Notice of quarantine.

Under the authority of §§ 3.1-188.20 through 3.1-188.31:2 of the Code of Virginia, a quarantine of the Commonwealth of Virginia and all cotton producing states and countries infested with the boll weevil is hereby established to control, eradicate, and prevent the spread *or reintroduction* of the cotton boll weevil, "*Anthonomus grandis grandis*" Boheman.

## 2 VAC 5-440-30. Regulated articles.

~~A. The following shall not be moved from outside Virginia into this Commonwealth, or between points within Virginia, or interstate any regulated area, in any manner or method, except in compliance with the conditions prescribed in this chapter:~~

1. The boll weevil, "*Anthonomus grandis grandis*" Boheman, in any living state of development.
2. Seed cotton.
3. Gin trash.
4. Used cotton harvesting equipment.
5. Any other products, articles, or means of conveyance of any kind not covered by subdivisions 1 through 4 ~~above of this section~~, when it is determined by an inspector that they present a hazard of spread of the boll weevil and the person in possession is notified.

## 2 VAC 5-440-40. Requirements for program participation.

A. All cotton farm operators in Virginia are hereby required to participate in the eradication/*exclusion* program. Participation shall include timely reporting of acreage and field locations, compliance with regulations, and payment of fees. Farm operators within the Commonwealth shall be notified through either the extension offices, ~~VDACS the department~~, ~~CFSA FSA~~, or newspapers of their program costs on a per acre basis on or before ~~March 15~~ *April 1* of each year. The following procedures are required for participation in the program:

1. ~~Completing a Cotton Acreage Reporting Form at the CFSA office and the payment of a fee based on the measured or certified acreage. The fee and the reporting date to be set by March 1 of each year by the Commissioner of Agriculture and Consumer Services after consultation with the growers FSA office by July 1 of the current growing season for which participation is required. At this time the farm operator shall pay a nonrefundable fee in an amount sufficient to cover estimated program costs as determined by the commissioner. Those farm operators not reporting their acreage by July 1 will not be considered as program participants and will be subject to a penalty.~~
2. All fees shall be paid by the farm operator. Fees shall be made payable to Treasurer of Virginia and collected by ~~CFSA FSA~~.
3. Noncommercial cotton shall not be planted in Virginia unless the grower applies for and receives an exemption to grow cotton. Applications, in writing, shall be made to the ~~State Entomologist Program Manager, Office of Plant and Pest Services, 1100 Bank Street, Room 703, Richmond, VA~~

23219, stating the conditions under which the grower requests such exemption. The decision whether all or part of these requirements shall be exempted shall be based on the following:

- a. Location of growing area,
- b. Size of growing area,
- c. Pest conditions in the growing area,
- d. Accessibility of growing area,
- e. Any stipulations set forth in a compliance agreement between the individual and the Department of Agriculture and Consumer Services that are necessary for the effectuation of the program.

~~B. Farm operators whose CFSA FSA measured acreage exceeds the grower reported acreage by more than 10%, shall be assessed an additional \$5.00 per acre on that acreage in excess of the reported acreage. Any person whose reported acreage exceeds the CFSA measured acreage by more than 10% due to emergency or hardship conditions may apply for a waiver of the additional assessment. Any farm operator applying for a waiver of the additional assessment shall make application in writing to the State Entomologist stating the conditions under which the waiver is requested.~~

~~C. Failure to pay all fees on or before the date established by the commissioner will result in an additional assessment of \$10 per acre. Failure by a farm operator to pay all program costs as of August 1 or upon notification of CFSA measured acreage, whichever is later, shall be a violation of The Virginia Cotton Boll weevil Quarantine. The farm operator when found in violation and upon notification shall completely destroy all cotton not found to be in compliance with the provisions of this section. If such farm operator fails to comply with this chapter, the Commissioner of Agriculture and Consumer Services, through his duly authorized agents, shall proceed to destroy such cotton, and shall compute the actual costs of labor and materials used, and the farm operator shall pay to the commissioner such assessed costs. No damage shall be awarded the grower of such cotton for entering thereon and destroying any cotton when done by the order of the commissioner.~~

~~D. C. A farm operator may apply for a waiver requesting delayed payment under conditions of financial hardship. Any farm operator applying for a waiver shall make application in writing to the Program Manager, Office of Plant and Pest Services, 1100 Bank Street, Richmond, VA 23219. This request must be accompanied by a financial statement from a state or federally chartered bank or lending agency supporting such request. The decision of whether to waive all or part of these additional assessments or payment dates shall be made by the State Entomologist program manager and notification given to the farm operator within two weeks after receipt of such application. The decision shall be based on the following: (i) meteorological conditions, (ii) economic conditions, and (iii) any other uncontrollable destructive forces. If a waiver is granted, payment shall be due at the time the cotton is sold, or by December 1, whichever is sooner.~~

~~D. Failure to pay all fees on or before July 1 will result in a penalty of \$5.00 per acre. Failure by a farm operator to pay all~~

program costs by August 1 shall be a violation of The Virginia Cotton Boll Weevil Quarantine. The farm operator when found in violation and upon notification shall completely destroy all cotton not found to be in compliance with the provisions of this section. If such farm operator fails to comply with these regulations, the Commissioner of Agriculture and Consumer Services, through his duly authorized agents, may proceed to destroy such cotton, and shall compute the actual costs of labor and materials used, and the farm operator shall pay to the commissioner such assessed costs. No damage shall be awarded the grower of such cotton for entering thereon and destroying any cotton when done by the order of the commissioner.

E. Acreage subject to emergency or hardship conditions after all the growers' share of the program have been paid and prior to the initiation of field operations may be considered for a refund. The refund amount will be determined by the actual program cost per acre up to the time of emergency or hardship.

F. The commissioner may purchase growing cotton when he deems it in the best interest of the program. Purchase price shall be based on the ~~C~~FSA FSA farm established yield for the current year.

## **2 VAC 5-440-50. Conditions governing the issuance of certificates and permits to allow the movement of regulated articles.**

A. Certificates shall be issued by ~~the~~ *an authorized* inspector for movement of the regulated articles designated in 2 VAC 5-440-30 under any of the following conditions when:

1. In the judgment of the inspector, they have not been exposed to ~~infestation boll weevil~~ *in any living stage*.
2. They have been examined by the inspector and found to be free of ~~infestation boll weevil~~ *in any living stage*.
3. They have been treated *to destroy boll weevil*, under the observation of the inspector, ~~in compliance with~~ *according to* methods selected by him ~~from procedures known to be effective under the conditions in which applied~~.
4. Grown, produced, stored, or handled in such manner that, in the judgment of the inspector, no ~~infestation boll weevil~~ would be transmitted.

B. Limited permit. Limited permits may be issued by ~~the~~ *an authorized* inspector for the movement of noncertified regulated articles specified under 2 VAC 5-440-30 to specified destinations for limited handling, use, processing, or treatment, when he determines that no hazard of spread of the boll weevil exists.

C. Special permits. Special permits may be issued by the Virginia Department of Agriculture and Consumer Services to allow the movement of boll weevil in any living stage and any other regulated articles for scientific purposes, under conditions prescribed in each specific case.

D. Compliance agreement. Compliance agreements may be issued by ~~the~~ *an authorized* inspector. As a condition of receiving a certificate or limited permit for the movement of regulated articles, any person engaged in purchasing,

assembling, exchanging, handling, processing, utilizing, treating, or moving such article may be required to sign a compliance agreement. The agreement shall stipulate that the required safeguards against the establishment and spread of infestation will be maintained and will comply with the conditions governing the maintenance of identity, handling, and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers.

E. *Use of certificates or permits with shipments. If a certificate or permit is required for the movement of regulated articles, the regulated articles are required to have a certificate or permit attached when offered for movement. If a certificate or permit is attached to the invoice or way-bill, and the articles are adequately described on the certificate, the attachment of a certificate or limited permit to the regulated article will not be required. Certificates or permits attached to the invoice, way-bill or other shipping document, shall be given by the carrier to the consignee at the destination of the shipment, or to an inspector when requested.*

F. *Assembly of articles for inspection. Persons intending to move any regulated articles shall apply for inspection as far in advance as possible. They shall safeguard the articles from infestation. The articles shall be assembled at a place and in a manner designated by the inspector to facilitate inspection.*

G. *Disposition of certificates and permits. In all cases, certificates and permits shall be furnished by the carrier to the consignee at the destination of the shipment.*

## **2 VAC 5-440-60. Cancellation of certificates and permits.**

Any certificate or permit which has been issued or authorized may be withdrawn by the inspector if determined that the holder has not complied with any condition for ~~the~~ *their* use of ~~the documents~~ *or with any applicable compliance agreement*.

## **2 VAC 5-440-80. Assembly and inspection of regulated articles. (Repealed.)**

~~Persons who desire to move regulated articles shall, as far in advance as possible, request an inspector to examine the articles prior to movement. The articles shall be assembled at a place and in a manner designated by the inspector to facilitate inspection.~~

## **2 VAC 5-440-90. Attachment and disposition of certificates or permits. (Repealed.)**

~~A. If a certificate or permit is required for the movement of regulated articles, the certificate or permit shall be securely attached to the outside of the container in which the articles are moved. However, if the certificate or permit is attached to the way-bill or other shipping document, and the regulated articles are adequately described on the certificate, permit, or shipping document, then the certificate or permit need not be attached to each container.~~

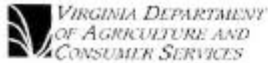
~~B. In all cases, certificates, or permits shall be given by the carrier to the consignee at the destination of the shipment.~~

<b>NOTICE:</b> The form used in administering 2 VAC 5-440, Rules and Regulations for Enforcement of the Virginia Pest Law - Cotton Boll Weevil Quarantine, is listed and published below.
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# Proposed Regulations

## FORMS

~~Boll Weevil Eradication Program~~ Cotton Acreage Reporting Form (rev. 3/99).



### COTTON ACREAGE REPORTING FORM

Boll Weevil Eradication Program

Revenue Code: 814-02-09060

Name & Address: (PLEASE PRINT)	Social Security or FIN #
	Phone:
	Program Year:
	County : (where cotton is planted)
<b>TOTAL ACRES:</b> _____ <b>*ATTACH ITEMIZED FSA ACREAGE REPORTS*</b>	
I certify to the best of my knowledge and belief that the total acreage of cotton listed herein is true and correct.	
Grower's Signature: _____ Date: _____	
<b><u>PAYMENT DUE JULY 1</u></b>	
A. Total acres..... _____	
B. Amount due (total acres X fee per acre)..... _____	
C. Assessment for late payment after July 1 (acres X \$10.00)..... _____	
<b>TOTAL PAID (B+C)</b> ..... _____	
(FSA Office) Fee Collected By:	
Signature: _____	Date: _____
Title: _____	Check No. _____

Office of Plant & Pest Services, P. O. Box 1163, Richmond, VA 23218  
804/786-3515

rev. 3/99

VDACS Office Copy

VA.R. Doc. No. R01-110; Filed August 16, 2002, 11:53 a.m.

\* \* \* \* \*

**Title of Regulation:** 2 VAC 5-500. Rules and Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory (REPEALING).

**Title of Regulation:** 2 VAC 5-501. Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk (adding 2 VAC 5-501-10 through 2 VAC 5-501-110).

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

**Public Hearing Date:** March 13, 2003 - 10 a.m.

Public comments may be submitted until 5 p.m. on December 9, 2002.

(See Calendar of Events section for additional information)

**Agency Contact:** John A. Beers, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 703, Richmond, VA 23219, telephone (804) 786-1453, FAX (804) 371-7792 or e-mail jbeers@vdacs.state.va.us.

**Basis:** Sections 3.1-530.1, 3.1-530.2, 3.1-535, and 3.1-535.1 of the Code of Virginia provide the discretionary authority for the regulation. Section 3.1-530.1 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services (Board) "...to establish definitions, standards of quality and identity, and to adopt and enforce regulations dealing with the issuance of permits, production, importation, processing, grading, labeling, and sanitary standards for milk, milk products, and those products manufactured or sold in semblance to or as substitutes therefor." Section 3.1-530.2 directs the board to be guided by those regulations recommended from time to time by the United States Department of Health, Education and Welfare, and the United States Department of Agriculture when adopting regulations for the purpose of sanitation and to prevent deception. Section 3.1-535 authorizes the board to make and enforce rules governing applications for certificates to manipulate the Babcock or other centrifugal machine for the purpose of determining the composition of milk or cream for purposes of inspection, to determine the composition or value of milk or cream, or to sample or weigh milk or cream as a basis for payment in buying or selling. Section 3.1-535.1 authorizes the board "...to promulgate and enforce rules and regulations governing the equipment, standards, and procedures used in the receiving, weighing, measuring, sampling, and testing of milk or other fluid dairy products when the results are to be used for the purpose of inspection, check testing, or as a basis for payment in buying or selling."

**Purpose:** The goals of the proposed regulation are to (i) protect the public's health and welfare with the least possible costs and intrusiveness to the citizens of the Commonwealth; (ii) ensure the safety and quality of milk produced in Virginia by establishing temperatures at which milk must be kept on the farm and in the dairy plant, and by establishing equipment-design, construction, installation, and use requirements that protect milk from contamination during storage, transfer, and delivery; and (iii) establish standards to be used in measuring, collecting, and evaluating milk samples for purposes of

determining its components (such as fats, solids, and protein, which are the basis for determining how much the farmer is to be paid for his milk) and its suitability (determined by the amount of bacteria it contains, among other things) for consumption by humans.

The proposed regulation will include the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption. The primary purpose of the proposed regulation is to ensure the safety and quality of all milk and milk products produced. The existing regulation covers only cow's milk, but there is significant production of dairy products offered for sale for human consumption made from the milk of goats, sheep, and water buffalo.

All milk and milk products have the same potential to carry pathogenic organisms. Numerous diseases of humans have been documented to be present in the milk of lactating mammals. Brucellosis and tuberculosis are two well-known and documented diseases that are capable of being spread from cows and goats to humans through their milk. Other common pathogens associated with milk and dairy products are: *Staphylococcus*, noted for its toxin production; *Streptococcus*, which causes strep-throat; *Campylobacter jejuni*, which infects the lining of the intestine and causes bloody diarrhea; *Escherichia coli*, which is responsible for causing bloody diarrhea and Hemolytic Uremic Syndrome; *Salmonella*, which also causes diarrhea; *Yersinia enterocolitica*, which causes severe abdominal pain; *Listeria monocytogenes*, which causes fever, vomiting, and can lead to still-births in pregnant women; and *Coxiella burnetii*, which causes Q fever. Some of these diseases can be fatal.

Milk is an excellent growth medium for most organisms including many pathogens. The fact that spoilage organisms and pathogens can grow in milk if they are present or introduced later by poor handling practices makes milk and milk products potentially hazardous if they are not properly processed, handled, packaged, and stored. The regulation ensures the safety and quality of milk by: (i) requiring all milk to be cooled and stored at temperatures that prevent or slow the growth of pathogens and spoilage organisms; (ii) requiring milk to be cooled to storage temperatures quickly and maintained thereat to reduce the time pathogens and spoilage organisms have to grow while the temperature of the milk is being reduced to storage temperature; and (iii) requiring minimum equipment-design, construction, installation, and use requirements that protect milk from contamination during storage, transfer, and delivery.

The proposed regulation establishes standards to be used in measuring, collecting, and evaluating milk samples for purposes of determining its components (such as fats, solids, and protein, which are the basis for determining how much the farmer is to be paid for his milk) and its suitability (determined by the amount of bacteria it contains, among other things) for consumption by humans. Milk samples used for inspection and pay purposes must be truly representative of the entire shipment of milk marketed to protect the buyer and the seller. The proposed regulation establishes: (i) the procedures that must be followed to accurately measure the amount of milk being shipped; (ii) the types of equipment that may be used to collect and store official milk samples; and (iii) the minimum

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# Proposed Regulations

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information that must be recorded on the seller's weigh ticket and the sample container.

The proposed regulation also establishes chain of custody requirements for official milk samples by: (i) requiring persons to obtain a permit to weigh and sample milk prior to weighing or sampling any milk; (ii) establishing sample collection, storage, and transportation procedures; (iii) establishing equipment and records requirements; and (iv) provisions for sample security. Establishing chain of custody for milk samples is essential to enforce the safety and quality requirements on permit holders. The inability of the agency to establish chain of custody on any individual milk sample renders the results of laboratory tests on the sample unenforceable.

Substance: The proposed regulation includes the milk of goats, sheep, water buffalo, and other species of mammals if the milk or dairy products are intended for human consumption. The existing regulation covers the milk from cows only. The primary purpose of the proposed regulation is to ensure the safety and quality of milk produced on Virginia dairy farms. Safety and quality of milk is ensured by requiring all milk for human consumption to be refrigerated and handled in ways which protect the milk from contamination.

The proposed regulation is consistent with the requirements of the Pasteurized Milk Ordinance (PMO) for grade "A" milk that includes the milk from cows, goats, and sheep. The PMO is a model federal regulation for states to adopt that governs the regulation of grade "A" milk and milk products nationwide. The PMO was amended by the May 1999 Interstate Milk Shippers Conference to require permits for milk haulers, persons who weigh and sample milk, milk pickup tanks, and milk transport tanks. Compliance with the provisions of the PMO is essential to maintain Interstate Milk Shipper (IMS) ratings. An IMS rating of ninety or better is required to ship grade "A" milk and milk products out of state. Once every two years each grade "A" milk supply and dairy processor is rated for compliance with the requirements of the PMO. Failure to achieve a satisfactory score of ninety or better prevents receiving states from accepting any milk from the affected milk supply. The only options available to dairy farmers whose supply of milk fails an IMS rating is to market their milk production for manufacturing purposes at substantially reduced pricing or dump it on the farm.

The proposed regulation includes recording thermometer specifications that are consistent with the PMO. The May 1999 Interstate Milk Shipper's Conference modified the PMO to include requirements for recording thermometers to be installed on grade "A" farm bulk milk tanks with specific design and installation requirements.

The PMO was amended in May 2001 to require permits for a milk tank truck cleaning facility and the evaluation of anyone who collects milk samples at a dairy plant once every two years. The proposed regulation includes provisions for permits for persons to operate a tank truck cleaning facility or to sample milk in a dairy plant.

The proposed regulation also establishes certain procedures for permitting laboratories and persons who sample and test milk for pay purposes.

The proposed regulation includes provisions for the cooling, storing, measuring, and sampling of milk without the use of a bulk tank. The existing regulation was developed without considering the needs of small-scale milk producers or milk produced from species other than cows. The small-scale production of goat's milk, sheep's milk, water buffalo's milk, or the milk from other mammals intended for human consumption is not suitable for refrigerated bulk milk tanks. Bulk milk tanks typically require fifty or more gallons of milk to operate properly. Small-scale producers of goat's milk, sheep's milk, or water buffalo's milk seldom produce more than a few gallons of milk per milking, making the use of bulk tanks unfeasible. To foster the developing small-scale dairy industry in Virginia, alternatives to bulk tanks were included in the proposed regulation.

The proposed regulation eliminates all references to fees. Fees used to be charged for milk hauling permits but the authority for them was eliminated by the General Assembly in 1996.

The proposed regulation requires dedicated milk transport tanks to be used to haul any pasteurized milk, milk products, or frozen desserts mix when the products will not be repasteurized at the plant where they are packaged. The primary focus for the regulation is to ensure milk safety. Contaminated milk transport tanks are believed to have caused a large public health outbreak associated with the consumption of ice cream in 1994. The company received pasteurized ice cream mix in milk transport tanks that were also used to haul raw eggs from an egg cracking plant. The transport tanks were not properly washed and sanitized after hauling the raw eggs and salmonella was introduced into the ice cream mix that was being transported. Repasteurization of the mix in the plant prior to packaging or use of dedicated tankers would have avoided this serious public health outbreak. This outbreak caused illness in more than two thousand people nationwide.

The proposed regulation requires the collection of two identical milk samples at each pickup. Currently, a great deal of Virginia's milk is marketed out of state, making the collection of milk samples for compliance with PMO requirements difficult. If milk haulers were required to collect two identical samples from each dairy farm on their milk pickup route, agency personnel could collect one set of milk samples before the load leaves Virginia and the other set of milk samples could accompany the load to its final destination. This will save time and travel costs for inspectors that currently travel to individual dairy farms to procure milk samples needed for compliance with the PMO.

Issues:

**Public:** The proposed regulation will enhance the safety and quality of milk and milk products produced from the milk of goats, sheep, water buffalo, and other mammals by requiring the same protections for all milk as are currently required for cow's milk.

There are no disadvantages to the public.

**Regulated Entities:** The proposed regulation will create a level playing field on which all dairy farmers and dairy processors can compete. The proposed regulation has been crafted to

comply with the requirements of the PMO, the United States Department of Agriculture's (USDA) Recommended Requirements for Milk for Manufacturing Purposes, and the needs of a developing small-scale dairy industry in Virginia. The proposed regulation governs the cooling, storage, sampling, transporting, and testing of all milk for human consumption produced in Virginia. Currently, only producers and processors of grade "A" milk, manufactured grade milk producers, and processors of cow's milk are included under the existing regulation. Persons producing or processing milk from goats, sheep, water buffalo, or other species of mammals are currently regulated under the Virginia Food Laws and related regulations. The Virginia Food Laws and related regulations do not require a permit and are not specific to the dairy industry but are applicable to all food production and processing. Requirements under the Virginia Food Laws and related regulations for milk producers and processors are significantly less stringent than those imposed on Virginia's grade "A" and manufactured grade milk producers and processors. There are currently 950 grade "A" and manufactured grade dairy farms, 14 grade "A" milk processors, and four cheese processors who are regulated under the current regulation. There are seven small-scale cheese processors currently being inspected under the Virginia Food Laws and related regulations. The agency is aware of another six persons who may be producing cheese for sale from goat's milk, who have ceased production of cheese to avoid inspection, or who are appealing convictions for violations of the Virginia Food Laws related to their cheese production and sales. Each of the thirteen persons who engage in the small-scale production of cheese from goat's or sheep's milk will be regulated for the first time under the proposed regulation.

The proposed regulation will require each person formerly regulated under the Virginia Food Laws to: (i) provide a milkhouse or milkroom of sufficient size in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils can be conducted; (ii) cool their milk to 40°F or less (but not frozen) within two hours after milking; (iii) provide containers for storing or transporting any milk that are made from food grade materials that are easily cleanable; and (iv) determine the amount of milk offered for sale or purchased in gallons or pounds. Five of the thirteen persons regulated under the Virginia Food Laws are in substantial compliance with the proposed regulation. The other eight persons and any person who wishes to enter the dairy business producing milk in the future would need to provide a milkhouse or milkroom on his dairy farm to be in substantial compliance.

Persons employed by a milk plant who are responsible for collecting milk samples from milk tank trucks for laboratory testing prior to receipt of the milk into the plant will be required to obtain a permit from the agency and to be evaluated at least once during the first year after their permit is issued and every two years thereafter as a condition for permit renewal. This requirement is essential to conform with the PMO and IMS requirements and strengthens the agency's ability to establish chain of custody for milk samples used as a basis for regulatory actions.

Persons employed by the agency and the Virginia Department of Health who sample milk or milk products in a milk plant will be required to obtain a permit from the agency and be evaluated at least once during the first year after their permit is issued and every two years thereafter as a condition for permit renewal. This requirement is essential to conform with the PMO and IMS requirements and strengthens the agency's ability to establish chain of custody for milk samples used as a basis for regulatory actions.

New permitting requirements have been established for persons who wish to operate a milk tank truck cleaning facility. This requirement is essential to conform with the PMO and IMS requirements and establishes the facilities necessary to wash and sanitize milk tank trucks. Currently, there is one facility in Virginia that washes milk tank trucks that formally was permitted as a milk transfer station. Because the facility no longer handles any milk at their transfer station, they no longer qualify to hold a transfer station permit. Obtaining a permit to operate a milk tank truck cleaning facility will help ensure that milk tank trucks washed and sanitized by the firm will be accepted by milk plants receiving milk and milk products transported in them.

Persons transporting pasteurized milk, pasteurized milk products, and pasteurized frozen dessert mix to or from milk plants will be required to use only dedicated tankers for hauling these products if the products will not be pasteurized again prior to packaging in the milk plant receiving them. This requirement is intended to prevent the cross-contamination of pasteurized milk or milk products with unpasteurized milk or milk products that may be transported in the same tank immediately before the pasteurized milk or milk product is loaded.

Agency: The cooling, storing, sampling, and transporting of milk would be regulated under the same laws and regulations for all dairy farms producing milk in Virginia. The cooling, storing, sampling, and transporting of milk on grade "A" dairy farms producing milk from cows, goats, or sheep and manufactured grade dairy farms producing milk from cows are regulated under the existing regulation. Dairy farms producing manufactured grade milk from goats, sheep, water buffalo, or other mammals (except humans) are currently regulated under the Virginia Food Laws and related regulations.

The Dairy Inspection Program utilizes administrative processes to regulate grade "A" dairy farms and manufactured grade dairy farms. Inspectors conducting inspections under the regulations governing milk for manufacturing purposes also conduct inspections under authority of the grade "A" milk regulations and are trained specifically in the production and processing methods used within the dairy industry.

The Food Safety Program utilizes the criminal justice system to regulate the food industry in Virginia. Violations of the Virginia Food Laws or related regulations must be prosecuted in court. Food Safety Specialists have broad training in food processing and safety; but no specific training related to dairy products or milk production.

Because dairy inspection personnel are not trained in the policies and procedures utilized to conduct inspections, collect samples, and enforce the Virginia Food Laws, a Food Safety

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Specialist is assigned with a Dairy Inspector to form a joint inspection team. Likewise, a Food Safety Specialist is not trained in the specifics of milk production and dairy product processing. It takes both staff members together to possess the needed knowledge, skills, and abilities to perform adequate sanitary inspections of dairy facilities operated under the Virginia Food Laws.

This situation causes the agency to send two staff members to perform inspections when personnel resources could be utilized more effectively. The proposed regulation will eliminate the need to send more than one staff member to any dairy farm or dairy plant.

The proposed regulation will allow the agency to regulate all dairy farms and dairy plants under an administrative process. Administrative processes are much more efficient and economical to enforce than prosecutions in court.

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

Summary of the proposed regulation. The Department of Agriculture and Consumer Services (department) proposes to (i) make these regulations applicable to the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption, and (ii) require permits for milk pickup trucks, milk transport tanks, laboratories, persons testing milk samples for pay purposes, persons collecting official milk samples in dairy plants, and milk tank truck cleaning facilities.

Estimated economic impact.

Noncow Milk. The current regulations are applicable only to the milk of cows. The proposed regulations apply to all nonhuman mammalian milk intended for human consumption. According to the department, there are currently approximately thirteen dairy farms producing manufactured grade noncow milk from goats, sheep, water buffalo, or other nonhuman mammals. These farms will be required to have a milkhouse or milkroom in which to cool, handle, and store milk and to wash, sanitize, and store milk containers and utensils. The cost to each farm will depend on whether it has an existing building that can be modified for use as a millhouse or milkroom. The modifications required would include providing concrete floors, doors, windows, lighting, plumbing, floor drains, wash vats, and hand washing facilities within an existing structure. The department estimates the costs for

these improvements to be approximately \$3,000. Construction of a millhouse from the ground up would cost about \$10,000.<sup>1</sup> Thus, the estimated cost to those farms that do not already comply with this proposed requirement would range from \$3,000 to \$10,000.

The primary benefit of requiring this amendment concerns reducing public health risks. The proposal to require dairy farms that produce manufactured grade milk from goats, sheep, water buffalo, or other nonhuman mammals to have a milkhouse or milkroom is designed to minimize the chance of contamination with harmful bacteria. The department states that "all milk and milk products have the same potential to carry pathogenic organisms. Numerous diseases of humans have been documented to be present in the milk of lactating animals."

But based upon the evidence provided by VDACS, it is very rare for life-threatening illnesses to occur due to the ingestion of noncow milk products. The agency cites one salmonella-induced fatality in France during 1993 and four brucellosis-induced fatalities in New Mexico and Texas during 1983 due to the ingestion of cheese made from unpasteurized goat's milk. The agency has provided no evidence of any health problems in Virginia specifically linked to the ingestion of noncow milk products.

Given the available evidence, it appears that the risk of life-threatening illness due to the consumption of noncow milk products in Virginia is extremely small. The risk of non life-threatening illnesses, such as diarrhea, appears to be greater. But the public commonly chooses to take risks of a similar magnitude. For example, people willingly eat raw fish and steak tartare, choose to cook and consume hamburgers less well done than recommended by the CDC, eat raw vegetables without washing thoroughly, etc., despite CDC warnings and common knowledge of the health risks.

The proposed regulations do not ban the production and sale of noncow milk products in Virginia. But the proposal to require a milkhouse or a milkroom does significantly increase the cost of production. Holding other factors constant, significantly raising the cost of production will reduce the quantity produced of noncow milk products and raise the price of the products that are sold. It is not clear that the benefits of an unspecified reduction in risk of disease outweighs the costs to consumers of higher prices and lower product availability, as well as the lower net income for the small, independent producers.

Perhaps rather than require the producers to incur significant increases in production costs, the noncow dairy products could be required to be labeled with information accurately reflecting the relative risk of ingesting the product. The public would then be able to make an informed decision as to whether the benefits of consumption are worth the potential risk of disease. A producer who has met all the proposed requirements for the permit could perhaps be permitted to use a label indicating a reduced probability of contagion.

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<sup>1</sup> Virginia Department of Agriculture and Consumer Services estimate.



Permits. The department proposes to require several new permits in order to remain in compliance with the Pasteurized Milk Ordinance (PMO). There will be no fees associated with the permits. The PMO is a model federal regulation for states to adopt that governs the regulation of Grade "A" milk and milk products nationwide. The PMO was amended by the May 1999 Interstate Milk Shippers Conference to require permits for milk haulers, persons who weigh and sample milk, milk pickup tanks, and milk transport tanks. In May 2001 the PMO was amended to require permits for milk tank truck cleaning facilities and the evaluation of anyone who collects milk samples at a dairy plant once every two years. Compliance with the provisions of the PMO is necessary in order to maintain sufficiently high Interstate Milk Shipper (IMS) ratings. Failure to maintain sufficiently high IMS ratings prevents receiving states from accepting any milk from the affected supply. Thus, the proposed new permits are necessary in order to maintain Virginia's dairy farmers' ability to ship their products out of state.

There are currently 39 contract haulers and subcontract haulers operating in Virginia. These individuals will be required to provide seals or locks on the openings into each milk tank truck they operate. The average cost of this proposed requirement is approximately \$250 per tank truck.<sup>2</sup> There are approximately 300 milk tank trucks in service in the Commonwealth.<sup>3</sup>

Businesses and entities affected. The proposed regulations affect the 925 grade "A" dairy farms, 25 manufactured grade cow dairy farms, 13 manufactured grade noncow dairy farms, 39 contract milk haulers and subcontract milk haulers, 491 individuals permitted to measure, weigh, and sample milk, and 40 employees of milk plants who receive official milk samples that will be required to obtain a permit. Due to the additional costs for farmers and haulers related to the proposed regulatory amendments, consumers of milk and milk products may face slightly higher prices.

Localities particularly affected. The proposed changes potentially affect all localities in the Commonwealth, but areas with milk haulers, dairy farms, and dairy plants in particular.

Projected impact on employment. Some small producers of goat cheese may choose to cease production rather than incur the costs associated with adding a milkhouse or milkroom.

Effects on the use and value of private property. The proposal to require that manufactured grade noncow dairy farms have a milkhouse or a milkroom will cost those farms not already in compliance approximately \$3,000 to \$10,000. Given the low net income of many of these producers, a significant portion may cease production due to the increased costs. The proposed required permit for contract milk haulers and subcontract milk haulers will cost the haulers about \$250 per tank truck in new equipment. The value of the farmers' and haulers' businesses will be reduced by these new costs.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency wishes to comment on the statement under the title "Businesses and Entities Affected" – the last sentence states, "Due to the additional costs for farmers and haulers related to the proposed regulatory amendments, consumers of milk and milk products may face slightly higher prices." The price for milk is set by its availability nationally. The amendments to a regulation of the Commonwealth of Virginia do not impact the national price of milk.

In addition, the agency wishes to comment on the statement under the title "Effects of the Use and Value of Private Property" – the last sentence states, "The value of the farmers' and haulers' businesses will be reduced by these new costs." The values of the farmers' and haulers' businesses will increase, not decrease. If the new requirements are adopted, only farms and milk hauling equipment that meets the new requirements will be allowed to operate. In this case, a farm or milk hauling business would be worth more to a prospective buyer because the buyer will know the farm or milk hauling business complies with the requirements to operate in Virginia and the prospective buyer will not have to make the improvements themselves. Additionally, where a milkroom has been added to a farm, the value of the farm will always increase because the milkroom structure will represent a permanent addition to buildings on the property and may be used for many other purposes other than a milkroom.

## Summary:

*Due to the extensive amendments to this regulation, 2 VAC 5-500, Rules and Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory, is proposed to be repealed and replaced by 2 VAC 5-501, Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk adopted concurrently. The proposed amendments (i) make the regulations applicable to the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption; (ii) require permits for milk pickup trucks, milk transport tanks, laboratories, and persons testing milk samples for pay purposes, persons collecting official milk samples in dairy plants, and milk tank truck cleaning facilities; and (iii) establish administrative enforcement procedures for the agency to follow when summarily suspending a permit.*

### CHAPTER 501.

#### REGULATIONS GOVERNING THE COOLING, STORING, SAMPLING AND TRANSPORTING OF MILK.

#### **2 VAC 5-501-10. Definitions.**

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

*"Bulk milk hauler" means any person who holds a permit issued by the Virginia Department of Agriculture and Consumer Services to collect official milk samples and transport: (i) raw milk from a dairy farm to a milk plant, receiving station, or transfer station; or (ii) raw milk products*

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<sup>2</sup> Source: Virginia Department of Agriculture and Consumer Services.

<sup>3</sup> Ibid.

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from one milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.

"Bulk milk pickup tanker" means a vehicle, including the truck, tank, and those appurtenances necessary for its use, used by a bulk milk hauler or bulk milk sampler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.

"Bulk milk pickup tanker commingled milk" means the commingled raw milk from two or more dairy farms which has not been removed from the bulk milk pickup tanker.

"Bulk milk sampler" means any person who holds a permit issued by the Virginia Department of Agriculture and Consumer Services to collect, store, or transport official milk samples.

"Cancel" means to permanently nullify, void, or delete a permit issued by the Virginia Department of Agriculture and Consumer Services.

"Contract hauler" or "subcontract hauler" means any person who contracts; (i) to transport raw milk from a dairy farm to a milk plant, receiving station, or transfer station; or (ii) to transport raw milk or milk products between a milk plant, receiving station, or transfer station and another milk plant, receiving station, or transfer station.

"Dairy farm" means any place or premises where any cow, goat, sheep, water buffalo, or other mammal (except humans) is kept, from which any cow, goat, sheep, water buffalo, or other mammal (except humans) milk, dairy product, or milk product is provided, sold, or offered for sale for human consumption.

"Dairy plant sampler" means any employee of: (i) a milk plant who is responsible for collecting official milk samples in the Commonwealth of Virginia; (ii) the Virginia Department of Agriculture and Consumer Services who is responsible for collecting raw milk or pasteurized milk product samples at a milk plant; or (iii) the Virginia Department of Health who is responsible for collecting raw milk or pasteurized milk product samples at a milk plant and who holds a permit issued by the Virginia Department of Agriculture and Consumer Services for the collection of official milk samples for regulatory purposes.

"Dairy product" means butter, natural or processed cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated whole or skim milk, condensed whole milk, and condensed plain or sweetened skim milk.

"Deny" means the Virginia Department of Agriculture and Consumer Services will not issue a permit to the applicant.

"Farm bulk cooling or holding tank" means any tank installed on a dairy farm for the purpose of cooling or storing raw milk.

"Milk" means the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, goats, sheep, water buffalo, or other mammal (except humans) intended for human consumption excluding that obtained before and after birthing for such a period as may be necessary to render the milk practically colostrum-free.

"Milk plant" means any place, premises, or establishment where milk, milk products, or dairy products are collected,

handled, processed, stored, pasteurized, aseptically processed, bottled, packaged, or prepared for distribution.

"Milk producer" means any person who operates a dairy farm and provides, sells, or offers any milk for human consumption.

"Milk product" means: (i) acidified lowfat milk, acidified milk, acidified milk product, acidified skim milk, acidified sour cream, acidified sour half-and-half, aseptically processed milk, aseptically processed milk product, buttermilk, coffee cream, concentrated milk, concentrated milk product, cottage cheese, cottage cheese dry curd, cream, cultured half-and-half, cultured milk, cultured lowfat milk, cultured skim milk, cultured sour cream, dry curd cottage cheese, eggnog, eggnog-flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate, goat milk, half-and-half, heavy cream, lactose-reduced lowfat milk, lactose-reduced milk, lactose-reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat milk, lowfat yogurt, low-sodium lowfat milk, low-sodium milk, low-sodium skim milk, milk, nonfat milk, nonfat yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, sheep milk, skim milk, sour cream, sour half-and-half, table cream, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, or yogurt; (ii) any of the following foods: milk, lowfat milk, or skim milk with added safe and suitable microbial organisms; or (iii) any food made with a food specified in (i) of this definition by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Milk products also include those dairy foods made by modifying the federally standardized products listed above in accordance with 21 CFR 130.10 – Requirements for foods named by use of a nutrient content claim and a standardized term.

"Milk tank truck" means the term used to describe both a bulk milk pickup tanker and a milk transport tank.

"Milk tank truck cleaning facility" means any place, premise, or establishment, separate from a milk plant, receiving station, or transfer station where a bulk milk pickup tanker or milk transport tank is cleaned and sanitized.

"Milk transport tank" means a vehicle, including the truck and tank, used by a bulk milk hauler to transport bulk shipments of milk, milk product, or dairy product from a milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.

"Official laboratory" means a facility where biological, chemical, or physical testing is performed that is operated or approved by the state regulatory authority.

"Official milk sample" means each sample of milk, milk product, or dairy product that is collected for compliance with requirements of this chapter by a person who holds a permit to collect milk, milk product, or dairy product samples issued by the state regulatory authority.

"Other mammals" means any mammal except humans, cows, goats, sheep, or water buffalo.

"Pay purpose laboratory" means a laboratory that conducts tests for the purpose of determining the composition of milk, milk product, cream, or dairy product as a basis for payment in

buying or selling any milk, milk product, cream, or dairy product.

"Permit" means the written document issued by the Virginia Department of Agriculture and Consumer Services to a person qualified to be a bulk milk hauler, bulk milk sampler, contract hauler, subcontract hauler, dairy plant sampler, pay purpose tester, or to operate a pay purpose laboratory, bulk milk pickup tanker, or milk transport tank.

"Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, institution, or association.

"Raw" means unpasteurized.

"Receiving station" means any place, premises, or establishment where any milk, milk product, or dairy product is received, collected, handled, stored or cooled, and prepared for further transporting.

"Revoke" means to permanently annul, repeal, rescind, countermand, or abrogate the opportunity for any person or persons to hold a permit issued by the Virginia Department of Agriculture and Consumer Services.

"State regulatory authority" means the Virginia Department of Agriculture and Consumer Services, the agency having jurisdiction and control over the matters embraced within this chapter.

"Summarily suspend" means the immediate suspension of a permit issued by the state regulatory authority without the permit holder being granted the opportunity to contest the action prior to the effective date and time of the suspension.

"Suspend" means to temporarily nullify, void, debar, or cease for a period of time a permit issued by the Virginia Department of Agriculture and Consumer Services.

"Transfer station" means any place, premises, or establishment where milk, dairy products, or milk products are transferred directly from one transport milk tank to another, or from one or more bulk milk pickup tankers to one or more transport milk tanks.

"Transport-commingled milk" means any raw milk, milk product, or dairy product that has been removed from one or more bulk milk pickup tankers or any silo, vat, or container in a milk plant and loaded into a milk transport tank.

"Transport tank operator" means any person who hauls transport-commingled milk.

"3-A Sanitary Standards" means the standards for dairy equipment and accepted practices formulated by the 3-A Sanitary Standards Committees representing the International Association for Food Protection, the U. S. Public Health Service, and the Dairy Industry Committee and published by the International Association for Food Protection.

## **2 VAC 5-501-20. Intent, scope, and interpretation.**

A. The Virginia Board of Agriculture and Consumer Services hereby finds that a uniform regulation is needed to govern the cooling or storage of milk on Virginia dairy farms; the sampling of milk in storage and the handling of milk samples from the dairy farm to the laboratory; the hauling, transferring, storage, handling, and delivery of milk from the farm to the processing

plant; the hauling, transferring, handling, and delivery of milk, milk products, and dairy products between one milk plant and another; and the handling and testing of milk, milk product, and dairy product samples in laboratories if the test results will be used as a basis for payment. This chapter shall be applicable throughout the Commonwealth, shall be enforced on a statewide basis, and shall regulate all milk, milk products, and dairy products produced on Virginia dairy farms or moved between milk plants.

B. Unless otherwise provided by state law or regulations of the Virginia Board of Agriculture and Consumer Services, this chapter shall be interpreted and enforced by the Department of Agriculture and Consumer Services. In the interest of the consumer and to facilitate the orderly marketing of milk, the Commissioner of Agriculture and Consumer Services may establish, publish, and enforce interpretations of this chapter.

C. This chapter defines milk cooling or storage tanks, pay purpose laboratories, dairy farms, plants, etc.; sets forth permit requirements, milkhouse and associated facilities required; construction, location and operation of milk cooling or storage tanks; establishes minimum cooling and storage requirements for milk on the farm and in transport; sampling and measuring of milk produced and sold from dairy farms; and facilities and operations required in hauling milk from the farm to the processing plant.

## **2 VAC 5-501-30. Permits.**

A. It shall be unlawful for any person who does not possess a permit from the state regulatory authority of the Commonwealth of Virginia to: (i) operate a bulk milk pickup tanker; (ii) sample, measure, and collect milk from farm bulk milk cooling or holding tanks; (iii) sample, measure, or receive milk in cans or containers into any milk plant, receiving station, or transfer station; (iv) possess or transport official milk samples; (v) collect official milk samples from bulk milk pickup tankers or milk transport tanks; or (vi) collect official milk samples of pasteurized milk or pasteurized milk products from a milk plant. Each person shall pass a test as prescribed by the state regulatory authority. Qualifications of such persons shall be those set forth by laws, regulations, and procedures prescribed by the state regulatory authority. All such permits shall expire on December 31 next following the date of issuance. All such permits shall be renewed without further examination if the permit holder renews his permit within one year after the permit's expiration date. No permit to operate a bulk milk pickup tanker to sample, measure, and collect milk from farm bulk milk cooling or holding tanks shall be renewed without the applicant satisfactorily passing a test as prescribed by the state regulatory authority if the applicant did not renew his permit within one year after it expired. Each bulk milk sampler shall be evaluated by the state regulatory authority at least once during the first year after his permit is issued and a minimum of once every two years thereafter as a condition of permit renewal. It shall be the responsibility of each bulk milk sampler to ensure he is available to be evaluated by the state regulatory authority.

B. It shall be unlawful for any person who does not possess a permit from the state regulatory authority of the Commonwealth of Virginia to operate a milk tank truck cleaning facility. Each milk tank truck cleaning facility shall be

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inspected and determined to be in compliance with all requirements of this chapter by the state regulatory authority prior to permit issuance. All such permits shall expire on December 31 next following the date of issuance.

C. Each contract hauler and subcontract hauler shall obtain a permit from the state regulatory authority in order to contract for the hauling of milk from a dairy farm to a milk plant or transfer station. Each contract hauler and subcontract hauler shall also obtain a permit from the state regulatory authority for each bulk milk pickup tanker and each milk transport tank they operate. Each bulk milk pickup tanker and each transport tank shall be identified by a five-digit number preceded by the letters "VA". The first two digits of the five-digit number shall identify the contract hauler or subcontract hauler as assigned by the state regulatory authority and the last three digits of the five-digit number shall identify the specific bulk milk pickup tanker or transport tank as assigned by the state regulatory authority. Each contract hauler and subcontract hauler shall identify each bulk milk pickup tanker and transport tank on the left hand side of the rear bulkhead of each tank with permanent, water resistant letters and numbers. Each contract hauler and subcontract hauler shall use only letters and numbers to identify a bulk milk pickup tanker or milk transport tank that are at least three inches tall and one-and-one-half inches wide. Each contract hauler and subcontract hauler shall provide the state regulatory authority with the name of the manufacturer, year made, model number, capacity, serial number, number of compartments, whether the tanker is a bulk milk pickup tanker or milk transport tank, delivery address, mailing address, telephone, and contact information for each bulk milk pickup tanker and milk transport tank for permitting purposes. Permits for contract haulers, subcontract haulers, bulk milk pickup tankers, and milk transport tanks shall expire on December 31 next following the date of issuance and shall be renewed annually.

D. It shall be unlawful for any person who does not possess a permit from the state regulatory authority of the Commonwealth of Virginia to operate a pay purpose laboratory or to test milk for pay purposes. Each person employed by a pay purpose laboratory who is involved in testing milk for pay purposes shall pass a test as prescribed by the state regulatory authority. Qualifications of such persons shall be those set forth by laws, regulations, and procedures prescribed by the state regulatory authority. All such permits shall expire on December 31 next following the date of issuance and shall be renewed annually. All such permits shall be renewed without further examination if the permit holder renews within one year after the permit's expiration date.

E. Only a person who complies with this chapter shall be entitled to receive and retain such a permit. Permits or identification numbers shall not be transferable with respect to persons, equipment, or locations.

F. The state regulatory authority may cancel, suspend, or revoke the permit of any person, or may deny to any person a permit if:

1. It has reason to believe that a public health hazard exists;

2. The permit holder fails to engage daily in the business for which the permit was issued;

3. The permit holder was not evaluated by the state regulatory authority if required for permit renewal;

4. The permit holder fails to comply with any requirement of this chapter, or of §§ 3.1-420 through 3.1-424, §§ 3.1-530.1 through 3.1-530.10, §§ 3.1-531.1 through 3.1-542, or §§ 3.1-544 through 3.1-545.1 of the Code of Virginia;

5. The permit holder has interfered with the state regulatory authority in the performance of its duties;

6. The person supplies false or misleading information to the state regulatory authority: (i) in the person's application for a permit; (ii) concerning the identity of the person who will control the business or equipment that is the subject of the permit; (iii) concerning the amount of milk, milk product, or dairy product that the person weighs, samples, tests, or transports; (iv) concerning the distribution of the person's milk, milk product, or dairy product; (v) concerning any investigation conducted by the state regulatory authority; or (vi) concerning the location of any part of the person's operation or equipment that is subject to a permit;

7. The permit holder engages in fraudulent activity regarding: (i) the amount of milk, milk product, or dairy product the person weighs, samples, tests, or transports; (ii) the collection of samples used to determine compliance with any provision of 2 VAC 5-490, 2 VAC 5-530, or this chapter; or (iii) the collection or testing of samples used for pay purposes;

8. The permit holder fails to correct any deficiency that the state regulatory authority has cited in a written notice of intent to suspend the person's permit, as a violation of this chapter; or

9. The authority in another state responsible for issuing permits to contract haulers, subcontract haulers, bulk milk haulers, bulk milk samplers, dairy plant samplers, transporters of official samples, pay purpose laboratories, or testers of milk samples for pay purposes has suspended, or revoked the permit of the person in that state for any act or omission that would violate this chapter or the statutes under which this chapter was adopted, had the act or omission occurred in the Commonwealth.

G. The state regulatory authority may summarily suspend the permit of any person for violation of subdivisions F 1 or F 8 of this section.

H. Each bulk milk sampler and bulk milk hauler shall ensure that one complete set of milk samples representing each of the milk pickups on each load of farm pickup milk in his possession shall accompany the load to its destination. No person may remove the last complete set of milk samples from a bulk milk pickup tanker prior to its delivery to a milk plant, receiving station, or transfer station.

- I. Each person who holds a permit to produce milk shall store a minimum of the past 30 days bulk milk pickup tickets in his milkroom for use by the state regulatory authority if he ships his milk by bulk shipment.

J. Each person who operates a dairy farm shall abstain from selling any milk from his dairy farm after his milk tests positive for excessive drug residues until notified by the state regulatory authority that a followup official milk sample taken from his milk supply tested negative for excessive drug residues.

K. To provide for permitting reciprocity between states, the state regulatory authority may issue a Virginia permit to any bulk milk hauler or bulk milk sampler who holds a valid permit issued by the regulatory authority in another state without that person having to take or pass a test in Virginia if the person will be picking up or sampling milk in Virginia.

L. Each person who operates a dairy farm shall use only a farm bulk milk pickup tanker or milk transport tanker for direct loading and storage of milk on his dairy farm if: (i) the milk tank truck is equipped with a means to collect representative milk samples approved by the state regulatory authority at his dairy farm; (ii) the milk tank truck is always delivered to the same milk plant in Virginia where a representative milk sample may be obtained by the state regulatory authority or (iii) the operator of the dairy farm arranges for official milk samples to be collected and delivered to a laboratory operated by the state regulatory authority.

M. Each bulk milk hauler, bulk milk sampler, contract hauler, and subcontract hauler who transports any pasteurized milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix shall use only a milk tank truck that is dedicated solely to transport or hold pasteurized milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix if the pasteurized milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix will not be repasteurized in the milk plant receiving the pasteurized milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix prior to being packaged for sale.

## **2 VAC 5-501-40. Milkhouse or milkroom; construction and facilities.**

Each person who operates a dairy farm shall:

1. Provide a milkhouse or milkroom of sufficient size in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted;
2. Provide (i) incandescent lighting fixtures of 100 watts or more capacity; or (ii) fluorescence lighting fixtures of 40 watts or more capacity in his milkhouse or milkroom; and (iii) lighting fixtures that are located near, but not directly above, any farm bulk milk tank if one is installed;
3. Provide sufficient light in the milkhouse or milkroom to illuminate the interior of each farm bulk milk tank installed on the dairy farm for inspection purposes. The person's lighting fixture for illuminating the interior of each farm bulk milk tank shall be either permanently installed or portable and battery operated;
4. Provide ventilation in his milkhouse or milkroom sufficient to prevent condensation from forming on the milkhouse ceiling or walls. No person who operates a dairy farm shall install vents in a milkhouse ceiling if the vents are located

directly above any part of a farm bulk milk tank, wash vat, hand basin, equipment storage rack or floor drain. Each person who operates a dairy farm shall install only vents in a milkhouse ceiling that comply with the following:

- a. Each vent shall be constructed to form a solid chimney between the milkhouse ceiling and the roof of the building so that there are no openings for dust, insects, birds, or other debris to enter the chimney and fall into the milkhouse or milkroom;
  - b. Each vent shall be screened at the top of the chimney after it exits the roof to prevent the entrance of insects and birds; and
  - c. Each vent shall be capped with a rainproof covering to prevent water and snow from falling down into the milkhouse or milkroom;
5. Not install a forced air heating or cooling vent directly over any farm bulk milk tank, wash vat, equipment storage rack, or hand basin;
  6. Provide in his milkhouse or milkroom a water hose that complies with the following requirements:
    - a. The water hose shall be of sufficient length to reach all parts of the milkhouse;
    - b. The water hose shall be connected to a permanently mounted water valve; and
    - c. The water hose shall be equipped with facilities for storing the water hose above the floor;
  7. Provide in his milkhouse or milkroom a separate, permanently installed hand-washing facility with hot and cold running water under pressure supplied through a mix valve, soap, and single service paper towels;
  8. Provide only potable water under pressure in his milkhouse from a public or private supply properly developed, constructed, and maintained;
  9. Store in his milk house or milk room the weighing and sampling receipt from each milk pickup for a minimum of the past 60 days if his milk is picked up by a bulk milk hauler; and
  10. Sell his milk production only to a person who holds a milk plant permit issued by the state regulatory authority of Virginia or another state.

## **2 VAC 5-501-50. Cooling temperature and storage standards for milk stored on a dairy farm.**

A. Each person who operates a dairy farm shall cool his raw milk to 40°F or cooler, but not frozen, within two hours after milking and the temperature at any time thereafter shall not be warmer than 50°F. Raw milk that is warmer than a temperature of 50°F two hours after the first milking or at any time thereafter shall be deemed a public health hazard and shall not be utilized in any milk, milk product, or dairy product, offered for sale, or sold.

B. No person who operates a dairy farm and holds a grade "A" dairy farm permit shall sell or offer to sell any milk as grade

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"A" milk if the age of the milk is older than 52 hours after the completion of the first milking.

C. No person who operates a dairy farm and holds a permit to produce milk for manufacturing purposes shall sell, offer to sell, or process any milk for manufacturing purposes if the age of the milk is older than 76 hours after the completion of the first milking. Raw milk for manufacturing purposes older than 76 hours shall be deemed to be a public health hazard.

### **2 VAC 5-501-60. Construction and operation of farm bulk milk cooling or holding tanks, recording thermometers, interval timing devices, and other required milkhouse or milkroom facilities.**

A. Each person who operates a dairy farm and installs one or more farm bulk cooling or holding tanks in his milkhouse shall provide the following facilities:

1. A milk hose port opening no larger than eight inches in diameter through a wall in the milkhouse closest to the area the bulk milk pickup tanker will be parked to receive the milk from each farm bulk cooling or holding tank;
2. The hose port shall be provided with a self-closing door which shall open to the outside;
3. The hose port shall be of sufficient height above the milkhouse floor and the outside apron to prevent flooding or draining of the milkhouse;
4. An outside apron constructed of concrete or other equally impervious material shall be provided on the outside of the milkhouse directly beneath the hose port to protect the milk-conducting equipment from contamination;
5. Each outside apron shall be a minimum of four inches thick if constructed of concrete and measure a minimum of two feet by two feet horizontally; and
6. Each outside apron constructed of a material other than concrete shall measure a minimum of two feet by two feet horizontally.

B. Each person who operates a dairy farm and installs one or more farm bulk cooling or holding tanks in his milkhouse or milkroom shall comply with the following requirements:

1. Each farm bulk cooling or holding tank shall comply with all the requirements contained in:
  - a. 3-A Sanitary Standards for Farm Milk Cooling and Holding Tanks, Document No. 13-09 (Nov. 1993); or
  - b. 3-A Sanitary Standards for Farm Milk Storage Tanks, Document No. 30-01 (Sept. 1984);
2. Each farm bulk cooling or holding tank shall be equipped with an indicating thermometer accurate to plus or minus 2.0°F and capable of registering the temperature of the milk in the tank before it reaches 10% of the tank's volume;
3. Each farm bulk cooling or holding tank shall be installed to comply with the following minimum clearance distances around, above, and below each farm bulk cooling or holding tank:

a. Three feet measured horizontally between a wash vat and the outermost portion of any farm bulk cooling or holding tank;

b. Three feet measured horizontally in a 180-degree arch from the front of the tank where the outlet valve is located;

c. Two feet measured horizontally from the sides and rear of any farm bulk cooling or holding tank to any wall, shelves, water heater, hand-basin, or other object;

d. Eighteen inches measured horizontally from the outermost portion of any farm bulk cooling or holding tank to any floor drain and the floor drain shall not be located underneath the tank;

e. Three feet measured vertically from the top of the manhole cover of any farm bulk cooling or holding tank to the ceiling;

f. Eight inches measured vertically from the floor underneath the bottom of any round farm bulk cooling or holding tank that measures greater than 72 inches in diameter;

g. Four inches measured vertically from the floor underneath the bottom of any round farm bulk cooling or holding tank that measures equal to or less than 72 inches in diameter; and

h. Six inches measured vertically from the floor underneath the bottom of any flat bottom farm bulk cooling or holding tank;

4. Farm bulk cooling or holding tanks installed through a milkroom wall shall meet the following minimum requirements:

a. The area between the farm bulk cooling or holding tank and the wall shall be tightly sealed;

b. All vents and openings on the farm bulk cooling or holding tank located outside the milkroom shall be protected from dust, insects, moisture, and other debris which might enter the tank;

c. All agitators located outside the milkroom shall be equipped with a tightly fitting seal between the bottom of the agitator motor and the top of the farm bulk cooling or holding tank;

5. Each person who operates a dairy farm shall ensure that each farm bulk cooling or holding tank is installed with a foundation of sufficient strength to support the tank when it is full;

6. Each person who operates a dairy farm shall obtain prior approval from the state regulatory authority for each farm bulk cooling or holding tank and its installation before it is installed on the person's dairy farm; and

7. Each person who operates a dairy farm shall ensure each farm bulk cooling or holding tank on his farm is installed, gauged, and a volume chart prepared in compliance with § 3.1-941.1 of the Code of Virginia. Each farm bulk cooling or holding tank and any gauge rod, surface gauge, gauge, or gauge tube and calibration chart

associated with it shall be identified by serial number in a prominent manner.

C. Each person who holds a grade "A" dairy farm permit and installs a farm bulk cooling or holding tank shall comply with the following:

1. Each farm bulk cooling or holding tank shall be equipped with a recording thermometer;

2. Each recording thermometer shall be installed to comply with the following:

a. Each recording thermometer shall be installed in the milkhouse;

b. No recording thermometer may be installed on or attached to a farm bulk cooling or holding tank;

c. Each recording thermometer shall be installed: (i) on an inside wall of the milkhouse; (ii) on an outside wall of the milkhouse or milkroom if installed with one inch of rigid insulation between the back of the recording thermometer and the surface of the outside wall; or (iii) on metal brackets from the ceiling or floor;

d. Each recording thermometer sensor shall be installed on the farm bulk cooling or holding tank to record the temperature of the milk in the tank before the milk reaches ten percent of the tank's volume;

3. Standards for recording thermometers. Each recording thermometer installed on a farm bulk cooling or holding tank shall comply with the following minimum requirements:

a. The case for each recording thermometer shall be moisture proof under milkhouse conditions;

b. The case for each recording thermometer shall be UL rated NEMA 4X enclosure or equivalent as provided in ANSI/NEMA 250, Enclosures for Electrical Equipment (1000 Volts Maximum) dated August 30, 2001;

c. The case for each recording thermometer shall be equipped with a corrosion-resistant latching mechanism that keeps the recording thermometer tightly closed;

d. The recorder chart for each recording thermometer shall not exceed a maximum chart rotation time of 48 hours. Recorder charts for farm bulk cooling or holding tanks that are picked up every other day shall have a chart rotation time of 48 hours. Recorder charts for farm bulk cooling or holding tanks that are picked up every day may have a chart rotation time of 24 or 48 hours;

e. The recorder chart for each recording thermometer shall be marked with water resistant ink;

f. The scale on the recording chart shall cover a minimum of 30°F to 180°F, with the scale reversed to show cold temperatures at the outside of the chart for best resolution;

g. Each division on the recording chart shall represent a maximum of 1.0°F between 30°F and 60°F, with two degree divisions between 60°F and 180°F;

h. Spacing of divisions on the recorder chart shall be a minimum of 0.040 inches per 2.0°F, with the ink line easily distinguishable from the printed line;

i. The recording thermometer speed of response or sensing of temperature shall be a maximum of 20 seconds;

j. The recording thermometer shall be accurate to plus or minus 2.0°F;

k. The sensor for each recording thermometer shall be: (i) a resistance temperature detector (RTD) type sensor; (ii) constructed of stainless steel type 304 or type 316 on all exterior surfaces; (iii) hermetically sealed; (iv) accurate to 0.3°C; and (v) continuous run wire;

l. Each recording thermometer and sensor shall be calibrated and supplied as a package;

m. No capillary system containing any toxic gas or liquid shall be allowed to come into direct contact with any milk or milk product;

n. Other recording devices may be accepted by the state regulatory authority if they comply with the requirements of subdivisions 3 a through m of this subsection;

o. If a strip chart style recorder is used, it shall move not less than one inch per hour, and may be continuous for a maximum of 30 days; and

p. Recording thermometers may be manually wound or electrically operated;

4. Recording thermometer operation: Each recording thermometer installed on a farm bulk cooling or holding tank shall comply with the following minimum operating requirements:

a. Each recording thermometer shall be provided with a means to seal the calibration and zeroing mechanism to provide evidence of unauthorized adjustment or tampering;

b. Each recording thermometer shall be provided with a pin in the hub to prevent the recording chart from being rotated; and

c. Each recording thermometer shall be properly grounded and short circuit protected;

5. Each person who operates a dairy farm and installs a recording thermometer on his farm bulk cooling or holding tank shall maintain a minimum of a 30-day supply of unused recorder charts designed for the specific recording thermometer he installed and maintain a minimum of the past 60 days of used charts for purposes of inspection;

6. Each person who operates a dairy farm and installs a recording thermometer on his farm bulk cooling or holding tank shall provide a moisture proof storage container in the milkhouse or milkroom for purpose of storing a supply of new charts and a minimum of 60 days of used charts;

D. No person may remove from the dairy farm any recorder chart that has been used once and removed from the recorder within the past 60 days unless he has obtained permission

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from the state regulatory authority. All recorder charts removed from any dairy farm by any person other than a representative of the state regulatory authority shall be returned to the dairy farm within ten days. All recorder charts shall be available to the state regulatory authority.

E. Handling of recording charts. Each bulk milk hauler shall comply with the following requirements when picking up milk from a dairy farm if the farm bulk cooling or holding tank is equipped with a recording thermometer:

1. Each milk hauler, in making a milk pickup, shall properly agitate the milk and remove the chart from the recorder;
2. Each milk hauler shall record the following information on each chart removed from the recorder:
  - a. The date and time of pickup; and
  - b. The signature of the milk hauler;
3. Each milk hauler shall store the used chart in the storage container supplied by the dairy farmer;
4. Each milk hauler shall obtain a new chart from the supply provided by the dairy farmer and record the following information in the chart:
  - a. The date; and
  - b. The patron number of the dairy farmer;
5. If a recorder chart is used for more than one pickup, each milk hauler shall identify each lot of milk on the chart with the date, time of pickup, and his signature;
6. Before removing any milk from the farm tank, each milk hauler shall check the recorder chart. If the recorder chart indicates that the milk temperature has varied in a manner that would preclude acceptance, he shall immediately notify his superior and the dairy farmer. If the milk is rejected, each milk hauler shall record this information on the chart. If the milk is picked up, each milk hauler shall sign the chart and record the date and time of pickup;

F. Maintenance of recording thermometers. Each person who operates a dairy farm and holds a grade "A" dairy farm permit shall be responsible for maintaining each of his recording thermometers in good repair and adjustment to include calibrating the recording thermometer to read accurately within plus or minus 2.0°F of the actual milk temperature in the farm bulk cooling or holding tank.

G. Sealing of recording thermometers: Each recording thermometer installed on a farm bulk cooling or holding tank shall be inspected and may be sealed by the state regulatory authority after it has been shown to be properly installed and calibrated.

H. Each person who holds a grade "A" dairy farm permit and installs a farm bulk cooling or holding tank shall:

1. Install on each farm bulk cooling or holding tank an interval timing device that automatically agitates the milk in the farm bulk tank for not less than five minutes every hour during the entire time milk is being cooled or stored in the tank;

2. Not install a manual switch capable of turning off the interval timing device on any farm bulk milk cooling or holding tank while any milk is being cooled or stored; and

3. Maintain in good repair and operating condition each interval timing device installed on his farm bulk cooling or holding tank.

## **2 VAC 5-501-70. Measuring, sampling, and testing.**

A. Quantity measurements. Each person who determines the quantity of milk in any lot of milk being picked up on any dairy farm in Virginia shall comply with one of the following:

1. If the milk is being picked up from a farm bulk cooling or holding tank, the person shall use only a measuring rod, gauge, or gauge tube accurately calibrated to the individual farm bulk cooling or holding tank and the accompanying calibration chart with a serial number that matches the serial number for the specific farm bulk cooling or holding tank for which it was prepared;
2. If the milk being picked up is not stored in a farm bulk cooling or holding tank, the person shall determine the quantity of milk at the point of delivery to the milk plant processing the milk by commingling all of the milk in a vessel equipped with a gauge rod, surface gauge, gauge, or gauge tube and a volume chart that has been prepared in compliance with § 3.1-941.1 of the Code of Virginia;
3. If the milk being picked up is not stored in a farm bulk cooling or holding tank and the basis for payment for the milk will be based solely on the volume of milk in gallons, the person shall determine the quantity of milk by adding the volume in gallons of each separate full container and the volume in gallons of any milk in containers that are not full; or
4. If the milk being picked up is not stored in a farm bulk cooling or holding tank and the basis for payment for the milk will be based solely on the pounds of milk delivered, the person shall determine the quantity of milk in pounds by weighing each of the containers of milk on a commercial scale before and after they have been emptied and subtracting the weight of the empty containers from the total weight of the containers and the milk, the difference being the weight in pounds of milk.

B. Each person who desires to convert a volumetric measurement of milk to weight in pounds of milk shall multiply the volume of milk in gallons by 8.60.

C. Each person who operates a dairy farm and transports any milk in cans or other containers from his dairy farm to a milk plant and intends to determine the basis for payment of his milk based solely on its volume in gallons or solely on its weight in pounds, shall ensure the cans or other containers comply with the following:

1. Each container shall be provided with a visual means to measure the volume of milk in the container in divisions of one or more whole gallons up to the total capacity of the container;
2. Each container shall be equipped with a tightly fitting lid that prevents any milk from leaking out around the closure;



3. Each container shall be manufactured from stainless steel, food grade plastic, or tinned metal;
4. No container shall be manufactured from glass or other easily breakable material;
5. Each container shall be smooth and easily cleanable; and
6. Each container shall be equipped with an opening large enough to allow the container to be washed by hand if it is intended to be washed by hand or washed by mechanical means if it is intended to be washed by mechanical means.

**D. Each person who operates a pay purpose laboratory shall:**

1. Provide a separate room of sufficient size in which pay purpose testing shall be conducted;
2. Provide lighting of at least 20 foot-candles when measured at work bench levels and at all other work areas used to conduct testing;
3. Provide adequate ventilation sufficient to prevent condensation from forming and to prevent noxious or hazardous chemical fumes from collecting in the laboratory;
4. Provide heating and cooling equipment sufficient to maintain a constant room temperature of 70°F plus or minus 2.0°F in his laboratory at all times;
5. Provide a separate permanently installed hand-washing facility with hot and cold running water under pressure supplied through a mix valve, soap, and single service paper towels;
6. Provide only potable water under pressure in his laboratory;
7. Provide walls that are constructed of impervious material with a light-colored material and that are easily cleanable;
8. Provide floors made of concrete or other equally impervious material that are easily cleanable;
9. Provide toilet facilities for his employees;
10. Use only methods and equipment approved by the state regulatory authority to test milk for protein, solids, solids not fat, and fat;
11. Construct the facility to insure that the laboratory environment has a stable electrical supply, water supply, stable heating and cooling, and stable ventilation to allow a constantly controllable environment for pay purpose testing procedures and pay purpose equipment; and
12. Dispose of all liquid, solid, and gaseous wastes in a manner that complies with state and federal requirements for waste disposal.

**E. Sampling. Each bulk milk hauler shall:**

1. Collect at least two representative samples from each bulk milk cooling or holding tank each time that milk is picked up from the dairy farm for use as official milk samples;
2. Collect a minimum of four ounces of milk for each official milk sample collected;

3. Maintain custody of all official milk samples collected or transfer custody of all official milk samples collected to another permitted bulk milk hauler, bulk milk sampler, or at the discretion of the state regulatory agency, lock all official milk samples in a suitable container in which they may be transported or stored;

4. Pickup all of the milk in each farm bulk cooling or holding tank each time that milk is picked up from the farm bulk cooling or holding tank; and

5. Pick up only milk that is 45°F or cooler, but not frozen.

**F. Butterfat testing. Each person who desires to determine the butterfat content of milk as a basis for payment shall:**

1. Select from each dairy farm supplying them with milk a minimum of four milk samples taken at irregular intervals each month and utilize only laboratory butterfat test results from milk samples that have been tested within 48 hours of collection for pay purposes; or

2. Collect a representative sample from each shipment of each producer supplying them with milk for a maximum of 16 days, if composite milk samples are used to determine butterfat content;

3. Store composite milk samples only in an approved milk laboratory that will perform the butterfat test;

4. Preserve all composite milk samples with an appropriate preservative designed to prevent the spoilage of milk and that will not affect the butterfat test; and

5. Test each composite milk sample within three days following the end of the number of days used to create the composite milk sample.

**2 VAC 5-501-80. Farm bulk milk pickup tanker and milk transport tank requirements.**

**A. Each contract hauler or subcontract hauler shall:**

1. Use only a farm bulk milk pickup tanker or a milk transport tank that complies with all the requirements contained in 3-A Sanitary Standards for Stainless Steel Automotive Milk and Milk Product Transportation Tanks for Bulk Delivery and/or Farm Pick-Up Service, Document No. 05-14 (Nov. 1989), and that are maintained in good repair;

2. Ensure that all appurtenances of each farm bulk milk pickup tanker or each milk transport tank including any hoses, pumps, and fittings comply with all applicable 3-A Sanitary Standards (effective as of November 20, 2001) for construction and are maintained in good repair;

3. Provide sample racks for holding all milk samples collected in the sample cooler;

4. Provide a sample dipper or other sampling device of sanitary design that is maintained clean and in good repair;

5. Provide milk sample storage coolers that have sufficient insulation to maintain proper milk temperatures under all conditions throughout the year;

6. Provide only sterile sample bags, tubes or bottles, properly stored to prevent contamination;

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7. Provide a calibrated pocket thermometer certified as accurate within plus or minus 2.0°F to each bulk milk hauler in his employ and ensure the pocket thermometer is recertified a minimum of each six months thereafter;

8. Provide a United States Environmental Protection Agency approved and registered sanitizer for the sample dipper container;

9. Provide a suitable sanitizer test kit to each bulk milk hauler in his employ for use in checking the strength of sanitizing solutions;

10. Ensure that each appurtenance requiring flexibility for the milk transfer system to operate properly is free draining, supported to maintain a uniform slope and alignment, and easily disassembled and accessible for inspection without the use of tools;

11. Ensure that each farm bulk milk pickup tanker or a milk transport tank and their appurtenances are cleaned and sanitized prior to being used the first time, after each use thereafter, and each time 72 hours has elapsed since the last cleaning and sanitizing treatment;

12. Ensure that multiple milk pickups from dairy farms occur during a 24-hour period without washing and sanitizing the farm bulk milk pickup tanker only if a maximum of two hours elapses between the time of the last delivery and start of the next milk pickup;

13. Pickup any milk in a farm bulk milk pickup tanker or milk transport tank only if there exists a wash and sanitize record for the farm bulk milk pickup tanker or milk transport tank documenting that the tank has been washed and sanitized within the past 72 hours;

14. Install and use clamps on each milk pickup hose that are easily dismantled by hand without the use of tools;

15. Identify and maintain each farm bulk milk pickup tanker or milk transport tank with the identification numbers and letters assigned to each farm bulk milk pickup tanker or milk transport tank by the state regulatory agency. The identification shall be affixed to the left rear bulkhead of the tanker;

16. Provide a suitable enclosure in the rear milk hose or sample compartment of each farm bulk milk pickup tanker for storing inspection sheets capable of protecting the inspection sheets from excessive moisture, dust, soil, or light that might damage or render the inspection sheets illegible and so they will be available to any state or federal regulatory agent wherever the farm bulk milk pickup tanker might deliver;

17. Provide a suitable enclosure located within three feet of the tank outlet valve or located on top of one of the rear wheel fenders for each milk transport tank for storing inspection sheets capable of protecting the inspection sheets from excessive moisture, dust, soil, or light that might damage or render the inspection sheets illegible and so they will be available to any state or federal regulatory agent wherever the milk transport tank might deliver;

18. Completely empty the farm bulk cooling or holding tank each time that milk is picked up;

19. Store the three most recent inspection reports for each farm bulk milk pickup tanker or transport tank in the protected enclosure provided on each farm bulk milk pickup tanker or transport tank at all times; and

20. Provide a means to lock or seal each opening into a bulk milk pickup tanker or milk transport tank for security purposes.

B. When picking up and transporting any milk in a bulk milk pickup tanker each bulk milk hauler shall:

1. Practice good hygiene, maintain a neat and clean appearance, and abstain from using tobacco products in any milkhouse;

2. Conduct all pickup and handling practices to prevent contamination of any milk contact surface;

3. Pass the milk transfer hose through the hose port and remove the cap from the transfer milk hose and set it where it will not become contaminated and then attach the transfer milk hose to the tank outlet valve;

4. Wash his hands thoroughly and dry his hands with a clean single-service towel or electric forced air hand dryer immediately prior to measuring or sampling the milk in the tank;

5. Examine the milk in the tank by sight and smell for any off odor or any other abnormalities that would render the milk unacceptable and reject the milk if necessary;

6. Record the milk producer's name, milk producer's identification number, the date and time of pickup, the temperature of the milk, the measuring rod reading, the poundage, the name of the purchasing organization, and the signature of the bulk milk hauler on the producer's weight ticket;

7. Check the temperature of the milk in each farm bulk cooling or holding tank at least once a month with an accurately calibrated pocket thermometer after it has been properly sanitized;

8. Turn off the milk tank agitator if it is running when they arrive at the milkhouse or milkroom and allow the surface of the milk to become quiescent;

9. Carefully insert the measuring rod, after it has been wiped dry with a single-service towel, into the tank and then read the measurement. Each bulk milk hauler shall repeat this procedure until two identical measurements are obtained and then shall record the measurement on the weight ticket;

10. Agitate the milk in each tank holding two thousand gallons or less milk a minimum of five minutes before collecting any milk sample;

11. Agitate the milk in each tank holding more than two thousand gallons of milk a minimum of ten minutes before collecting any milk sample;

12. While the tank is being agitated, bring the sample container, dipper, dipper container, and sanitizing agent, or single service sampling tubes into the milkhouse aseptically;
  13. While the tank is being agitated, remove the cap from the tank outlet valve and examine for milk deposits or foreign matter and then sanitize if necessary;
  14. Remove the sample dipper or sampling device from the sanitizing solution and rinse it in the milk from the tank at least twice before collecting any official milk sample;
  15. Collect two representative samples from each tank after the milk has been properly agitated, transferring the milk from the sample dipper to the sample container away from the tank opening to avoid spilling any milk back into the tank, and filling the sample containers only three quarters full;
  16. Rinse the sample dipper with water until it is free of visible milk and replace it in its carrying container;
  17. Close the cover or lid of the bulk tank;
  18. Identify each milk sample with the producer's patron or member number and the date of collection;
  19. Collect at the first pickup for each load of milk two temperature samples and identify the temperature samples with the date, time, temperature of the milk, producer number, and name of the bulk milk hauler;
  20. Place each milk sample collected immediately on ice in the sample storage cooler;
  21. After collection of milk samples, open the outlet valve and start the pump to transfer the milk from the farm tank to the bulk milk pickup tanker;
  22. Turn off the agitator once the level of milk in the tank has reached the level where over-agitation will occur;
  23. Disconnect and cap the transfer hose after removing it from the outlet valve of the tank;
  24. Observe the walls and bottom of the tank for foreign matter and extraneous material and record any objectionable observations on the weight ticket;
  25. Rinse the entire inside of the tank with warm water while the tank outlet valve is open;
  26. Use only sample containers and single-service sampling tubes that comply with all the requirements contained in *Standard Methods for the Examination of Dairy Products*, 16th Edition, 1992;
  27. Cool and store all official milk samples to a temperature of 40°F or cooler, but not frozen;
  28. Provide sufficient ice and water or other coolant in the sample storage cooler to maintain all milk samples at proper temperature;
  29. Discard any milk that remains in the external transfer system that exceeds 45°F including any milk in pumps, hoses, and air elimination equipment or metering systems;
  30. Protect samples from contamination and shall not bury the tops of sample containers in ice or bury sample containers above the milk level in the sample containers;
  31. Keep all producer milk samples that represent the commingled milk on the load with the load of milk until the load of milk has been received by a milk plant, receiving station, or transfer station or if rejected by a milk plant, receiving station, or transfer station until the milk samples are collected for official laboratory testing to determine the disposition of the load of milk; and
  32. Deliver each bulk milk pickup tanker of commingled milk to a milk plant, receiving station, or transfer station within 24 hours after the last milk pickup on the route for the bulk milk pickup tanker.
- C. When sampling any milk from a bulk milk pickup tanker or transport tanker the dairy plant sampler shall:
1. Practice good hygiene, maintain a neat and clean appearance, and abstain from using tobacco products in the receiving area;
  2. Conduct all sampling and handling practices to prevent contamination of any milk contact surface;
  3. Wash his hands thoroughly and dry his hands with a clean single-service towel or acceptable air dryer immediately prior to sampling the milk in the tank;
  4. Examine the milk in the tank by sight and smell for any off odor or any other abnormalities that would classify the milk as unacceptable and reject the milk if necessary;
  5. Agitate for a period of time needed to blend the milk in each compartment to a homogenous state using odor-free, pressurized, filtered air or electrically driven stirring or recirculating equipment that has been properly sanitized before sampling or receiving;
  6. Check the temperature of the milk in each compartment with a properly sanitized thermometer that has been checked against a standardized thermometer at least once every six months and certified accurate;
  7. Reject any milk that has a temperature above 45°F;
  8. Bring the sample container, properly constructed sample dipper, and sanitizing solution to the tanker aseptically after the milk is properly agitated;
  9. Remove the sample dipper or sampling device from the sanitizing solution and rinse it in the milk from the tank at least twice before collecting any official milk sample;
  10. Collect at least one representative sample from each compartment of the tanker, transferring the milk from the sample dipper to the sample container away from the tank opening to avoid spilling any milk back into the tank, and filling the sample container only three quarters full;
  11. Rinse the sample dipper with water until it is free of visible milk and replace it in its carrying container or storage container;
  12. Close the cover or lid for each compartment of the bulk milk tanker;

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13. Identify each milk sample with the tanker number, compartment if the tanker is equipped with more than one compartment, and the date of collection;

14. Place each milk sample collected immediately on ice in a sample storage cooler or deliver it to the laboratory for immediate analysis;

15. Attach the milk transfer hose to the outlet valve of the milk tank truck and open the outlet valve of the milk tank truck before starting the pump to transfer the milk from the bulk milk pickup tanker to the milk plant storage facility or silo only after the collection of official milk samples;

16. Turn off the agitator once the level of milk in the tank has reached the level where over-agitation will occur;

17. Disconnect and cap the transfer hose after removing it from the outlet valve of the tank;

18. Observe the walls and bottom of the tank for foreign matter and extraneous material and record any objectionable observations on the plant receiving log;

19. Rinse the entire inside of the tanker with warm water after the tanker has been emptied and the external transfer system has been disconnected while the tanker outlet valve is open;

20. Use only sample containers and single-service sampling tubes that comply with all the requirements contained in Standard Methods for the Examination of Dairy Products, 16th Edition, 1992;

21. Cool and store all official milk samples to a temperature of 40°F or cooler, but not frozen;

22. Provide sufficient ice and water or other coolant in the sample storage cooler to maintain all milk samples at proper temperature;

23. Protect samples from contamination and not bury tops of sample containers in ice or bury samples above the milk level in the sample containers;

24. Promptly deliver samples and sample data to the laboratory; and

25. Discard any milk that remains in the external transfer system that exceeds 45°F including any milk in pumps, hoses, air elimination equipment, or metering systems.

D. Wash and sanitize records. Each bulk milk hauler shall:

1. Ensure each bulk milk pickup tanker or milk transport tank is properly cleaned and sanitized after unloading;

2. Ensure a cleaning and sanitizing tag is affixed to the outlet valve of the bulk milk pickup tanker or milk transport tank after it is washed;

3. Ensure when the bulk milk pickup tanker or milk transport tank is next washed, the previous cleaning and sanitizing tag is removed and stored at the location where the bulk milk pickup tanker or milk transport tank was washed; and

4. Ensure the following information is recorded on the wash and sanitize tag before it is attached to the outlet valve of the bulk milk pickup tanker or milk transport tank:

a. Identification number of the bulk milk pickup tanker or milk transport tank;

b. Date and time of day the bulk milk pickup tanker or milk transport tank was cleaned and sanitized;

c. Location where the bulk milk pickup tanker or milk transport tank was cleaned and sanitized; and

d. The signature of the person who cleaned and sanitized the bulk milk pickup tanker or milk transport tank.

E. Wash and sanitize records. Each person who operates a milk plant, receiving station, or transfer station and each dairy plant sampler responsible for sampling and receiving milk into a milk plant, receiving station, or transfer station shall:

1. Ensure each bulk milk pickup tanker and milk transport tank is properly cleaned and sanitized after unloading;

2. Ensure a cleaning and sanitizing tag is affixed to the outlet valve of the bulk milk pickup tanker or milk transport tank after it is washed;

3. Ensure when washing a bulk milk pickup tanker or milk transport tank, the previous cleaning and sanitizing tag is removed and stored at the location where the bulk milk pickup tanker or milk transport tank is washed; and

4. Record the following information on the wash and sanitize tag before it is attached to the outlet valve of the bulk milk pickup tanker or milk transport tank:

a. Identification number of the bulk milk pickup tanker or milk transport tank;

b. Date and time of day the bulk milk pickup tanker or milk transport tank was cleaned and sanitized;

c. Location where the bulk milk pickup tanker or milk transport tank was cleaned and sanitized; and

d. The signature of the person who cleaned and sanitized the bulk milk pickup tanker or milk transport tank.

F. Labeling and shipping documents. Each bulk milk hauler shall ensure that each shipping document or load manifest contains the following information for each bulk milk pickup tanker or milk transport tank:

1. The shipper's name, address, and permit number;

2. The Interstate Milk Shipper Bulk Tank Unit identification number for each Bulk Tank Unit on the load of milk or the Interstate Milk Shipper listed Plant Number;

3. The milk hauler permit number if the milk hauler is not an employee of the shipper;

4. The point of origin of the shipment;

5. The bulk milk pickup tanker or milk transport tank identification number;

6. The name of the product;

7. The weight of the product;

8. The temperature of the product when loaded;

9. The date of shipment;

10. The name of the supervising regulatory agency at the point of origin of shipment;

11. A statement as to whether the contents of the load are raw, pasteurized, or in the case of cream, lowfat, or skim milk whether it has been heat-treated;

12. The seal number on inlet, outlet, wash connections and vents, if applicable; and

13. The grade of the product.

**G. Protection of bulk milk and chain of custody of milk samples.**

1. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall ensure the proper protection of all milk and milk samples in his custody. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall seal or lock each opening into a bulk milk pickup tanker or milk transport tank including each manhole lid, vent, wash port, and door to the pump housing and sample storage box prior to leaving the bulk milk pickup tanker or milk transport tank unattended.

2. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall inspect the condition of the seals and locks placed on each opening into the bulk milk pickup tanker or milk transport tank upon his return after an absence to determine if the seals or locks have been tampered with.

3. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall report immediately to the state regulatory authority instances of tampering with the seals or locks.

4. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall hold a valid permit issued by the state regulatory authority for the collection of milk samples prior to collecting or transporting any milk or milk samples.

**2 VAC 5-501-90. Sanitation requirements for a milk tank truck cleaning facility.**

Each person who operates a milk tank truck cleaning facility permit shall:

1. Provide floors constructed of concrete or equally impervious material that are easily cleanable, smooth, properly sloped, and provided with trapped floor drains and kept in good repair;

2. Provide walls and ceilings with a smooth, washable, light-colored surface and kept in good repair;

3. Provide effective means to prevent the access of flies and rodents;

4. Provide solid doors or glazed windows for each opening to the outside and keep the doors and windows closed during dusty weather;

5. Provide lighting of at least 20 foot-candles measured in all work areas;

6. Provide ventilation sufficient to prevent condensation and odors;

7. Provide a toilet room fitted with tightly-fitting self-closing doors, kept clean and in good repair, well-ventilated and lighted and that does not open directly into any room in which milk or milk products are processed or milk product contact-surfaces, utensils and equipment are washed;

8. Dispose of all sewage and other wastes in a sanitary manner;

9. Provide hot and cold running water from a supply that is properly located, protected, and operated, and shall be easily accessible, adequate, and of a safe and sanitary quality;

10. Provide hand-washing facilities with hot and cold running water, soap, and individual sanitary towels or other approved hand-drying devices and keep the hand-washing facilities clean and in good repair;

11. Provide and maintain an effective insect and rodent control program and shall keep the milk tank truck cleaning facility neat and clean;

12. Provide only sanitary piping, fittings, and connections that are constructed to be smooth, impervious, corrosion-resistant, nontoxic, easily cleanable, and manufactured from material that is approved for food contact surfaces;

13. Provide and use only stainless steel piping complying with the American Iron and Steel Institute (AISI) 300 series as published in the Iron and Steel Society's Steel Products Manual for Stainless Steels, dated March 1999;

14. Provide only sanitary piping, fittings, and connections that are in good repair and constructed for ease of cleaning;

15. Provide and use only plastic, rubber, or rubber-like materials made from approved food contact-grade materials that are relatively inert, and resistant to scratching, scoring, and damage from cleaning compounds;

16. Clean and sanitize before each use the product-contact surfaces of utensils and equipment used in the transportation of any milk or food;

17. Attach a wash tag to the outlet valve of the tanker showing the date, time, place, and signature of the employee who washed the bulk milk pickup tanker or milk transport tank after the milk tank truck has been cleaned and sanitized;

18. Store and transport all clean and sanitized utensils and equipment to assure complete draining and protection from contamination before use;

19. Store all single-service containers, utensils, and materials in a sanitary manner in a clean dry place until used;

20. Store, handle, and use poisonous or toxic materials to preclude the contamination of any milk product contact-surfaces of equipment and utensils;

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21. Ensure that his employees wash their hands thoroughly before commencing cleaning functions and as may be required to remove soil and contamination;

22. Allow an employee to resume work after visiting the toilet room only after that employee has thoroughly washed his hands;

23. Ensure that each of his employees engaged in the handling of milk product contact-surfaces, equipment, and utensils wears clean outer garments, adequate hair covering, and refrains from using any tobacco products; and

24. Keep the surroundings of the milk tank truck cleaning facility neat, clean, and free from conditions that may attract flies, insects, or rodents.

## **2 VAC 5-501-100. Interpretation and enforcement.**

A. The administrative procedures used to conduct case decisions under this chapter shall conform to the provisions of the Virginia Administrative Process Act.

B. The Virginia Department of Agriculture and Consumer Services shall comply with the following administrative procedures when summarily suspending a permit as specified in 2 VAC 5-501-30 G:

1. The Virginia Department of Agriculture and Consumer Services shall serve upon the permit holder a written notice of suspension. The written notice of suspension shall specify the violations in question and inform the permit holder of the right to appear before the Virginia Department of Agriculture and Consumer Services in person, by counsel, or by other qualified representative at a fact-finding conference for the informal presentation of factual data, arguments, and proof to appeal this determination of violation;

2. Upon receipt of written application from any person whose permit has been summarily suspended (within 30 days after the effective date of the summary suspension), the Virginia Department of Agriculture and Consumer Services shall within seven days after the date of receipt of a written application from any person whose permit has been summarily suspended, proceed to hold an informal fact-finding conference to ascertain the facts of the violations in question, and upon evidence presented at the informal fact-finding conference, shall affirm, modify, or rescind the summary suspension;

3. The Virginia Department of Agriculture and Consumer Services shall, unless the parties consent, ascertain the fact basis for their decisions of cases through informal conference proceedings. Such conference proceedings include the rights of parties to the case to have reasonable notice thereof, to appear in person or by counsel or other qualified representative before the Virginia Department of Agriculture and Consumer Services for the informal presentation of factual data, argument, or proof in connection with any case, to have notice of any contrary fact basis or information in the possession of the Department which can be relied upon in making an adverse decision, to receive a prompt decision of any application for license, benefit, or renewal thereof, and to be informed,

briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case;

4. No person whose permit has been summarily suspended may be granted an informal fact-finding conference by the Virginia Department of Agriculture and Consumer Services unless the Virginia Department of Agriculture and Consumer Services receives the person's written application within 30 days after the effective date of the summary suspension;

5. From any adverse decision of an informal fact-finding conference, the permit holder may request a formal hearing under § 2.2-4000 et seq. of the Code of Virginia by writing the Program Manager of the Office of Dairy and Foods within 30 days stating the request and providing the Virginia Department of Agriculture and Consumer Services with a statement of the issues in dispute. If the request for a formal conference is denied, the Virginia Department of Agriculture and Consumer Services shall notify the permit holder in writing and further may affirm or modify the decision of the informal fact-finding conference; and

6. If a formal fact-finding conference is denied, the Virginia Department of Agriculture and Consumer Services shall notify the permit holder of the right to file an appeal in the circuit court.

## **2 VAC 5-501-110. Regulation superseded.**

This chapter supersedes 2 VAC 5-500, Rules and Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory, and is based upon a Notice of Intended Regulatory Action published in the Virginia Register of Regulations for June 4, 2001 at page 2704 under "Title 2. Agriculture."

### DOCUMENTS INCORPORATED BY REFERENCE

3-A Sanitary Standards, effective as of November 20, 2001, International Association of Food Protection.

UL Rated NEMA 4x Enclosure Definition as published in ANSI/NEMA 250, Enclosures for Electrical Equipment (1000 Volts Maximum), ANSI Approval Date August 30, 2001, American Society of Mechanical Engineers.

Standard Methods for the Examination of Dairy Products, 16th Edition, 1992, American Public Health Association.

American Iron & Steel Institute (AISI) 300 Series as published in Steel Products Manual - Stainless Steels, March 1999, Iron and Steel Society.

VA.R. Doc. No. R01-166; Filed August 16, 2002, 11:55 a.m.

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**REGISTRAR'S NOTICE:** Due to its length, the following proposed regulatory action filed by the Department of Agriculture and Consumer Services is not being published. However, in accordance with § 2.2-4031 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 Agriculture and Consumer Services (see contact information below) and is accessible on the Virginia Register of Regulations website at <http://legis.state.va.us/codecomm/register/vol18/welcome.htm>.

**Title of Regulation:** 2 VAC 5-530. Rules and Regulations Governing the Production, Handling and Processing of Milk for Manufacturing Purposes and Establishing Minimum Standards for Certain Dairy Products to be Used for Human Food (REPEALING).

**Title of Regulation:** 2 VAC 5-531. Regulations Governing Milk for Manufacturing Purposes (adding 2 VAC 5-531-10 through 2 VAC 5-531-130).

**Statutory Authority:** § 3.1-530.1 and 3.1-530.2 of the Code of Virginia.

**Public Hearing Date:** March 13, 2003 - 10 a.m.

Public comments may be submitted until 5 p.m. on December 9, 2002.

(See Calendar of Events section for additional information)

**Agency Contact:** John A. Beers, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 703, Richmond, VA 23219, telephone (804) 786-1453, FAX (804) 371-7792 or e-mail [jbeers@vdacs.state.va.us](mailto:jbeers@vdacs.state.va.us).

**Basis:** Sections 3.1-530.1 and 3.1-530.2 of the Code of Virginia provide the discretionary authority for the regulation. Section 3.1-530.1 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services "...to establish definitions, standards of quality and identity, and to adopt and enforce regulations dealing with the issuance of permits, production, importation, processing, grading, labeling, and sanitary standards for milk, milk products, and those products manufactured or sold in semblance to or as substitutes therefor." Section 3.1-530.2 directs the State Board of Agriculture and Consumer Services to be guided "...by those regulations recommended from time to time by the United States Department of Health, Education and Welfare and the United States Department of Agriculture" when adopting regulations for the purpose of sanitation and to prevent deception.

**Purpose:** The goals of the proposed regulation are to (i) protect the public's health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; (ii) ensure the safety of manufactured dairy products through pasteurization and prevention of contamination, and (iii) facilitate the sales of Virginia manufactured dairy products in intrastate and interstate commerce.

The proposed regulation will include the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption. The primary purpose of the regulation is to ensure the safety and wholesomeness of all milk and milk products produced. The existing regulation covers only cow's milk, but there is significant production of dairy products offered for sale for human consumption made from the milk of goats, sheep, and water buffalo.

All milk and milk products have the same potential to carry pathogenic organisms. Numerous diseases of humans have been documented to be present in the milk of lactating mammals. Brucellosis and tuberculosis are two well-known and documented diseases that are capable of being spread from cows and goats to humans through their milk. Other common pathogens associated with milk and dairy products are: *Staphylococcus*, noted for its toxin production; *Streptococcus*, which causes strep-throat; *Campylobacter jejuni*, which infects the lining of the intestine and causes bloody diarrhea; *Escherichia coli*, which is responsible for causing bloody diarrhea and Hemolytic Uremic Syndrome; *Salmonella*, which also causes diarrhea; *Yersinia enterocolitica*, which causes severe abdominal pain; *Listeria monocytogenes*, which causes fever, vomiting, and can lead to still-births in pregnant women; and *Coxiella burnetii*, which causes Q fever. Some of these diseases can be fatal.

Milk is an excellent growth medium for most organisms including many pathogens. The fact that spoilage organisms and pathogens can grow in milk if they are present or introduced later by poor handling practices makes milk and milk products potentially hazardous if they are not properly processed, handled, packaged, and stored.

The requirement of pasteurization or aging at specific temperatures in the case of certain cheeses as effective means of destroying pathogens in manufactured dairy products will reduce the risk of death and illness from consuming contaminated manufactured dairy products. The regulation also requires the plant to employ certain practices that prevent contamination after pasteurization or aging. The regulation is essential to ensure the safety of these products.

The proposed regulation is consistent with the U.S. Department of Agriculture (USDA) recommended requirements for milk for manufacturing purposes and processing plant requirements. In recent years, USDA recommended minimum quality standards applicable for milk used to make manufactured dairy products have changed. In addition, these recommended requirements include milk from goats and sheep and provide that all milk received at processing plants must be screened for animal-drug residues prior to processing.

The proposed regulation facilitates sales of Virginia-manufactured products by providing for the labeling of dairy products to prevent deception, establishing standards of identity, and providing a level playing field on which all persons may compete.

**Substance:** The proposed regulation requires persons who produce and sell milk from goats, sheep, water buffalo, and other mammals (except humans) for manufacturing purposes or who manufacture and sell cheese, butter, condensed milk,

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powdered milk, and similar products manufactured from the milk from goats, sheep, water buffalo, and other mammals (except humans) to obtain a permit and comply with the requirements of the regulation for the first time. Persons producing and selling cow's milk for manufacturing purposes or who manufacture and sell cheese, butter, condensed milk, powdered milk, and similar products manufactured from cow's milk are currently required to obtain a permit under the existing regulation.

The proposed regulation contains provisions to foster the developing small-scale cheese processing industry in Virginia. The regulation defines "small-scale cheese plant" to establish which persons qualify for the special considerations and includes exemptions to certain requirements contained in the proposed regulation for small-scale plants processing cheese products.

The proposed regulation uses established standards of identity under the Code of Federal Regulations to define numerous standard and nonstandardized cheeses and related products.

The proposed regulation also establishes the following:

1. Administrative procedures for the Virginia Department of Agriculture and Consumer Services to follow when summarily suspending a permit.
2. Requirement that manufactured dairy products in final package form for direct human consumption offered for sale in Virginia must have been: (i) pasteurized; (ii) made from dairy ingredients that have all been pasteurized; or (iii) in the case of cheese, aged above 35°F for a minimum of 60 days.
3. Specific requirements for permit holders manufacturing dairy products to develop and maintain a product recall plan.
4. Specific procedures for the Virginia Department of Agriculture and Consumer Services to follow when impounding adulterated or misbranded milk for manufacturing purposes or dairy products.
5. Specific conditions that allow the Virginia Department of Agriculture and Consumer Services to cancel, suspend, or revoke the permit of any person.
6. Procedures for private individuals to become certified by the Virginia Department of Agriculture and Consumer Services to inspect and test pasteurization equipment.
7. An animal drug-residue monitoring program that requires milk to be screened for beta lactam drug-residues prior to processing into dairy products.
8. A prohibition on the receipt of untreated sewage or septage on a dairy farm and on the feeding of unprocessed poultry litter or unprocessed manure from any animal to lactating dairy animals.
9. New labeling requirements and definitions for product sell-by dates, frozen and previously frozen cheeses, and the use of the term "fresh" when used to describe a dairy product.

10. Standards that apply to milk for manufacturing purposes for chemical residues, bacteriological load, somatic cell count, cryoscope, maximum length of time for milk storage on the farm, and temperature.

11. Standards that apply to dairy products offered for sale for chemical residues, coliform counts, and *Staphylococcus aureus* counts.

12. Specific requirements that facilities and equipment must meet in order to operate a dairy processing plant.

13. Specific facility and construction requirements for dairy farms producing milk for manufacturing purposes. Principle areas of change include eliminating installation of a milk storage tank in the milking parlor and adding water supply development and testing criteria.

Issues: Public. The proposed regulation will enhance safety and wholesomeness of manufactured dairy products by including milk for manufacturing purposes and manufactured dairy products produced from the milk of goats, sheep, water buffalo, and other mammals (except humans). The existing regulation covers only those dairy products manufactured from cow's milk.

The proposed regulation will enhance public confidence in manufactured dairy products by requiring all dairy farms producing milk and all dairy plants manufacturing dairy products to obtain a permit prior to offering any products for sale. Currently, persons using the milk from goats, sheep, water buffalo, or other mammals (except humans) are not required to register with the Virginia Department of Agriculture and Consumer Services prior to offering dairy products for sale. Consumers purchasing dairy products at local farmers' markets generally expect that the food products being offered for sale are safe, wholesome, and approved for sale to the public. This perception on the part of consumers that food products come from approved sources at farmers' markets is partially based on the market's location (usually on public property), with the market being sanctioned and operated by local government.

There are no disadvantages to the public.

Regulated Entities. The proposed regulation will create a level playing field on which all dairy farmers and dairy processors can compete. Under the existing regulation, only dairy farmers producing milk for manufacturing purposes from cow's milk and dairy processors manufacturing dairy products from cow's milk are required to meet specific facility, equipment, inspection, and quality standards established for the production of manufactured milk and dairy products.

Under the proposed regulation all dairy farmers producing milk for manufacturing purposes must obtain a permit from the Virginia Department of Agriculture and Consumer Services and meet certain facility requirements. Under the existing regulation, dairy farmers currently producing milk from goats, sheep, water buffalo, or other mammals (except humans) are not required to obtain permits from the Virginia Department of Agriculture and Consumer Services or meet certain facility requirements.

Under the existing and proposed regulation dairy plants using cow's milk to produce dairy products must obtain a permit



from the Virginia Department of Agriculture and Consumer Services and construct production facilities that provide separate rooms for receiving milk, pasteurization, packaging, dry storage, equipment, laboratory, employee locker rooms, and conduct quality control and laboratory testing programs. Under the existing regulation, persons using milk from goats, sheep, water buffalo or other mammals (except humans) to process dairy products are not required to obtain a permit from the Virginia Department of Agriculture and Consumer Services and may process their dairy products in their home without complying with any specific facility requirements for separation of processing steps in different rooms.

The proposed regulation will foster development of the small-scale dairy industry in Virginia by establishing a definition of a "small-scale cheese plant" and creating exemptions to certain facility and construction requirements for those persons who qualify. Under the proposed regulation for separate rooms, the requirements : (i) to receive milk; (ii) for employees to change their clothes; (iii) to operate a laboratory; (iv) for paraffining cheese; (v) for rindless block wrapping; (vi) for curing cheese; (vii) for cleaning and preparing bulk cheese; and (viii) for cutting and wrapping cheese are not applicable to a "small-scale cheese plant" if the operators conduct their cheese processing operations one step at a time in a single room. The provisions for separate rooms are based on prevention of cross-contamination of dairy products caused by conducting multiple operations in the same room at the same time. If operations are conducted one step at a time, sanitation and product safety are maintained. Creating exemptions to facility requirements that do not affect the safety or wholesomeness of dairy products significantly reduces the cost of entering the business of cheese production.

Persons wishing to establish a small-scale cheese plant will find it easier to obtain financing and insurance because their operations would be permitted, inspected, and their products would be tested by the Virginia Department of Agriculture and Consumer Services. Financial institutions and insurance companies consistently want assurances that businesses they lend money to or insure are in compliance with regulatory requirements and under inspection.

The proposed regulation will facilitate sales of manufactured dairy products because many retailers require that any person supplying products to their store must be under inspection, have adequate insurance, and are in compliance with regulatory requirements. The proposed regulation makes it easier for a person to prove that he is in compliance with regulatory requirements because he will have a permit and inspection records to use for this purpose. The proposed regulation is also consistent with federal requirements to ship products in interstate commerce, allowing producers of dairy products access to markets inside and outside Virginia.

The existing traditional cow dairy industry will be better protected from economic harm due to public health incidents associated with dairy products made from the milk of goats, sheep, water buffalo, or other mammals (except humans). When consumers learn of public health outbreaks associated with milk and dairy products, they tend to avoid purchasing and consuming all similar dairy products for a period of time. Public health incidents associated with milk or dairy products

made from goats, sheep, water buffalo or other mammals (except humans) tend to negatively impact sales of similar products made from cow's milk.

The primary disadvantage to the regulated entities is that those persons producing milk from goats, sheep, water buffalo, or other mammals (except humans) or producing manufactured grade dairy products from the milk of goats, sheep, water buffalo, or other mammals (except humans) would come under the proposed regulation for the first time. The Virginia Department of Agriculture and Consumer Services is aware of fifteen persons in this category. Five of these operations are considered in compliance with the proposed regulation. Two of these operations have voluntarily ceased sale of all food products to avoid inspection by the Virginia Department of Agriculture and Consumer Services. One of these operations is in litigation with the Virginia Department of Agriculture and Consumer Services. Seven of the remaining operations would have to make facility and equipment improvements to comply with the requirements under the proposed regulation.

Agency. All dairy farms producing milk and all dairy plants processing manufactured dairy products would be regulated under the same laws and regulations. Currently, the Virginia Department of Agriculture and Consumer Services regulates dairy farms producing cow's milk and dairy plants using cow's milk under the existing regulations governing milk for manufacturing purposes. Those persons producing milk from goats, sheep, water buffalo, or other mammals (except humans) or producing manufactured grade dairy products from the milk of goats, sheep, water buffalo, or other mammals (except humans) are regulated under the Virginia Food Laws.

The Dairy Inspection Program utilizes administrative processes to regulate permitted cow dairies and dairy processing plants using cow's milk. Inspectors conducting inspections under the regulations governing milk for manufacturing purposes also conduct inspections under authority of the grade "A" milk regulations and are trained specifically in the production and processing methods used within the dairy industry.

The Food Safety Program utilizes the criminal justice system to regulate the food industry in Virginia. Violations of the Virginia Food Laws or related regulations must be prosecuted in court. Food safety specialists have broad training in food processing and safety but no specific training related to dairy products or milk production.

Because dairy inspection personnel are not trained in the policies and procedures utilized to conduct inspections, collect samples, and enforce the Virginia Food Laws, a food safety specialist is assigned with a dairy inspector to form a joint inspection team. Likewise, a food safety specialist is not trained in the specifics of milk production and dairy product processing. It takes both staff members together to possess the needed knowledge, skills, and abilities to perform adequate sanitary inspections of dairy facilities operated under the Virginia Food Laws.

This situation is causing the Virginia Department of Agriculture and Consumer Services to send two staff members to perform

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inspections when personnel resources could be utilized more effectively. The proposed regulation will eliminate the need to send more than one staff member to any dairy farm or dairy plant.

The proposed regulation would allow the Virginia Department of Agriculture and Consumer Services to regulate all dairy farms and dairy plants under an administrative process. Administrative processes are much more efficient and economical to enforce than prosecutions in court.

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

Summary of the proposed regulation. The Virginia Department of Agriculture and Consumer Services (VDACS) proposes numerous amendments to these regulations, including several to be consistent with the most recent USDA recommendations on milk for manufacturing purposes. In addition, VDACS proposes that manufactured milk and manufactured milk products from goats, sheep, water buffalo, and other noncow sources be regulated in the interest of public health and safety.

Estimated economic impact. Under the current regulations, persons who produce and sell milk from goats, sheep, and water buffalo for manufacturing purposes or who manufacture and sell cheese, butter, condensed milk, powdered milk, and similar products manufactured from the milk from goats, sheep, and water buffalo are not required to acquire a permit to operate. VDACS proposes to require all persons who produce and sell milk for manufacturing purposes or who manufacture and sell cheese, butter, condensed milk, powdered milk, and similar products manufactured from the milk from any nonhuman mammal to obtain a permit in order to operate. VDACS estimates the costs of complying with the proposed equipment, construction, and production requirements needed in order to receive a permit to be \$3,000 to 20,000. The president of the Virginia State Dairy Goat Association estimates the cost to be substantially higher. Some members of the Virginia State Dairy Goat Association have asserted that the costs associated with meeting the equipment, construction, and production requirements needed to obtain a permit would put them out of business.

The primary benefit of requiring these permits concerns reducing public health risks. The equipment, construction, and procedures required to gain the permit to operate are

designed to minimize the chance of contamination with harmful bacteria. The U.S. Centers for Disease Control and Prevention (CDC) lists unpasteurized dairy products among the many items or activities to avoid to minimize the chance of contracting bacterial infections such as salmonella,<sup>1</sup> listeriosis,<sup>2</sup> and diseases associated with Escherichia coli O157:H7 (E. coli).<sup>3</sup>

Based upon the evidence provided by VDACS, it appears that it is very rare for life-threatening illnesses to occur due to the ingestion of noncow milk products. The agency cites one salmonella-induced fatality in France during 1993 and one brucellosis-induced fatalities in New Mexico and Texas during 1983 due to the ingestion of cheese made from unpasteurized goat's milk. The agency has provided no evidence of any health problems in Virginia specifically linked to the ingestion of noncow milk products.

Given the available evidence, it appears that the risk of life-threatening illness due to the consumption of noncow milk products in Virginia is small. The risk of non life-threatening illnesses, such as diarrhea, appears to be greater. But the public commonly chooses to take risks of a similar magnitude. For example, people willingly eat raw fish and steak tartare, choose to cook and consume hamburgers less well done than recommended by the CDC, eat raw vegetables without washing thoroughly, etc., despite CDC warnings and common knowledge of the health risks.

The proposed regulations do not ban the production and sale of noncow milk products, including cheese made from unpasteurized milk, in Virginia. But the proposal to require permits does significantly increase the cost of production. Holding other factors constant, significantly raising the cost of production will reduce the quantity produced of noncow milk products and raise the price of the products that are sold. It is

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<sup>1</sup> In order to avoid salmonella, CDC recommends that "people should not eat raw or undercooked eggs, poultry, or meat. Raw eggs may be unrecognized in some foods such as homemade hollandaise sauce, caesar and other salad dressings, tiramisu, homemade ice cream, homemade mayonnaise, cookie dough, and frostings. Poultry and meat, including hamburgers, should be well cooked, not pink in the middle. Persons also should not consume raw or unpasteurized milk or other dairy products. Produce should be thoroughly washed before consuming. Cross-contamination of foods should be avoided. Uncooked meats should be kept separate from produce, cooked foods, and ready-to-eat foods. Hands, cutting boards, counters, knives, and other utensils should be washed thoroughly after handling uncooked foods. Hands should be washed handling any food, and between handling different food items."

<sup>2</sup> In order to reduce the risk for listeriosis, CDC recommends that consumers: (i) thoroughly cook raw food from animal sources, such as beef, pork, or poultry, (ii) wash raw vegetables thoroughly before eating, (iii) keep uncooked meats separate from vegetables and from cooked foods and ready-to-eat foods, (iv) avoid raw (unpasteurized) milk or foods made from raw milk, and (v) wash hands, knives, and cutting boards after handling uncooked foods.

<sup>3</sup> In order to prevent E. coli infection, CDC recommends that consumers "cook all ground beef and hamburger thoroughly." "Ground beef should be cooked until a thermometer inserted into several parts of the patty reads at least 160 degrees." "Avoid spreading bacteria in your kitchen. Keep raw meat separate from ready-to-eat foods. Wash hands, counters, and utensils with hot soapy water after they touch raw meat. Never place cooked hamburgers or ground beef on the unwashed plate that held raw patties. Wash meat thermometers in between tests of patties that require further cooking." "Drink only pasteurized milk, juice, or cider." "Wash fruits and vegetables thoroughly, especially those that will not be cooked. Children under 5 years of age, immunocompromised persons, and the elderly should avoid eating alfalfa sprouts until their safety can be assured." "Drink municipal water that has been treated with chlorine or other effective disinfectants. Avoid swallowing lake or pool water while swimming."

not clear that the benefits of an unspecified likely reduction in risk of disease outweighs the costs to consumers of higher prices and lower product availability, as well as the higher production costs for the producers.

Perhaps rather than require the producers to incur significant increases in production costs, the noncow dairy products could be required to be labeled with information accurately reflecting the relative risk of ingesting the product. The public would then be able to make an informed decision as to whether the benefits of consumption are worth the potential risk of disease. A producer who has met all the proposed requirements for the permit could perhaps be permitted to use a label indicating a reduced probability of contagion.

Businesses and entities affected. The proposed amendments potentially affect 59 farmers and dairy product manufacturers.<sup>4</sup>

Localities particularly affected. The proposed changes potentially affect all localities in the Commonwealth, but areas with dairy farms and plants in particular.

Projected impact on employment. Some small producers of goat cheese may choose to cease production rather than incur the costs associated with the requirements for obtaining an operating permit.

Effects on the use and value of private property. The proposal to require all persons who produce and sell milk for manufacturing purposes or who manufacture and sell cheese, butter, condensed milk, powdered milk, and similar products manufactured from the milk from any nonhuman mammal to obtain a permit in order to operate will increase production costs and reduce the value of these individual's dairy farms and plants.

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

Summary:

*Due to the extensive amendments to this regulation, 2 VAC 5-530, Rules and Regulations Governing the Production, Handling and Processing of Milk for Manufacturing Purposes and Establishing Minimum Standards for Certain Dairy Products to be Used for Human Food, is proposed to be repealed and 2 VAC 5-531, Regulations Governing Milk for Manufacturing Purposes, adopted concurrently. The proposed amendments (i) make the regulations applicable to the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption; (ii) make the regulations consistent with the USDA recommended requirements for milk for manufacturing purposes and processing plant purposes; and (iii) develop alternative requirements to foster the developing goats, sheep and water buffalo industries in Virginia.*

VA.R. Doc. No. R01-64; Filed August 16, 2002, 11:57 a.m.



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<sup>4</sup> Source: VDACS.

**TITLE 9. ENVIRONMENT**

**STATE AIR POLLUTION CONTROL BOARD**

Title of Regulation: **9 VAC 5-40. Existing Stationary Sources (Rev. J00) (adding 9 VAC 5-40-6250 through 9 VAC 5-40-6510).**

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

Public Hearing Date: October 10, 2002 - 9 a.m.

Public comments may be submitted until November 8, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510 or e-mail kgsabastea@deq.state.va.us.

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

Purpose: The purpose of the regulation is to establish emission standards that will require the owners of commercial/industrial solid waste incinerators (CISWIs) to limit emissions of organics (such as dioxins/furans), metals (such as particulate matter), and acid gases (such as sulfur dioxide and hydrogen chloride) to a specified level necessary to protect public health and welfare. The regulation is being proposed to meet the requirements of §§ 111(d) and 129 of the federal Clean Air Act, and 40 CFR Part 60 Subpart DDDD of federal regulations.

Substance: The regulation defines and identifies the sources to which it applies, as well as exemptions. Emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury are established, as well as limitations for and cross references to existing state requirements for visible emissions, fugitive dust/emissions, odor, and toxic pollutants. General good operating practices that contribute to the overall effectiveness of the technical requirements are included, in the form of an operator training and qualification program, and waste management plans, which are intended to reduce the amount of emissions. A compliance schedule with specific increments of progress is provided. Operating limits for operating parameters such as maximum charge rates, minimum pressure drop, and minimum scrubber liquor flow rate are prescribed. Procedures to be followed in the event of facility and control equipment maintenance or malfunction are provided. Test methods to be used in determining compliance with the emission limits are specified. Compliance requirements, including testing schedules, are specified. Equipment necessary to monitor compliance with the site-specific operating limits are to be installed, calibrated, maintained, and operated. Records of monitoring and test results are to be maintained and reported. Air curtain incinerators must meet separate requirements for increments of progress, opacity limits, compliance monitoring and testing,

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recordkeeping, and reporting. Finally, state requirements for facility and control equipment maintenance or malfunction; test methods and procedures; compliance, monitoring; recordkeeping and reporting; registration; and permits are cross-referenced.

## Issues:

**Public:** The general public will experience a number of health and welfare advantages. CISWI emissions cause a number of serious health effects. Therefore, reduction of these emissions will reduce disease and its related costs. Reduction of CISWI emissions will also reduce the risk of damage to vegetation and property, which will in turn enhance property values, tax revenues, payroll, and other socioeconomic components. Generally, the wide availability of alternatives to incineration will limit disadvantages, and may in fact provide a benefit in the form of reduced costs.

A limited number of CISWIs may experience an economic disadvantage if they must install pollution control systems. A number of CISWIs may benefit by shutting down outdated equipment and finding more efficient and cost-effective alternatives. In addition to CISWIs, industry in general will also benefit from the rule: overall ozone reductions may lessen the risk of current attainment areas being designated nonattainment, and current nonattainment areas being reclassified to a more serious classification.

**Department:** The department may need to perform additional inspection, monitoring and recordkeeping to ensure that the emissions limitations are being met, which will require increased expenditure in personnel and equipment. However, the increase in data to be gathered and analyzed will benefit the department by enhancing its ability to make both short- and long-term planning decisions. Furthermore, these sources have been, for the most part, permitted, inspected, and monitored for many years, therefore, little new additional new effort will be expended. It is anticipated that more sources will seek alternatives to incineration, thereby reducing the number of sources the department will need to inspect and monitor.

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

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

**Department of Planning and Budget's Economic Impact Analysis:** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private

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

**Summary of the proposed regulation.** The proposed regulations will establish emission standards for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury that will apply to commercial/industrial solid waste incinerators. To ensure proper facility operation and compliance with the emission limits, requirements for emissions testing and monitoring, operator training and qualifications, recordkeeping, reporting, registration, permitting, siting, and developing waste managements plans are also proposed. These regulations are proposed to meet the requirements of sections 111(d) and 129 of the federal Clean Air Act, and 40 CFR part 60 subpart DDDD of federal regulations.

## Estimated economic impact.

**Introduction.** The proposed regulation is the result of the continuing effort of the U.S. Environmental Protection Agency (EPA) to control emissions from small incinerators and will apply to commercial/industrial solid waste incinerators (CISWIs) that burn nonhazardous solid waste and that commenced construction on or before November 30, 1999. These facilities combust commercial/industrial solid waste, which include garbage, refuse, sludge, and other discarded materials such as solid, liquid, semisolid, or contained gaseous materials resulting from agricultural, industrial, commercial, mining operations, and from community activities. Examples of commercial/industrial solid waste are insulation materials, sheetrock, carpet and padding, plastics, paper, cloth, metals, sweepings, dry sludge compounds, and automotive fluff.

These regulations will apply to both existing and new CISWIs. Existing plants will be subject to emissions guidelines while new plants will be subject to the new source performance standards, which are more stringent. Existing plants are those for which construction commenced on or before November 30, 1999 and new plants are those for which construction, modification, or reconstruction began after that date.

Hazardous waste and the waste that is not recyclable or compostable must be disposed. The two primary types of disposal practices are landfilling and incineration. Landfills are facilities for long-term containment of solid waste. An alternative method of managing solid waste is through incineration. Solid waste incineration involves burning of all or a portion of the solid waste stream in specially designed solid waste combustion facilities and the disposal of the residual ash in landfills. Incineration reduces the mass of waste up to 90%<sup>1</sup> and results in considerable savings in landfill capacity, but also creates various kinds of toxic emissions. In 1998, Virginia generated about 9 million tons of solid waste, recycled 35%, incinerated 18%, and landfilled 47% of this amount.<sup>2</sup>

Emissions from CISWIs contain harmful organics such as dioxins/furans, metals such as particulate matter, cadmium,

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<sup>1</sup> Source: EPA.

<sup>2</sup> Ibid.

lead, mercury, and acid gases such as sulfur dioxide, hydrogen chloride, and nitrogen oxides. These emissions can cause or contribute to air pollution that may endanger public health and welfare. Some of the pollutants emitted are highly toxic and can cause serious health effects in humans. Emissions of oxides of nitrogen and sulfur contribute to acid rain, which is known to harm lakes, forests, and buildings, as well as public health.

It is estimated that the proposed regulations may apply to approximately 50 to 90 incinerators in Virginia. However, the agency's (Department of Environmental Quality) emissions inventory database does not allow determining the exact number of units that will be subject to the proposed emissions standards. Currently, between 50 and 90 units located throughout the state may meet the overall criteria for "commercial/industrial solid waste incinerator." These units vary widely with respect to size, technology, purpose, frequency of use, and age. Some units are part of large industrial facilities, while some are small, run intermittently, and belong to small businesses. The emissions from these units must be reduced by the application of "maximum achievable control technology," which is defined as the technology that would result in emissions reductions as high as that that can be achieved by the best controlled combustion unit, taking into account the costs and benefits of compliance.

The proposed requirements. The proposed regulations will establish emission standards for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury, which will apply to CISWIs. Standards for visible emissions, fugitive dust/emissions, odor, and toxic pollutants have been established in other regulations and incorporated by reference. Since those standards already established elsewhere and apply to CISWIs, this analysis does not address them. Proposed emission limits for existing CISWIs are summarized in Table 1.

A distinguishing feature of the proposed regulations is that they do not prescribe how to achieve the standards summarized in the table. The source has complete control on the method by which the standards will be met. The affected sources are likely to employ the most cost effective methods to comply with the standards and promote innovation in emissions control technology. This feature is likely to result in relatively low compliance costs. The magnitude of savings depends on how many different technology options are available for controlling emissions.

In addition to the emission limits, general operating practices will be established in the form of an operator training and qualification program. A compliance schedule with specific increments of progress is provided. Operating limits for operating parameters such as maximum charge rates, temperature limits, and carbon feed rates and usage are prescribed. Test methods to be used in determining compliance with the emission limits, as well as compliance requirements, including testing schedules, are specified. Air curtain incinerators that burn 100% yard waste will have to meet separate requirements for increments of progress, compliance monitoring and testing, recordkeeping, and

reporting. Procedures to be followed in the event of facility and control equipment maintenance or malfunction are provided.

Table 1: The proposed Emissions Limits

Pollutant	Emission Limit <sup>a, b</sup>
Particulate Matter (PM)	70 mg/dscm
Carbon Monoxide (CO)	157 ppm by dry volume
Dioxins/Furans (toxic equivalency basis)	.41 ng/dscm
Hydrogen Chloride (HCl)	62 ppm by dry volume
Sulfur Dioxide (SO <sub>2</sub> )	20 ppm by dry volume
Nitrogen Oxides (NO <sub>x</sub> )	388 ppm by dry volume
Lead (Pb)	0.04 mg/dscm
Cadmium (Cd)	0.004 mg/dscm
Mercury (Hg)	0.47 mg/dscm

<sup>a</sup> Emission limits are measured at 7.0% oxygen on a dry basis at standard conditions.

<sup>b</sup> The list of acronyms used in the table is the following: mg stands for milligrams, dscm stands for dry standard cubic meter, ppm stands for parts per million, ng stands for nanograms.

Initial and annual stack testing will be used to measure the emissions levels and to demonstrate compliance with the standards. Equipment necessary to monitor compliance with the site-specific operating limits are to be installed, calibrated, maintained, and operated. The reporting of emissions will be required once a year, unless emission limits are exceeded, in which case reporting is required twice a year. Records of monitoring and test results are to be maintained.

Operator training and certification requirements are proposed to ensure good operating practices that contribute to the overall effectiveness of the plant operations, which in turn, may reduce the amount of emissions. CISWI unit operators will be required to complete a generic and a site-specific operator-training course. According to the agency, operators are already required to complete a generic training. However, the proposed regulation will introduce an additional requirement for plant specific training on all employees who might affect plant operations. A site-specific documentation must also be developed for each CISWI, must be accessible to operators, and all of the operators must review it annually through a program.

In addition, the owners of new CISWIs applying for a construction permit will be required to prepare a siting analysis. A siting analysis is used to identify and limit the potential effects of a proposed facility on public health and the environment. The effects of CISWI emissions on environment include impacts to the ambient air quality, visibility, and soils and vegetation.

In short, the owners of CISWIs will have to conduct initial and periodic emissions testing, install and operate emission monitoring systems, monitor waste load levels, train operators and obtain certification for some operators, develop site specific operating documents to ensure compliance with the

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proposed regulations. All of these requirements will have to be satisfied according to a schedule. A compliance schedule with specific increments of progress is proposed. CISWIs will have two deadlines, as follows.

Increment 1, Submit final control plan: Within six months of the effective date of the proposed standards.

Increment 2, Final compliance: Within three years of the effective date, or before December 1, 2005, whichever is earlier.

The agency indicates that the plan approval and consequently, the effective date are likely to be around the 2005 deadline.

Costs. Total costs of this regulation for affected entities will depend on the particular characteristics of each source. Costs will vary significantly for each unit due to the relative size and complexity of each source. The definition of "commercial/industrial waste incinerators" covers many different types of incinerators combusting different materials in support of various industrial processes located within a wide variety of industries. Potentially affected sources in the Commonwealth range from large units located at large manufacturing facilities, to very small, infrequently operated units located at smaller facilities.

The costs for testing, monitoring, and reporting vary considerably from one source to another and from one pollutant to another. A single stack test for pollutants such as particulate matter, sulfur oxides, or nitrogen oxide may cost anywhere from \$2,000 to \$10,000 per pollutant depending on the pollutant emitted, stack size, and complexity of the test required.<sup>3</sup> Installing continuous emission monitors for a single point in a facility may cost anywhere from \$25,000 to \$150,000 per pollutant, without a data acquisition system.<sup>4</sup>

Section 129 of the Clean Air Act requires that all incinerators operate with a Title V permit, and this regulatory program will implement that requirement. It is likely that the majority of the affected sources already have permits to operate, as well as Title V operating permits. According to the agency, approximately 10% of the affected sources may need to revise their permits to reflect potentially significant changes in operation in order to meet the requirements of the regulation. This could cost a source, depending on company resources, between \$10,000 and \$30,000.<sup>5</sup> Some companies may prepare the required analysis with their own staff and some may rely on consultants. A number of sources that have been exempt may need to obtain permits, including a Title V operating permit. If a parent facility already has or is in the process of getting a Title V permit, or if the source otherwise meets Title V applicability requirements, then that source may already have a permit. There may be some sources that do not otherwise meet the need to have a Title V permit other than the existence of this rule. Depending on the specific source, a complete set of new permits could cost between \$20,000 and \$200,000, although it is very unlikely that

sources that currently do not have permits will have any significant permitting requirements.<sup>6</sup> The amount of additional costs to facility owners due to permit requirements is not known.

The additional reporting costs will depend on the specific requirements for the source. Small facilities and sources meeting the emission limits will have less reporting responsibilities than the large facilities and those who do not meet the standards.

Currently, an incinerator operator has to pay \$150 to take the examination and obtain a license, \$75-fee for the initial application, \$50-fee for the biennial certification renewal. Private companies conduct training needed to qualify to take the exam. The cost of an operator-training course ranges from approximately \$400 to \$800. Although these costs are currently incurred, the proposed regulations will require additional site-specific operator training. The additional costs for the site-specific training are not known. The additional training costs may be incurred by the operator, or by the facility owner.

In short, the proposed regulations will impose many different types of costs on the owners of CISWIs. These costs can be grouped under capital and operating cost categories. Capital costs include outlays on control, monitoring, and any other types of equipment purchases and installation expenses required to comply with the proposed standards. Capital costs are one-time costs and are not very meaningful unless converted to annual figures based on the useful life of the capital equipment. Operating costs are ongoing costs and stem from the operation and maintenance of installed equipment, testing, monitoring, reporting, recordkeeping, operator training and certification, and any other activities necessary to comply with the proposed regulations. Total annual cost is the sum of the annualized capital costs and operating costs, and is used to measure the impact on the owners of CISWIs.

As it is clear from the information provided so far, the proposed requirements are numerous and complex. Given the absence of facility-specific cost data, it is impossible to identify each cost item for each specific plant affected in Virginia. Instead, the unit costs estimated by EPA will be provided. EPA has already produced an analysis on the economic impact of the commercial and industrial solid waste incinerator regulations.<sup>7</sup> The unit cost estimates presented here are derived from the EPA analysis.

To estimate the total costs, EPA analysis considers three different model units. The characteristics of these units are provided in the following table.

Table 2: Characteristics of Model Incinerator Units

Model Parameters	Model A	Model B	Model C
Waste Type	Sludge/Liquid	Solids	Solids

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

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> EPA, 1999, "Economic Impact Analysis of Proposed Commercial and Industrial Solid Waste Incineration Regulation."

Technology	Excess Air	Excess Air	Excess Air
Chamber Design	Single Chamber	Single Chamber	Multiple Chamber
Waste Charging	Continuous	Batch	Intermittent
Capacity	1,500 lbs/hr	100 lbs/hr 500 lbs/batch	1,500 lbs/hr
Operating Time	4,719 hrs/yr	2,838 hrs/yr	2,838 hrs/yr

Source: EPA, 1999, "Economic Impact Analysis of Proposed Commercial and Industrial Solid Waste Incineration Regulation," p. 5-2.

Since the costs of the proposed emissions standards will vary depending on the additional controls required, estimated operating costs for each of the affected model units is tabulated, as follows.

Table 3: Unit Cost Estimates for the Affected Facilities <sup>a</sup>

Existing Controls	Additional Controls Required	Model A Control Costs	Model B Control Costs	Model C Control Costs
Units with Wet Scrubbers	No Additional Control Requirements	\$22,563	\$22,143	\$22,143
Units with Fabric Filters or Dry Sorbent Injection and Fabric Filters	Packed Bed	\$174,162	\$62,477	\$127,772
Units that are Uncontrolled	Wet Scrubbers	\$203,075	\$75,558	\$154,089

Source: EPA, 1999, "Economic Impact Analysis of Proposed Commercial and Industrial Solid Waste Incineration Regulation," p. 5-5.

<sup>a</sup> All cost figures are converted to 2001 dollars from 1998 dollars by an inflation factor of 1.09 based on the U.S. producer price index.

Additional costs reported in the table are total annual costs for a unit, which includes annualized capital costs and annual operating costs. The table suggests that the costs of the proposed regulations may be as low as \$22,143 for model B and C units if no additional emissions control equipment is required, and as high as \$203,075 for model A units if wet scrubbers must be installed.

The total cost of the proposed regulations to Virginia businesses is subject to great uncertainty. First, the distributions of CISWIs in Virginia over currently existing controls and over the three types of model units are not known. Second, there is lack of information on the number of CISWIs that will be affected by the proposed regulations. However, general assumptions can be made to produce rough estimates for the total cost of the proposed standards on all of the potentially affected units in Virginia. To provide total cost estimates, it is assumed that all of the Virginia units are uncontrolled, and Model A units make up 12% of the total affected units, Model B units make up 52%, and model C units make up the remaining 36% of the affected facilities.<sup>8</sup>

Table 4: Total Annual Cost Estimates

	50 Units	60 Units	70 Units	80 Units	90 Units
Total Annual Cost	\$5,956,560	\$7,147,872	\$8,339,184	\$9,530,496	\$10,721,808

The figures in Table 4 suggest that if 50 units become subject to the proposed emissions standards and none of them have any emissions controls installed currently, then the total annual cost is likely to be about \$5.9 million. Similarly, if 90 units are affected in Virginia, then the total compliance cost can be as high as \$10.7 million.

It is important to note that these estimates should be taken as the maximum likely costs for these facilities as they were obtained assuming that the facilities do not have any control equipment installed currently, and that the facility will not switch to a more cost effective waste disposal alternative. Recycling and landfilling may be very attractive ways of waste disposal after the proposed changes becomes effective. If recycling and landfilling become cheaper methods, it is very likely that these facilities will change their waste disposal method to avoid higher costs provided alternative methods of incineration are available. EPA analysis indicates that at least 50% of the facilities will find it economically cheaper to employ an alternative method of disposal such as landfilling. Switching to a less costly disposal alternative is likely to reduce the estimated compliance costs.

These additional costs may cause some of the facilities to cease operations and may discourage commercial industrial facilities to use incinerators. As mentioned, this may be because landfilling may be cheaper or additional costs may encourage recycling. The agency anticipates that approximately 10% of sources still operating by the time the regulation is effective will shut down in order to avoid meeting the new regulatory requirements. Whether a facility opts to install control equipment, change their operations such that the addition of equipment is not necessary, or seek an alternative to incineration, cannot be accurately predicted.

For example, one unit located at a large manufacturing facility has been in operation for many years, and performs one unique task on a case-by-case basis. The unit has no air pollution control devices, nor does it burn large quantities of waste. Further, this unit has been operated only intermittently over the years, depending on the type and amount of product it is intended to process. Due to the constant evolution of the parent facility's numerous processes, use of this unit has decreased significantly over the last several years, and has not been operated at all for over a year. While it is unlikely that the unit will be used again, the facility is considering whether it should be maintained in order to meet an unanticipated manufacturing need that may occur at a later date, to adapt it to meet additional or different purposes, or to replace it. The parent facility is currently in the process of weighing the unit's future usefulness against the likelihood of adding controls and incurring other costs as required by the regulation. In short, such decisions are dependent on many factors and cannot be accurately predicted.

<sup>8</sup> This distribution is consistent with the sample used in EPA analysis.

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Additionally, the economic impact of the proposed standards would be relatively more significant for the new units because they will be subject to more stringent new source performance standards. However, the EPA analysis anticipates that even in the absence of the proposed standards, no CISWIs will come online. Provided no new units come online in Virginia, there should be no economic impact due to proposed new source performance standards.

It should be also noted that some of these costs may have been already incurred. Some of the facility owners have been anticipating the proposed regulations and may have been already taking necessary steps to meet the proposed emissions standards. According to the agency, Virginia's potentially affected facilities, especially large incinerators, may have already installed the control equipment. Many of the sources are believed to have already obtained permits, established testing and recordkeeping procedures, and trained and licensed operators. Thus, these facilities may have to incur only limited additional costs beyond the costs they have already incurred to realize the full cost of the proposed changes.

Some of the projected costs to the facilities may be passed downstream to customers and upstream to suppliers depending on the characteristics of the industry where commercial industrial facilities operate in. It is usually impossible to pass all of the cost increases to consumers and in most cases the firm can pass at least a portion of the costs. Some of the industry characteristics have been provided in the appendix.

Industry descriptions of potentially affected facilities, their distributions over industries,<sup>9</sup> the total number of existing firms, four firm concentration ratios, value of shipments, total payroll, and the number of paid employees have been identified. For example, there are 44 establishments in Virginia's miscellaneous manufacturing industries (SIC 39), two of which may be subject to the proposed standards. The value of shipments in this industry was about \$189 million in 1997 and about \$34 million was paid to approximately 1,000 employees. The four-firm concentration ratio also indicates that the four largest firms account for about 13% - 24% of the total value of shipments in this industry.

In general, a low concentration ratio is a characteristic of more competitive markets where firms are price takers and a high concentration ratio indicates that the industry is closer to a monopolistic market structure where firms may influence the prices. It may be easier for firms operating in highly concentrated industries to pass the compliance costs to their customers or their suppliers. According to the EPA analysis, most affected industries are competitive and only a small number of firms in each industry will be subject to the proposed standards. In Virginia, potentially affected firms may be between 50 and 90 out of over 11,000 firms in similar industries. This is less than one percent of the total number of firms. Thus, it is unlikely that there will be a significant impact on market prices of the goods produced in these industries. If the market price cannot be influenced, then the affected firms

with incineration units are likely to bear most of the compliance costs. Based on the available evidence presented here, the economic theory suggests that the compliance costs are likely to be paid out of CISWI profits and not by their customers or other businesses.

Finally, the agency will likely perform additional inspection, monitoring, and recordkeeping to ensure that the emissions limitations are being met, which may require increased expenditure in personnel and equipment. However, the agency does not expect additional personnel and equipment needs to be significant because many of these sources have been already permitted, inspected, and monitored for many years. Allocation of additional duties among the current personnel and other resources within the agency is expected to be sufficient to cover small additional staffing that may be required to ensure compliance with the proposed changes. On the other hand, the agency expects to enhance its ability to make both short- and long-term planning decisions by a small margin through the additional data collected and analyses performed.

Benefits. The main benefit of the proposed standards will be substantially reducing emissions of harmful air pollutants. These regulations will significantly reduce emissions of the eight pollutants mentioned above. For example, nationwide, hydrogen chloride emissions from CISWI units are expected to drop by 89%, dioxin/furans by about 65%, mercury by 34%, and particulate matter by about 71% over 1990 levels.<sup>10</sup> Some of these pollutants are considered carcinogens.

The benefits from the proposed standards are expected to be significant as the health risks from small exposures to some of these regulated air pollutants can be high. Some of the emissions are known or suspected of causing cancer, nervous system damage, developmental abnormalities, reproductive impairment, immune suppression, liver dysfunction, hormone imbalance, and other serious health effects.

In particular, dioxin is a significant concern because it is persistent in the environment and bioaccumulates. These characteristics cause dioxin to move through the food chain, biomagnify, and cause adverse effects to humans and wildlife. Reproductive, developmental, and immune system effects associated with exposure to dioxin are significant public health concerns.

Mercury is also highly toxic, persistent in the environment and bioaccumulates, particularly in fish. Human exposure to mercury occurs primarily through ingestion of fish. Exposure to mercury can cause adverse health effects in humans and wildlife, including gastrointestinal and respiratory tract disturbances, central nervous system, birth, and developmental effects.

Lead and cadmium are highly toxic and may cause mucous membrane irritation, gastrointestinal effects, nervous system, reproductive, and developmental disorders, and skin irritation. Long-term exposure to hydrogen chloride may affect eyes, skin, and mucus membranes.

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<sup>9</sup> Uses the low-end estimates for the number of potentially affected facilities.

<sup>10</sup> Source: EPA.



Control of harmful emissions from municipal waste combustors will reduce such serious health effects and the associated treatment costs. Furthermore, the reduction of CISWI emissions will reduce the risk of damage to vegetation and property, and improve visibility. A summary of health and other effects are provided in Table 5 on the next page. The economic value of these benefits cannot be credibly estimated because the uncertainty in doing so is enormous. It is not known how many people are exposed to these harmful emissions. Also, dose-response relationships between exposure to many of these harmful pollutants and the adverse health effects are little known.

Finally, overall ozone reductions may lessen the risk of current attainment areas being designated nonattainment, and current nonattainment areas being reclassified to a more serious classification. Also, failure to implement these regulations may result in federal government intervention.

Table 5: Health and Other Effects of Pollutants

Pollutant	Health and Other Effects
Dioxins/Furans	mortality, morbidity carcinogenicity
Cadmium (Cd)	retardation and brain damage hypertension central nervous system injury renal dysfunction
Mercury (Hg)	
Lead (Pb)	
Particulate Matter (PM)	mortality, morbidity eye and throat irritation, bronchitis, lung damage impaired visibility soiling and materials damage
Sulfur Dioxide (SO <sub>2</sub> )	dental erosion acid rain mortality, morbidity respiratory tract problems, permanent harm to lung soiling and materials damage reduced agricultural yield
Hydrogen Chloride (HCl)	
Nitrogen Oxides (NO <sub>x</sub> )	

Source: Federal Register, Vol. 60, No. 243, p. 65411.

Businesses and entities affected. About 50 to 90 facilities located throughout the state generally meet the criteria for "commercial and industrial solid waste incinerator." When the agency conducts a more definitive inventory as a part of the section 111(d) plan, this number may be revised and the total number of affected units may change significantly.

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

Projected impact on employment. The number of units that may shut down their incinerators is not known, but the agency anticipates that about 10% of the affected CISWIs may shut down their operations due to additional costs introduced by the proposed standards. This is likely to reduce the demand for labor at the incinerator units of the affected facilities. These firms may also reduce their demand for labor employed in the production process due to higher cost of production. On the other hand, affected entities are likely to employ an alternative method of waste disposal such as landfilling, other firms in the industry are likely to increase their production if there is a decrease in supply, and emissions control businesses may increase production. These effects are likely to increase the demand for labor and balance the negative impact to some degree. In fact, EPA analysis indicates that the compliance costs as a percentage of total company sales do not exceed 3.0%. This is taken as an indication that no significant impact on nationwide employment should be expected. Given the absence of any evidence against EPA's conclusion, the impact of the proposed regulations on Virginia's net employment is not expected to be large.

Effects on the use and value of private property. The value of the affected firms is likely to decrease because of additional compliance costs and lower profits. However, air pollution control devices will have to be purchased and the vendors will likely experience an increase in demand for their products. Their profits and the value of their businesses are likely to increase. Furthermore, businesses that conduct training of incinerator operators are also expected to experience an increase in the demand for their services. This may positively affect the value of training businesses. Finally, the value of private property located around affected incinerator units may increase due to emissions reductions that will be achieved.

Appendix: Characteristics of Potentially Affected Industries in Virginia <sup>a</sup>

SIC	Industry Description <sup>b</sup>	Firms could be Affected	Firms in Industry	Four-Firm Concentration Ratio (%)	Value of Shipments <sup>c</sup> (\$1,000)	Annual Payroll <sup>c</sup> (\$1,000)	Number of Paid Employees
02	Agricultural prod. - Livestock	2	-	-	-	-	-
21	Tobacco manufactures	1	5	62	-	-	1,000-2,499
22	Textile mill products	3	38	24 - 34	\$2,197,343	\$368,157	14,344
24	Lumber & wood products	1	12	43	\$268,839	\$42,693	1,341
28	Chemicals & allied products	3	15	26 - 45	-	-	2,100-5,249
30	Rubber & misc. plastics prod.	4	142	5 - 26	\$2,448,237	\$370,161	12,932

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33	Primary metal industries	1	1	22 – 51	-	-	100-249
34	Fabricated metal products <sup>d</sup>	3	157	7 – 62	\$731,444	\$159,864	6,470-7,469
35	Industrial machinery & equip.	2	13	22 – 76	\$904,183	\$157,927	5,431
36	Electrical & electronic equip.	2	25	33 – 41	\$387,401	\$81,301	2,777
37	Transportation equipment <sup>d</sup>	3	59	31 – 53	\$2,254,372	\$826,383	22,235
38	Instruments & related prod.	1	18	57	\$2,254,372	\$826,383	22,235
39	Miscellaneous manufacturing industries	2	44	13 – 24	\$189,434	\$34,496	1,090
50	Wholesale trade-durable good	3	1,356	7 – 13	\$4,489,887	\$482,491	15,873
51	Wholesale trade-nondurable good	2	318	28 – 52	\$7,355,225	\$355,442	12,370
54	Food stores	2	5,185	9 – 90	\$13,457,863	\$1,206,659	99,331-114,331
65	Real estate	1	41	21	\$37,823	\$14,501	468
72	Personal services	2	553	21 – 35	\$339,543	\$98,578	4,838
75	Automotive repair, services, & parking	1	196	2	\$79,364	\$24,208	1,072
76	Misc. repair services	6	784	7 – 48	\$914,330	\$220,699	7,453
80	Health services	1	102	74	\$7,950,293	\$2,927,241	95,609
87	Engineering & management services	2	2,122	11 – 31	\$6,570,862	\$2,797,150	56,932
97	National security	2	-	-	-	-	-
<b>Total</b>		<b>50<sup>e</sup></b>	<b>11,186</b>				

Source: Extracted from 1997 Economic Census, U.S. Census Bureau.

<sup>a</sup> Some data are not available because either withheld to avoid disclosure or not found in database.

<sup>b</sup> Industry is defined as narrowly as possible. It does not include all the firms under the same two-digit SIC code, but only those very similar to the facility that may be affected.

<sup>c</sup> In terms of 1997 dollars.

<sup>d</sup> Numbers exclude undisclosed data.

<sup>e</sup> This corresponds to low-end estimates for the potentially affected facilities in Virginia.

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

## Summary:

*The proposed regulation applies to commercial/industrial solid waste incinerators (CISWIs), and includes emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury. Special CISWI operator training and qualification requirements are included in order to assure proper facility operation and compliance with the emissions limitations; sources are also required to prepare overall waste management plans. Compliance, emissions testing, and monitoring requirements are delineated, as well as recordkeeping and*

*reporting of such test results. Finally, specific compliance schedules are provided.*

## PART II. EMISSION STANDARDS.

### Article 45.

*Commercial/Industrial Solid Waste Incinerators (Rule 4-45).*

### **9 VAC 5-40-6250. Applicability and designation of affected facility.**

*A. Except as provided in subsections C and D of this section, the affected facilities to which the provisions of this article apply are commercial/industrial solid waste incinerator (CISWI) units that commenced construction on or before November 30, 1999.*

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

C. Exempted from the provisions of this article are the following:

1. Pathological waste incineration units burning 90% or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of any combination of pathological waste, low-level radioactive waste, or chemotherapeutic waste if the owner:

- a. Notifies the board that the unit meets these criteria, and
- b. Keeps records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

2. Agricultural waste incineration units burning 90% or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes if the owner:

- a. Notifies the board that the unit meets these criteria, and
- b. Keeps records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

3. Municipal waste combustion units that meet either of the following:

- a. Are regulated under Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 or Article 52 (9 VAC 5-40-6550 et seq.) of Part II of 9 VAC 5 Chapter 40.
- b. Burn greater than 30% municipal solid waste or refuse-derived fuel, as defined in Subparts Ea, Eb, AAAA, and BBBB of 40 CFR Part 60, and have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if the owner:

- (1) Notifies the board that the unit meets these criteria, and
- (2) Keeps records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

4. Medical waste incineration units regulated under Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50.

5. Small power production facility units if:

- a. The unit qualifies as a small power-production facility under § 3(17)(C) of the Federal Power Act (16 USC § 796(17)(C));
- b. The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity; and
- c. The owner notifies the board that the unit meets all of these criteria.

6. Cogeneration facility units if:

- a. The unit qualifies as a cogeneration facility under § 3(18)(B) of the Federal Power Act (16 USC § 796(18)(B));

b. The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes; and

c. The owner notifies the board that the unit meets all of these criteria.

7. Hazardous waste combustion units that are either:

a. Required to obtain a permit under 9 VAC 20 Chapter 60 (9 VAC 20-60), or

b. Regulated under Article 2 (9 VAC 5-60-90 et seq.) of Part II of 9 VAC 5 Chapter 60.

8. Materials recovery units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

9. Air curtain incinerators that burn only (i) 100% wood waste, (ii) 100% clean lumber or (iii) 100% mixture of only any combination of wood waste, clean lumber, or yard waste shall meet the requirements under 9 VAC 5-40-6490.

10. Cyclonic barrel burners.

11. Rack, part, and drum reclamation units.

12. Cement kilns regulated under Article 2 (9 VAC 5-60-90 et seq.) of Part II of 9 VAC 5 Chapter 60.

13. Sewage sludge incinerator units regulated under Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50.

14. Chemical recovery units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds.

a. Except as provided in subdivision 14 b of this subsection, the following types of units are considered chemical recovery units.

(1) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(3) Units burning only wood or coal feedstock for the production of charcoal.

(4) Units burning only manufacturing byproduct streams or residues or both containing catalyst metals that are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(7) Units burning only photographic film to recover silver.

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b. If a chemical recovery unit is not listed in subdivision 14 a of this subsection, the owner of the unit can petition the board to add the unit to the list. The petition shall contain the following:

- (1) A description of the source of the materials being burned.
- (2) A description of the composition of the materials being burned, highlighting the chemical constituents in these materials that are recovered.
- (3) A description (including a process flow diagram) of the process in which the materials are burned, highlighting the type, design, and operation of the equipment used in this process.
- (4) A description (including a process flow diagram) of the chemical constituent recovery process, highlighting the type, design, and operation of the equipment used in this process.
- (5) A description of the commercial markets for the recovered chemical constituents and their use.
- (6) The composition of the recovered chemical constituents and the composition of these chemical constituents as they are bought and sold in commercial markets.

c. Until the board approves the petition, the incineration unit is subject to this article.

d. If a petition is approved, the board will amend subdivision 14 a of this subsection to add the unit to the list of chemical recovery units.

15. Laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis.

D. The provisions of this rule do not apply to a CISWI unit if the owner makes changes that meet the definition of modification or reconstruction on or after June 1, 2001, at which point the CISWI unit becomes subject to subpart CCCC of 40 CFR Part 60.

E. If the owner makes physical or operational changes to an existing CISWI unit primarily to comply with this article, subpart CCCC of 40 CFR Part 60 does not apply to that unit. Such changes do not qualify as modifications or reconstructions under subpart CCCC of 40 CFR Part 60.

F. Each CISWI unit shall operate pursuant to a federal operating permit no later than (i) December 1, 2003, or (ii) the effective date of the federal operating permit program to which the unit is subject, whichever is later. If the unit is subject to the federal operating permit program as a result of some triggering requirements other than this article (for example, being a major source), then the unit may be required to apply for and obtain a federal operating permit prior to the deadlines in subdivisions (i) and (ii) of this subsection. If more than one requirement triggers the requirement to apply for a federal operating permit, the 12-month timeframe for filing a permit application is triggered by the requirement that first causes the source to be subject to the federal operating permit program.

## 9 VAC 5-40-6260. Definitions.

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

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

C. Terms defined.

"Agricultural waste" means vegetative agricultural materials such as nut and grain hulls and chaff (e.g., almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

"Auxiliary fuel" means natural gas, liquefied petroleum gas, fuel oil, or diesel fuel.

"Bag leak detection system" means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (i.e., baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

"Calendar quarter" means three consecutive months, not overlapping, beginning on January 1, April 1, July 1, or October 1.

"Calendar year" means 365 consecutive days starting on January 1 and ending on December 31.

"Chemotherapeutic waste" means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this section. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and

industrial solid waste hopper (if applicable) and extends through two areas:

1. The combustion unit flue gas system, which ends immediately after the last combustion chamber.
2. The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

"Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom-built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

"Contained gaseous material" means gases that are in a container when that container is combusted.

"Cyclonic barrel burner" means a combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air.

"Deviation" means any instance in which an affected source subject to this article, or an owner of such a source:

1. Fails to meet any requirement or obligation established by this article, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;
2. Fails to meet any term or condition that is adopted to implement an applicable requirement in this article and that is included in the operating permit for any affected source required to obtain such a permit; or
3. Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this article during startup, shutdown, or malfunction, regardless of whether such failure is permitted by this article.

"Dioxins/furans" means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

"Discard" means, for purposes of this article, to burn in an incineration unit without energy recovery.

"Drum reclamation unit" means a unit that burns residues out of drums (e.g., 55 gallon drums) so that the drums can be reused.

"Energy recovery" means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

"Federal operating permit" means a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80.

"Fabric filter" means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media (e.g., baghouse).

"Low-level radioactive waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 USC § 2014(e)(2)).

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

"Modification" or "modified CISWI unit" means a CISWI unit that has been changed later than June 1, 2001, and that meets one of the following criteria:

1. The cumulative cost of the changes over the life of the unit exceeds 50% of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.
2. Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which § 129 or § 111 of the Clean Air Act has established standards.

"Part reclamation unit" means a unit that burns coatings off parts (e.g., tools, equipment) so that the parts can be reconditioned and reused.

"Particulate matter" means total particulate matter emitted from CISWI units as measured by Reference Method 5 or 29.

"Pathological waste" means waste material consisting of only human or animal remains, anatomical parts, anatomical tissue, the bags and containers used to collect and transport the waste material, and animal bedding (if applicable).

"Rack reclamation unit" means a unit that burns the coatings off of racks that are used to hold small items for application of a coating. The unit burns the coating overspray off of the rack so the rack can be reused.

"Reconstruction" means the rebuilding of a CISWI unit that meets the following criteria:

1. The reconstruction begins on or after June 1, 2001, and
2. The cumulative cost of the construction over the life of the incineration unit exceeds 50% of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

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"Refuse-derived fuel" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel, including (i) low-density fluff refuse-derived fuel through densified refuse-derived fuel and (ii) pelletized refuse-derived fuel.

"Shutdown" means the period of time after all waste has been combusted in the primary chamber.

"Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, as amended (33 USC § 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 USC § 2014). For purposes of this article, solid waste does not include the waste burned in the units described in 9 VAC 5-40-6250 C.

"Standard conditions" means, when referring to units of measure, a temperature of 68 degrees Fahrenheit (20°C) and a pressure of 1 atmosphere (101.3 kilopascals).

"Startup period" means the period of time between the activation of the system and the first charge to the unit.

"Wet scrubber" means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics), or to absorb and neutralize acid gases, or both.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.
2. Construction, renovation, or demolition wastes.
3. Clean lumber.

## **9 VAC 5-40-6270. Limit for particulate matter.**

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any particulate emissions in excess of 70 milligrams per dry standard cubic meter, measured at 7.0% oxygen, dry basis at standard conditions.

## **9 VAC 5-40-6280. Limit for carbon monoxide.**

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any carbon monoxide emissions in excess of 157 parts per million by dry

volume, measured at 7.0% oxygen, dry basis at standard conditions.

## **9 VAC 5-40-6290. Limit for dioxins/furans.**

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any dioxin/furan emissions in excess of 0.41 nanograms per dry standard cubic meter (toxic equivalency basis), measured at 7.0% oxygen, dry basis at standard conditions.

## **9 VAC 5-40-6300. Limit for hydrogen chloride.**

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any hydrogen chloride emissions in excess of 62 parts per million by dry volume, measured at 7.0% oxygen, dry basis at standard conditions.

## **9 VAC 5-40-6310. Limit for sulfur dioxide.**

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any sulfur dioxide emissions in excess of 20 parts per million by dry volume, measured at 7.0% oxygen, dry basis at standard conditions.

## **9 VAC 5-40-6320. Limit for nitrogen oxides.**

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any nitrogen oxide emissions in excess of 388 parts per million by dry volume, measured at 7.0% oxygen, dry basis at standard conditions.

## **9 VAC 5-40-6330. Limit for lead.**

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any lead emissions in excess of 0.04 milligrams per dry standard cubic meter, measured at 7.0% oxygen, dry basis at standard conditions.

## **9 VAC 5-40-6340. Limit for cadmium.**

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any cadmium emissions in excess of 0.004 milligrams per dry standard cubic meter, measured at 7.0% oxygen, dry basis at standard conditions.

## **9 VAC 5-40-6350. Limit for mercury.**

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any mercury emissions in excess of 0.47 milligrams per dry standard cubic meter, measured at 7.0% oxygen, dry basis at standard conditions.

## **9 VAC 5-40-6360. Limit for visible emissions.**

A. The provisions of Article 1 (9 VAC 5-40-60 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Visible Emissions) apply except that the provisions in subsection B of this section apply instead of 9 VAC 5-40-80.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any visible emissions that exhibit greater than 10% opacity.

## **9 VAC 5-40-6370. Standard for fugitive dust/emissions.**

The provisions of Article 1 (9 VAC 5-40-60 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Fugitive Dust/Emissions, Rule 4-1) apply.

## **9 VAC 5-40-6380. Standard for odor.**

The provisions of Article 2 (9 VAC 5-40-130 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Odor, Rule 4-2) apply.

## **9 VAC 5-40-6390. Standard for toxic pollutants.**

The provisions of Article 3 (9 VAC 5-40-160 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Toxic Pollutants, Rule 4-3) apply.

## **9 VAC 5-40-6400. Operator training and qualification.**

A. No CISWI unit shall be operated unless a fully trained and qualified CISWI unit operator is accessible, whether at the facility or capable of being at the facility within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, the procedures in subsection J of this section shall be followed.

B. Operator training and qualification shall be obtained through a program approved by the Board for Waste Management Facility Operators or by completing the requirements included in subsection C of this section.

C. Training shall be obtained by completing an incinerator operator training course that includes, at a minimum, the following:

1. Training on the following subjects:
  - a. Environmental concerns, including types of emissions.
  - b. Basic combustion principles, including products of combustion.
  - c. Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.
  - d. Combustion controls and monitoring.
  - e. Operation of air pollution control equipment and factors affecting performance (if applicable).
  - f. Inspection and maintenance of the incinerator and air pollution control devices.
  - g. Actions to correct malfunctions or conditions that may lead to malfunction.
  - h. Bottom and fly ash characteristics and handling procedures.
  - i. Applicable federal, state, and local regulations, including Occupational Safety and Health Administration workplace standards.
  - j. Pollution prevention.
  - k. Waste management practices.

2. An examination designed and administered by the instructor.

3. Written material covering the training course topics that can serve as reference material following completion of the course.

D. The operator training course shall be completed by the later of the following dates:

1. The final compliance date in 9 VAC 5-40-6420 A.
2. Six months after CISWI unit startup.
3. Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

E. Operator qualification shall be obtained by completing a training course that satisfies the criteria under subsection B of this section. Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under subdivision C 2 of this section.

F. To maintain operator qualification, the operator shall complete an annual review or refresher course covering, at a minimum, the following topics:

1. Update of regulations.
2. Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.
3. Inspection and maintenance.
4. Responses to malfunctions or conditions that may lead to malfunction.
5. Discussion of operating problems encountered by attendees.

G. Lapsed operator qualification shall be renewed when the operator:

1. For a lapse of less than three years, completes a standard annual refresher course described in subsection F of this section, or
2. For a lapse of three years or more, repeats the initial qualification requirements in subsection E of this section.

H. Site-specific documentation shall be available at the facility and readily accessible for all CISWI unit operators that addresses the topics described in subdivisions H 1 through 10 of this subsection. The owner shall maintain this information and the training records required by subsection I 3 of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

1. Summary of the applicable standards under this article.
2. Procedures for receiving, handling, and charging waste.
3. Incinerator startup, shutdown, and malfunction procedures.
4. Procedures for maintaining proper combustion air supply levels.

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5. Procedures for operating the incinerator and associated air pollution control systems within the standards established under this article.
  6. Monitoring procedures for demonstrating compliance with the incinerator operating limits.
  7. Reporting and recordkeeping procedures.
  8. The waste management plan required under 9 VAC 5-40-6410.
  9. Procedures for handling ash.
  10. A list of the wastes burned during the emission test.
- I. A program for reviewing the following information shall be established for each incinerator operator:
1. The initial review of the information listed in subsection H of this section shall be conducted by the later of the following dates:
    - a. The final compliance date in 9 VAC 5-40-6420 A.
    - b. Six months after CISWI unit startup.
    - c. Six months after being assigned to operate the CISWI unit.
  2. Subsequent annual reviews of the information listed in subsection H of this section shall be conducted no later than 12 months following the previous review.
  3. The following information shall be maintained:
    - a. Records showing the names of CISWI unit operators who have completed review of the information in subsection H of this section as required by this subsection, including the date of the initial review and all subsequent annual reviews.
    - b. Records showing the names of the CISWI operators who have completed the operator training requirements under subsection C of this section, met the criteria for qualification under subsection E of this section, and maintained or renewed their qualification under subsection F or G of this section. Records shall include documentation of training, the dates of the initial refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.
    - c. For each qualified operator, the telephone or pager number at which they can be reached during operating hours.
- J. If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within one hour), one of the following procedures shall be followed:
1. When all qualified operators are not accessible for more than 8 hours, but less than two weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in subsection H of this section within the past 12 months. The period when all qualified operators were not accessible shall be recorded, and this deviation shall be included in the annual report as specified in 9 VAC 5-40-6480 G.
  2. When all qualified operators are not accessible for two weeks or more, the owner shall perform the following:
    - a. Notify the board of this deviation in writing within 10 days, including the cause of the deviation, what is being done to ensure that a qualified operator is accessible, and the anticipated date when a qualified operator will be accessible.
    - b. Submit a status report to the board every 4 weeks outlining what is being done to ensure that a qualified operator is accessible, the anticipated date when a qualified operator will be accessible, and a request for approval from the board to continue operation of the CISWI unit. The first status report shall be submitted 4 weeks after the board has been notified of the deviation under subdivision 2 a of this subsection. If the board disapproves the request to continue operation of the CISWI unit, the CISWI unit may continue operation for 90 days. After 90 days, the CISWI unit shall cease operation. Operation of the unit may resume if the following requirements are met:
      - (1) A qualified operator is accessible as required under subsection A of this section.
      - (2) The board is notified that a qualified operator is accessible and that operation is resuming.
- K. All training shall be conducted in accordance with § 54.1-2212 of the Code of Virginia.

## **9 VAC 5-40-6410 Waste management plan.**

A. The owner of an affected facility shall prepare a written waste management plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

B. The waste management plan shall be submitted no later than the date specified in 9 VAC 5-40-6420 B 1.

C. The waste management plan shall include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan shall identify any additional waste management measures; and the source shall implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

## **9 VAC 5-40-6420. Compliance schedule.**

A. CISWI units shall achieve final compliance as expeditiously as practicable after approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan, but no later than either December 1, 2005, or three years after approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan, whichever is earlier.

B. Sources planning to achieve compliance more than one year following approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan shall meet the earlier of the following increments of progress:



1. Submit and maintain a final control plan no later than six months after approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan; or

2. Achieve final compliance no later than three years after approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan or December 1, 2005.

C. The owner shall notify the board as increments of progress are achieved. Notification of achievement of increments of progress shall include the following:

1. Notification that the increment of progress has been achieved.
2. Any items required to be submitted with each increment of progress.
3. Signature of the owner of the CISWI unit.

D. Notifications for achieving increments of progress shall be postmarked no later than 10 business days after the compliance date for the increment.

E. If an increment of progress is not met, the owner of the affected source shall submit a notification to the board postmarked within 10 business days after the date for that increment of progress. The owner shall continue to submit reports each subsequent calendar month until the increment of progress is met.

F. The control plan increment of progress shall meet the following requirements:

1. Submittal of the final control plan, which shall include the following:
  - a. A description of the devices for air pollution control and process changes that will be used to comply with the emission limitations and other requirements of this article;

- b. The types of waste to be burned;
- c. The maximum design waste burning capacity;
- d. The anticipated maximum charge rate; and
- e. If applicable, the petition for site-specific operating limits under 9 VAC 5-40-6430 D.

2. Maintenance of a copy of the final control plan onsite.

G. For the final compliance increment of progress, the owner of the affected source shall complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

H. If a CISWI unit is closed but will be restarted prior to the final compliance date, the increments of progress specified in subsection B of this section shall be met.

I. If a CISWI unit is closed but will be restarted after the final compliance date, the owner shall complete emission control retrofits and meet the emission limitations and operating limits on the date the unit restarts operation.

J. If a CISWI unit is to close rather than comply with this article, the owner shall submit a closure notification, including the date of closure, to the board by the date the final control plan is due.

**9 VAC 5-40-6430. Operating limits.**

A. The owner of a facility using wet scrubbers shall meet operating limits as established in subdivisions 1 and 2 of this subsection.

1. Operating limits for operating parameters shall be in accordance with Table 4-45A.

TABLE 4-45A  
OPERATING LIMITS FOR WET SCRUBBERS

Operating parameters	Operating limits	Minimum frequencies		
		Data measurement	Data recording	Averaging time
Charge rate	Maximum charge rate	Continuous	Every hour	Daily (batch units)
				3-hour rolling (continuous and intermittent units) <sup>a</sup>
Pressure drop across the wet scrubber or amperage to wet scrubber	Minimum pressure drop or amperage	Continuous	Every 15 minutes	3-hour rolling <sup>a</sup>
Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	3-hour rolling <sup>a</sup>
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	3-hour rolling <sup>a</sup>

<sup>a</sup> Calculated each hour as the average of the previous three operating hours.

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2. Operating limits for wet scrubbers shall be established during the initial emission test as follows:

a. Maximum charge rate shall be calculated using one of the following procedures:

(1) For continuous and intermittent units, the maximum charge rate is 110% of the average charge rate measured during the most recent emission test demonstrating compliance with all applicable emission limitations.

(2) For batch units, the maximum charge rate is 110% of the daily charge rate measured during the most recent emission test demonstrating compliance with all applicable emission limitations.

b. Minimum pressure drop across the wet scrubber, which is calculated as 90% of the average pressure drop across the wet scrubber measured during the most recent emission test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as 90% of the average amperage to the wet scrubber measured during the most recent emission test demonstrating compliance with the particulate matter emission limitations.

c. Minimum scrubber liquor flow rate, which is calculated as 90% of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent emission test demonstrating compliance with all applicable emission limitations.

d. Minimum scrubber liquor pH, which is calculated as 90% of the average liquor pH at the inlet to the wet scrubber measured during the most recent emission test demonstrating compliance with the hydrogen chloride emission limitation.

B. Operating limits established during the initial emission test shall be met on the date the initial emission test is required or completed, whichever is earlier.

C. If a fabric filter is used to comply with the emission limitations, each fabric filter system shall be operated such that the bag leak detection system alarm does not sound more than 5.0% of the operating time during a six-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of one hour. If longer than one hour to initiate corrective action transpires, the alarm time shall be counted as the actual amount of time taken to initiate corrective action.

D. If an air pollution control device other than a wet scrubber is used, or if emissions are controlled in some other manner, the owner shall petition the board for specific operating limits to be established during the initial emission test and continuously monitored thereafter. The initial emission test shall not be conducted until after the petition has been approved by the board. The petition shall include the following:

1. Identification of the specific parameters proposed to be used as additional operating limits.

2. A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will limit emissions of regulated pollutants.

3. A discussion of how the upper or lower values, or both, for these parameters, which will establish the operating limits on these parameters, will be established.

4. A discussion identifying the methods to be used to measure and the instruments to be used to monitor these parameters, and the relative accuracy and precision of these methods and instruments.

5. A discussion identifying the frequency and methods for recalibrating the instruments used for monitoring these parameters.

### **9 VAC 5-40-6440. Facility and control equipment maintenance or malfunction.**

A. The provisions of 9 VAC 5-20-180 (Facility and control equipment maintenance or malfunction) apply to the emission standards set forth in 9 VAC 5-40-6370, 9 VAC 5-40-6380, and 9 VAC 5-40-6390.

B. The provisions of 9 VAC 5-20-180 A, B, C, D, H, and I apply to the emission limits in 9 VAC 5-40-6270 through 9 VAC 5-40-6360.

C. The emission limitations and operating limits apply at all times except during CISWI unit startups, shutdowns, or malfunctions. Each malfunction shall last no longer than three hours. This subsection shall not apply to the emission standards set forth in 9 VAC 5-40-6370, 9 VAC 5-40-6380, and 9 VAC 5-40-6390.

### **9 VAC 5-40-6450. Test methods and procedures.**

A. The provisions governing test methods and procedures shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6370, 9 VAC 5-40-6380, and 9 VAC 5-40-6390, the provisions of 9 VAC 5-40-30 (Emission testing) apply.

2. With regard to the emission limits in 9 VAC 5-40-6270 through 9 VAC 5-40-6360, the following provisions apply:

a. 9 VAC 5-40-30 D and G.

b. 40 CFR 60.8(b) through (f).

c. Subsections B through H of this section.

B. All emission tests shall consist of a minimum of three test runs conducted under conditions representative of normal operations.

C. The owner shall document that the waste burned during the emission test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in 9 VAC 5-40-6480 B 2 a) and the types of waste burned during the emission test.

D. All emission tests shall be conducted using the following minimum run durations and reference methods:

1. For particulate matter: 3-run average (one hour minimum sample time per run), Reference Method 5 or 29.
2. For carbon monoxide: 3-run average (one hour minimum sample time per run), Reference Method 10, 10A, or 10B.
3. For dioxins/furans: 3-run average (one hour minimum sample time per run), Reference Method 23.
4. For hydrogen chloride: 3-run average (one hour minimum sample time per run), Reference Method 26A.
5. For sulfur dioxide: 3-run average (one hour minimum sample time per run), Reference Method 6 or 6c.
6. For nitrogen oxides: 3-run average (one hour minimum sample time per run), Reference Methods 7, 7A, 7C, 7D, or 7E.
7. For lead: 3-run average (one hour minimum sample time per run), Reference Method 29.
8. For cadmium: 3-run average (one hour minimum sample time per run), Reference Method 29.
9. For mercury: 3-run average (one hour minimum sample time per run), Reference Method 29.
10. For visible emissions: six-minute average, Reference Method 9.

E. Reference Method 1 shall be used to select the sampling location and number of traverse points.

F. Reference Method 3A or 3B shall be used for gas composition analysis, including measurement of oxygen concentration. Reference Method 3A or 3B shall be used simultaneously with each method.

G. All pollutant concentrations, except for opacity, shall be adjusted to 7.0% oxygen using the following equation:

$$C_{adj} = C_{meas} (20.9 - 7) / (20.9 - \% O_2)$$

where:

$C_{adj}$  = pollutant concentration adjusted to 7.0% oxygen;

$C_{meas}$  = pollutant concentration measured on a dry basis;

(20.9-7) = 20.9% oxygen - 7.0% oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$  = oxygen concentration measured on a dry basis, percent.

H. The owner of an affected facility shall determine the dioxins/furans toxic equivalency as follows:

1. Measure the concentration of each dioxin/furan tetra-through octa-congener emitted using EPA Method 23.
2. For each dioxin/furan congener measured in accordance with subdivision 1 of this subsection, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 4-45B of this article.

TABLE 4-45B.

TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
Octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
Octachlorinated dibenzofuran	0.001

3. Sum the products calculated in accordance with subdivision 2 of this subsection to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

**9 VAC 5-40-6460. Compliance**

A. The provisions governing compliance shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6370, 9 VAC 5-40-6380, and 9 VAC 5-40-6390, the provisions of 9 VAC 5-40-20 (Compliance) apply.
2. With regard to the emission limits in 9 VAC 5-40-6270 through 9 VAC 5-40-6360, the following provisions apply:
  - a. 9 VAC 5-40-20 B, C, D, and E,
  - b. 40 CFR 60.11, and
  - c. Subsections B and C of this section.

B. The owner of an affected facility shall conduct an initial emission test to determine compliance with the emission limitations in 9 VAC 5-40-6270 through 9 VAC 5-40-6360 and to establish operating limits using the procedures in 9 VAC 5-40-6430. The initial emission test shall be conducted using the reference methods and procedures in 9 VAC 5-40-6450, and shall be conducted no later than 180 days after the final compliance date specified in 9 VAC 5-40-6420 A.

C. The owner of an affected facility shall conduct an annual emission test for particulate matter, hydrogen chloride, and opacity for each CISWI unit to determine compliance with the emission limitations under 9 VAC 5-40-6270 through 9 VAC 5-40-6360 as follows:

1. The annual emission test shall be conducted using the test methods and procedures in 9 VAC 5-40-6450.

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2. The operating limits specified in 9 VAC 5-40-6430 shall be continuously monitored. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Three-hour rolling average values shall be used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under 9 VAC 5-40-6430 D. Operating limits do not apply during emission tests.

3. Only the same types of waste used to establish operating limits shall be burned during the emission test.

4. Annual emission tests for particulate matter, hydrogen chloride, and opacity shall commence within 12 months following the initial emission test. Subsequent annual emission tests shall be conducted within 12 months following the previous one.

5. The owner of an affected facility may conduct emission testing less often if the unit has test data for at least three years, and all emission tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over three consecutive years show that the unit complies with the emission limitation. In this case, no emission test is required for that pollutant for the next two years. The owner shall conduct an emission test during the third year and no more than 36 months following the previous emission test.

6. If the CISWI unit continues to meet the emission limitation for particulate matter, hydrogen chloride, or opacity, the owner may conduct emission tests for these pollutants every third year, but each test shall be within 36 months of the previous test.

7. If an emission test shows a deviation from an emission limitation for particulate matter, hydrogen chloride, or opacity, the owner shall conduct annual emission tests for that pollutant until all emission tests over a three-year period show compliance.

8. A repeat emission test may be conducted at any time to establish new values for the operating limits. The board may request a repeat emission test at any time. The emission test shall be repeated if the feed stream is different than the feed streams used during any emission test used to demonstrate compliance.

## 9 VAC 5-40-6470. Monitoring.

A. The provisions governing monitoring shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6370, 9 VAC 5-40-6380, and 9 VAC 5-40-6390, the provisions of 9 VAC 5-40-40 (Monitoring) apply.

2. With regard to the emission limits in 9 VAC 5-40-6270 through 9 VAC 5-40-6360, the following provisions apply:

- a. 9 VAC 5-40-40 A and F,
- b. 40 CFR 60.13, and
- c. Subsections B through F of this section.

B. The owner of an affected facility using a wet scrubber to comply with the emission limitations under 9 VAC 5-40-6270 through 9 VAC 5-40-6360 shall install, calibrate (to

manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 4-45A. These devices (or methods) shall measure and record the values for these operating parameters at the frequencies indicated in Table 4-45A at all times except as specified in subsection E of this section.

C. The owner of an affected facility using a fabric filter to comply with the requirements of this article shall install, calibrate, maintain, and continuously operate a bag leak detection system as follows:

1. A bag leak detection system shall be installed and operated for each exhaust stack of the fabric filter.

2. Each bag leak detection system shall be installed, operated, calibrated, and maintained in a manner consistent with the manufacturers' written specifications and recommendations.

3. The bag leak detection system shall be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

4. The bag leak detection system sensor shall provide output of relative or absolute particulate matter loadings.

5. The bag leak detection system shall be equipped with a device to continuously record the output signal from the sensor.

6. The bag leak detection system shall be equipped with an alarm system that sounds automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm shall be located where it is easily heard by plant operating personnel.

7. For positive pressure fabric filter systems, a bag leak detection system shall be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector shall be installed downstream of the fabric filter.

8. Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

D. The owner of an affected facility using something other than a wet scrubber to comply with the emission limitations under 9 VAC 5-40-6270 through 9 VAC 5-40-6260 shall install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in 9 VAC 5-40-6430 D.

E. Except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), the owner of an affected facility shall conduct all monitoring at all times the CISWI unit is operating.

F. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this article, including

data averages and calculations, shall not be used. All the data collected during all other periods shall be used in assessing compliance with the operating limits.

## **9 VAC 5-40-6480. Recordkeeping and reporting.**

A. The provisions governing recordkeeping and reporting shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6370, 9 VAC 5-40-6380, and 9 VAC 5-40-6390, the provisions of 9 VAC 5-40-50 (Notification, records and reporting) apply.
2. With regard to the emission limits in 9 VAC 5-40-6270 through 9 VAC 5-40-6360, the following provisions apply:
  - a. 9 VAC 5-40-50 F and H,
  - b. 40 CFR 60.7, and
  - c. Subsections B through J of this section.

B. The following records, as applicable, shall be maintained for a period of at least five years:

1. Calendar date of each record.
2. Records of the following data:
  - a. The CISWI unit charge dates, times, weights, and hourly charge rates.
  - b. Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.
  - c. Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.
  - d. Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.
  - e. For affected CISWI units that establish operating limits for controls other than wet scrubbers under 9 VAC 5-40-6430 D, the owner shall maintain data collected for all operating parameters used to determine compliance with the operating limits.
  - f. If a fabric filter is used to comply with the emission limitations, the owner shall record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. The owner shall also record the percent of operating time during each six-month period that the alarm sounds, calculated as specified in 9 VAC 5-40-6430 C.

3. Identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

4. Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

5. Identification of calendar dates and times for which data show a deviation from the operating limits in Table 4-45A or a deviation from other operating limits established under 9 VAC 5-40-6430 D with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

6. The results of the initial, annual, and any subsequent emission tests conducted to determine compliance with the emission limits and to establish operating limits, as applicable. Retain a copy of the complete emission test report including calculations.

7. Records showing the names of CISWI unit operators who have completed review of the information in 9 VAC 5-40-6400 H as required by 9 VAC 5-40-6400 I, including the date of the initial review and all subsequent annual reviews.

8. Records showing the names of the CISWI operators who have completed the operator training requirements under 9 VAC 5-40-6400 A, met the criteria for qualification under 9 VAC 5-40-6400 E, and maintained or renewed their qualification under 9 VAC 5-40-6400 F or G. Records shall include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

9. For each qualified operator, the telephone or pager number at which they can be reached during operating hours.

10. Records of calibration of any monitoring devices as required under 9 VAC 5-40-2730 A through C.

11. Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

12. The information listed in 9 VAC 5-40-6400 H.

13. On a daily basis, a log of the quantity of waste burned and the types of waste burned.

C. All records shall be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the board.

D. The owner of an affected facility shall submit the waste management plan no later than the date specified in 9 VAC 5-40-6420 A for submittal of the final control plan.

E. The information specified in this subsection shall be submitted no later than 60 days following the initial emission test. All reports shall be signed by the facilities manager.

1. The complete emission test report for the initial emission test results obtained under 9 VAC 5-40-6460 B, as applicable.

2. The values for the site-specific operating limits established in 9 VAC 5-40-6430.

3. If a fabric filter is being used to comply with the emission limitations, documentation that a bag leak detection system

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has been installed and is being operated, calibrated, and maintained as required by 9 VAC 5-40-6470 C.

F. An annual report shall be submitted no later than 12 months following the submission of the information in subsection E of this section. Subsequent reports shall be submitted no more than 12 months following the previous report. If the unit is subject to permitting requirements under the federal operating permit program, the permit may require submittal of these reports more frequently.

G. The annual report required under subsection F of this section shall include the items listed in this subsection. If a deviation from the operating limits or the emission limitations occurs, deviation reports shall also be submitted as specified in 9 VAC 5-40-6480 H.

1. Company name and address.
2. Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.
3. Date of report and beginning and ending dates of the reporting period.
4. The values for the operating limits established pursuant to 9 VAC 5-40-6430.
5. If no deviation from any applicable emission limitation or operating limit has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the operating limits was inoperative, inactive, malfunctioning or out of control.
6. The highest recorded three-hour average and the lowest recorded three-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.
7. Information recorded under subdivisions B 2 f and B 3 through 5 of this section for the calendar year being reported.
8. If an emission test was conducted during the reporting period, the results of that test.
9. If the requirements of 9 VAC 5-40-6460 C 5 or 6 were met, and no emission test was conducted during the reporting period, a statement that the facility met the requirements of 9 VAC 5-40-6460 C 5 or 6, and, therefore, no emission test during the reporting period was required.
10. Documentation of periods when all qualified CISWI unit operators were unavailable for more than eight hours, but less than two weeks.

H. Deviation reports shall be submitted in accordance with the following:

1. A deviation report shall be submitted if (i) any recorded three-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this article, (ii) the bag leak detection system alarm sounds for more than 5.0% of the operating time for the six-month reporting period, or (iii) an emission

test was conducted that deviated from any emission limitation.

2. The deviation report shall be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).

3. For any pollutant or parameter that deviated from the emission limitations or operating limits specified in this article, the following items shall be included in the deviation report:

- a. The calendar dates and times the unit deviated from the emission limitations or operating limit requirements.
- b. The averaged and recorded data for those dates.
- c. Duration and causes of each deviation from the emission limitations or operating limits, and corrective actions taken.
- d. A copy of the operating limit monitoring data during each deviation and any emission test report that documents the emission levels.
- e. The dates, times, number, duration, and causes for monitoring downtime incidents other than downtime associated with zero, span, and other routine calibration checks.
- f. Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

4. Deviations from the requirement to have a qualified operator accessible shall be reported as follows:

- a. If all qualified operators are not accessible for two weeks or more, the owner shall:
  - (1) Submit a notification of the deviation within 10 days that includes a statement of what caused the deviation, a description of what is being done to ensure that a qualified operator is accessible, and the anticipated date when a qualified operator will be available; and
  - (2) Submit a status report to the board every four weeks that includes a description of what is being done to ensure that a qualified operator is accessible, the anticipated date when a qualified operator will be accessible, and request for approval from the board to continue operation of the CISWI unit.

b. If the unit was shut down by the board under the provisions of 9 VAC 5-40-6400 J 2 a due to a failure to provide an accessible qualified operator, the owner shall notify the board that the unit will resume operation once a qualified operator is accessible.

I. Initial, annual, and deviation reports shall be submitted electronically or in paper format, postmarked on or before the submittal due dates.

J. Semiannual or annual reporting dates may be changed with the approval of the board in accordance with the procedures in 40 CFR 60.19(c).

**9 VAC 5-40-6490. Requirements for air curtain incinerators.**

A. The owner of an affected air curtain incinerator that plans to achieve compliance more than one year following approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan, shall meet the following increments of progress: (i) submittal of a final control plan, and (ii) achievement of final compliance. These increments of progress shall be met no later than the dates provided in 9 VAC 5-40-6420 B.

B. The owner shall notify the board as increments of progress are achieved. Notification of achievement of increments of progress shall include the following:

1. Notification that the increment of progress has been achieved,
2. Any items required to be submitted with each increment of progress (see subsection C of this section), and
3. Signature of the owner of the incinerator.

Notifications for achieving increments of progress shall be postmarked no later than 10 business days after the compliance date for the increment. If the owner fails to meet an increment of progress, the owner shall submit a notification to the board postmarked within 10 business days after the due date for that increment of progress informing the board that the unit did not meet the increment. The owner shall continue to submit reports each subsequent calendar month until the increment of progress is met.

C. The control plan increment of progress shall be met as follows: (i) submit the final control plan, including a description of any devices for air pollution control and any process changes that will be used to comply with the emission limitations and other requirements of this article, and (ii) maintain an onsite copy of the final control plan.

D. For the final compliance increment of progress, the owner shall complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.

E. The following shall be met if an air curtain incinerator is to be closed:

1. If an incinerator is closed but will be reopened prior to the final compliance date in 9 VAC 5-40-6420 A, the owner shall meet the increments of progress specified in 9 VAC 5-40-6420 B.
2. If an incinerator is closed but will be restarted after the final compliance date, the owner shall complete emission control retrofits and meet the emission limitations on the date the incinerator restarts operation.
3. If an incinerator is permanently closed, the owner shall submit a closure notification, including the date of closure, to the board by the date the final control plan is due.

F. After the date the initial emission test is required or completed (whichever is earlier), no owner or other person shall cause or permit to be discharged into the atmosphere

from any affected air curtain incinerator any emissions in excess of the following limits:

1. The opacity limitation is 10% (six-minute average), except as described in subdivision 2 of this subsection.
2. The opacity limitation is 35% (six-minute average) during the startup period that is within the first 30 minutes of operation.

G. Except during malfunctions, the requirements of this article shall apply at all times, and each malfunction shall not exceed three hours.

H. Air curtain incinerators shall meet the following requirements to determine compliance with the opacity limitation:

1. Compliance with the opacity limitation shall be determined using Reference Method 9.
2. An initial emission test for opacity shall be conducted no later than 180 days after the final compliance date.
3. After the initial emission test for opacity, annual emission tests shall be conducted no more than 12 calendar months following the date of the previous emission test.

I. Owners of air curtain incinerators shall maintain records and submit reports as follows:

1. Records of results of all initial and annual emission tests for opacity shall be kept onsite in either paper copy or electronic format, unless the board approves another format, for at least five years.
2. All records shall be made available for submittal to the board or for an inspector's onsite review.
3. An initial report shall be submitted no later than 60 days following the initial emission test for opacity that includes the following information:
  - a. The types of materials to be combusted.
  - b. The results (each six-minute average) of the initial emission tests for opacity.
4. Annual emission test results for opacity shall be submitted within 12 months following the previous report.
5. Initial and annual emission test reports for opacity shall be submitted as electronic or paper copy on or before the applicable submittal date. A copy shall be maintained onsite for a period of five years.

**9 VAC 5-40-6500. Registration.**

The provisions of 9 VAC 5-20-160 (Registration) apply.

**9 VAC 5-40-6510. Permits.**

A permit may be required prior to beginning any of the activities specified below if the provisions of 9 VAC 5 Chapter 50 (9 VAC 5-50) and 9 VAC 5 Chapter 80 (9 VAC 5-80) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.

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2. *Reconstruction (replacement of more than half) of a facility.*
3. *Modification (any physical change to equipment) of a facility.*
4. *Relocation of a facility.*
5. *Reactivation (restart-up) of a facility.*
6. *Operation of a facility.*

Article 45 51.

Emission Standards for Lithographic Printing Processes  
(RULE 4-45 51).

Article 46 52.

Standards of Performance for Municipal Waste Combustors  
(RULE 4-46 52).

VA.R. Doc. No. R01-113; Filed August 8, 2002, 12:03 p.m.

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**Title of Regulation: 9 VAC 5-40. Existing Stationary Sources (Rev. K00) (adding 9 VAC 5-40-6550 through 9 VAC 5-40-6810).**

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

**Public Hearing Date:** October 10, 2002 - 9 a.m.

Public comments may be submitted until November 8, 2002 - 4:30 p.m.

(See Calendar of Events section for additional information)

**Agency Contact:** Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510 or e-mail kgsabastea@deq.state.va.us.

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

**Purpose:** The purpose of the regulation is to establish emission standards that will require the owners of small municipal waste combustors (SMWCs) to limit emissions of organics (such as dioxins/furans), metals (such as particulate matter), and acid gases (such as sulfur dioxide and hydrogen chloride) to a specified level necessary to protect public health and welfare. The regulation is being proposed to meet the requirements of §§ 111(d) and 129 of the federal Clean Air Act, and 40 CFR Part 60 Subpart BBBB of federal regulations.

**Substance:** The regulation defines and identifies the sources to which it applies, as well as exemptions. Emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury are established, as well as limitations for and cross references to existing state requirements for visible emissions, fugitive dust/emissions, odor, and toxic pollutants. General good operating practices that contribute to the overall effectiveness of the technical requirements are included, in the form of an operator training and qualification program, which is intended to reduce the amount of emissions. A

compliance schedule with specific increments of progress is provided. Operating limits for operating parameters such as maximum charge rates, temperature limits, and carbon feed rates and usage are prescribed. Test methods to be used in determining compliance with the emission limits, as well as compliance requirements, including testing schedules, are specified. Equipment necessary to monitor compliance with the site-specific operating limits are to be installed, calibrated, maintained, and operated. Records of monitoring and test results are to be maintained and reported. Air curtain incinerators that burn 100% yard waste must meet separate requirements for increments of progress, opacity limits, compliance monitoring and testing, recordkeeping, and reporting. Procedures to be followed in the event of facility and control equipment maintenance or malfunction are provided. Finally, state requirements for facility and control equipment maintenance or malfunction; test methods and procedures; compliance, monitoring; recordkeeping and reporting; registration; and permits are cross-referenced.

Issues:

1. Public: The general public will experience a number of health and welfare advantages. SMWC emissions cause a number of serious health effects. Therefore, reduction of these emissions will reduce disease and its related costs. Reduction of SMWC emissions will also reduce the risk of damage to vegetation and property, which will in turn enhance property values, tax revenues, payroll, and other socioeconomic components. Generally, the wide availability of alternatives to incineration will limit disadvantages, and may in fact provide a benefit in the form of reduced costs.

A number of SMWCs may benefit by seeking more efficient and cost-effective alternatives to incineration. In addition to SMWCs, industry in general will also benefit from the rule: overall ozone reductions may lessen the risk of current attainment areas being designated nonattainment, and current nonattainment areas being reclassified to a more serious classification.

2. Department: A disadvantage to the department is that it may need to perform additional inspection, monitoring and recordkeeping to ensure that the emissions limitations are being met, which will require increased expenditure in personnel and equipment. However, the increase in data to be gathered and analyzed will benefit the department by enhancing its ability to make both short- and long-term planning decisions. Furthermore, these sources have been permitted, inspected, and monitored for many years, therefore, little, if any, additional new effort will be expended.

There are no identified disadvantages to the public.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and



employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulations will establish emission standards for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury, which will apply to small municipal waste combustors. To ensure proper facility operation and compliance with the emission limits, requirements for emissions testing and monitoring, operator training and qualifications, recordkeeping, and reporting are also proposed. These regulations are proposed to meet the requirements of §§ 111(d) and 129 of the federal Clean Air Act, and 40 CFR part 60 subpart BBBB of federal regulations.

Estimated economic impact.

Introduction. Original federal regulations were developed for all municipal waste combustors both small and large, but because of a court order the U.S. Environmental Protection Agency (EPA) developed separate regulations for small and large combustors. In 1995, EPA promulgated regulations for large combustors that burn more than 250 tons of waste per day. The proposed regulation is a continuum of the original intent of EPA and will apply to small municipal waste combustors (SMWCs) with a combustion design capacity of 35 to 250 tons/day. These facilities combust municipal solid waste, which include solid, liquid, or gasified solid waste, and refuse-derived fuel, which is the shredded and classified form of municipal solid waste. The term "municipal" does not refer to the ownership of the facility, but rather to the type of the waste combusted. Municipal waste includes household, commercial/retail, and institutional waste. These waste materials may be discarded by residential dwellings, hotels, motels, stores, offices, restaurants, warehouses, schools, hospitals, and prisons. Majority of the waste items are paper, yard waste, plastics, leather, rubber, glass, metals, and other combustible and noncombustible materials.

The proposed regulations will apply to both existing SMWCs and the new plants that will come online in the future. Existing plants will be subject to emissions guidelines while new plants will be subject to the new source performance standards. Existing plants are those for which construction commenced on or before August 30, 1999 and new plants are those for which construction, modification, or reconstruction began after that date.

Hazardous household waste and the waste that is not recyclable or compostable must be disposed. The two primary types of disposal practices are landfilling and municipal waste combustion, or incineration. Landfills are facilities for long-term containment of solid waste. An alternative method of managing solid waste is through combustion. Solid waste combustion involves incineration of all or a portion of the solid waste stream in specially designed combustion facilities and the disposal of the residual ash in landfills. Incineration

reduces the mass of waste up to 90%<sup>1</sup> and results in considerable savings in landfill capacity, but also creates various kinds of toxic emissions. In 1998, Virginia generated about 9 million tons of solid waste, recycled 35%, incinerated 18%, and landfilled 47% of this amount.<sup>2</sup>

Combustion or incineration may employ conventional techniques or a "waste-to-energy" approach. A by-product of combustion at many SMWC facilities is energy production. Most of these combustors generate electricity or steam from burning garbage for commercial and residential use and affected Virginia facilities are no exceptions.

Emissions from SMWCs contain harmful organics such as dioxins/furans, metals such as particulate matter, cadmium, lead, mercury, and acid gases such as sulfur dioxide, hydrogen chloride, and nitrogen oxides. These emissions can cause or contribute to air pollution that may endanger public health and welfare. Some of the pollutants emitted are highly toxic and can cause serious health effects in humans. Emissions of oxides of nitrogen and sulfur contribute to acid rain, which is known to harm lakes, forests, and buildings, as well as public health.

The proposed regulations will apply to three existing municipal waste plants with four combustion units in Virginia. The emissions from these units must be reduced by the application of "maximum achievable control technology," which is defined as the technology that would result in emissions reductions as high as that can be achieved by the best controlled combustion unit, taking into account the costs and benefits of compliance.

The proposed requirements. The proposed regulations will establish emission standards for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury, which will apply to SMWCs. Standards for visible emissions, fugitive dust/emissions, odor, and toxic pollutants have been established in other regulations and incorporated by reference. Since those standards are already established elsewhere and apply to SMWCs, this analysis does not address them. The proposed emission limits vary according to the capacity of the combustion unit. Class I units are those with an aggregate combustion capacity greater than 250 tons/day of municipal waste while Class II units are those with combustion capacity equal to or less than that. The proposed emission limits for existing SMWCs are summarized in Table 1.

A distinguishing feature of the proposed regulations is that they do not prescribe how to achieve the standards summarized in the table. The source has complete control on the method by which the standards will be met. The affected sources are likely to employ the most cost effective methods to comply with the standards and promote innovation in emissions control technology. This feature is likely to result in low compliance costs. The magnitude of savings depends on how many different technology options are available for controlling emissions.

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<sup>1</sup> Source: EPA.

<sup>2</sup> Ibid.

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Table 1: The Proposed Emissions Limits

Pollutant	Emission Limit <sup>a, b</sup>	
	Class I Units	Class II Units
Particulate Matter (PM)	27 mg/dscm	70 mg/dscm
Carbon Monoxide (CO)	—	50–250 ppm by dry volume <sup>c</sup>
Dioxins/Furans (total mass basis)	30 ng/dscm (nonelectrostatic precipitator units) 60 ng/dscm (electrostatic precipitator units)	125 ng/dscm
Hydrogen Chloride (HCl)	31 ppm by dry volume or 95% reduction	250 ppm by dry volume or 50% reduction
Sulfur Dioxide (SO <sub>2</sub> )	31 ppm by dry volume or 75% reduction	77 ppm by dry volume or 50% reduction
Nitrogen Oxides (NO <sub>x</sub> )	170–380 ppm by dry volume <sup>d</sup>	—
Lead (Pb)	0.490 mg/dscm	1.6 mg/dscm
Cadmium (Cd)	0.040 mg/dscm	0.10 mg/dscm
Mercury (Hg)	0.080 mg/dscm	0.080 mg/dscm

<sup>a</sup> Emission limits are measured at 7.0% oxygen on a dry basis at standard conditions.

<sup>b</sup> The list of acronyms used in the table is the following: mg stands for milligrams, dscm stands for dry standard cubic meter, ppm stands for parts per million, ng stands for nanograms.

<sup>c</sup> Applicable limit depends on the combustion method employed within the regulated unit (e.g., fluidized-bed units must achieve 100 ppm). See proposed 9-VAC-40-6580 for details.

<sup>d</sup> Applicable limit depends on the unit design (e.g., mass burn waterwall units must achieve 200 ppm). See proposed 9-VAC-40-6620 for details.

In addition to the emission limits, general operating practices will be established in the form of an operator training and qualification program. A compliance schedule with specific increments of progress is provided. Operating limits for operating parameters such as maximum charge rates, temperature limits, and carbon feed rates and usage are prescribed. Test methods to be used in determining compliance with the emission limits, as well as compliance requirements, including testing schedules, are specified. Air curtain incinerators that burn 100% yard waste will have to meet separate requirements for increments of progress, compliance monitoring and testing, recordkeeping, and reporting. Procedures to be followed in the event of facility and control equipment maintenance or malfunction are provided.

Initial and annual stack testing will be used to measure the emissions levels and to demonstrate compliance with the

standards. Equipment necessary to monitor compliance with the site-specific operating limits are to be installed, calibrated, maintained, and operated. The reporting of emissions will be required once a year, unless emission limits are exceeded, in which case reporting is required twice a year. Records of monitoring and test results are to be maintained.

Operator training and certification requirements are proposed to ensure good operating practices that contribute to the overall effectiveness of the plant operations, which in turn, may reduce the amount of emissions. SMWC's chief facility operator, shift supervisors, and control room operators will be required to complete a generic and a site-specific operator training course. According to the agency (Department of Environmental Quality), operators are already required to complete a generic training. However, the proposed regulations will introduce an additional requirement for plant-specific training on all employees who might affect plant operations. These employees include chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane or load handlers. A training manual must also be developed for each SMWC and all of these employees must review it annually through a program.

In short, the owners of SMWC will have to conduct initial and annual stack testing, install and operate continuous emission monitoring systems, monitor waste load levels, train operators and obtain certification for some operators and supervisors, develop operating manuals to ensure compliance with the proposed regulations. All of these requirements will have to be satisfied according to a schedule.

A compliance schedule with specific increments of progress is proposed. The final compliance will have to be achieved by December 6, 2005 or within three years after the proposed regulations are approved by EPA and became effective, whichever is earlier. The agency indicates that the plan approval and, consequently, the effective date are likely to be around the 2005 deadline.

Compliance schedules will depend on whether a source is a Class I unit or a Class II unit. The compliance schedule for Class I units has five increments of progress, as follows.

Increment 1, Submit final control plan: Within six months of the effective date.

Increment 2, Award contracts: Within one year of the effective date.

Increment 3, Begin onsite construction: Within two years of the effective date.

Increment 4, Complete onsite construction: Within thirty months of the effective date.

Increment 5, Final compliance: Within three years of the effective date, or before December 6, 2005, whichever is earlier.

In contrast, Class II units will have only two deadlines, as follows.

Increment 1, Submit final control plan: Within six months of the effective date.

Increment 2, Final compliance: Within three years of the effective date, or before December 6, 2005, whichever is earlier.

In addition to the above deadlines, Class I units that commenced construction after June 26, 1987 will be required to comply with the proposed dioxins/furans and mercury emission limits within one year of the effective date, or one year after the issuance of a revised construction or operation permit if a permit modification is required, but no later than November 6, 2005.

**Costs.** The proposed regulations will impose many different types of costs on the owners of SMWCs. These costs can be grouped under capital and operating cost categories. Capital costs include outlays on control, monitoring, and any other types of equipment purchases and installation expenses required to comply with the proposed standards. Capital costs are one-time costs and are not very meaningful unless converted to annual figures based on the useful life of the capital equipment. Operating costs are ongoing costs and stem from the operation and maintenance of installed equipment, testing, monitoring, water and electricity inputs used in the process, supervision of labor, reporting, recordkeeping, operator training and certification, and any other activities necessary to comply with the proposed regulations. Total annual cost is the sum of the annualized capital costs and operating costs and is used to measure the impact on the owners of SMWCs.

Although the proposed requirements are numerous and complex, there are only three facilities in Virginia that will be affected. Each facility has been contacted and asked to provide cost estimates for the proposed standards. Only one facility with two combustion units provided readily available cost estimates from 1996, which were developed in preparation for the promulgation of the original regulations. These estimates included one-time capital costs as well as the annual operation costs, which is a standard format for this type of analysis.

For the remaining two affected facilities, an approximation is made from readily available research on the subject to produce a ballpark estimate for all of the affected facilities. As a part of its responsibility, EPA has already produced an analysis on the economic impact of the small municipal waste combustor regulations.<sup>3</sup> The cost estimates for the two affected facilities, each with a single combustion unit, are derived from EPA's analysis.<sup>4</sup> This is done by first identifying the most relevant combustion unit cost information available in the EPA study and then extrapolating that information for the affected two facilities.<sup>5</sup> There is a chance that the estimates

based on combustion units may overstate (understate) the potential costs if the sizes of affected Virginia units are larger (smaller) than the size of the average unit included in the original analysis.

Because both EPA analysis and the facility-specific cost estimates did not quantify operator training and certification costs, these items are identified separately and incorporated into capital and operating cost estimates provided here.<sup>6</sup> To comply with the regulations, all of the operators must be tested and certified for plant-specific training through a certification panel. This initial certification cost is estimated to be about \$20,000 for all of the operators at each combustion unit. In a sense, these are one-time capital costs and are distributed over 15 years. In addition to that, there will be additional ongoing certification costs due to operator turnover, which are considered as operating expenses. Based on historical turnover rates, each unit is expected to replace one of its operators every two years, which amounts to \$2,500 in annual operating costs. Aside from the certification costs, each combustion unit is also expected to incur about \$8,000 per year in other site-specific training costs, which include providing a training room and other accommodations for the operators. These estimated costs are extrapolated to all of the affected four units and added in the cost estimates provided in Table 2.

As an alternative to cost estimates based on the number of combustion units, cost estimates based on per ton of waste processed are also provided. To provide this information, the quantity of waste processed at each facility is summed up and multiplied by the estimated cost/ton figures in EPA's analysis.<sup>7</sup> Similarly, these estimates may also overstate (understate) the actual costs as the quantity of waste processed in one year may be higher (lower) than the quantity of waste processed by an average unit in the original analysis.

Compliance costs for the affected SMWC units in the table are separately estimated for one business-owned facility with a single combustion unit and for the two government-owned facilities with three combustion units. The business-owned facility is currently not operating its combustion unit, but has a valid permit to start operations any time. This facility is currently evaluating its options and has not decided whether to permanently shut down, or start operations. If the facility shuts down, the compliance cost estimates under the business-owned units column should be disregarded accordingly.

Per unit cost estimates suggest that the three affected facilities will incur approximately \$16.1 million for the purchase of the required emission control equipment and for their installation on a one-time basis, and about \$1.6 million for the

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<sup>3</sup> EPA, 1999, "Economic Impact Analysis: Small Municipal Waste Combustor – Section 111/129 Emission Guidelines and New Source Performance Standards."

<sup>4</sup> Some costs are not quantified in EPA's analysis. Unquantified cost items include operator training and certification costs, administrative costs on the agency to issue permits, to monitor performance, and enforce compliance, costs associated with underutilization of resources from lost output, resource allocation costs, and unemployment assistance, costs associated with additional paperwork requirements beyond testing, reporting, and record-keeping, and finally costs associated with controlling fugitive emissions.

<sup>5</sup> For one of the affected facilities, cost estimates to comply with the new source performance standards is applied because the facility is expected to rebuild its facility and be subject to more stringent standards.

<sup>6</sup> These estimates are derived in large from the conversations with the affected facility personnel.

<sup>7</sup> The quantities of waste processed are obtained from the agency and are verified with the affected facility personnel whenever possible. Some rounding of figures occurred in this two-step process.

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other operating expenses on an annual basis.<sup>8</sup> When one-time capital costs are converted to annual costs based on the useful life of the necessary equipment and added to other annual operating costs, total annual costs to the owners of the facilities in Virginia is estimated to be approximately \$3 million per year.

Table 2: Cost Estimates for the Affected Units in Virginia<sup>a</sup>

Costs	Business-Owned Units	Government-Owned Units	Total
	<i>Based on Cost Per Combustion Unit</i>		
Capital Costs	\$6,944,575	\$9,191,449	\$16,136,024
Annual Operating Costs	\$730,584	\$878,540	\$1,609,124
Total Annual Costs	\$1,389,548	\$1,647,567	\$3,037,115
<i>Based on Cost Per Ton of Waste</i>			
Cost Per Ton	\$15.84	\$17.77 (\$54.79) c	
Tons of Waste Processed	13,000 b	80,000 (23,000) c	116,000
Total Annual Costs	\$216,420	\$2,713,270	\$2,929,690

Source: EPA, 1999, "Economic Impact Analysis: Small Municipal Waste Combustor – Section 111/129 Emission Guidelines and New Source Performance Standards," p. 16., and affected facility personnel.

<sup>a</sup> All cost figures that are stated in 1997 dollars in the original source are converted to 2001 dollars by an inflation factor of 1.08 based on the U.S. producer price index.

<sup>b</sup> This figure represents the quantity of waste the facility could potentially process if it were operating.

<sup>c</sup> Figures for the facility that will be subject to the new source performance standards are in parentheses.

The estimated figures in the lower panel of the table are based on the cost per ton of waste processed. The estimates suggest that the business-owned unit is likely to incur \$216 thousand while the two government-owned facilities with three combustion units are likely to incur about \$2.7 million in annual compliance costs. When compared across the two estimation methods, there are significant differences in the cost estimates for both business- and government-owned units. However, both estimation methods indicate that the total annual compliance costs are likely to be close to \$3 million.

EPA analysis also estimates the additional compliance costs per household and in terms of tipping fees to illustrate the magnitude of the compliance costs from a different perspective. For the fee-for-service facilities, the tipping fee is the fee charged to other businesses. The information collected from the facilities and from the agency indicates that slightly

more than half of the waste combusted at these facilities is household waste and less than half is commercial type of waste.

In terms of current dollars, it is estimated that annual average compliance costs per household is about \$52.70 in counties with a population of 50,000 or less and about \$10.21 in counties with a population from 100,000 to 250,000. Populations of affected cities in 2000 are as follows: City of Galax, 6,837; City of Harrisonburg, 40,468; City of Hampton, 146,437.<sup>9</sup> These population figures matched with the estimated costs merely suggest that the additional waste disposal costs for the City of Galax and City of Harrisonburg are about \$52.70 per household/year and about \$10.21 for City of Hampton.

If the facility does not process household waste but processes mostly commercial waste, then the additional costs in terms of tipping fees would better illustrate the magnitude of the additional compliance costs. It is indicated that the additional compliance costs are equivalent to about 32% increase in tipping fees over the \$62.58 national average in current dollars for per ton of waste combusted.

Neither the tipping fee increases nor the cost per household estimates should be taken as an indication that the full compliance costs can be passed to customers or businesses. The ability to pass some of the compliance costs downstream to customers and upstream to suppliers depends on the waste disposal market characteristics these facilities operate in. It is usually impossible to pass all of the cost increases to consumers although in most cases the supplier can pass at least a portion of the costs.

The demand for combustion services is known to be irresponsive to the price changes,<sup>10</sup> which makes it easier to pass cost increases to customers. On the other hand, the affected facilities are small players and price takers in the municipal waste disposal market.<sup>11</sup> This makes it difficult to pass on the costs. For Virginia's affected facilities, there is not sufficient evidence indicating presence of market power in the waste disposal industry that would allow passing costs to households or other businesses. In fact, relatively small sizes of affected facilities and the widespread availability of landfilling alternative for disposal are the two main reasons for the lack of any overriding market power these facilities could have. Thus, it is very unlikely that the affected firms will pass a significant portion of the additional compliance costs to households or to other commercial businesses.

What is probable is passing costs to steam customers. The two of the three affected facilities are currently generating steam as a by-product of incineration and selling it to institutions or commercial businesses that use it for heating and cooling purposes. Interestingly, the third facility is primarily established for steam production by industrial boilers, but also has an incinerator unit to contribute to steam

<sup>9</sup> Source: U.S. Census Bureau.

<sup>10</sup> Source: EPA.

<sup>11</sup> Source: Conversations with the facility personnel.

<sup>8</sup> The agency indicated a chance that two additional units may be subject to the proposed emissions standards. These estimates do not include additional costs for these two facilities that may be subject to the proposed regulations.

generation. The combustion unit at this facility is currently not operational.

In short, the steam generation is a significant part of the overall operations for all of the affected facilities. For example, the previous year's revenues from the steam production at the largest affected facility were about \$3.5 million.<sup>12</sup> Unlike the waste disposal industry, the affected facilities have strong market power in the steam business. The primary source of their market power is the infrastructure of the steam distribution. Like the natural gas markets,<sup>13</sup> steam has to be transported through existing pipelines. This limits the number of sellers in a local area and creates a very small regional market. Furthermore, the number of steam customers is also very limited not exceeding only a few. One of the facilities is known to be located in the vicinity of its only customer and is known to have a contractual relationship to participate in operating costs rather than buying steam at the ongoing price. In a market structure with one seller and a couple of buyers, most of the decisions are made through bargaining, and both parties will likely have vested interest in sharing additional compliance costs given the potentially tremendous costs of establishing a new steam pipeline or streamlining the whole production to suit an alternative energy source. Thus, it is likely that some of the compliance costs will be passed to the affected facilities' steam customers.

It is also important to note that the estimated compliance costs in Table 2 should be taken as the maximum likely costs for these facilities as they were obtained under the assumption that the facility will not switch to a more cost effective waste disposal alternative, or to a cheaper production process. Recycling and landfilling may be very attractive ways of waste disposal after the proposed changes becomes effective. If recycling and landfilling become more cost effective methods, it is very likely that these facilities will change their waste disposal method to avoid higher costs. They may increase the scope of recycling programs, construct a landfill, or contract with a nearby landfill. In addition, steam production by an additional boiler may become relatively cheaper and attractive. Such rational behavior is likely to reduce the estimated compliance costs in the table. For example, if an incinerator constructs a new landfill to dispose waste, or if the business-owned unit decides to shut down its combustion unit, it will not incur the estimated compliance costs, but rather incur probably smaller costs for transforming its business operations.

All of the affected facilities indicate that no significant capital or operating expenses have been incurred yet for the proposed regulations. However, because the original regulations have been promulgated in 1996 and held back because of a court order, one of the facilities have installed some add on equipment to the existing plant. Thus, most of the compliance costs will likely be incurred before the compliance deadline to meet the proposed standards.

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<sup>12</sup> Source: Ibid.

<sup>13</sup> Soderholm, Patrick, 2000 "Fuel Flexibility in the West European Power Sector," Resources Policy, 26: 157-170.

These additional costs may cause some of the facilities to cease operations and may discourage new entrants in the municipal waste combustion industry. This may be because landfilling the waste or changing the plant operations may become more cost effective. As mentioned before, there is no formal indication that any plants are shutting down operations, but there is a chance that the business-owned unit may shut down its combustion unit.

The economic impact of the proposed standards will be different in magnitude for the new units. These units will not be subject to the emissions guidelines, but to the new source performance standards. All new units will be required to install spray-dryer-based control systems and class I units will be required to install newer technology control systems for nitrogen oxides. Although the estimated unit costs do not differ significantly for new and existing units, EPA's estimated cost per ton of waste combusted for new units coming online is significantly higher than the estimated cost per ton of waste for the existing units. For example, additional cost per ton of waste is estimated to be \$55.79 in current dollars for new units coming online while it is \$17.77 for the existing government-owned units. However, expected emissions reductions from the new units are also higher.

Finally, the agency will likely perform additional inspection, monitoring, and recordkeeping to ensure that the emissions limitations are being met, which may require increased expenditure in personnel and equipment. However, the agency does not expect additional personnel and equipment needs to be significant because these sources have been already permitted, inspected, and monitored for many years. Allocation of additional duties among the current personnel and other resources within the agency is expected to be sufficient to cover little, if any, additional staffing that may be required to ensure compliance with the proposed changes. On the other hand, the agency expects to enhance its ability to make both short- and long-term planning decisions by a small margin through the additional data collected and analyses performed.

Benefits. The main benefit of the proposed standards will be substantially reducing emissions of harmful air pollutants. EPA has estimated the total amount of emissions reductions expected from the proposed standards. The table on the next page extrapolates these estimates for Virginia. This is done by first calculating the expected emissions reduction per combustion unit and then multiplying the result by the number of affected units in the Commonwealth. The table reveals that the amounts of emissions reductions from SMWCs are substantial. The percent reductions for most pollutants are expected to be more than 50% and for dioxins/furans may be as high as 97%.

The benefits from the proposed standards are expected to be significant as the health risks from small exposures to some of these regulated air pollutants can be high. Some of the emissions are known or suspected of causing cancer, nervous system damage, developmental abnormalities, reproductive impairment, immune suppression, liver dysfunction, hormone imbalance, and other serious health effects.

In particular, dioxin is a significant concern because it is persistent in the environment and bioaccumulates. These

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characteristics cause dioxin to move through the food chain, biomagnify, and cause adverse effects to humans and wildlife. Reproductive, developmental, and immune system effects associated with exposure to dioxin are significant public health concerns. According to the agency, when compliance with the standards is achieved municipal waste combustors will represent less than 1.0% of the known sources of dioxin when the proposed rule is fully implemented.

Table 3: Aggregate Expected Emissions Reductions from Virginia Sources

Pollutant	Current Emissions <sup>a</sup> (Lbs. per year)	Expected Emissions Reduction (Lbs. per year)	Percent Reduction
Dioxins/Furans	.27 <sup>b</sup>	.26	97%
Cadmium (Cd)	41	34	84%
Mercury (Hg)	139	132	95%
Lead (Pb)	70	64	91%
Particulate Matter (PM)	106,527	77,765	73%
Sulfur Dioxide (SO <sub>2</sub> )	275,298	134,896	49%
Hydrogen Chloride (HCl)	750,335	637,784	85%
Nitrogen Oxides (NO <sub>x</sub> )	382,924	34,463	9%

Source: EPA, 1999, "Economic Impact Analysis: Small Municipal Waste Combustor – Section 111/129 Emission Guidelines and New Source Performance Standards," p. 23.

<sup>a</sup> Obtained from the agency's emissions inventory database.

<sup>b</sup> Estimated from EPA study based on the number of combustion units because current emissions for dioxins/furans are not measured at the affected facilities in Virginia.

Mercury is also highly toxic, persistent in the environment and bioaccumulates, particularly in fish. Human exposure to mercury occurs primarily through ingestion of fish. Exposure to mercury can cause adverse health effects in humans and wildlife, including gastrointestinal and respiratory tract disturbances, central nervous system, birth, and developmental effects. The agency indicates that municipal waste combustors will represent only about 3.0% of the U.S. inventory for mercury emissions when the proposed rule is implemented.

Lead and cadmium are highly toxic and may cause mucous membrane irritation, gastrointestinal effects, nervous system, reproductive, and developmental disorders, and skin irritation. Long-term exposure to hydrogen chloride may affect eyes, skin, and mucus membranes.

Control of harmful emissions from municipal waste combustors will reduce such serious health effects and the associated treatment costs. Furthermore, the reduction of SMWC emissions will reduce the risk of damage to vegetation

and property, and improve visibility. A summary of health and other effects are provided in the following table.

Table 4: Health and Other Effects of Pollutants

Pollutant	Health and Other Effects
Dioxins/Furans	mortality, morbidity carcinogenicity
Cadmium (Cd)	retardation and brain damage hypertension central nervous system injury renal dysfunction
Mercury (Hg)	
Lead (Pb)	
Particulate Matter (PM)	mortality, morbidity eye and throat irritation, bronchitis, lung damage impaired visibility soiling and Materials damage
Sulfur Dioxide (SO <sub>2</sub> )	dental erosion acid rain mortality, morbidity respiratory tract problems, permanent harm to lung soiling and materials damage reduced agricultural yield
Hydrogen Chloride (HCl)	
Nitrogen Oxides (NO <sub>x</sub> )	

Source: Federal Register, December 19, 1995. Vol. 60, No. 243, p. 65411.

The economic value of these benefits cannot be credibly estimated because the uncertainty in doing so is enormous. It is not known how many people are exposed to these harmful emissions. Also, dose-response relationships between exposure to many of these harmful pollutants and the adverse health effects are little known.

Finally, overall ozone reductions may lessen the risk of current attainment areas being designated nonattainment, and current nonattainment areas being reclassified to a more serious classification. Also, failure to implement these regulations may result in federal government intervention.

Businesses and entities affected. Currently, three facilities in Virginia meet the criteria for "small municipal waste combustor." When a more definitive inventory is conducted as part of the § 111(d) plan, this number may be revised.

Localities particularly affected. The proposed regulations will apply throughout the Commonwealth. However, the three facilities that will be affected are located in the City of Galax, City of Hampton, and City of Harrisonburg.

Projected impact on employment. None of the three SMWCs are expected to permanently shut down their operations at this time. Although there is a chance that one facility may permanently shut down its combustion unit that is currently not operational, what the facility will eventually do is not known. Even if this unit decides to shut down, no impact on employment is expected because it is not currently operating. Also, the facility located in City of Harrisonburg is believed to be making plans to temporarily shut down the plant in next two years for construction of a new facility. The actual impact on employment depends on whether the affected facilities shut down their combustion units.

Effects on the use and value of private property. The value of the affected facilities is likely to decrease because of additional compliance costs and lower profits. The value of steam customers may also decrease in value due to sharing a portion of compliance costs. However, air pollution control devices will have to be purchased and the vendors will likely experience a small increase in demand for their products. Their profits and the value of their businesses are likely to increase. Furthermore, businesses that conduct training of combustion unit operators are also expected to experience a small increase in the demand for their services. This may have a small positive effect on the value of their businesses. Finally, the value of private property located in the vicinity of the affected SMWC units may increase due to emissions reductions that will be achieved.

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

Summary:

*The proposed regulation applies to small municipal waste combustors (SMWCs), and includes emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury. Special SMWC operator training and qualification requirements are included in order to assure proper facility operation and compliance with the emissions limitations. Compliance, emissions testing, and monitoring requirements are delineated, as well as recordkeeping and reporting of such test results. Finally, specific compliance schedules are provided.*

Article 46.

Small Municipal Waste Combustors (Rule 4-46).

**9 VAC 5-40-6550. Applicability and designation of affected facility.**

A. Except as provided in subsections C and D of this section, the affected facilities to which the provisions of this article apply are small municipal waste combustion units that (i) have the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel, and (ii) have commenced construction on or before August 30, 1999.

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

C. The following provisions govern changes to municipal waste combustion units.

1. If the owner of a municipal waste combustion unit makes changes that meet the definition of modification or reconstruction after June 6, 2001, for 40 CFR Subpart AAAA (9 VAC 5-50-410), the municipal waste combustion unit becomes subject to Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 and the provisions of this article no longer apply to that unit.

2. If the owner of a municipal waste combustion unit makes physical or operational changes to an existing municipal

waste combustion unit primarily to comply with the provisions of this article, Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 does not apply to that unit. Such changes do not constitute modifications or reconstructions under 40 CFR Subpart AAAA (9 VAC 5-50-410).

D. Exempt from the provisions of this article are the following.

1. Small municipal waste combustion units that combust less than 11 tons per day and meet the following conditions.

a. The unit is subject to a federally enforceable permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

b. The owner notifies the board that the unit qualifies for the exemption.

c. The owner provides the board with a copy of the federally enforceable permit.

d. The owner keeps daily records of the amount of municipal solid waste combusted.

2. Small power production units that meet the following conditions.

a. The unit qualifies as a small power production facility under § 3(17)(C) of the Federal Power Act (16 USC § 796(17)(C)).

b. The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

c. The owner notifies the board that the unit qualifies for the exemption.

d. The board receives documentation from the owner that the unit qualifies for the exemption.

3. Cogeneration units that meet the following conditions.

a. The unit qualifies as a cogeneration facility under § 3(18)(B) of the Federal Power Act (16 USC § 796(18)(B)).

b. The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

c. The owner notifies the board that the unit qualifies for the exemption.

d. The board receives documentation from the owner that the unit qualifies for the exemption.

4. Municipal waste combustion units that combust only tires and meet the following conditions.

a. The unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

b. The owner notifies the board that the unit qualifies for the exemption.

c. The board receives documentation from the owner that the unit qualifies for the exemption.

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5. Hazardous waste combustion units that have received a permit under 9 VAC 20 Chapter 60 (9 VAC 20-60).

6. Materials recovery units that combust waste mainly to recover metals. Primary and secondary smelters may qualify.

7. Co-fired units that meet the following conditions.

a. The unit has a federally enforceable permit limiting municipal solid waste combustion to 30% of the total fuel input by weight.

b. The board is notified by the owner that the unit qualifies for the exemption.

c. The owner provides the board with a copy of the federally enforceable permit.

d. The owner records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

8. Plastics/rubber recycling units that meet the following conditions.

a. The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit.

b. The owner records the weight, each quarter, of plastics, rubber, and rubber tires processed.

c. The owner records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

d. The owner maintains the name and address of the purchaser of the feed stocks.

9. Units that combust fuels made from products of plastics/rubber recycling plants and meet the following criteria.

a. The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

b. The unit does not combust any other municipal solid waste.

10. Cement kilns that combust municipal solid waste.

11. Air curtain incinerators that combust 100% yard waste are exempt from the requirements of this article except they shall meet the requirements of 9 VAC 5-40-6780.

12. Affected municipal waste combustion units that meet the following criteria.

a. The owner reduces, by the final compliance dates in 9 VAC 5-40-6710, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. A permit restriction or a change in the method of operation does not qualify as a reduction in capacity.

b. The owner submits a final control plan and the notifications of achievement of increments of progress as specified in 9 VAC 5-40-6710 B. The final control plan shall, at a minimum, include the following.

(1) A description of the physical changes that will be made to accomplish the reduction.

(2) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. The combustion capacity of a municipal waste combustion unit shall be calculated as specified in 9 VAC 5-40-6730 F.

## 9 VAC 5-40-6560. Definitions.

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

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

C. Terms defined.

"Administrator" means the Administrator of the U.S. Environmental Protection Agency.

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

"Batch municipal waste combustion unit" means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

"Calendar quarter" means three consecutive months (nonoverlapping) beginning on January 1, April 1, July 1, or October 1.

"Calendar year" means 365 (or 366 consecutive days in leap years) consecutive days starting on January 1 and ending on December 31.

"Chief facility operator" means the person in direct charge and control of the operation of a municipal waste combustion unit. That person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

"Class I units" mean small municipal waste combustion units subject to this article that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition in this section of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

"Class II units" mean small municipal combustion units subject to this article that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition in this section of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.



"Clean wood" means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include: (i) yard waste, or (ii) construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of "municipal solid waste" in this section.

"Co-fired combustion unit" means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a co-fired combustion unit, the unit shall be subject to a federally enforceable permit that limits it to combusting a fuel feed stream that is 30% or less (by weight) municipal solid waste as measured each calendar quarter.

"Continuous burning" means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

"Continuous emission monitoring system" means a monitoring system that continuously measures the emissions of a pollutant from a municipal waste combustion unit.

"Dioxins/furans" mean tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

"Effective date of § 111(d)/129 plan approval" means the effective date that EPA approves the § 111(d)/129 Plan. The Federal Register specifies the date in the notice that announces EPA's approval of the § 111(d)/129 plan.

"Eight-hour block average" means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three eight-hour periods of time: (i) midnight to 8 a.m., (ii) 8 a.m. to 4 p.m., and (iii) 4 p.m. to midnight.

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

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an implementation plan established pursuant to § 110 of the federal Clean Air Act, or a § 111(d) plan.

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

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

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

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

"Federal operating permit" means a permit issued under Article 1 (9 VAC 5-80-50 et seq.) of Part II of 9 VAC 5-80.

"First calendar half" means the period that starts on January 1 and ends on June 30 in any year.

"Fluidized bed combustion unit" means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

"Four-hour block average" means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six four-hour periods: (i) midnight to 4 a.m., (ii) 4 a.m. to 8 a.m., (iii) 8 a.m. to noon, (iv) noon to 4 p.m., (v) 4 p.m. to 8 p.m., and (vi) 8 p.m. to midnight.

"Mass burn refractory municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

"Mass burn rotary waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

"Mass burn waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

"Maximum demonstrated load of a municipal waste combustion unit" means the highest four-hour block arithmetic average municipal waste combustion unit load achieved during four consecutive hours in the course of the most recent dioxins/furans stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this article.

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"Maximum demonstrated temperature of the particulate matter control device" means the highest four-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during four consecutive hours in the course of the most recent stack test for dioxins/furans emissions that demonstrates compliance with the limits specified in this article.

"Medical/infectious waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in subdivisions 1 through 9 of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in 40 CFR Part 261; household waste, as defined in 40 CFR 261.4(b)(1); ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in 40 CFR 261.4(a)(1).

1. Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

2. Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

3. Human blood and blood products, regardless of whether containerized, including:

a. Liquid human blood;

b. Products of blood;

c. Items containing unabsorbed or free-flowing blood;

d. Items saturated or dripping or both with human blood; or

e. Items that were saturated and dripping or both with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

4. Regardless of the presence of infectious agents, sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes. Also included are other types of broken or unbroken glassware that may have been in contact with infectious agents, such as used slides and cover slips.

5. Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to

have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals.

6. Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

7. Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

8. Any waste that is contaminated or mixed with any waste listed in subdivisions 1 through 7 of this definition.

9. Any residue or contaminated soil, waste, or other debris resulting from the cleaning of a spill of any waste listed in subdivisions 1 through 8 of this definition.

"Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit" means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. That includes both conventional pulverized coal and micropulverized coal.

"Modification" or "modified municipal waste combustion unit" means a municipal waste combustion unit that has been modified after June 6, 2001, and that meets one of the following criteria: (i) the cumulative cost of the changes over the life of the unit exceeds 50% of the original cost of building and installing the unit (not including the cost of land) updated to current costs; or (ii) any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which new source performance standards have been established under § 129 or § 111 of the federal Clean Air Act. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100% of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in the determination.

"Modular excess-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

"Modular starved-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

"Municipal solid waste or municipal-type solid waste" means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material

discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

"Municipal waste combustion plant" means one or more municipal waste combustion units at the same location.

"Municipal waste combustion plant capacity" means the aggregate municipal waste combustion capacity of all municipal waste combustion units at the plant that are not subject to subparts Ea, Eb, or AAAA of 40 CFR Part 60.

"Municipal waste combustion unit" means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit. Municipal waste combustion units do not include cement kilns that combust municipal solid waste. Municipal waste combustion units do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through: (i) the combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber; (ii) the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system; and (iii) the combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

"Particulate matter" means total particulate matter emitted from municipal waste combustion units as measured using Reference Method 5 and the procedures specified in 9 VAC 5-40-6740 D.

"Plastics or rubber recycling unit" means an integrated processing unit for which plastics, rubber, or rubber tires are

the only feed materials (incidental contaminants may be in the feed materials). The feed materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces shall be more than 70% of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes. The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. The feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards. The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

"Potential hydrogen chloride emissions" means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

"Potential mercury emissions" means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

"Potential sulfur dioxide emissions" means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

"Pyrolysis/combustion unit" means a unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

"Reconstruction" means rebuilding a municipal waste combustion unit and meeting two criteria: (i) the reconstruction begins after June 6, 2001; and (ii) the cumulative cost of the construction over the life of the unit exceeds 50% of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate the costs, see the definition in this section of "municipal waste combustion unit."

"Refractory unit" or "refractory wall furnace" means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

"Refuse-derived fuel" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. Refuse-derived fuel includes all classes of refuse-derived fuel, including low-density fluff refuse-derived fuel through densified refuse-derived fuel, and pelletized refuse-derived fuel.

"Same location" means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same

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entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

"Second calendar half" means the period that starts on July 1 and ends on December 31 in any year.

"Shift supervisor" means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

"Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit" means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

"Standard conditions," when referring to units of measure, means a temperature of 20°C and a pressure of 101.3 kilopascals.

"Startup period" means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with §§ 111(d)(1) and 129(b)(2) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with § 111(d)(2) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Stoker (refuse-derived fuel) combustion unit" means a steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

"Total mass dioxins/furans or total mass" means the total mass of tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using Reference Method 23 and the procedures specified in 9 VAC 5-40-6740 D.

"Twenty-four hour daily average" or "24-hour daily average" means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between midnight and the following midnight.

"Untreated lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Waterwall furnace" means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include: (i) construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in this section; or (ii) clean wood that is exempt from the definition of "municipal solid waste" in this section.

## **9 VAC 5-40-6570. Limit for particulate matter.**

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any particulate emissions in excess of 27 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any particulate emissions in excess of 70 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

## **9 VAC 5-40-6580. Limit for carbon monoxide.**

No owner or other person shall cause or permit to be discharged into the atmosphere from any small municipal waste combustion unit any carbon monoxide emissions in excess of the following.

1. For fluidized bed units: 100 parts per million by dry volume, measured at 7.0% oxygen, four-hour block average, arithmetic mean.
2. For fluidized bed, mixed fuel (wood/refuse-derived fuel) units: 200 parts per million by dry volume measured at 7.0% oxygen, 24-hour block average, geometric mean.
3. For mass burn rotary refractory units: 100 parts per million by dry volume measured at 7.0% oxygen, four-hour block average, arithmetic mean.
4. For mass burn rotary waterwall units: 250 parts per million by dry volume measured at 7.0% oxygen, 24-hour block average, arithmetic mean.
5. For mass burn waterwall and refractory units: 100 parts per million by dry volume measured at 7.0% oxygen, four-hour block average, arithmetic mean.
6. For mixed fuel-fired (pulverized coal/refuse-derived fuel) units: 150 parts per million by dry volume measured at 7.0% oxygen, four-hour block average, arithmetic mean.
7. For modular starved-air and excess air units: 50 parts per million by dry volume measured at 7.0% oxygen, four-hour block average, arithmetic mean.
8. For spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) units: 200 parts per million by dry volume measured at 7.0% oxygen, 24-hour daily block average, arithmetic mean.

9. For stoker, refuse-derived fuel units: 200 parts per million by dry volume measured at 7.0% oxygen, 24-hour daily block average, arithmetic mean.

**9 VAC 5-40-6590. Limit for dioxins/furans.**

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any dioxin/furan (total mass basis) emissions in excess of the following.

1. For units that do not use an electrostatic precipitator-based emission control system: 30 nanograms per dry standard cubic meter, measured at 7.0% oxygen, three-run average (minimum run duration of four hours).

2. For units that use electrostatic precipitator-based emission control system: 60 nanograms per dry standard cubic meter, measured at 7.0% oxygen, three-run average (minimum run duration of four hours).

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any dioxin/furan emissions (total mass basis) in excess of 125 nanograms per dry standard cubic meter, measured at 7.0% oxygen, three-run average (minimum run duration of four hours).

**9 VAC 5-40-6600. Limit for hydrogen chloride.**

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any hydrogen chloride emissions in excess of 31 parts per million by dry volume or 95% reduction of potential emissions, measured at 7.0% oxygen, three-run average (minimum run duration of one hour).

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any hydrogen chloride emissions in excess of 250 parts per million by dry volume or 50% reduction of potential emissions, measured at 7.0% oxygen, three-run average (minimum run duration of one hour).

**9 VAC 5-40-6610. Limit for sulfur dioxide.**

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any sulfur dioxide emissions in excess of 31 parts per million by dry volume or 75% reduction of potential emissions, measured at 7.0% oxygen, 24-hour daily block geometric average concentration or percent reduction.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any sulfur dioxide emissions in excess of 77 parts per million by dry volume or 50% reduction of potential emissions, measured at 7.0% oxygen, 24-hour daily block geometric average concentration or percent reduction.

**9 VAC 5-40-6620. Limit for nitrogen oxides.**

No owner or other person shall cause or permit to be discharged into the atmosphere from any small municipal waste combustor any nitrogen oxide emissions in excess of the following:

1. For mass burn waterwall units: 200 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

2. For mass burn rotary waterwall units: 170 parts per million by dry volume measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

3. For refuse-derived fuel units: 250 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

4. For fluidized bed units: 220 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

5. For mass burn refractory units: 350 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

6. For modular excess air units: 190 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

7. For modular starved air units: 380 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

**9 VAC 5-40-6630. Limit for lead.**

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any lead emissions in excess of 0.490 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any lead emissions in excess of 1.6 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

**9 VAC 5-40-6640. Limit for cadmium.**

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any cadmium emissions in excess of 0.040 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any cadmium emissions in excess of 0.10 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

**9 VAC 5-40-6650. Limit for mercury.**

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any mercury emissions in excess of 0.080 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any mercury emissions in excess of 0.080 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

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## **9 VAC 5-40-6660. Limit for visible emissions.**

A. The provisions of Article 1 (9 VAC 5-40-60 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Visible Emissions) apply except that the provisions in subsection B of this section apply instead of 9 VAC 5-40-80.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any small municipal waste combustion unit any visible emissions that exhibit greater than 10% opacity, measured at 30 six-minute averages.

## **9 VAC 5-40-6670. Standard for fugitive dust/emissions.**

A. The provisions of Article 1 (9 VAC 5-40-60 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Fugitive Dust/Emissions, Rule 4-1) apply.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any small municipal waste combustion unit any fugitive ash visible emissions for more than 5.0% of hourly observation period, measured at three one-hour observation periods.

## **9 VAC 5-40-6680. Standard for odor.**

The provisions of Article 2 (9 VAC 5-40-130 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Odor, Rule 4-2) apply.

## **9 VAC 5-40-6690. Standard for toxic pollutants.**

The provisions of Article 3 (9 VAC 5-40-160 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Toxic Pollutants, Rule 4-3) apply.

## **9 VAC 5-40-6700. Operator training and certification.**

A. Each chief facility operator, shift supervisor, and control room operator shall complete a training course as follows.

1. The operator training course shall be completed by the later of (i) one year after the effective date of § 111(d)/129 plan approval, (ii) six months after the municipal waste combustion unit starts up, or (iii) the date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

2. The requirement in subdivision A 1 of this section does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of § 111(d)/129 plan approval.

3. The owner may request that the board waive the requirement in subdivision A 1 of this section for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of § 111(d)/129 plan approval.

B. A plant-specific training course and operating manual shall be established as follows.

1. All employees with responsibilities that affect how a municipal waste combustion unit operates, including but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and

crane or load handlers, shall complete the plant-specific training course.

2. A plant-specific operating manual shall be developed by the later of (i) six months after the municipal waste combustor unit starts up, or (ii) one year after the effective date of § 111(d)/129 plan approval.

3. A program to review the plant-specific operating manual with people whose responsibilities affect the operation of the municipal waste combustion unit shall be established. Initial review of the program shall be completed by the later of (i) one year after the effective date of § 111(d)/129 plan approval, (ii) six months after the municipal waste combustor unit starts up, or (iii) the date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

4. The manual shall be updated and reviewed with staff annually.

5. The following information shall be included in the plant-specific operating manual.

- a. A summary of all applicable requirements in this article.
- b. A description of the basic combustion principles that apply to municipal waste combustion units.
- c. Procedures for receiving, handling, and feeding municipal solid waste.
- d. Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.
- e. Procedures for maintaining a proper level of combustion air supply.
- f. Procedures for operating the municipal waste combustion unit in compliance with the requirements contained in this article.
- g. Procedures for responding to periodic upset or off-specification conditions.
- h. Procedures for minimizing carryover of particulate matter.
- i. Procedures for handling ash.
- j. Procedures for monitoring emissions from the municipal waste combustion unit.
- k. Procedures for recordkeeping and reporting.

6. The operating manual shall be maintained in an easily accessible location at the plant. It shall be available for review or inspection by all employees who are required to review it and by the board.

C. Each chief facility operator and shift supervisor shall obtain operator certification as follows.

1. Each chief facility operator and shift supervisor shall obtain and maintain one of the following:
  - a. A current provisional operator certification from the American Society of Mechanical Engineers (QRO-1-1994) in conjunction with the licensing requirements of the

Board for Waste Management Facility Operators as required by 18 VAC 155-20; or

b. A license from the Board for Waste Management Facility Operators as required by 18 VAC 18-20.

2. The certification and licensing required in subdivision 1 of this subsection shall be obtained by the later of the following:

a. For Class I units, 12 months after the effective date of § 111(d)/129 plan approval; for Class II units, 18 months after the effective date of § 111(d)/129 plan approval.

b. Six months after the municipal waste combustion unit starts up.

c. Six months after being transferred to the municipal waste combustion unit or six months after they are hired to work at the municipal waste combustion unit.

3. Each chief facility operator and shift supervisor shall:

a. Obtain a full certification from the American Society of Mechanical Engineers in conjunction with the Board for Waste Management Facility Operators as required by 18 VAC 155-20; or

b. Schedule a full certification exam with the American Society of Mechanical Engineers (QRO-1-1994) in conjunction with the Board for Waste Management Facility Operators as required by 18 VAC 155-20; or

c. Obtain a license from the Board for Waste Management Facility Operators as required by 18 VAC 155-20.

4. The chief facility operator and shift supervisor shall obtain the full certification or be scheduled to take the certification and licensing exam as required in subdivision C 3 of this section by the later of the following dates.

a. For Class I units, 12 months after the effective date of § 111(d)/129 plan approval; for Class II units, 18 months after the effective date of § 111(d)/129 plan approval.

b. Six months after the municipal waste combustion unit starts up.

c. Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

D. After the required date for full or provisional certification and full license, no municipal waste combustion unit shall be operated unless one of the following employees is on duty:

1. A fully certified chief facility operator.

2. A provisionally certified chief facility operator who is scheduled to take the full certification exam.

3. A fully certified shift supervisor.

4. A provisionally certified shift supervisor who is scheduled to take the full certification exam.

E. No owner of an affected facility shall allow the facility to be operated at any time unless a person is on duty who is responsible for the proper operation of the facility and has a

license from the Board for Waste Management Facility Operators in the correct classification.

F. If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, the owner shall meet one of the following.

1. When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the board.

2. When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for two weeks or less, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the board. The periods when the certified chief facility operator and certified shift supervisor are offsite shall be recorded and included in the annual report as specified under 9 VAC 5-40-6770 B 2 l.

3. When the certified chief facility operator and certified shift supervisor are offsite for more than two weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the board, and the owner shall:

a. Notify the board in writing what caused the absence and what is being done to ensure that a certified chief facility operator or certified shift supervisor is onsite; and

b. Submit a status report and corrective action summary to the board every four weeks following the initial notification. If the board notifies the owner that the status report or corrective action summary is disapproved, the municipal waste combustion unit shall cease operation after 90 days. If corrective actions are taken in the 90-day period such that the board withdraws the disapproval, municipal waste combustion unit operation may continue.

G. All training and licensing shall be in accordance with § 54.1-2212 of the Code of Virginia and with 18 VAC 155-20 (Regulations for the Virginia Board for Waste Management Facility Operators).

## **9 VAC 5-40-6710. Compliance schedule.**

A. Small municipal waste combustion units shall achieve final compliance or cease operation as expeditiously as practicable but not later than December 6, 2005, or three years after the effective date of Section 111(d)/129 Plan approval, whichever is earlier.

B. The enforceable increments of progress shall be met as follows.

1. If a Class I unit plans to achieve compliance more than one year following the effective date of § 111(d)/129 plan approval and a permit modification is not required, or more than one year following the date of issuance of a revised

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construction or operation permit if a permit modification is required, the Class I unit shall:

- a. Submit a final control plan no later than six months after the effective date of § 111(d)/129 plan approval.
- b. Submit a notification of retrofit contract award no later than one year after the effective date of § 111(d)/129 plan approval.
- c. Initiate onsite construction no later than two years after the effective date of § 111(d)/129 plan approval.
- d. Complete onsite construction no later than 30 months after the effective date of § 111(d)/129 plan approval.
- e. Achieve final compliance no later than three years after the effective date of § 111(d)/129 plan approval, or December 6, 2005, whichever is earlier.

2. Class I units that commenced construction after June 26, 1987, shall comply with the dioxins/furans and mercury limits specified in 9 VAC 5-40-6590 and 9 VAC 5-40-6650 no later than one year following the effective date of § 111(d)/129 plan approval, or one year following the issuance of a revised construction or operation permit, if a permit modification is required. Final compliance shall be achieved no later than December 6, 2005 even if the date one year after the issuance of a revised construction or operation permit is later than December 6, 2005.

3. If a Class II unit plans to achieve compliance more than one year following the effective date of § 111(d)/129 plan approval and a permit modification is not required, or more than one year following the date of issuance of a revised construction or operation permit if a permit modification is required, the Class II unit shall:

- a. Submit a final control plan no later than six months after the effective date of § 111(d)/129 plan approval.
- b. Achieve final compliance no later than three years after the effective date of § 111(d)/129 plan approval, or December 6, 2005, whichever is earlier.

C. The following provisions govern municipal waste combustor closure.

1. If a municipal waste combustion unit is closed but will reopen prior to the final compliance date, the increments of progress specified in subdivision B 1 of this section shall be met. If a municipal waste combustion unit is closed but will be restarted after the final compliance date, emission control retrofit shall be completed and emission limits and good combustion practices shall be met on the date the municipal waste combustion unit restarts operation.

2. If a municipal waste combustion unit will be closed rather than comply with this article, the owner shall submit a closure notification, including the date of closure, to the board by the date the final control plan is due. If the closure date is later than one year after the effective date of § 111(d)/129 plan approval, the owner shall enter into a legally binding closure agreement with the board by the date the final control plan is due. The agreement shall specify the date by which operation will cease.

D. Notification of achievement of increments of progress shall be prepared and submitted as follows.

1. The notification shall state that the increment of progress has been achieved and shall include any items required to be submitted with the increment of progress listed in subdivision 3 of this subsection. The notification shall be signed by the owner or operator of the municipal waste combustion unit, and shall be postmarked no later than 10 days after the compliance date for the increment.

2. If an increment of progress is not met, the owner shall submit a notification to the board postmarked within 10 business days after the specified date in subsection B of this section for achieving that increment of progress. The notification shall inform the board that the increment was not met, explain why, and include a plan for meeting the increment as expeditiously as possible. Reports shall be submitted each subsequent month until the increment of progress is met.

3. Individual increments of progress shall be reported as follows.

a. For the control plan increment of progress, the owner shall submit the final control plan, including a description of the devices for air pollution control and process changes that will be used to comply with the emission limits and other requirements of this article. An onsite copy of the final control plan shall be maintained.

b. For the awarding contracts increment of progress, the owner shall submit a signed copy of the contracts awarded to initiate onsite construction, initiate onsite installation of emission control equipment, and incorporate process changes. A copy of the contracts shall be included with the notification that the increment of progress has been achieved, exclusive of documents incorporated by reference or attachments to the contracts.

c. For the initiating onsite construction increment of progress, the owner shall initiate onsite construction and installation of emission control equipment and initiate the process changes outlined in the final control plan.

d. For the completing onsite construction increment of progress, the owner shall complete onsite construction and installation of emission control equipment and complete process changes outlined in the final control plan.

e. For the final compliance increment of progress, the owner shall complete all process changes and complete retrofit construction as specified in the final control plan; and connect the air pollution control equipment with the municipal waste combustion unit identified in the final control plan and complete process changes to the municipal waste combustion unit so that if the affected municipal waste combustion unit is brought online, all necessary process changes and air pollution control equipment are operating as designed.



**9 VAC 5-40-6720. Operating requirements.**

A. No owner shall operate any municipal waste combustion unit at loads greater than 110% of the maximum demonstrated load of the municipal waste combustion unit (four-hour block average).

B. The municipal waste combustion unit shall be operated such that the temperature at the inlet of the particulate matter control device does not exceed 17°C above the maximum demonstrated temperature of the particulate matter control device (four-hour block average).

C. If the municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, an eight-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins/furans or mercury test shall be maintained.

D. If the municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, the total carbon usage for each calendar quarter shall be evaluated. The total amount of carbon purchased and delivered to the municipal waste combustion plant shall be at or above the required quarterly usage of carbon. The owner may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit. The quarterly usage of carbon shall be calculated as required in 9 VAC 5-40-6760 F 1 e (1) and (2).

E. A municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of the following.

1. Annual tests for dioxins/furans.
2. Annual mercury tests (for carbon feed rate requirements only).
3. The two weeks preceding annual tests for dioxins/furans.
4. The two weeks preceding annual mercury tests (for carbon feed rate requirements only).
5. Whenever the board allows any of the following.
  - a. Evaluation of system performance.
  - b. Testing of new technology or control technologies.
  - c. Performance of diagnostic testing.
  - d. Performance of other activities to improve unit performance.
  - e. Performance of other activities to advance the state of the art for emission controls for the municipal waste combustion unit.

**9 VAC 5-40-6730. Compliance.**

A. The provisions governing compliance shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6660 A, 9 VAC 5-40-6670, 9 VAC 5-40-6680, and 9 VAC 5-40-6690, the provisions of 9 VAC 5-40-20 (Compliance) apply.

2. With regard to the emission limits in 9 VAC 5-40-6570 through 9 VAC 5-40-6650 and 9 VAC 5-40-6660 B, the following provisions apply:

- a. 9 VAC 5-40-20 B, C, D, and E,
- b. 40 CFR 60.11, and
- c. Subsections B through F of this section.

B. After the date the initial stack test and continuous emission monitoring system evaluation are required or completed, whichever is earlier, the owner shall meet the applicable emission limits specified in 9 VAC 5-40-6570 through 9 VAC 5-40-6660.

C. Initial and annual stack tests shall be conducted to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash. The results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash shall be used to demonstrate compliance with the applicable emission limits. Compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide shall be demonstrated as provided in subsection E of this section.

D. The owner shall (i) install continuous emission monitoring systems for certain gaseous pollutants, (ii) operate continuous emission monitoring systems correctly, (iii) obtain the minimum amount of monitoring data, and (iv) install a continuous opacity monitoring system.

E. The owner shall use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide in order to demonstrate continuous compliance with the applicable emission limits specified in 9 VAC 5-40-6610, 9 VAC 5-40-6620, and 9 VAC 5-40-6580.

F. Municipal waste combustion unit capacity shall be determined as follows.

1. For a municipal waste combustion unit that can operate continuously for 24-hour periods, the municipal waste combustion unit capacity shall be calculated based on 24 hours of operation at the maximum charge rate. The maximum charge rate shall be determined by one of the following methods.

a. For municipal waste combustion units with a design based on heat input capacity, the maximum charging rate shall be calculated based on the maximum heat input capacity and one of the following heating values:

(1) If the municipal waste combustion unit combusts refuse-derived fuel, a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound) shall be used; or

(2) If the municipal waste combustion unit combusts municipal solid waste, a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound) shall be used.

b. For municipal waste combustion units with a design not based on heat input capacity, the maximum designed charging rate shall be used.

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2. Batch municipal waste combustion unit capacity shall be determined by calculating the maximum design amount of municipal solid waste that can be charged per batch multiplied by the maximum number of batches that can be processed in 24 hours. The maximum number of batches shall be calculated by dividing 24 by the number of hours needed to process one batch. Fractional batches shall be retained in the calculation; for example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

## **9 VAC 5-40-6740. Test methods and procedures.**

A. The provisions governing test methods and procedures shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6660 B, 9 VAC 5-40-6670, 9 VAC 5-40-6680, and 9 VAC 5-40-6690, the provisions of 9 VAC 5-40-30 (Emission testing) apply.

2. With regard to the emission limits in 9 VAC 5-40-6570 through 9 VAC 5-40-6650 and 9 VAC 5-40-6660 B, the following provisions apply:

- a. 9 VAC 5-40-30 D and G,
- b. 40 CFR 60.8 (b) through (f), and
- c. Subsections B through F of this section.

B. Class I units shall submit dioxin/furan stack test results for at least one test conducted during or after 1990. The stack tests shall have been conducted according to the procedures specified under subsection D of this section.

C. Stack testing shall be conducted on the following schedule.

1. Initial stack tests for the pollutants listed in 9 VAC 5-40-6730 C shall be conducted no later than 180 days after the final compliance date.

2. Annual stack tests for the pollutants listed in 9 VAC 5-40-6730 C shall be conducted no later than 13 months after the initial stack test and no later than 13 months after the previous stack test thereafter.

D. Stack testing shall be conducted as follows.

1. Specific testing requirements are as follows.

a. For dioxins/furans: Reference Method 1 shall be used to determine the sampling location. Reference Method 23 shall be used to measure the pollutant concentration; oxygen (or carbon dioxide) shall be measured simultaneously using Reference Method 3A or 3B. The minimum sampling time shall be four hours per test run while the municipal waste combustion unit is operating at full load.

b. For cadmium: Reference Method 1 shall be used to determine the sampling location. Reference Method 29 shall be used to measure the pollutant concentration; oxygen (or carbon dioxide) shall be measured simultaneously using Reference Method 3A or 3B. Compliance testing shall be performed while the municipal waste combustion unit is operating at full load.

c. For lead: Reference Method 1 shall be used to determine the sampling location. Reference Method 29 shall be used to measure the pollutant concentration; oxygen (or carbon dioxide) shall be measured simultaneously using Reference Method 3A or 3B. Compliance testing shall be performed while the municipal waste combustion unit is operating at full load.

d. For mercury: Reference Method 1 shall be used to determine the sampling location. Reference Method 29 shall be used to measure the pollutant concentration; oxygen (or carbon dioxide) shall be measured simultaneously using Reference Method 3A or 3B. Compliance testing shall be performed while the municipal waste combustion unit is operating at full load.

e. For opacity: Reference Method 9 shall be used to determine the sampling location, and Reference Method 9 shall be used to measure the pollutant concentration. Reference Method 9 shall be used to determine compliance with the opacity limits, using a three-hour observation period (30 six-minute averages).

f. For particulate matter: Reference Method 1 shall be used to determine the sampling location, and Reference Method 5 or 29 shall be used to measure the pollutant concentration. The minimum sample probe volume shall be 1.0 cubic meters. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than  $160 \pm 14^{\circ}\text{C}$ . The minimum sampling time is one hour.

g. For hydrogen chloride: Reference Method 1 shall be used to determine the sampling location. Reference Method 26 or 26A shall be used to measure the pollutant concentration; oxygen (or carbon dioxide) shall be measured simultaneously using Reference Method 3A or 3B. Test runs shall be at least one hour long while the municipal waste combustion unit is operating at full load.

h. For fugitive ash: No sampling location applies. Reference Method 22 (visible emissions) shall be used to measure the pollutant concentration. The three one-hour observation periods shall include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded onto containers or trucks.

i. For sulfur dioxide, nitrogen oxide, and carbon monoxide, continuous emission monitoring systems shall be used. Stack tests are not required except for quality assurance requirements in appendix F of 40 CFR Part 60.

2. Stack tests for all pollutants shall consist of at least three test runs as specified in 40 CFR 60.8. The average of the pollutant emission concentrations from the three test runs shall be used to determine compliance with the applicable emission limits.

3. Oxygen (or carbon dioxide) measurements shall be obtained at the same time as the pollutant measurements to determine diluent gas levels, as specified in 9 VAC 5-40-6750 B.

4. The percent reduction in potential hydrogen chloride emission shall be calculated using the following equation:

$$\%P_{HCl} = (E_i - E_o) * (100 / E_i)$$

where:

$\%P_{HCl}$  = percent reduction of the potential hydrogen chloride emissions

$E_i$  = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7.0% oxygen, dry basis

$E_o$  = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7.0% oxygen, dry basis

5. The reduction efficiency for mercury emissions shall be calculated using the following equation:

$$\%P_{Hg} = (E_i - E_o) * (100 / E_i)$$

where:

$\%P_{Hg}$  = percent reduction of potential mercury emissions

$E_i$  = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7.0% oxygen, dry basis

$E_o$  = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7.0% oxygen, dry basis

6. The owner may apply to the board for approval under 40 CFR 60.8(b) to use a reference method with minor changes in methodology, use an equivalent method, use an alternative method the results of which the board has determined are adequate for demonstrating compliance, waive the requirement for a performance test because the owner has demonstrated compliance by other means, or use a shorter sampling time or smaller sampling volume.

E. Alternative stack testing schedules may be established as follows.

1. A Class II unit that has conducted stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash over three consecutive years, and has demonstrated compliance with the emission limits is not required to conduct a stack test for that pollutant for the next two years. A stack test shall be conducted within 36 months of the anniversary date of the third consecutive stack test that shows compliance with the emission limit. Thereafter, stack tests shall be performed every third year but no later than 36 months following the previous stack tests. If a stack test shows noncompliance with an emission limit, annual stack tests for that pollutant shall be conducted until all stack tests over three consecutive years show compliance with the emission limit for that pollutant.

2. An alternative test schedule for dioxins/furans emissions may be established if the following criteria are met: (i) the affected facility contains multiple municipal waste combustion units onsite that are subject to this article; and

(ii) those municipal waste combustion units have demonstrated levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for two consecutive years. If these criteria are met, annual stack tests shall be conducted on only one municipal waste combustion unit per year. Stack tests conducted under the provisions of this subdivision shall be conducted as follows.

a. The annual stack test shall be conducted no more than 13 months following a stack test on any municipal waste combustion unit subject to this article. Each year a different municipal waste combustion unit subject to this article shall be tested. All municipal waste combustion units subject to this article shall be tested in a sequence determined by the owner. Once a testing sequence has been determined it shall not be changed without approval of the board.

b. If each annual stack test shows levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, stack tests may be conducted on only one municipal waste combustion unit subject to this article per year.

c. If any annual stack test indicates levels of dioxins/furans emissions greater than 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, subsequent annual stack tests shall be conducted on all municipal waste combustion units subject to this article. The owner may return to testing one municipal waste combustion unit subject to this article per year if it can demonstrate dioxins/furans emissions levels less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for all municipal waste combustion units at a stationary source subject to this article for two consecutive years.

F. No owner of an affected facility shall deviate from the 13-month testing schedules specified in 9 VAC 5-40-6740 C and 9 VAC 5-40-6740 E 2 a without applying to the board for an alternative schedule, and the board approves the request for alternate scheduling prior to the date on which the owner would otherwise have been required to conduct the next stack test.

**9 VAC 5-40-6750. Monitoring.**

A. The provisions governing monitoring shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6660 A, 9 VAC 5-40-6670, 9 VAC 5-40-6680, and 9 VAC 5-40-6690, the provisions of 9 VAC 5-40-40 (Monitoring) apply.

2. With regard to the emission limits in 9 VAC 5-40-6570 through 9 VAC 5-40-6650 and 9 VAC 5-40-6660 B, the following provisions apply:

a. 9 VAC 5-40-40 A and F,

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b. 40 CFR 60.13, and

c. Subsections B through L of this section.

B. Continuous emission monitoring systems for gaseous pollutants shall be installed as follows.

1. Each affected municipal waste combustion unit shall install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. Class I municipal waste combustion units shall also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. The continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and oxygen (or carbon dioxide) shall be installed at the outlet of the air pollution control device.

2. Each continuous emission monitoring system shall be installed, evaluated, and operated according to the monitoring requirements in 40 CFR 60.13.

3. The oxygen (or carbon dioxide) concentration shall be monitored at each location where sulfur dioxide and carbon monoxide are monitored. Class I units shall also monitor the oxygen (or carbon dioxide) concentration at the location where nitrogen oxides are monitored.

4. Carbon dioxide may be monitored instead of oxygen as a diluent gas. If carbon dioxide is monitored, then an oxygen monitor is not required and the requirements in 9 VAC 5-40-6750 F shall be met.

5. If compliance is demonstrated by monitoring the percent reduction of sulfur dioxide, continuous emission monitoring systems for sulfur dioxide and oxygen (or carbon dioxide) shall be installed at the inlet of the air pollution control device.

6. If an alternative sulfur dioxide monitoring method is used, such as parametric monitoring, or if the source cannot monitor emissions at the inlet of the air pollution control device to determine percent reduction, an alternative monitoring method may be used on approval of the board under 40 CFR 60.13(i).

C. Continuous emission monitoring systems shall be operated as follows.

1. Initial, daily, quarterly, and annual evaluations of the continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class I units only), and carbon monoxide shall be conducted.

2. The initial evaluation of the continuous emission monitoring systems shall be completed within 180 days after the final compliance date.

3. For initial and annual evaluations, data shall be collected concurrently (or within 30 to 60 minutes) using the oxygen (or carbon dioxide) continuous emission monitoring system, the sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, using the following test methods:

a. For nitrogen oxides as monitored by Class I units, the pollutant concentration levels shall be validated using Reference Method 7, 7A, 7B, 7C, 7D, or 7E; oxygen (or carbon monoxide) shall be measured using Reference Method 3 or 3A.

b. For sulfur dioxide, the pollutant concentration levels shall be validated using Reference Method 6 or 6C; oxygen (or carbon monoxide) shall be measured using Reference Method 3 or 3A.

c. For carbon monoxide, the pollutant concentration levels shall be validated using Reference Method 10, 10A, or 10B; oxygen (or carbon monoxide) shall be measured using Reference Method 3 or 3A.

4. Data shall be collected during each initial and annual evaluation of the continuous emission monitoring systems as follows.

a. For opacity: the span value shall be 100%, and Performance Specification 1 shall be used. Reference Method 9 shall be used if needed to meet minimum data requirements.

b. For nitrogen oxides as monitored by Class I units: the span value for the control device outlet shall be 125% of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit, and Performance Standard 2 shall be used. Reference Method 7E shall be used if needed to meet minimum data requirements.

c. For sulfur dioxide:

(1) For the inlet to the control device: the span value shall be 125% of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit, and Performance Standard 2 shall be used. Reference Method 6C shall be used if needed to meet minimum data requirements.

(2) For the control device outlet: the span value shall be 50% of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit, and Performance Standard 2 shall be used. Reference Method 6C shall be used if needed to meet minimum data requirements.

d. For carbon monoxide: the span value shall be 125% of the maximum expected hourly potential carbon monoxide emissions of the municipal waste combustion unit, and Performance Specification 4A shall be used. Reference Method 10 with alternative interference trap shall be used if needed to meet minimum data requirements.

e. For oxygen or carbon dioxide: the span value shall be 25% oxygen or 25% carbon dioxide, and Performance Specification 3 shall be used. Reference Method 3A or 3B shall be used if needed to meet minimum data requirements.

5. The quality assurance procedures in Procedure 1 of appendix F of 40 CFR Part 60 shall be followed for each continuous emission monitoring system.

D. The accuracy tests for the sulfur dioxide continuous emission monitoring system require evaluation of the oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, the oxygen (or carbon dioxide) continuous emission monitoring system is exempt from Section 2.3 of Performance Specification 3 in appendix B of 40 CFR Part 60 (relative accuracy requirement) and Section 5.1.1 of appendix F of 40 CFR Part 60 (relative accuracy test audit).

E. The following schedule for evaluating continuous emission monitoring systems shall be met.

1. Annual evaluations of the continuous emission monitoring systems shall be conducted no more than 13 months after the previous evaluation was conducted.
2. Continuous emission monitoring systems shall be evaluated daily and quarterly as specified in appendix F of 40 CFR Part 60.

F. The relationship between oxygen and carbon dioxide shall be established during the initial evaluation of the continuous emission monitoring systems, and may be reestablished during annual evaluations. The relationship shall be established as follows.

1. Reference Method 3A or 3B shall be used to determine oxygen concentration at the location of the carbon dioxide monitor.
2. At least three test runs for oxygen shall be conducted. Each test run shall represent a one-hour average, and sampling shall continue for at least 30 minutes in each hour.
3. The fuel-factor equation in Reference Method 3B shall be used to determine the relationship between oxygen and carbon dioxide.

G. The following monitoring data shall be collected.

1. Where continuous emission monitoring systems are required, one-hour arithmetic averages shall be obtained. The averages for sulfur dioxide, nitrogen oxides (Class I units only), and carbon monoxide shall be in parts per million by dry volume at 7.0% oxygen (or the equivalent carbon dioxide level). The one-hour averages of oxygen (or carbon dioxide) data from the continuous emission monitoring system shall be used to determine the actual oxygen (or carbon dioxide) level and to calculate emissions at 7.0% oxygen (or the equivalent carbon dioxide level).
2. At least two data points per hour shall be obtained in order to calculate a valid one-hour arithmetic average. 40 CFR 60.13(e)(2) requires the continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.
3. Valid one-hour averages shall be obtained for 75% of the operating hours per day for 90% of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.
4. Failure to obtain the minimum data required in subdivisions G 1 through 3 of this section constitutes a violation of the data collection requirement regardless of the

emission level monitored. In such case the board shall be notified according to 9 VAC 5-40-6770 B 2 e.

5. If the minimum data required in subdivisions G 1 through 3 of this section is not obtained, the owner shall nevertheless use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with subsection H of this section.

H. One-hour arithmetic averages shall be converted into averaging times and units as follows.

1. Emissions shall be calculated at 7.0% oxygen using the following equation:

$$C_{7\%} = C_{unc} * (13.9) * (1 / (20.9 - CO_2))$$

where:

$C_{7\%}$  = concentration corrected to 7.0% oxygen.

$C_{unc}$  = uncorrected pollutant concentration.

$CO_2$  = concentration of oxygen (percent).

2. Reference Method 19 shall be used to calculate the daily geometric average concentrations of sulfur dioxide emissions. Owners monitoring the percent reduction of sulfur dioxide shall use Reference Method 19 to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

3. Class I units shall use Reference Method 19 to calculate the daily arithmetic average for concentrations of nitrogen oxides.

4. Reference Method 19 shall be used to calculate the four-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

I. Operating parameters required for continuous monitoring are as follows.

1. Municipal waste combustion unit load shall be monitored as follows:

a. Municipal waste combustion units that generate steam shall install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter as follows.

(1) The measurements of steam (or feed water) shall be continuously measured and recorded in kilograms (or pounds) per hour.

(2) The steam (or feed water) flow shall be calculated in four-hour block averages.

(3) The steam (or feed water) flow rate shall be calculated using the method in "American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1--1964 (R1991)," section 4.

(4) Nozzles or orifices for flow rate measurements shall be designed, constructed, installed, calibrated, and used following the recommendations in "American Society of Mechanical Engineers Interim Supplement

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19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters," 6th Edition (1971), chapter 4.

(5) Before each dioxins/furans stack test, or at least once a year, all signal conversion elements associated with steam (or feed water) flow measurements shall be calibrated according to the manufacturer's instructions.

b. If the municipal waste combustion units do not generate steam, or if the municipal waste combustion units have shared steam systems and steam load cannot be estimated per unit, the owner shall determine, to the satisfaction of the board, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). The selected parameters shall be monitored continuously.

2. The owner shall install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

3. Municipal waste combustion units that use activated carbon to control dioxins/furans or mercury emissions shall perform the following.

a. A carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed) shall be selected.

b. During each dioxins/furans and mercury stack test, the average carbon feed rate in kilograms (or pounds) per hour and the average operating parameter level that correlates to the carbon feed rate shall be determined. A relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level shall be established.

c. The selected operating parameter shall be continuously monitored during all periods when the municipal waste combustion unit is operating and combusting waste, and the eight-hour block average carbon feed rate shall be calculated in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the eight-hour block average, (i) hours when the municipal waste combustion unit is not operating shall be excluded, and (ii) hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly shall be included.

4. Continuous parameter monitoring systems shall meet the following requirements.

a. One-hour arithmetic averages shall be obtained for the following parameters:

- (1) Load level of the municipal waste combustion unit;
- (2) Temperature of the flue gases at the inlet of the particulate matter control device; and
- (3) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

b. In order to calculate a valid one-hour arithmetic average, at least two data points per hour shall be obtained.

c. Valid one-hour averages shall be obtained for at least 75% of the operating hours per day for 90% of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

d. If the minimum data required in subdivisions 4 a through c of this subsection are not obtained, the owner is in violation of the data collection requirement, and shall notify the board according to 9 VAC 5-40-6770 B 2 e.

J. An initial evaluation of the continuous opacity monitoring system shall be completed according to Performance Specification 1 in appendix B of 40 CFR Part 60 no later than 180 days after the final compliance date. Each annual evaluation of the continuous opacity monitoring system shall be completed no more than 13 months after the previous evaluation. Tests shall be conducted according to Reference Method 9, as specified in 9 VAC 5-40-6740 D, to determine compliance with the opacity limit in 9 VAC 5-40-6660. The data obtained from the continuous opacity monitoring system are not used to determine compliance with the opacity limit.

K. Operation of the continuous emission monitoring systems and continuous opacity monitoring system shall use the required span values and applicable performance specifications in 9 VAC 5-40-6750 C.

L. If any continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements due to systems malfunction or when repairs, calibration checks, or zero and span checks prevent collection of the minimum amount of data, the alternate methods found in 9 VAC 5-40-6740 D shall be used.

## **9 VAC 5-40-6760. Recordkeeping.**

A. The provisions governing recordkeeping shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6660 A, 9 VAC 5-40-6670, 9 VAC 5-40-6680, and 9 VAC 5-40-6690, the provisions of 9 VAC 5-40-50 (Notification, records and reporting) apply.

2. With regard to the emission limits in 9 VAC 5-40-6570 through 9 VAC 5-40-6650 and 9 VAC 5-40-6660 B, the following provisions apply:

- a. 9 VAC 5-40-50 F and H,
- b. 40 CFR 60.7, and
- c. Subsections B through F of this section.

B. All records shall be kept onsite in paper copy or electronic format unless the board approves another format. All records on each municipal waste combustion unit shall be kept for at least five years, and shall be available for submittal to the board or for onsite review by an inspector.

C. The following records for operator training and certification shall be maintained.

1. Records of provisional certifications, including:
    - a. For the municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers, or an equivalent board-approved certification program.
    - b. Dates of the initial provisional certifications.
    - c. Documentation showing current provisional certifications.
  2. Records of full certifications and licenses, including:
    - a. For the municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent board-approved program.
    - b. Dates of initial and renewal of full certifications and licenses.
    - c. Documentation showing current full certifications and licenses.
  3. Records showing completion of the operator training course, including:
    - a. For the municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA municipal waste combustion operator training course or an equivalent board-approved program.
    - b. Dates of completion of the operator training course.
    - c. Documentation showing completion of the operator training course.
  4. Records of reviews for plant-specific operating manuals, including:
    - a. Names of persons who have reviewed the operating manual.
    - b. Date of the initial review.
    - c. Dates of subsequent annual reviews.
  5. Records of when a certified operator is temporarily offsite, including:
    - a. If the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for two weeks or less, and no other certified operator is onsite, the dates that the certified chief facility operator and certified shift supervisor were offsite shall be recorded.
    - b. When all certified chief facility operators and certified shift supervisors are offsite for more than two weeks and no other certified operator is onsite, the following records shall be kept:
      - (1) The notice that all certified persons are offsite.
      - (2) The conditions that cause those people to be offsite.
      - (3) The corrective actions being taken to ensure a certified chief facility operator or certified shift supervisor is onsite.
      - (4) Copies of the written reports submitted every four weeks that summarize the actions taken to ensure that a certified chief facility operator or certified shift supervisor will be onsite.
  6. Records of calendar dates. Include the calendar date on each record.
- D. For stack tests required under 9 VAC 5-40-6730 C, the following records shall be kept.
1. Stack test results for dioxins/furans, cadmium, lead, mercury, opacity, particulate matter, hydrogen chloride, and fugitive ash.
  2. Test reports, including supporting calculations that document the results of all stack tests.
  3. The maximum demonstrated load of the municipal waste combustion units and maximum temperature at the inlet of the particulate matter control device during all stack tests for dioxins/furans emissions.
  4. The calendar date of each record.
- E. For continuously monitored pollutants or parameters, the following records shall be maintained.
1. Records of monitoring data, including the following parameters measured using continuous monitoring systems:
    - a. All six-minute average levels of opacity.
    - b. All one-hour average concentrations of sulfur dioxide emissions.
    - c. For Class I units, all one-hour average concentrations of nitrogen oxides emissions.
    - d. All one-hour average concentrations of carbon monoxide emissions.
    - e. All one-hour average load levels of the municipal waste combustion unit.
    - f. All one-hour average flue gas temperatures at the inlet of the particulate matter control device.
  2. Records of average concentrations and percent reductions.
    - a. All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.
    - b. For Class I units, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.
    - c. All four-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.
    - d. All four-hour block arithmetic average load levels of the municipal waste combustion unit.

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e. All four-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.

3. Records of exceedances, including:

a. Calendar dates whenever any of the pollutant or parameter levels recorded in subdivision 2 of this subsection or the opacity level recorded in subdivision 1 of this subsection did not meet the emission limits or operating levels specified in this article.

b. Reasons why the applicable emission limits or operating levels were exceeded.

c. Corrective actions taken or being taken to meet the emission limits or operating levels.

4. Records of minimum data, including the following:

a. Calendar dates for which the minimum amount of data required under 9 VAC 5-40-6750 G and I 4 were not collected for the following types of pollutants and parameters:

(1) Sulfur dioxide emissions.

(2) For Class I units, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load levels of the municipal waste combustion unit.

(5) Temperatures of the flue gases at the inlet of the particulate matter control device.

b. Reasons why the minimum data were not collected.

c. Corrective actions taken or being taken to obtain the required amount of data.

5. Records of exclusions, including documentation of each time data was excluded from the calculation of averages for any of the following pollutants or parameters and the reasons why the data were excluded:

a. Sulfur dioxide emissions.

b. For Class I units, nitrogen oxides emissions.

c. Carbon monoxide emissions.

d. Load levels of the municipal waste combustion unit.

e. Temperatures of the flue gases at the inlet of the particulate matter control device.

6. Records of drift and accuracy, including documentation of the results of daily drift tests and quarterly accuracy determinations according to procedure 1 of appendix F of 40 CFR Part 60, for the sulfur dioxide, nitrogen oxides (Class I units only), and carbon monoxide continuous emissions monitoring systems.

7. Records of the relationship between oxygen and carbon dioxide. If carbon dioxide is monitored instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in 9 VAC 5-40-6750 F.

8. Records of calendar dates shall be included on each record.

F. Municipal waste combustion units that use activated carbon to control dioxins/furans or mercury emissions shall maintain the following records.

1. Records of average carbon feed rate, including documentation of the following:

a. Average carbon feed rate in kilograms (or pounds) per hour during all stack tests for dioxins/furans and mercury emissions, with supporting calculations.

b. For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxins/furans and mercury emissions. Supporting data that document the relationship between the operating parameter and the carbon feed rate shall be included in the records.

c. All eight-hour block average carbon feed rates in kilograms (or pounds) per hour calculated from the monitored operating parameter.

d. Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If the total carbon purchased and delivered is evaluated on a municipal waste combustion unit basis, the total carbon purchased and delivered for each individual municipal waste combustion unit shall be recorded. Supporting documentation shall be included in the records.

e. Required quarterly usage of carbon for the municipal waste combustion plant. If the required quarterly usage for carbon is evaluated on a municipal waste combustion unit basis, the required quarterly usage for each municipal waste combustion unit shall be recorded. Supporting calculations shall be included in the records.

(1) The following equation shall be used for calculation on a plant basis:

$$C = \sum_{i=1}^n f_i * h_i$$

where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

$f_i$  = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is, the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

$h_i$  = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at the plant.

(2) The following equation shall be used for calculation on a unit basis:

$$C = f * h$$

where:



*C* = required quarterly carbon usage for the unit in kilograms (or pounds).

*f* = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is, the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

*h* = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

2. Records of low carbon feed rates, including the following:
  - a. The calendar dates when the average carbon feed rate over an eight-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxins/furans or mercury emissions (whichever has a higher feed rate).
  - b. Reasons for the low carbon feed rates.
  - c. Corrective actions taken or being taken to meet the eight-hour average carbon feed rate requirement.
3. Records of minimum carbon feed rate data, including the following:
  - a. Calendar dates for which the minimum amount of carbon feed rate data required under 9 VAC 5-40-6750 I 4 were not collected.
  - b. Reasons why the minimum data was not collected.
  - c. Corrective actions taken or being taken to obtain the required amount of data.
4. Records of exclusions, including documentation of each time data were excluded from the calculation of average carbon feed rates and the reasons why.
5. Records of calendar dates, including the calendar date on each record.

## **9 VAC 5-40-6770. Reporting.**

A. The provisions governing reporting shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6660 A, 9 VAC 5-40-6670, 9 VAC 5-40-6680, and 9 VAC 5-40-6690, the provisions of 9 VAC 5-40-50 (Notification, records and reporting) apply.
2. With regard to the emission limits in 9 VAC 5-40-6570 through 9 VAC 5-40-6650 and 9 VAC 5-40-6660 B, the following provisions apply:
  - a. 9 VAC 5-40-50 F and H,
  - b. 40 CFR 60.7, and
  - c. Subsections B and C of this section.

B. The owner of an affected facility shall submit (i) an initial report; (ii) annual reports; and (iii) semiannual reports for any emission or parameter level that does not meet the provisions of this article, as described in subdivisions B 1 through 3 of this subsection. All reports shall be submitted on paper, postmarked on or before the submittal dates in subdivisions B

1 through 3. Electronic reports may be submitted with the board's prior approval. All reports required by subdivisions B 1 a, 2, and 3 shall be maintained onsite for five years.

1. As specified in 40 CFR 60.7(c), the initial report shall be submitted no later than 180 days after the final compliance date. The initial report shall include the following:

a. The emission levels measured on the date of the initial evaluation of the continuous emission monitoring systems for all of the following pollutants or parameters as recorded in accordance with 9 VAC 5-40-6760 E 2:

- (1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily geometric percent reduction of sulfur dioxide emissions.
- (2) For Class I units, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.
- (3) The four-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.
- (4) The four-hour block arithmetic average load level of the municipal waste combustion unit.
- (5) The four-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

b. The results of the initial stack tests as required by 9 VAC 5-40-6730 C and recorded in 9 VAC 5-40-6760 D.

c. The test report that documents the initial stack tests, including supporting calculations.

d. The initial performance evaluation of the continuous emissions monitoring systems, using the applicable performance specifications in appendix B of 40 CFR Part 60 to conduct the evaluation.

e. The maximum demonstrated load of the municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device, using values established during the initial stack test for dioxins/furans emissions, and including supporting calculations.

f. If activated carbon is used to control dioxins/furans or mercury emissions, the average carbon feed rates recorded during the initial stack tests for dioxins/furans and mercury emissions, including supporting calculations as specified in 9 VAC 5-40-6760 F 1 a and b.

g. If carbon dioxide is monitored instead of oxygen as a diluent gas, the relationship between oxygen and carbon dioxide as specified in 9 VAC 5-40-6750 F.

2. The annual report shall be submitted no later than February 1 of each year that follows the calendar year in which the data is collected. If the facility has a federal operating permit for any unit, the permit may require submittal of semiannual reports. The annual report shall summarize data collected for all pollutants and parameters regulated under this article, and shall include:

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a. The results of the annual stack test as required by 9 VAC 5-40-6730 C and as recorded under 9 VAC 5-40-6760 D 1.

b. A list of the highest average levels recorded, in the appropriate units, for the following pollutants and parameters:

- (1) Sulfur dioxide emissions.
- (2) For Class I units, nitrogen oxides emissions.
- (3) Carbon monoxide emissions.
- (4) Load level of the municipal waste combustion unit.
- (5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (four-hour block average).

c. The highest six-minute opacity level measured. The value shall be based on all six-minute average opacity levels recorded by the continuous opacity monitoring system as required by 9 VAC 5-40-6760 E 1 a.

d. For municipal waste combustion units that use activated carbon for controlling dioxins/furans or mercury emissions, the following records shall be included:

- (1) The average carbon feed rates recorded during the most recent dioxins/furans and mercury stack tests.
- (2) The lowest eight-hour block average carbon feed rate recorded during the year.
- (3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If the total carbon purchased and delivered is evaluated on a municipal waste combustion unit basis, the total carbon purchased and delivered for each individual municipal waste combustion unit shall be recorded.
- (4) The required quarterly carbon usage of the municipal waste combustion plant calculated using the equations in 9 VAC 5-40-6760 F 1 e (1) and (2). If the required quarterly usage for carbon is evaluated on a municipal waste combustion unit basis, the required quarterly usage for each municipal waste combustion unit shall be recorded.

e. The total number of days the minimum number of hours of data for the following pollutants or parameters were not obtained, including the reasons why data were not obtained and corrective actions taken to obtain the data in the future:

- (1) Sulfur dioxide emissions.
- (2) For Class I units, nitrogen oxides emissions.
- (3) Carbon monoxide emissions.
- (4) Load level of the municipal waste combustion unit.
- (5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
- (6) Carbon feed rate.

f. The number of hours data have been excluded from the calculation of average levels (include the reasons for excluding it), for the following pollutants and parameters:

- (1) Sulfur dioxide emissions.
- (2) For Class I units, nitrogen oxides emissions.
- (3) Carbon monoxide emissions.
- (4) Load level of the municipal waste combustion unit.
- (5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
- (6) Carbon feed rate.

g. A notice of intent to begin a reduced stack testing schedule for dioxins/furans emissions during the following calendar year if the facility is eligible for alternative scheduling as provided in 9 VAC 5-40-6740 E 1 or 2.

h. A notice of intent to begin a reduced stack testing schedule for other pollutants during the following calendar year if the facility is eligible for alternative scheduling as provided in 9 VAC 5-40-6740 E 1.

i. A summary of any emission or parameter level that did not meet the limits specified in this article.

j. A summary of the data in subdivisions B 2 a through d of this section from the year preceding the reporting year, which gives the board a summary of the performance of the municipal waste combustion unit over a two-year period.

k. If carbon dioxide is monitored instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in 9 VAC 5-40-6750 F.

l. Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 12 hours.

3. A semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this article shall be submitted. For data collected during the first half of a calendar year, the report shall be submitted by August 1 of that year. For data collected during the second half of the calendar year, the report shall be submitted by February 1 of the following year. The following information shall be included:

a. For any of the following pollutants and parameters that exceeded the limits specified in this article, the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and corrective actions taken:

- (1) Concentration or percent reduction of sulfur dioxide emissions.
- (2) For Class I units, concentration of nitrogen oxides emissions.
- (3) Concentration of carbon monoxide emissions.
- (4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Average six-minute opacity level. The data obtained from the continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

b. If the results of the annual stack tests (as recorded in 9 VAC 5-40-6760 D 1) show emissions above the limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, a copy of the test report that documents the emission levels and corrective actions taken shall be included.

c. Municipal waste combustion units that apply activated carbon to control dioxins/furans or mercury emissions shall include the following.

(1) Documentation of all dates when the eight-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxins/furans stack test, as specified in 9 VAC 5-40-6760 F 1 a, including (i) eight-hour average carbon feed rate, (ii) reasons for occurrences of low carbon feed rates, (iii) corrective actions taken to meet the carbon feed rate requirement, and (iv) the calendar date.

(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If the total carbon purchased and delivered is evaluated on a municipal waste combustion unit basis, the total carbon purchased and delivered for each individual municipal waste combustion unit shall be recorded. The following information shall be included: (i) amount of carbon purchased and delivered to the plant, (ii) required quarterly usage of carbon, (iii) reasons for not meeting the required quarterly usage of carbon, (iv) corrective actions taken to meet the required quarterly usage of carbon, and (iv) the calendar date.

C. Changes to semiannual or annual reporting dates may be pursued in accordance with the procedures of 40 CFR 60.19(c), and with the approval of the board.

### **9 VAC 5-40-6780. Requirements for air curtain incinerators that burn 100% yard waste.**

A. The owner of an air curtain incinerator subject to the provisions of this article shall meet the following opacity requirements no later than 180 days after the final compliance date.

1. The opacity limit is 10% (six-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.

2. The opacity limit is 35% (six-minute average) during the startup period that is within the first 30 minutes of operation.

3. Except during malfunctions, the requirements of this article apply at all times. Each malfunction shall not exceed three hours.

4. Compliance with the opacity limit shall be achieved as follows.

a. Reference Method 9 shall be used to determine compliance with the opacity limit.

b. An initial test for opacity as specified in 40 CFR 60.8 shall be conducted.

c. After the initial test for opacity, annual tests shall be conducted no more than 13 calendar months following the date of the previous test.

B. The owner of an air curtain incinerator subject to the provisions of this article shall meet the following recordkeeping and reporting requirements.

1. A notice of construction shall be provided that includes the following:

a. The intent to construct the air curtain incinerator.

b. The planned initial startup date.

c. Types of fuels planned to combust.

d. Incinerator capacity, including supporting capacity calculations, as specified in 9 VAC 5-40-6730 F.

2. Records of results of all opacity tests shall be maintained onsite in either paper copy or electronic format unless the board approves another format.

3. All records for each incinerator shall be maintained for at least five years.

4. All records shall be available to the board or for onsite review by an inspector.

5. The results (each six-minute average) of the opacity tests shall be submitted no later than February 1 of the year following the year of the opacity emission test.

6. Reports shall be submitted as a paper copy on or before the applicable submittal date. Reports may be submitted on electronic media with prior approval of the board.

7. Annual reporting dates may be revised with the prior approval of the board (see 40 CFR 60.19(c)).

8. All reports shall be maintained onsite for a period of five years.

### **9 VAC 5-40-6790. Registration.**

The provisions of 9 VAC 5-20-160 (Registration) apply.

### **9 VAC 5-40-6800. Facility and control equipment maintenance or malfunction.**

A. The provisions of 9 VAC 5-20-180 (Facility and control equipment maintenance or malfunction) apply to the emission standards set forth in 9 VAC 5-40-6670 A, 9 VAC 5-40-6680, and 9 VAC 5-40-6690.

B. The provisions of 9 VAC 5-20-180 A, B, C, D, H, and I and subsections C through E of this section apply to the emission

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limits in 9 VAC 5-40-6530 through 9 VAC 5-40-6660 and 9 VAC 5-40-6670 B.

C. The emission limitations and operating limits apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction. No startup, shutdown, or malfunction shall last for longer than three hours. This subsection shall not apply to the emission standards set forth in 9 VAC 5-40-6670 A, 9 VAC 5-40-6680, and 9 VAC 5-40-6690.

D. A maximum of three hours of test data may be dismissed from compliance calculations during periods of startup, shutdown, or malfunction.

E. During startup, shutdown, or malfunction periods longer than three hours, emissions data shall not be discarded from compliance calculations, and all provisions under 40 CFR 60.11(d) apply.

## 9 VAC 5-40-6810. Permits.

A permit may be required prior to beginning any of the activities specified below if the provisions of 9 VAC 5-50 and 9 VAC 5-80 apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (restart-up) of a facility.
6. Operation of a facility.

Article 45 51.

Emission Standards for Lithographic Printing Processes (RULE 4-45 51).

Article 46 52.

Standards of Performance for Municipal Waste Combustors (RULE 4-46 52).

VA.R. Doc. No. R01-112; Filed August 8, 2002, 12:04 p.m.

## VIRGINIA WASTE MANAGEMENT BOARD

**Title of Regulation:** 9 VAC 20-110. Regulations Governing the Transportation of Hazardous Materials (amending 9 VAC 20-110-10 through 9 VAC 20-110-40, 9 VAC 20-110-100, 9 VAC 20-110-110, 9 VAC 20-110-121, and 9 VAC 20-110-122; repealing 9 VAC 20-110-115).

**Statutory Authority:** § 10.1-1450 of the Code of Virginia.

**Public Hearing Date:** October 24, 2002 - 2 p.m.

Public comments may be submitted until 4 p.m. on November 8, 2002.

(See Calendar of Events section for additional information)

**Agency Contact:** Melissa Porterfield, Department of Environmental Quality, 629 E. Main Street, Richmond, VA 23240, telephone (804) 698-4238, FAX (804) 698-4327 or e-mail mspporterfi@deq.state.va.us.

**Basis:** Section 10.1-1450 of the Code of Virginia requires the board to promulgate regulations "designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported." This section also requires the regulations to be no more restrictive than any applicable federal laws or regulations. Section 10.1-1454 of the Code of Virginia states that "any person transporting hazardous materials in accordance with regulations promulgated under the laws of the United States, shall be deemed to have complied with the provisions of this article, except when such transportation is excluded from regulation under the laws or regulations of the United States." The department incorporates federal regulations into state regulations to maintain consistent requirements for transporters of hazardous materials.

**Purpose:** The proposed regulatory action will provide consistency between federal and state regulations governing the transportation of hazardous materials. By amending the state regulations to incorporate federal regulations, law-enforcement officers in the Commonwealth will be able to protect the public from improper transportation of hazardous materials. The Regulations Governing the Transportation of Hazardous Materials regulate the method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored, and transported. By Virginia statute, these regulations shall not be more restrictive than any applicable federal laws or regulations.

**Substance:** The regulations are being amended to incorporate sections of 49 Code of Federal Regulations in effect on October 1, 2001.

9 VAC 20-110-10. Definitions. The proposed amendments revise definitions for "coordinator" and "monitor." The definition of "variance" is removed.

9 VAC 20-110-20. Authority for regulation. Additional language is added to this section that gives additional information about the statute that directs the board to promulgate these regulations.

9 VAC 20-110-30. Purpose of regulations. This section is clarified to state that shippers of hazardous radioactive materials need to register if the radioactive materials are subject to advance notification requirements prior to transportation.

9 VAC 20-110-40. Administration of regulations. Section 383 of 49 CFR is no longer being incorporated by reference into these regulations since the Virginia Department of Motor Vehicles has promulgated regulations governing commercial driver's licenses. (24 VAC 20-60).

9 VAC 20-110-100. Application of Administrative Process Act. The citation to the Administrative Process Act has been changed to reflect the current citation of the Act.

9 VAC 20-110-110. Compliance. Changes have been made to this section to incorporate sections of 49 CFR as in effect October 1, 2001. An additional section is being incorporated

into the regulations that requires transporters of hazardous materials to register with the federal government. The section no longer incorporates commercial driver's license requirements.

9 VAC 20-110-115. Variance from physical qualification requirements for drivers of vehicles transporting hazardous materials. This section is being repealed since the statute has been revised and the Director of the Department of Environmental Quality is no longer directed by statute to issue variances from physical requirements. The Commissioner of the Department of Motor Vehicles is now responsible for issuing these variances.

9 VAC 20-11-121. Register of shippers. This section clarifies that every shipper transporting or proposing to transport hazardous radioactive materials requiring advance notification must register with the Department of Emergency Management.

9 VAC 20-110-122. Monitoring and transportation. Language has been added to this section clarifying that shipments of radioactive materials requiring advance notification shall notify the coordinator of the Department of Emergency Management prior to the shipment taking place.

Issues: By incorporating current federal text, the public and the regulated community will benefit from being regulated by federal and state regulations that are consistent. This amendment will assist law-enforcement officers in the Commonwealth with protecting the public from improper transportation of hazardous materials.

There are no disadvantages to the public or the Commonwealth.

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

Summary of the proposed regulation. The proposed regulations will update the reference to federal hazardous material transportation regulations with the most recent version, repeal the section on issuing variances from physical qualification requirements for drivers transporting hazardous materials, and make a number of other changes to clarify and update the language and increase the awareness of federal regulations.

Estimated economic impact. These regulations contain rules for transportation of hazardous materials, which cover activities such as loading, unloading, packing, identifying, marking, placarding, and storing. Hazardous materials have

the potential to create danger to health, life, or property through contact, exposure, inhalation, fire, explosion, or environmental pollution. Examples of hazardous materials include fuels, corrosive or flammable chemicals, compressed gases, some cleaning supplies, and hazardous wastes.

Virginia regulations incorporate the federal hazardous material transportation regulations by reference. The proposed changes will update the referenced federal regulations in Title 49 of the Code of Federal Regulations that were effective on March 18, 1994, with the most recent version that became effective October 1, 2001. Referenced sections address exemptions, registration of transporters, general requirements and carriage types, specifications for packaging and tank cars, package maintenance, and motor carrier safety. The Department of Environmental Quality (DEQ) indicates that transporters of hazardous materials are required to comply with federal regulations and the most recent version of the federal regulations are already being enforced by law-enforcement authorities in the Commonwealth. Thus, no significant economic effect is expected from the proposed update. However, the consistency between the federal and state regulations governing the transportation of hazardous materials is expected to reduce the potential for creating confusion for law-enforcement authorities and regulated hazardous materials transporters. For example, the most significant difference between the federal regulations in effect March 18, 1994, and the federal regulations currently in effect is the universe of transporters being regulated. The regulations in effect March 18, 1994, only addressed interstate transportation and the current federal regulations now regulate interstate and intrastate transportation of hazardous materials. Such discrepancies have the potential to cause some confusion if the most recent version of the regulations currently enforced is not referenced. Since DEQ is not aware of any problems currently experienced by enforcement officers or the regulated community, the significance of this expected benefit is not known.

Also, the proposed changes will repeal the section on issuing variances from physical qualification requirements for drivers transporting hazardous materials. Current language in the regulations charges the Director of DEQ with issuing variances to drivers with physical impairments such as visual acuity, diabetes, having use of only one arm, hand, foot, or leg to allow them to transport hazardous materials. The language requires the applicant to provide information on company name, address, telephone number, description of duties and years of service and copies of driving record, physician report for visual impairment or diabetes, and the road test for drivers with missing or impaired limbs. Enactments to § 46.2-341.9:1 of the Code of Virginia in 1997 require the Commissioner of Department of Motor Vehicles (DMV) to issue variances. After the statutory change, the variances have been issued under the regulations promulgated by DMV.<sup>1</sup> Thus, the proposed change will have no impact on current practice of issuing variances and is not expected to have any significant economic effects. Additionally, the requirements in these regulations and the requirements currently enforced by DMV are similar in large part except for the road test requirement.

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<sup>1</sup> The Department of Motor Vehicles regulations can be found in 24 VAC 20-60.

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Current language in these regulations requires administering a road test to drivers with disabilities seeking a variance. The regulations currently enforced by DMV on the other hand, still require a physician evaluation of the driver to determine if the driver is capable of operating a commercial vehicle, but do not require administration of the road test. Although discrepancies between the two sets of regulations are minor, the proposed change has the potential to produce small benefits to hazardous waste transporters seeking variance from physical qualifications in terms of reducing communication costs that may stem from confusions caused by outdated and inaccurate current regulatory language.

Finally, several other changes are proposed to clarify and update the regulatory language and increase the awareness of federal regulations. These changes include the following: Virginia Department of Emergency Services will be replaced by Virginia Department of Emergency Management as this agency changed its name, citation to Administrative Process Act will be updated to reflect most recent coding changes, sections of federal regulations requiring transporters of hazardous materials to register with federal government and pay a registration fee will be referenced to increase awareness, the reference to federal regulations on criteria for issuing commercial driver's licenses will be deleted since DMV adopted new criteria for this purpose, it will be clarified that registration of shippers and monitoring transportation of hazardous materials are required for those materials that may constitute a significant potential danger to the citizens of the Commonwealth in the event of accidental spillage or release as specified in the statute, and it will be clarified that the registration of shippers is required if the radioactive materials are subject to advance notification requirements prior to transportation. As with the other changes, these clarifications, updates, and additional language to increase awareness have the potential to produce benefits in terms of reducing communication costs that may otherwise be incurred to resolve confusions that may be caused by the current language. In particular, the Department of Emergency Management requested the clarification of registration requirements for shippers of hazardous radioactive materials and expects to eliminate the confusion on this issue.<sup>2</sup>

Businesses and entities affected. The proposed regulations apply to transporters of hazardous materials. According to the DMV data, as of January 31, 2002, there were 46,025 commercial driver licenses issued in Virginia with an endorsement to transport hazardous materials. Furthermore, there were 21 variances issued in 2001 to hazardous material drivers with disqualifying disabilities. Of the 21 variances issued, 18 were renewals and 3 were initial issuances.

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

Projected impact on employment. No significant impact on employment is expected.

Effects on the use and value of private property. The proposed regulations are not anticipated to have any significant impact on the use and value of private property.

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

## Summary:

*The proposed amendments (i) revise definitions; (ii) clarify existing language regarding registration of hazardous radioactive materials by shipper; (iii) correct an incorrect citation; and (iv) add clarifying language regarding radioactive materials. Additionally, text referencing the director issuing variances from physical qualification requirements to drivers transporting hazardous materials has been removed from the regulations since current statute no longer gives the Director of the Department of Environmental Quality the authority to issue these variances.*

## **9 VAC 20-110-10. Definitions.**

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

"Board" means the Virginia Waste Management Board.

"Carrier" means a person engaged in the transportation of passengers or property by:

1. Land or water, as a common, contract, or private carrier; or
2. Civil aircraft.

"CFR" means the Code of Federal Regulations.

"Coordinator" means the Chief Executive Officer of the Virginia Department of Emergency ~~Services~~ Management.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality.

"Hazardous material" means a substance or material in a form or quantity which may pose an unreasonable risk to health, safety or property when transported, and which has been incorporated under Part III (9 VAC 20-110-110 et seq.).

"Hazardous radioactive materials" mean, for the purposes of this regulation, radioactive materials regulated by 10 CFR Parts 20, 71, and 73 .

"Monitor" means to track the transportation of hazardous radioactive materials *requiring advance notification prior to transportation* within the Commonwealth by:

1. Requiring ~~transporters~~ *shippers to register with the coordinator and to notify the coordinator of shipments of hazardous radioactive materials within the Commonwealth; and*
2. ~~The coordinator's~~ *In requiring the coordinator to prepare a report prepared annually for the Governor and the director summarizing the hazardous radioactive materials transportation for the preceding year.*

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<sup>2</sup> Source: Department of Environmental Quality.

"Person" means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe, when it offers hazardous materials, or hazardous radioactive materials for transportation, or transports hazardous materials or hazardous radioactive materials, but such term does not include:

1. The United States Postal Service; or
2. For the purposes of ~~§§ 110 and 111 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1809-1810)~~ 49 USC 5123 and 5124, any agency or instrumentality of the federal government.

"Shipper" means a person who transfers possession of hazardous material or hazardous radioactive material to the carrier for transport through the Commonwealth.

"Transport" or "transportation" means any movement of property by any mode, and any packing, loading, unloading, identification, marking, placarding, or storage incidental thereto.

~~"Variance" means authorization, granted by the director, to engage in an activity covered by these regulations without following specific regulatory requirements.~~

**9 VAC 20-110-20. Authority for regulation.**

A. These regulations are issued under authority of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Transportation of Hazardous Materials, and Chapter 3.3 (§ 44-146.30) of Title 44 of the Code of Virginia.

B. Section 10.1-1450 of the Code of Virginia assigns the Virginia Waste Management Board the responsibility for promulgating regulations governing the transportation of hazardous materials. Section 44-146.30 of the Code of Virginia also assigns to the board the responsibility for promulgating regulations by which the coordinator will maintain a register of shippers of hazardous radioactive materials and monitor transportation of hazardous radioactive materials within the Commonwealth, *which may constitute a significant potential danger to the citizens of the Commonwealth in the event of accidental spillage or release.*

C. The board is authorized to promulgate rules and regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported, such rules to be no more restrictive than any applicable federal laws or regulations.

**9 VAC 20-110-30. Purpose of regulations.**

The purpose of these regulations is to regulate the transportation of hazardous materials and to maintain a register of shippers and monitor the transportation of hazardous radioactive materials *requiring advance notification* in Virginia.

**9 VAC 20-110-40. Administration of regulations.**

A. The director has the responsibility to administer these regulations. When used in this regulation in any such provisions as may be adopted from 49 CFR Parts 107, 171 through 180, ~~383~~, and 390 through 397, except in reference to regulations on international transportation, United States means the "Commonwealth of Virginia"; Environmental Protection Agency means the "Virginia Department of Environmental Quality"; and the Secretary of Transportation, regional director, and administrator mean the "director," unless the context clearly indicates otherwise.

B. The department is responsible for the planning, development and implementation of programs to meet the requirements of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 and Chapter 3.3 (§ 44-146.30) of Title 44 of the Code of Virginia.

C. The coordinator is responsible for registering shippers and monitoring transportation of hazardous radioactive materials in accordance with these regulations.

D. The Radiation Advisory Board, established pursuant to § 32.1-233 of the Code of Virginia, shall make recommendations to the director and the board, furnishing such technical advice as may be required, on matters related to development, utilization, and regulations of sources of ionizing radiation.

**9 VAC 20-110-100. Application of Administrative Process Act.**

The provisions of the Virginia Administrative Process Act, codified as § ~~9-6.14:1~~ 2.2-4000 et seq. of the Code of Virginia, govern the adoption, amendment, modification, and revision of these regulations, and the conduct of all administrative proceedings hereunder.

PART III.  
COMPLIANCE WITH FEDERAL REGULATIONS AND  
~~VARIANCE FROM PHYSICAL QUALIFICATION  
REQUIREMENTS FOR DRIVERS OF COMMERCIAL  
MOTOR VEHICLES TRANSPORTING HAZARDOUS  
MATERIALS.~~

**9 VAC 20-110-110. Compliance.**

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the United States Secretary of Transportation with amendments promulgated and in effect as of ~~March 18, 1994~~ October 1, 2001, (except as otherwise specified below) pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Exemptions. ~~Hazardous Materials Program Procedures in~~ 49 CFR Part 107, Subpart B.
2. *Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.*
- 2- 3. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.

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~~3. Shipping Container 4. Specifications for Packagings in 49 CFR Part 178.~~

~~4. 5. Specifications for Tank Cars in 49 CFR Part 179.~~

~~5. 6. Continuing Qualifications and Maintenance of Cargo Tanks Packagings in 49 CFR Part 180.~~

~~6. Commercial Licensing Requirements in 49 CFR Part 383.~~

~~7. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.~~

## **9 VAC 20-110-115. Variance from physical qualification requirements for drivers of vehicles transporting hazardous materials. (Repealed.)**

~~A. The driver of a commercial motor vehicle transporting hazardous materials may apply to the director for a variance from the physical qualification requirements as specified in § 10.1-1450 B of the Code of Virginia. The driver or his employer shall submit the following information to the director:~~

~~1. A letter, showing the company name, address, and telephone number, that describes the driver's duties and years of service;~~

~~2. A copy of the driver's motor vehicle driving record obtained from the Department of Motor Vehicles;~~

~~3. A copy of the driver's physical examination on a form that meets the U.S. Department of Transportation requirements;~~

~~4. A copy of the Commercial Driver's License Physician's Report of Visual Acuity or a letter stating the operator's ability to operate a commercial motor vehicle safely, completed by the driver's ophthalmologist or optometrist, if the driver has either monocular vision or his visual acuity is not 20/40 or better;~~

~~5. A copy of a road test administered by the Virginia State Police to drivers who have use of only one arm, hand, foot, or leg along with a statement by the administering trooper that the driver is qualified to operate the vehicle;~~

~~6. For drivers who have diabetes, a copy of the physician's letter stating the driver is capable of operating a vehicle safely; and~~

~~7. Any other information bearing on the criteria requested in the statute.~~

~~This variance shall be effective for one year from the date signed by the director.~~

~~B. Variance renewal. This variance may be renewed 30 days prior to expiration by submitting the following information:~~

~~1. A letter, showing the company's name, address, and telephone number, that describes the driver's duties and years of service;~~

~~2. A copy of the driver's history record obtained from the Department of Motor Vehicles;~~

~~3. A copy of the driver's physical examination report on a form that meets the U.S. Department of Transportation requirements shall be submitted biennially;~~

~~4. A copy of the Commercial Driver's License Physician's Report of Visual Acuity or a letter stating the driver's ability to operate a commercial motor vehicle safely, completed by the driver's ophthalmologist or optometrist, if the driver has either monocular vision or his visual acuity is not 20/40 or better;~~

~~5. A copy of a road test administered by the Virginia State Police to drivers who have use of only one arm, hand, foot, or leg along with a statement by the administering trooper that the driver is qualified to operate the vehicle;~~

~~6. For drivers who have diabetes, a copy of the physician's letter stating the driver is capable of operating a vehicle safely; and~~

~~7. Any other information bearing on the criteria requested in the statute.~~

~~This variance shall be effective for one year from the date signed by the director.~~

## **9 VAC 20-110-121. Register of shippers.**

Every person, shipper or carrier transporting or proposing to transport within the Commonwealth hazardous radioactive materials, *requiring advance notification*, shall register with the Department of Emergency Services Management at least 30 days prior to the initial transportation of such materials. Application for registration or renewal of registration shall be completed on forms furnished by the coordinator and shall contain all the information required by the forms and accompanying instructions. Upon receipt of a complete application form and any other information required by the coordinator, the Department of Emergency Services Management shall issue a registration certificate. The certificate shall expire two years from the date of issue. Registration information shall be provided by the coordinator to the director upon request.

## **9 VAC 20-110-122. Monitoring and transportation.**

A. Notification. Prior to each shipment or series of shipments of hazardous radioactive materials ~~by a registrant~~ *requiring advance notification* within the Commonwealth of Virginia, the registrant shall notify the coordinator in writing as required by ~~the 10 CFR 71.97, 10 CFR 73.37 (f) or other~~ applicable federal regulations. The coordinator shall disseminate the notification to local law-enforcement agencies, local emergency services coordinators, local fire departments, or other designated local officials along the transportation route as requested by county or municipal authorities, or as determined by the coordinator to be necessary for effective implementation of these regulations.

B. Reports. At least annually, the coordinator shall submit to the director and the Governor's Office a report summarizing activities carried out under the provisions of these regulations pertaining to the transportation of hazardous radioactive materials.

VA.R. Doc. No. R01-231; Filed August 8, 2002, 12:03 p.m.





**TITLE 16. LABOR AND EMPLOYMENT**

**DEPARTMENT OF LABOR AND INDUSTRY**

**Safety and Health Codes Board**

Title of Regulation: **16 VAC 25-50. Boiler and Pressure Vessel Regulations (amending 16 VAC 25-50-20, 16 VAC 25-50-150, 16 VAC 25-50-340, and 16 VAC 25-50-440; adding 16 VAC 25-50-445).**

Statutory Authority: §§ 40.1-51.6 through 40.1-51.10 of the Code of Virginia.

Public Hearing Date: September 24, 2002 - 1 p.m.

Public comments may be submitted until 5 p.m. on November 8, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Fred P. Barton, Boiler Safety Compliance Director/Chief Boiler Inspector, Department of Labor and Industry, Powers-Taylor Building, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 786-3262, FAX (804) 371-2324 or e-mail [fpb@doli.state.va.us](mailto:fpb@doli.state.va.us).

Basis: The regulation is mandated by §§ 40.1-51.6 through 40.1-51.10 of the Code of Virginia. The scope of the mandate is that "no boiler or pressure vessel which does not conform to the rules and regulations of the (Safety and Health Codes) Board governing new construction and installation and which has been certified by the Board shall be installed or operated in this Commonwealth after twelve months from July 1, 1973." There is no federal mandate for the regulation.

Purpose: The proposed amendments (i) protect the public's health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth and (ii) continue evaluation of the need for changes to ensure current technical standards are met. The amendments regarding hobby boilers, redundant controls and manual resets, and national boiler and pressure vessel safety codes are public and workplace safety measures that bring the regulations up to date with state and national laws, standards and practices. The provision to allow certificate fees to be paid by credit card will provide an additional option and convenience to owners and users. The purpose of the amendments is to bring regulations into conformity with statutory changes regarding hobby boilers and provide for certificate fees to be paid by credit card. The amendments also adopt national standard provisions for two low-water fuel cutoffs on low-pressure boilers, a safety measure now required on high-pressure boilers, plus manual resets on all boilers. Further, the amendments incorporate references to the latest technological safety advances, such as manual resets, offered by national safety and inspection codes.

Substance: The amendments (i) remove language so as to eliminate possible conflicts with the recently enacted statute (§ 40.1-51.19 of the Code of Virginia) governing hobby boilers; (ii) provide for acceptance and processing of credit card payments for certificate fees; (iii) adopt Part CW (Steam and Waterside Control) of CSD-1-1998 to replace a reference to

CSD-1-1992 in 16 VAC 25-50-340 and 6 VAC 25-50-440. This national standard contains provisions for improving the safe operation of steam boilers and pressure vessels by requiring redundant controls with manual resets on new installations; and (iv) update references to 2001 editions of the NFPA 85 Boiler and Combustion Systems Hazards Code, ASME Code and National Board Inspection Code to take advantage of the latest technological advances in safety.

Issues: Employees and the general public, where exposed, will benefit from a safer work environment by reduced exposure to unsafe equipment and a reduction in the probability of a boiler explosion. Boiler and pressure vessel owners and users will have the option of paying certificate fees by credit card. The use of credit cards will facilitate electronic reporting and allow the department to receive payments more quickly. The changes eliminate potential regulatory conflicts with hobby boiler statutes. The requirement of the manual reset (lockout) will draw users' attention to the fact that the boiler is not functioning in a normal manner. The amendments adopt national standard provisions for two low-water fuel cutoffs on low-pressure boilers, a safety measure now required on high-pressure boilers, plus manual resets on all boilers. Presently, a low water condition is the second-leading cause for boiler accidents throughout the United States. Requiring two controls will result in fewer such accidents. Owners and users will be made aware of technological safety advances contained in prevailing national safety and inspection codes.

There are no disadvantages to the public or the Commonwealth relative to the amendments.

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

Summary of the proposed regulation. The Virginia Safety and Health Codes Board proposes to (i) accept credit card payments for certificate fees and (ii) require that newly installed steam boilers have two automatic low-water fuel cutoffs with manual resets.

Estimated economic impact. The proposed regulations add credit cards to the list of acceptable methods of certificate payment. Since no payment option has been eliminated and some boiler and pressure vessel owners may prefer to pay by credit card, this proposed change is beneficial for boiler and pressure vessel owners. The Department of Labor and Industry (department) finds payment by credit card to be advantageous in that the agency receives payment more quickly than under other methods. Thus, adding credit cards

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to the list of acceptable methods of certificate payment creates a net benefit.

Consistent with national standards, the board proposes to require that newly installed low-pressure boilers have two low-water fuel cutoffs and that all newly installed boilers have manual resets. Several manufacturers are already producing boilers that meet the new standards. A manual reset helps to prevent an explosion of a boiler by causing a safety shutdown and lockout in the event a safety valve malfunctions or the boiler material fails. The agency reports that, according to the National Board of Boiler and Pressure Vessel Inspectors, there have been 4,000 reported incidents in the U.S. involving low water conditions in the past five years. In Virginia, during this same period, there were eight incidents reported involving low water conditions. These events resulted in injuries and significant property damage. According to the department, such explosions have the potential to destroy an entire city block. The agency believes that the proposed additional controls significantly lower the probability of such accidental explosions. No data or research is available to estimate the reduced probability.<sup>1</sup>

The department estimates that boilers with a second low-water fuel cutoff and manual resets would cost \$500 to \$800 more than boilers without the additional controls. Without any estimate of the reduction in likelihood of boiler explosions due to the presence of the additional controls, it cannot be determined whether the benefits garnered from reduced probability of bodily injury and property damage exceed the \$500 to \$800 higher cost per new boiler.

Since the additional controls requirement only applies to new installations and adds non-negligible cost, some boiler owners may delay replacing their old boilers with new installations. In the short term, assuming that old boilers may be somewhat more likely to fail, the risk of accidents may increase. In the longer term, once all or most of the current boilers that do not meet the proposed requirements are replaced, the risk of accidents should decrease.

Businesses and entities affected. The proposed amendments potentially affect current and future steam boiler owners, firms that sell steam boilers, firms that manufacture the newly required controls, and individuals who spend time within the vicinity of steam boilers. The department estimates that up to 1,000 new steam boilers will be purchased per year.

Localities particularly affected. The proposed amendments potentially affect all Virginia localities.

Projected impact on employment. The proposed amendments may increase employment for firms that manufacture the proposed new required controls.

Effects on the use and value of private property. The manufacturers of the proposed new required controls will likely be able to sell more of their product and increase their firms' value. Purchasers of steam boilers will face higher costs, which will likely reduce their firms' value somewhat. Some firms that currently use steam boilers may opt to use a

different heat source when the usable lifespan of their current boiler ends.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Labor and Industry and the Safety and Health Codes Board concur with the economic impact analysis prepared by the Department of Planning and Budget for the proposed amendments to 16 VAC 25-50.

Summary:

*The proposed amendments eliminate possible conflicts with a recently enacted statute (§ 40.1-51.19 of the Code of Virginia) governing hobby boilers; allow certificate fees to be paid by credit card; adopt current Part CW of ANSI/ASME-CSD-1 provisions for burner controls and safety devices; and update references to prevailing National Fire Protection Association, American Society of Mechanical Engineers and National Board Codes.*

**16 VAC 25-50-20. Minimum construction standards for boilers and pressure vessels.**

A. Boilers and pressure vessels to be installed for operation in this Commonwealth shall be designed, constructed, inspected, stamped and installed in accordance with the applicable ASME Boiler and Pressure Vessel Code including all addenda and applicable code case(s), other international construction standards which are acceptable to the chief inspector, and this chapter.

B. Boilers and pressure vessels shall bear the National Board stamping, except cast iron boilers and UM vessels. A copy of the Manufacturers' Data Report, signed by the manufacturer's representative and the National Board commissioned inspector, shall be filed by the owner or user with the chief inspector prior to its operation in the Commonwealth.

C. Pressure piping--(including welded piping)--Piping external to power boilers extending from the boiler to the first stop valve of a single boiler, and to the second stop valve in a battery of two or more boilers is subject to the requirements of ASME Power Boiler Code, Section I, and the design, fabrication, installation and testing of the valves and piping shall be in conformity with the applicable paragraphs of ASME Code. Applicable ASME data report forms for this piping shall be furnished by the owner to the chief inspector. Construction rules for materials, design, fabrication, installation and testing both for the boiler external piping and the power piping beyond the valve or valves required by ASME Power Boiler Code, Section I, are referenced in ANSI B31.1, Power piping, and the code.

D. Boilers and pressure vessels brought into the Commonwealth and not meeting code requirements shall not be operated unless the owner/user is granted a variance in accordance with § 40.1-51.19 of the Act.

The request for variance shall include all documentation related to the boiler or pressure vessel that will provide evidence of equivalent fabrication standards, i.e., design specification, calculations, material specifications, detailed construction drawings, fabrication and inspection procedures and qualification records, examination, inspection and test records, and any available manufacturers' data report.

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<sup>1</sup> Source: Department of Labor and Industry.

In order to facilitate such a variance approval, the submission of documentation, in the English language and in current U.S. standard units of measure would be helpful. The following list of documents, while not all inclusive, would be useful in providing evidence of safety equivalent to ASME Code construction:

1. List of materials used for each pressure part;
2. The design calculations to determine the maximum allowable working pressure in accordance with the ASME Boiler and Pressure Vessel Code, applicable section, edition and addenda;
3. The design code used and the source of stress values for the materials used in the design calculations;
4. The welding procedures used and the qualification records for each procedure;
5. The material identification for each type of welding material used;
6. The performance qualification records for each welder or welding operator used in the construction of the boiler or pressure vessel;
7. The extent of any nondestructive examination (NDE) performed and the qualification records of NDE operators;
8. Record of final pressure test signed by a third party inspector;
9. Name and organization of the third party inspection agency;
10. A certification from a licensed professional engineer stating that the boiler or pressure vessel has been constructed to a standard providing equivalent safety to that of the ASME Boiler and Pressure Vessel Code. A signature, date and seal of the certifying engineer is required;
11. Where applicable, a matrix of differences between the actual construction of the boiler or pressure vessel for which a variance is requested and a similar boiler or pressure vessel that is code stamped; and
12. Where applicable, a letter from an insurance company stating that it will insure the boiler or pressure vessel.

After notification of a violation of these rules and regulations, an owner/user desiring a variance shall submit a request for variance within 30 days.

The chief inspector shall respond to any request for a variance within 30 days of receipt of all required documentation, and shall submit a recommendation to the commissioner, who will make the decision on the variance.

E. Before secondhand equipment is installed, application for permission to install shall be filed by the owner or user with the chief inspector and approval obtained.

F. Electric boilers, subject to the requirements of the Act and this chapter, shall bear the Underwriters' Laboratories label on the completed unit or assembly by the manufacturer. This label shall be in addition to the code symbol stamping requirements of the ASME and the National Board.

~~G. Replica or model boilers of historical nature; preserved, restored or maintained for hobby use; not intended for commercial use; and having an inside diameter less than or equal to 10 inches and a grate area less than or equal to 1 1/2 square feet and equipped with an ASME safety valve of adequate size, a water level indicator and a pressure gauge may have a certificate inspection every two years provided the owner provides a certification of safety valve testing annually.~~

## **16 VAC 25-50-150. Inspection certificate and inspection fees.**

A. Upon the inspection and determination that a boiler or pressure vessel is suitable and conforms to this chapter, the owner or user shall remit the payment for an inspection certificate in one of the following forms and amounts for each item required to be inspected under the Act.

1. Payment of \$20 may be ~~mailed sent~~ from the owner or user to the chief inspector by check, *credit card* or money order. Payment of inspection certificate fees should be made payable to the Treasurer of Virginia; or

2. Payment may be presented to a special inspector, where the inspector is authorized to collect and forward such fees on the department's behalf. The commissioner may authorize special inspectors to collect and forward to the chief inspector \$16 for each inspection certificate. Pursuant to § 40.1-51.10:1 of the Code of Virginia, special inspectors may charge owners or users a fee not exceeding \$4.00 for collecting and forwarding inspection certificate fees.

An inspection certificate will not be issued to the owner or user until payment is received by either the department or, if previously authorized, by a special inspector.

B. The chief inspector may extend an inspection certificate for up to three additional months beyond a two month grace period following the expiration of a certificate. Such extension is subject to a satisfactory external inspection of the boiler or pressure vessel and receipt of a fee of \$20 for each month of extension.

C. When the chief inspector determines that no contract fee inspectors are available to inspect a regulated uninsured boiler or pressure vessel in a timely manner, a commonwealth inspector may be directed to conduct a certification inspection. Contract fee inspection service shall be determined unavailable where (i) at least two contract fee inspectors contacted will not agree to provide inspection services to the owner or user within at least 21 days from the request and (ii) the owner's or user's inspection certificate will expire within that same period.

The following rates per inspected object, in addition to inspection certificate fees, shall apply for certification inspections conducted by a commonwealth inspector:

- |  |       |
|--|-------|
| 1. Power boilers and high pressure, high temperature water boilers | \$135 |
| 2. Heating boilers   | \$70  |
| 3. Pressure vessels  | \$50  |

D. The review of a manufacturer's or repair organization's facility for the purpose of national accreditation will be

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performed by the chief inspector or his qualified designee for an additional fee of \$800 per review or survey.

E. The owner or user who causes a boiler or pressure vessel to be operated without a valid certificate shall be subject to the penalty as provided for in § 40.1-51.12 of the Act.

F. Inspection certificates are not required for unfired pressure vessels inspected by an authorized owner-user inspection agency. However, the agency shall keep on file in its office in the establishment where the equipment is located a true record or copy of the report of the latest of each inspection signed by the inspector who made the inspection.

## **16 VAC 25-50-340. Burner controls and safety devices.**

Gas Fired burner installations shall conform to the requirements of *the following* nationally recognized standards including: the American Gas Association, Underwriters Laboratories, *Part CW (Steam and Waterside Control)* of ANSI/ASME-CSD-1 or National Fire Protection Association (NFPA) No. 85 series as applicable.

## **16 VAC 25-50-440. Automatic low-water fuel cutoff and/or water-feeding device.**

A. Each automatically fired and unattended steam or vapor system boiler, *except miniature boilers*, shall be equipped with at least ~~one~~ two automatic low-water fuel cutoff cutoffs located so as to cut off the fuel or energy supply automatically when the surface of the water falls to the lowest safe water line. ~~Power boilers, except miniature boilers, shall have two automatic low-water fuel cutoffs.~~ *Functioning of the lower of the two controls shall cause safety shutdown and lockout. The manual reset may be incorporated in the lower cutoff control.* If a water-feeding device is installed, it shall be constructed so that the water inlet valves cannot feed water into the boiler through the float chamber and located so as to supply requisite feedwater. The lowest safe water line should be not lower than the lowest visible part of the water glass.

B. The fuel cutoff or water feeding device shall be attached directly to a boiler or in the tapped openings available for attaching a water glass directly to a boiler, provided the connections are made to the boiler with nonferrous tees or Y's not less than 1/2-inch pipe size between the boiler and the water glass so that the water glass is attached directly and as close as possible to the boiler; the run of the tee or Y shall take the water glass fittings, and the side outlet or branch of the tee or Y shall take the fuel cutoff or water feeding device. The ends of all nipples shall be reamed to full-size diameter.

C. Fuel cutoffs and water feeding devices embodying a separate chamber shall have a vertical drain pipe and a blowoff valve not less than 3/4-inch pipe size, located at the lowest point in the water equalizing pipe connections so that the chamber and the equalizing pipe can be flushed and the device tested.

D. A forced circulation coil or water tube type boiler, with a heat input greater than 400,000 BTU's per hour shall have a flow sensing device installed to cut off the fuel supply at a minimum water circulation flow rate in the boiler. The boiler manufacturer's specifications for the safe minimum flow rate, setting, and location of the flow sensing device shall be utilized.

## **16 VAC 25-50-445. Pressure control devices.**

*Each automatically fired steam boiler or system of commonly connected steam boilers shall have at least one steam pressure control device that will shut off the fuel supply to each boiler or system of commonly connected boilers when the steam pressure reaches a preset maximum operating pressure. In addition, each individual automatically fired steam boiler shall have a high steam pressure limit control with a manual reset that will prevent generation of steam pressure in excess of the maximum allowable working pressure and can cause safety shutdown and lockout.*

### DOCUMENTS INCORPORATED BY REFERENCE

~~1998~~ 2001 Boiler and Pressure Vessel Code, ASME Code, American Society of Mechanical Engineers.

National Board Bylaws, National Board of Boiler and Pressure Vessel Inspectors, August 8, 1996.

ANSI/NB 23, ~~1998~~ 2001 National Board Inspection Code, National Board of Boiler and Pressure Vessel Inspectors.

ASME B31.1, ASME Code for Pressure Piping, American National Standards Institute, ~~1995 and Addenda through 1997~~ 1998.

~~NFPA 85C, Standards for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boiler-Furnaces, 1994~~ 85 Boiler and Combustion Systems Hazards, 2001 Edition, National Fire Protection Association.

*Part CW (Steam and Waterside Control) and Part CF (Combustion Side Control) Flame Safeguard* of ANSI/ASME CSD-1, Controls and Safety Devices for Automatically Fired Boilers, ~~1992~~ 1998, American Society of Mechanical Engineers.

"Boiler Blowoff Equipment," National Board of Boiler and Pressure Vessel Inspectors, Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991.

API510, Pressure Vessel Inspection Code, Maintenance Inspection, Rating, Repair and Alteration, Sixth Edition, June 1989, American Petroleum Institute.

VA.R. Doc. No. R02-16; Filed August 13, 2002, 10:45 a.m.



## **TITLE 17. LIBRARIES AND CULTURAL RESOURCES**

### **DEPARTMENT OF HISTORIC RESOURCES**

Title of Regulation: **17 VAC 10-30. Historic Rehabilitation Tax Credit (adding 17 VAC 10-30-10 through 17 VAC 10-30-160).**

Statutory Authority: § 10.2-2202 and 58.1-339.2 of the Code of Virginia.

Public Hearing Date: October 1, 2002 - 6 p.m.

Public comments may be submitted until 5 p.m. on November 8, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Virginia E. McConnell, Manager, Office of Preservation Incentives, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 367-2323, FAX (804) 367-2391 or e-mail gmcconnell@dhr.state.va.us.

Basis: The Department of Historic Resources has specific statutory authority and is mandated under § 58.1-339.2 of the Code of Virginia to promulgate regulations necessary to implement its review and certification of historic rehabilitation projects in order for those projects to receive state tax credits. The statute provides that the Director of the Department of Historic Resources shall establish by regulation the requirements needed for the program, including the fees to defray the necessary expenses and the extent to which the availability of the credit is coextensive with the availability of the federal rehabilitation tax credit.

Purpose: These regulations are mandated by state law and will protect the health, safety, and welfare of the citizens of Virginia by providing a clear and understandable process for qualifying for and claiming historic rehabilitation tax credits, while also assuring that those credits are issued for projects that meet high criteria for historic significance, quality rehabilitation and public benefit. The rehabilitation of historic buildings benefits not only individual property owners, developers, and investors, but entire communities. Through the tax credit program, private dollars are invested in preservation, resulting in enormous public advantage. This money represents costs paid into the construction industry to architects, contractors, craftsmen, and suppliers, as well as to professionals in related fields such as banking, legal services, private consulting, and real estate. The capital improvement to the buildings can result in dramatic increases in local property taxes, enhanced commercial activity, and community revitalization. The rehabilitated buildings provide needed housing (in many cases, low- and moderate-income housing), and office, retail, and other commercial space. Communities benefit from property improvement, blight removal, and increased occupancy of buildings in historic core neighborhoods.

Substance: The proposed regulations set forth the requirements and procedures for obtaining the tax credit authorized by § 58.1-339.2 of the Code of Virginia. The regulations address the following areas:

1. Definitions
2. Introduction to certifications of significance and rehabilitation
3. Certifications of historic significance
4. Standards for evaluating significance within registered historic districts
5. Certifications of rehabilitation
6. Standards for rehabilitation
7. Appeals
8. Fees for processing certification of rehabilitation requests

9. Forms
10. Definition of rehabilitation project
11. Eligible rehabilitation expenses
12. Qualification for credit
13. Amount and timing of credit
14. Entitlement to credit
15. Transition rules for projects begun before 1977
16. Coordination with the federal Certified Historic Rehabilitation program

Issues: The proposed state regulations parallel the well-established corresponding federal rehabilitation tax credit regulations to a large extent. Where they differ, it is primarily in ways that are advantageous to Virginia taxpayers. Advantages to the public include the following:

1. The state credit, unlike the federal credit, is available to homeowners.
2. The state credit is triggered by a different spending threshold than the federal credit. In order to qualify for the federal credit, rehabilitation expenditures must exceed the owner's adjusted basis in the building. In order to qualify for the state credit, rehabilitation expenditures for an income-producing building must be at least 50% of the locally assessed value of the building. This is usually a lower threshold, thus allowing property owners undertaking smaller rehabilitation projects to participate in the state program even if they are ineligible for the federal program.
3. The federal credit is available only for properties that are individually listed on the historic register or are contributing structures in listed historic districts. The state program expands eligibility by allowing the credit for properties that are certified by the Director of the Department of Historic Resources as eligible for individual listing, even if they are not actually listed.
4. The proposed state regulations, unlike the federal regulations, allow for disproportionate allocation of the credit among partners. This flexibility in the use of the credit will attract out-of-state investors and allow for more creative and innovative financing of projects. It will also result in nonprofit organizations being able to make use of the state credit by forming partnerships with investors.
5. The submission requirements for state applications are somewhat less stringent than the submission requirements for federal applications. Most notably, the federal program requires that Part 1 of the application, the Request for Certification of Significance, be submitted prior to completion of the rehabilitation. This sometimes precludes owners whose rehabilitation work would otherwise qualify them for the credit from applying at all. The proposed state regulations require that all parts of the application be submitted within one year of completion of the rehabilitation work, thereby preventing denial of the credit for a technicality in the paperwork.

The primary advantage of this program to the agency is the opportunity to provide an incentive for the use of private

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investment to further the agency's mission to protect historic resources. Through this program property owners and developers are encouraged to do appropriate work on historic buildings so that they can remain in, or be returned to, useful service. Since 1977, more than 900 historic Virginia buildings have been rehabilitated using the federal credit, representing private investment of nearly \$524 million. The state program has already resulted in over \$11 million in economic activity independent of the federal credit.

Another advantage to the agency is the opportunity to create an income stream through the use of fees for review and processing of projects. Details of the fee structure are listed below in the agency's statement on the fiscal impact of the program.

Because the implementation of the state tax credit has resulted in a considerable increase in the number of new projects submitted each year, the primary disadvantage to the agency is the rapidly growing workload in a time of budgetary stagnation and associated personnel shortages. Federal regulations require state reviewers to review and forward federal applications within 30 days of receipt. The proposed regulations also establish a 30-day target for review of projects. In addition, the program is growing in complexity and sophistication, and applicants expect department staff to be able to provide increasingly complex guidance and technical assistance. Currently the department has the equivalent of one full-time position and one part-time 1500-hour wage position dedicated to this program and charged against the program receipts. The department seeks authorization of one additional nongeneral fund position, to assist with the workload created by the growing popularity and sophistication of the program.

Because the state tax credit could not be granted without clear and precise regulations governing eligibility of projects, and because participation in the program is limited to property owners who voluntarily choose to seek the credit, these regulations will not result in any disadvantage to the public or the Commonwealth.

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

Summary of the proposed regulation. The proposed regulation sets forth guidelines regarding eligibility for the Virginia Historic Rehabilitation Tax Credit program, application requirements and procedures, review fees, approval criteria, appeal procedures, and coordination with the federal Certified Historic Rehabilitation program. The Department of Historic

Resources (department) has been operating the program under draft regulations since legislation was passed by the 1996 General Assembly establishing the program.

Aside from editorial clarifications and policies that have already been incorporated into current administration of the program, the proposed regulations include the following changes from the draft regulations:

1. Establishing a definition of "owner-occupied" in order to address situations which may arise involving residences that are partially income-producing (i.e., a home that is rented out during the summer or a home that includes a sub-unit available for rent);
2. Requiring documentation of assessed value of the building in the year preceding the start of the rehabilitation to ensure that rehabilitation expenses meet the minimums set out in the Code of Virginia;
3. Requiring a lease term of at least five years in order for a landlord to pass the tax credit through to a tenant or tenants in order to encourage genuine businesses transactions; and
4. Deleting a provision that allows historic rehabilitation tax credits to be sold or transferred to third parties. Legislation enacted in 1999 stipulated that the department could authorize credits to be transferred only for projects that were certified prior to the effective date of this regulation.

Estimated economic impact. The Virginia Historic Tax Credit program was established in 1997. Since then, 264 approved projects have been completed, incurring over \$316 million in eligible rehabilitation expenses. Accounting for the phase-in of the tax credit (10% of eligible expenses in 1997, increasing by 5.0% each year until reaching 25% in 2000), approximately \$67 million worth of tax credits have been awarded since 1997.<sup>1</sup> The number of projects, measured by both the number of new projects submitted each year and the number of projects completed and approved each year, has been steadily increasing since 1997. Although the number of new projects can be expected to vary with such factors as the strength of the economy, interest rates, and investor confidence, it is likely that the program will continue to grow as more individuals become aware of it. In addition to increasing the amount of tax credit granted, the growing popularity of the program can also be expected to increase the workload for administering the program. The department currently has the equivalent of one full-time position and one part-time position dedicated to this program and charged against program receipts, and has requested approval for an additional position that is to be funded completely from review fees paid by applicants.

There is evidence that significant economic benefits are generated by historic preservation activities. Studies performed in Georgia, New York, Maryland, and Virginia indicate that historical preservation enhances property values, attracts heritage tourists, and is often a key component is

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<sup>1</sup> This figure reflects the amount of tax credit awarded. The amount actually claimed by individuals is not known. The tax credit may be carried over for ten years or until the full credit is used, whichever occurs first.

housing development, community revitalization and economic growth.<sup>2</sup>

According to the Travel Industry Association, travelers who participate in historical and cultural activities tend to stay longer and spend more money than other travelers.<sup>3</sup> Using data from the Virginia Department of Economic Development's Division of Tourism, researchers were able to mirror those results here in Virginia, finding that on average, historic preservation visitors stayed longer, visited twice as many places, and spent over two-and-a-half times more money in Virginia than did other visitors.<sup>4</sup> A case study in downtown Richmond found that the appreciation of renovated historic properties on Franklin Street was substantially greater than the appreciation rates for new construction and unrestored historic properties.<sup>5</sup> Other studies show that in addition to higher property values, preservation activities help retain businesses and jobs and generate property tax revenues for local governments. Also, investments in historic structures maximize use of already existing infrastructure and offer alternatives to urban sprawl commonly associated with new development.

It must be noted that, in addition to the positive effects of historic preservation, researchers have identified potential negative aspects, including regulatory requirements that sometimes run counter to such goals as flexible reuse and affordable housing and the potential displacement of less-advantaged residents as historic areas are redeveloped.<sup>6</sup>

The proposed regulation reflects the department's experience over the past five years in administering the Virginia Historic Rehabilitation Tax Credit program and represents the current policies and procedures. No significant changes are expected from current operation of the program with implementation of

these permanent regulations. Approximately \$67 million in tax credit was granted over the past five years for the rehabilitation of 264 buildings in Virginia. While the benefits associated with the rehabilitation of those historic buildings are not as easy to capture, there is evidence to expect that, by promoting historical preservation, those expenditures may result in increased property values, heritage tourism, housing stock, and community revitalization, thereby providing a net economic benefit for Virginia's economy.

Businesses and entities affected. The proposed regulations affect all property owners seeking to obtain a tax credit for rehabilitation expenses made on eligible properties. There are approximately 2,000 registered historic resources in the Commonwealth, including individual buildings and historic districts, plus an unknown number of properties that qualify but are not listed. Since the program's start in 1997, 264 approved projects have been completed.

Localities particularly affected. The majority of eligible properties are found within the 287 historic districts in the Commonwealth.

Projected impact on employment. Studies have shown that historic rehabilitation projects are relatively labor intensive, thus requiring more workers than new construction projects of similar size. However, since these workers are likely drawn from other areas, there is not necessarily a creation of new jobs in the economy.

Effects on the use and value of private property. Since participation in the historic rehabilitation tax credit program is voluntary, it can be expected that those property owners who choose to undertake such projects expect a positive return on their investment. One case study in downtown Richmond found that the appreciation of renovated historic properties on Franklin Street was substantially greater than the appreciation rates for new construction and unrestored historic properties. "The per square footage value of the renovated properties is \$21 a square foot greater than that of new construction."<sup>7</sup>

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Historic Resources concurs with the Department of Planning and Budget's economic impact analysis regarding the proposed regulations for the state Rehabilitation Tax Credit program.

### Summary:

*The proposed regulations formally implement enabling legislation for the Virginia Historic Rehabilitation Tax Credit program. They will provide clear guidance to Virginia taxpayers about eligibility for the program, application requirements and procedures, review standards, appeal procedures, and coordination with the federal Certified Historic Rehabilitation program.*

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<sup>2</sup> *New York: Profiting Through Preservation*, prepared by Donovan D. Rypkema, Principal, Real Estate Services Group, Inc., with assistance from the Preservation League of New York State, 2000.

*Profiting from the Past: The Economic Impact of Historic Preservation in Georgia*, authored by Joni Leithe and Patricia Teague, Government Finance Officers Association of the U.S. and Canada for the Athens-Clarke County Unified Government and the Historic Preservation Division, Georgia Department of Natural Resources, 1999.

*The Value of Historic Preservation in Maryland*, prepared by Donovan D. Rypkema, Principal, Real Estate Services Group, Inc., produced by PRESERVATION MARYLAND in collaboration with the Maryland Heritage Alliance, Maryland Association of Historic District Commissions, and Maryland Association of History Museums, 1999.

*Virginia's Economy and Historic Preservation: The Impact of Preservation on Jobs, Business, and Community*, prepared by Donovan D. Rypkema, Principal, Real Estate Services Group, Inc., for the Preservation Alliance of Virginia, 1996.

<sup>3</sup> *Profile of Travelers Who Participate in Historical and Cultural Activities*, Travel Industry Association of America, 1997.

<sup>4</sup> *Virginia's Economy and Historic Preservation: The Impact of Preservation on Jobs, Business, and Community*, prepared by Donovan D. Rypkema, Principal, Real Estate Services Group, Inc., for the Preservation Alliance of Virginia, 1996. Historic preservation visitors are those visiting historic buildings and sites, museums, and Civil War sites.

<sup>5</sup> *The Importance of Historic Preservation in Downtown Richmond: Franklin Street, A Case Study*, Kim Chen for the Historic Richmond Foundation, 1990.

<sup>6</sup> *The Contributions of Historic Preservation to Housing and Economic Development*, David Listokin, Barbara Listokin, and Michael Lahr, Housing Policy Debate 9(3), 1998.

<sup>7</sup> *The Importance of Historic Preservation in Downtown Richmond: Franklin Street, A Case Study*, Kim Chen for the Historic Richmond Foundation, 1990.

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CHAPTER 30.  
HISTORIC REHABILITATION TAX CREDIT.

**17 VAC 10-30-10. Definitions.**

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

"Certified historic structure" means a building listed on the Virginia Landmarks Register, or certified by the Director of the Virginia Department of Historic Resources as contributing to the historic significance of a historic district that is listed on the Virginia Landmarks Register, or certified by the Director of the Department of Historic Resources as meeting the criteria for listing on the Virginia Landmarks Register. Portions of buildings, such as single condominium apartment units, are not independently eligible for certification. Rowhouses, even with abutting or party walls, are eligible for certification.

"Certified rehabilitation" means any rehabilitation of a certified historic structure that is certified by the Department of Historic Resources as consistent with The Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67).

"Completion year" means the calendar year in which the last eligible rehabilitation expense is incurred or the final certificate of occupancy (if appropriate) is issued.

"Department" means the Virginia Department of Historic Resources.

"Eligible rehabilitation expenses" means expenses incurred in the material rehabilitation of a certified historic structure and added to the property's capital account.

"Historic district" means any district listed on the Virginia Landmarks Register by the Historic Resources Board according to the procedures specified in Chapter 22 (§ 10.1-2200 et seq.) of Title 10.1 of the Code of Virginia.

"Inspection" means a visit by an authorized representative of the Department of Historic Resources to a property for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

"Material rehabilitation" means improvements or reconstruction consistent with The Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67), the cost of which amounts to at least 50% of the assessed value of the building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses, unless the building is an owner-occupied building, in which case the cost shall amount to at least 25% of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses. Material rehabilitation does not include enlargement or new construction.

"Owner" means the person, partnership, corporation, public agency, or other entity holding a fee simple interest in a property, or any other person or entity recognized by the Department of Taxation for purposes of the applicable tax benefits.

"Owner-occupied building" means any building, at least 75% of which is used as a personal residence by the owner, or

which is available for occupancy by the owner for at least 75% of the year.

"Plan of rehabilitation" means a plan pursuant to which a certified historic structure will be materially rehabilitated.

"Property" means a building and its site and landscape features.

"Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historical, architectural, and cultural values as determined by the Department of Historic Resources.

"Standards for Rehabilitation" means The Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67), established by the United States Department of the Interior.

"Start of rehabilitation" means the date upon which the taxpayer applies for the building permit for the work contemplated by the plan of rehabilitation, or the date upon which actual work contemplated by the plan of rehabilitation begins.

"Virginia Landmarks Register" means the list of historic landmarks, buildings, structures, districts, objects, and sites designated by the Virginia Landmarks Board, in accord with the procedures specified in Chapter 22 (§ 10.1-2200 et seq.) of Title 10.1 of the Code of Virginia.

**17 VAC 10-30-20. Introduction to certifications of significance and rehabilitation.**

A. Individuals, estates, partnerships, trusts, or corporations may apply for certification of historic significance and certification of rehabilitations.

B. Requests for certifications of historic significance and of rehabilitations shall be made on the Historic Preservation Certification Application forms. Part 1 of the application, Evaluation of Significance, is used to request certification of historic significance. Part 2 of the application, Description of Rehabilitation, is used to request certification of a proposed rehabilitation project. Part 3 of the application, Request for Certification of Completed Work, is used to request certification of a completed rehabilitation project. If a rehabilitation project is completed before preparing Part 2 of the application, the applicant shall prepare Parts 2 and 3 simultaneously.

C. The Historic Preservation Certification Application forms are available from the Department of Historic Resources.

D. The department generally completes reviews of certification requests within 30 days of receiving a complete, adequately documented application. Where adequate information is not provided, the department will notify the applicant of the additional information needed to complete the review. The department will adhere to this time period as closely as possible, but it is not mandatory, and the failure to complete a review within the designated period does not waive or alter any certification requirement. Expedited review of projects is available upon request as set forth in 17 VAC 10-30-80.



E. Certifications are only given in writing by duly authorized officials of the Department of Historic Resources. Decisions with respect to certifications are made on the basis of the information contained in the application form and other available information.

### **17 VAC 10-30-30. Certifications of historic significance.**

A. Any property owner may consult with the Department of Historic Resources to determine whether a property is listed individually on the Virginia Landmarks Register, or whether a property is located within a historic district that is listed on the Virginia Landmarks Register.

B. Properties listed individually on the Virginia Landmarks Register are certified historic structures.

C. For properties located in registered historic districts, the applicant shall request that the Department of Historic Resources determine whether the property is of historic significance to the district. The applicant shall prepare Part 1 of the Historic Preservation Certification Application form according to the instructions accompanying the application, including:

1. Name and mailing address of the owner;
2. Name and address of the property;
3. Name of the historic district;
4. Current photographs of the building and its site, showing exterior and interior features and spaces adequate to document the property's significance;
5. Brief description of the appearance of the property, including alterations, characteristic features, and estimated date or dates of construction;
6. Brief statement of significance, summarizing how the property reflects the recognized historic values of the historic district;
7. Map showing the location of the property within the historic district; and
8. Signature of the owner requesting certification.

D. Properties containing more than one building, where the department determines that the buildings have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, will be treated as a single certified historic structure, whether the property is individually listed in the Virginia Landmarks Register or is located within a registered historic district. Buildings that are functionally related historically are those that have functioned together to serve an overall purpose during the property's period of significance.

E. Properties within registered historic districts will be evaluated to determine if they contribute to the historic significance of the district by application of the standards set forth in 17 VAC 10-30-40.

F. Owners of properties that are not listed on the Virginia Landmarks Register may request a determination from the department as to whether the property meets the criteria for listing on the Virginia Landmarks Register. The department

will provide written notification to the applicant of determinations of eligibility. Individual properties determined by the department to be eligible for listing in the Virginia Landmarks Register are certified historic structures.

G. Owners of properties that are located in potential historic districts may request preliminary determinations from the department as to whether the potential historic district meets the criteria for listing on the Virginia Landmarks Register. Owners of properties located in districts determined to be eligible for listing may apply for preliminary certification of their properties, as specified in 17 VAC 10-30-40. Applications for preliminary certification of buildings within eligible historic districts must show how the district meets the criteria for listing on the Virginia Landmarks Register, and how the property contributes to the significance of that district, as specified in 17 VAC 10-30-40. Preliminary certifications will become final, and the properties will become certified historic structures, as of the date of listing the district on the Virginia Landmarks Register. Issuance of preliminary certification does not obligate the department to nominate the potential district. Applicants proceed with rehabilitation projects at their own risk; if the historic district is not listed in the Virginia Landmarks Register, the preliminary certification will not become final.

H. Owners of properties that have received preliminary certifications may apply for certification of rehabilitation projects, as specified in 17 VAC 10-30-50. Final certifications of rehabilitations will be issued only for certified historic structures.

I. A request for certification of historic significance may be submitted by an applicant who is not the owner of the property in question. In such cases, the applicant shall include a signed statement from the owner acknowledging the request for certification.

J. The Department of Historic Resources discourages the moving of historic buildings from their original sites. Under certain circumstances the relocation of historic buildings may be part of a historic rehabilitation project that can be certified. Building owners are advised that the relocation of a building that is listed in the Virginia Landmarks Register may result in removal of the building from the Register. The relocation of a building that has been determined eligible for listing in the Virginia Landmarks Register may result in the loss of its eligibility. The relocation of a historic building into, from, or within a historic district or to or from an individual property listed in the Virginia Landmarks Register, or that has been found eligible for listing, may result in removal of the district or property from the Register, loss of the eligibility of the district or property, or loss of the moved building's contributing status within the district or as part of the property. For historic rehabilitation projects involving moved buildings, the following procedures apply:

1. When a building is to be moved as part of a historic rehabilitation project for which certification is sought, the owner shall contact the department prior to moving the building, and shall follow procedures specified by the department. When a building is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment. In certain special cases,

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when there is adequate documentation about the building before its relocation and about the moving process, it may be possible to certify historic rehabilitation projects involving moved buildings when participation of the department prior to the move did not occur. However, this approach is not recommended, and owners pursue it at their own risk.

2. For individual properties and properties in historic districts not listed in the Virginia Landmarks Register or not previously found eligible for listing, prior to the move the owner shall submit Part 1 of the historic rehabilitation application to the department, according to subsections C, F, and G of this section.

3. For individual properties and properties in historic districts listed in the Virginia Landmarks Register or found eligible for listing, prior to the move the owner shall submit documentation to the department to determine whether the move is likely to result in the loss of listing or loss of eligibility for listing. Guidance on the type of documentation required can be obtained from the department.

4. Following the relocation of the building and its installation on a new site, reevaluation of the building will be necessary to determine whether it can become a certified historic structure. The owner shall submit Part 1 of the historic rehabilitation application to the department, according to subsections C, F, and G of this section, presenting information about the building in its new location.

5. The relocation of a historic building into, from, or within a listed or eligible historic district, or to or from an individually listed or eligible property, may result in alterations to the boundary definitions of the district or property, and will change the inventory of buildings in the district or on the individual property. The applicant for certification of the historic rehabilitation project involving building relocation will be responsible for amending the district or property information and nomination accordingly, following guidance provided by the department.

### **17 VAC 10-30-40. Standards for evaluating significance within registered historic districts.**

A. Some properties listed in the Virginia Landmarks Register, primarily historic districts, are resources whose concentration or continuity possesses greater historical significance than many of their individual component buildings and structures. These usually are documented as a group rather than individually. Accordingly, this type of documentation is not conclusive for the purposes of this part. The applicant shall supplement this documentation using Part 1 of the Historic Preservation Certification Application, providing information on the significance of the specific property, as set forth in 17 VAC 10-30-30 C.

B. The Department of Historic Resources evaluates properties located within registered historic districts to determine if they contribute to the historic significance of the district by applying the following standards:

1. A property contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development.

2. A property not contributing to the historic significance of a district is one that does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

3. Ordinarily buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

C. Certifications of significance will be made on the appearance and condition of the property before the beginning of the rehabilitation work.

D. If a nonhistoric surface material obscures a building's facade, it may be necessary for the owner to remove a portion of the surface material before requesting certification so that a determination of significance can be made. After the material has been removed, if the obscured facade has retained substantial historic integrity and the property otherwise contributes to the significance of the historic district, it will be determined to be a certified historic structure.

### **17 VAC 10-30-50. Certifications of rehabilitation.**

A. Applicants requesting certification of rehabilitation projects shall comply with the procedures listed below. A fee, described in 17 VAC 10-30-80, is charged by the Department of Historic Resources for reviewing all proposed, ongoing, and completed rehabilitation work. No certification decisions shall be issued to any applicant until the appropriate remittance is received. Applicants may request the department's review before, during, or after completion of a rehabilitation project. Applicants are strongly encouraged to request the department's review before beginning a rehabilitation project.

1. To request review of a rehabilitation project, the project applicant shall submit Part 2 of the Historic Preservation Certification Application form according to the instructions accompanying the application. Documentation, including photographs adequate to document the appearance of the structure, both on the interior and the exterior, and its site and environment before rehabilitation, shall accompany the application. Other documentation, including plans, specifications, and surveys, may be required to evaluate certain rehabilitation projects. Where necessary documentation is not provided, review and evaluation may not be possible and a denial of certification will be issued on the basis of lack of information. Because the circumstances of each rehabilitation project are unique, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by applicants as applicable to other projects.

2. To request certification of a completed rehabilitation project, the applicant shall submit Part 3 of the Historic Preservation Certification Application, "Request for Certification of Completed Work," according to the instructions accompanying the application, and provide documentation that the completed project is consistent with

the work described in Part 2. This documentation includes but is not limited to:

- a. Name and mailing address or addresses of the owner or owners;
- b. Name and address of the property;
- c. Photographs of the property showing the completed rehabilitation work, including exterior and interior features and spaces, sufficient to demonstrate that the completed work is consistent with the standards for rehabilitation;
- d. Assessed value of the building in the year preceding the start of rehabilitation;
- e. Final costs attributed to the rehabilitation work;
- f. When rehabilitation expenses exceed \$100,000, certification by a certified public accountant or equivalent of the actual costs attributed to the rehabilitation of the historic structure; and
- g. Signature of the applicant.

B. Each rehabilitation project shall be done according to a plan of rehabilitation. Although the department has not set any formal requirements for a plan of rehabilitation, every plan shall include, at a minimum, the name of the owner of the property, the location of the property, and a description of the proposed, ongoing, or completed rehabilitation project. A plan of rehabilitation must provide the department with sufficient information to determine whether the rehabilitation qualifies for certification. The burden is on the applicant to supply sufficient information for the department to make a determination.

C. A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified historic structure or structures and its site and environment, as well as related demolition, new construction or rehabilitation work that may affect the historic qualities, integrity, site, landscape features, and environment of the property.

1. All elements of the rehabilitation project shall be consistent with the standards for rehabilitation, as set forth in 17 VAC 10-30-60. Portions of a project that are not in conformance with the standards may not be exempted. In general, an applicant undertaking a rehabilitation project will not be held responsible for prior rehabilitation work not part of the current project, or rehabilitation work that was undertaken by previous owners.
2. Conformance to the standards will be determined on the basis of the application documentation and other available information by evaluating the property as it existed before the beginning of the rehabilitation project.

D. The department, on receipt of the complete application describing the rehabilitation project, shall determine if the project is consistent with the standards for rehabilitation. If the project does not meet the standards, the department shall advise the applicant of that fact in writing. Where possible, the department will advise the project applicant of necessary revisions to meet the standards.

E. Once a proposed or ongoing project has been approved, substantive changes in the work as described in the application shall be brought promptly to the attention of the department by written statement to ensure continued conformance to the standards.

F. An authorized representative of the department may inspect projects to determine if the work meets the standards for rehabilitation. The department reserves the right to make inspections at any time up to three years after completion of the rehabilitation and to revoke a certification, after giving the applicant 30 days to comment on the matter, if it is determined that the rehabilitation project was not undertaken as represented in the application and supporting documentation. The tax consequences of a revocation of certification will be determined by the Department of Taxation.

## **17 VAC 10-30-60. Standards for rehabilitation.**

A. The standards for rehabilitation are the criteria used to determine if a rehabilitation project qualifies as a certified historic rehabilitation. The intent of the standards is to promote the long-term preservation of a property's significance through the preservation of historic materials and features. The standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The standards also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction. To be certified, a rehabilitation project shall be determined by the Department of Historic Resources to be consistent with the historic character of the structure or structures and, where applicable, the district in which it is located.

B. The standards for rehabilitation shall be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated architectural features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new

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feature should match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing architectural features must be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If these resources must be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

C. The quality of materials, craftsmanship, and related new construction in a rehabilitation project should be commensurate with the quality of materials, craftsmanship, and design of the historic structure in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate rehabilitation measures include, but are not limited to: improper masonry repointing techniques; improper exterior masonry cleaning methods; improper introduction of insulation where damage to historic fabric would result; and incompatible additions and new construction on historic properties. In almost all situations, these measures and treatments will result in denial of certification.

D. In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In these cases, the Department of Historic Resources will consider this extreme intervention as part of a certified historic rehabilitation if:

1. The necessity for dismantling is justified in supporting documentation;
2. Significant architectural features and overall design are retained; and
3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

E. The qualities of a property and its environment which qualify it as a certified historic structure are determined taking into account all available information, including information derived from the physical and architectural attributes of the building; these determinations are not limited to information contained in the Virginia Landmarks Register nomination reports.

## 17 VAC 10-30-70. Appeals.

A. A project applicant may appeal any denial of certification. A request for an appeal shall be made in writing to the Director of the Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia, 23221, within 60 days of receipt of the decision that is the subject of the appeal. It is not necessary for the applicant to present arguments for overturning a decision within this 60-day period. The applicant may request an opportunity to meet with the director, but all information that the applicant wishes the director to consider shall be in writing. The director shall consider the record of the decision in question, any further written submissions by the applicant, and other available information, and may consult with experts or others as appropriate. The director shall provide the applicant a written decision as promptly as circumstances permit. The appeal process is an administrative review of decisions made by the department; it is not an adjudicative proceeding.

B. In considering appeals, the director may take into account new information not previously available or submitted; alleged errors in professional judgment; or alleged prejudicial procedural errors. The director's decision may:

1. Reverse the appealed decision;
2. Affirm the appealed decision; or
3. Resubmit the matter to the department program staff for further consideration.

C. The decision of the director shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his administrative remedies with respect to the certifications or decisions described in this part until the director has issued a final administrative decision in response to this section.

## 17 VAC 10-30-80. Fees for processing rehabilitation certification requests.

A. Fees are charged for reviewing rehabilitation certification requests in accordance with the following schedule:

Rehabilitation Costs	Part 2 Review Fee	Part 3 Review Fee
Less than \$50,000	Fee waived	\$100
\$50,000 - \$99,999	\$250	\$250
\$100,000 - \$499,999	\$400	\$400
\$500,000 - \$999,999	\$750	\$750
\$1 million or more	\$1,500	\$1,500

B. The department generally completes reviews of certification requests within 30 days of receiving a complete, adequately documented application. Upon request, the department will review complete, fully documented applications within five days. Fees are charged for such expedited review in accordance with the following schedule:

Rehabilitation Costs	Expedited Review Fee
Less than \$50,000	\$100
\$50,000 - \$99,999	\$250

\$100,000 - \$499,999	\$400
\$500,000 - \$999,999	\$750
\$1 million or more	\$1,500

C. Payment of fees for review of Parts 2 and 3 shall be made to the Department of Historic Resources when the applications are submitted. Certification decisions will not be issued until the appropriate remittances are received. Payment of fees for expedited review shall be submitted with the request for expedited review, and review shall not commence until such fee is paid. Fees are nonrefundable.

D. In general, each rehabilitation of a separate certified historic structure will be considered a separate project for purposes of computing the size of the fee.

**17 VAC 10-30-90. Forms.**

Applications for certifications of buildings and rehabilitation projects are made with the Historic Preservation Certification Application, prepared by the Department of Historic Resources. The forms are available from the department.

**17 VAC 10-30-100. Definition of rehabilitation project.**

A. A certified historic structure shall be treated as having been materially rehabilitated only if the eligible rehabilitation expenses (as defined in 17 VAC 10-30-110) incurred in a 24-month period selected by the taxpayer ending with or within the completion year shall equal or exceed 50% of the assessed value of the building for local real estate tax purposes, determined for the year before the start of rehabilitation, unless the building is an owner-occupied building, in which case the eligible rehabilitation expenses shall amount to at least 25% of the assessed value of the building for local real estate tax purposes for the year before the start of rehabilitation.

B. In the case of any rehabilitation that may reasonably be expected to be completed in phases set forth in a plan of rehabilitation submitted contemporaneously with the Description of Rehabilitation, subsection A of this section shall be applied by substituting "60-month period" for "24-month period." A rehabilitation may reasonably be expected to be completed in phases if it consists of two or more distinct stages of development. The department may review each phase as it is presented, but a phased project cannot be designated a certified rehabilitation until all of the phases are completed. The applicant may elect to claim the credit allowable for each completed phase of a phased project, upon receipt from the department of written approval of the work completed for each phase. Any such initial claims will be contingent upon final certification of the completed project.

**17 VAC 10-30-110. Eligible rehabilitation expenses.**

A. Eligible rehabilitation expenses are those expenses incurred in connection with a plan of rehabilitation on or after January 1, 1997, in the material rehabilitation of a certified historic structure and added to the property's capital account.

B. Once the material rehabilitation test is met, the eligible rehabilitation expenses upon which a credit can be claimed include:

1. Expenses incurred prior to the start of the 24-month measuring period as defined in 17 VAC 10-30-100 A, provided that the expenses were incurred in connection with the rehabilitation process that resulted in the material rehabilitation of the building;
2. Within the measuring period as defined in 17 VAC 10-30-100 A; and
3. After the end of the measuring period as defined in 17 VAC 10-30-100 A but prior to the completion of the project.

C. Amounts are properly chargeable to capital account if they are properly includable in computing the basis of real property under U.S. Department of the Treasury, Internal Revenue Code, Reg. § 1.46-3(c). Amounts treated as an expense and deducted in the year paid or incurred or amounts that are otherwise not added to the basis of real property do not qualify. Amounts incurred for architectural and engineering fees, site fees and other construction-related costs that are added to the basis of real property satisfy this requirement.

D. Certain expenses are not eligible rehabilitation expenses. These expenses are:

1. The cost of acquiring a building, any interest in a building (including a leasehold interest) or land. Interest incurred on a construction loan the proceeds of which are used for eligible rehabilitation expenditures (and which is added to the basis of the property) is not treated as a cost of acquisition.
2. Any expense attributable to an enlargement of a building.
  - a. A building is enlarged to the extent that the total volume of the building is increased. An increase in floor space resulting from interior remodeling is not considered an enlargement.
  - b. If expenditures only partially qualify as eligible rehabilitation expenditures because some of the expenditures are attributable to the enlargement of the building, the expenditures must be apportioned between the original portion of the building and the enlargement. The expenditures must be specifically allocated between the original portion of the building and the enlargement to the extent possible. If it is not possible to make a specific allocation of the expenditures, the expenditures must be allocated to each portion on a reasonable basis. The determination of a reasonable basis for an allocation depends on factors such as the type of improvement and how the improvement relates functionally to the building.

Example: A historic rehabilitation project includes a new rear wing. A new air-conditioning system and a new roof are installed on the building. A reasonable basis for allocating the expenditures among the two portions generally would be the volume of the historic building (excluding the new wing), served by the air-conditioning system or the roof, relative to the volume of the new wing that is served by the air-conditioning system and the roof.

3. Any expense attributable to the rehabilitation of a certified historic structure, or a building located in a registered historic district, which is not a certified rehabilitation.

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4. Any expense incurred before January 1, 1997.

E. The taxpayer may take into account eligible rehabilitation expenses created in connection with the same plan of rehabilitation by any other entity with an interest in the building. Where eligible rehabilitation expenses are created with respect to a building by an entity other than the taxpayer and the taxpayer acquires the building or a portion of the building to which the expenses were allocable, the taxpayer acquiring such property will be treated as having incurred the eligible rehabilitation expenses actually created by the transferor, provided that no credit with respect to such qualified rehabilitation expenses is claimed by anyone other than the taxpayer acquiring the property.

F. A taxpayer who has incurred eligible rehabilitation expenses may elect to treat a tenant or tenants as having incurred these rehabilitation expenses, provided that the lease is for a term of at least five years. This election shall be made on the application for the certification of rehabilitation. For purposes of testing whether a rehabilitation is material, all eligible rehabilitation expenses will be counted. In the event the election is made to treat multiple tenants as having incurred rehabilitation expenses, the allocation of eligible rehabilitation expenses to these tenants shall be made in accordance with the relative square footage occupied by the tenants or the relative amounts of eligible rehabilitation expenses spent in connection with each tenant's space. Eligible rehabilitation expenses that are not readily allocable by specific space shall be allocated in a manner consistent with the allocation method chosen.

## 17 VAC 10-30-120. Qualification for credit.

Credits against tax shall be available for the material rehabilitation of a certified historic structure. Material rehabilitation means improvements or reconstruction consistent with the standards for rehabilitation, the cost of which amounts to at least 50% of the assessed value of the buildings for local real estate tax purposes for the year before the start of rehabilitation, unless the building is an owner-occupied building, in which case the cost shall amount to at least 25% of the assessed value of such building for local real estate tax purposes for the year before such rehabilitation expenses were incurred. An owner-occupied building is any building, at least 75% of which is used as a personal residence by the owner, or which is available for occupancy by the owner for at least 75% of the year. The assessed value of the building for local real estate tax purposes does not include any assessment for land. The determination of whether a rehabilitation has been material shall be made at the entity level, not at the partner or shareholder level.

Ex. 1. Certified historic structure has a 1996 tax assessment of \$20,000 for the land, \$80,000 for the building; and a 1997 assessment of \$20,000 for the land, \$70,000 for the building. Taxpayer submits a plan of rehabilitation on December 1, 1997. Taxpayer applies for a building permit for work to be done in accordance with the plan of rehabilitation on December 15, 1997. Taxpayer incurs eligible rehabilitation expenses in the amount of \$37,500 pursuant to the plan of rehabilitation. Rehabilitation is completed in 1999. Taxpayer is not entitled to a tax credit because taxpayer's eligible rehabilitation expenses (\$37,500) do not exceed 50% of the

assessed value of the building in the year prior to the start of rehabilitation (\$40,000).

Ex. 2. Same facts as above, except taxpayer applies for the building permit on January 2, 1998. Eligible rehabilitation expenses (\$37,500) exceed 50% of the assessed value of the building in the year prior to the start of rehabilitation (\$35,000). Therefore, taxpayer is entitled to a credit of 20% (for completion in 1999) of \$37,500.

## 17 VAC 10-30-130. Amount and timing of credit.

A. The amount of the credit shall be determined by multiplying the total amount of eligible rehabilitation expenses incurred in connection with the plan of rehabilitation by 25%. Eligible rehabilitation expenses may include expenses in connection with the rehabilitation that were incurred prior to the start of rehabilitation. Further, eligible rehabilitation expenses may include expenses incurred prior to completion of a formal plan of rehabilitation provided the expenses were incurred in connection with the rehabilitation that was completed.

B. Complete, adequately documented Historic Preservation Certification Application forms must be received by the department within one year after the final expense is incurred or the final certificate of occupancy (if appropriate) is issued. Properties that do not meet the criteria for individual listing on the Virginia Landmarks Register must be located in registered historic districts by such date. Taxpayers are cautioned, however, that if Parts 1 and 2 of the Historic Preservation Certification Application forms are not submitted prior to beginning work on the rehabilitation, they proceed with the project at the risk that the building or the rehabilitation project will not be certified.

## 17 VAC 10-30-140. Entitlement to credit.

A. Effective for taxable years beginning on and after January 1, 1997, any individual, trust or estate, or corporation incurring eligible expenses in the rehabilitation of a certified historic structure shall be entitled to a credit against tax in the manner and amount set forth in these regulations. Credits granted to a partnership, electing small business corporation (S corporation), or limited liability company shall be passed through to the partners or shareholders, respectively. Credits granted to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated among partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document. The document shall be signed by all members, partners or shareholders of the owning, partnership, corporation, or limited liability company and shall be attached to the Request for Certification of Completed Work. The following form may be used:

The state historic rehabilitation tax credits shall be allocated among the members, partners or shareholders, as applicable as follows:

Member, partner or shareholder 1	x%
Member, partner or shareholder 2	y%
Member, partner or shareholder 3	z%
and so on through 100%	

This document shall be executed by all necessary parties prior to the Request for Certification of Completed Work form. The members, partners or shareholders at the end of the taxable year in which there is an entitlement to credit shall be allocated the state rehabilitation tax credits for which a project is certified, as defined in this document.

B. The Department of Historic Resources shall certify the amount of eligible rehabilitation expenses. The certification shall consist of a letter signed by an authorized representative of the department confirming that the rehabilitated property is a certified historic structure and that the rehabilitation is a certified historic rehabilitation, and shall specify the amount of eligible rehabilitation expenses, based on the Request for Certification of Completed Work form. The department's certification shall make reference to any partnership, S corporation, or limited liability company allocation document, as defined in subsection A of this section. A person with an interest in the property who materially rehabilitates a certified historic structure may apply for a certificate of material rehabilitation. Persons with an interest in the property include those individuals or entities that have a possessory interest in the property. The application for issuance of a certificate shall set forth the name of the individual or entity that will utilize the credit on its tax return. The taxpayer shall attach the certificate to the Virginia tax return on which the credit is claimed.

C. If the amount of the credit exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the income taxes of such taxpayer for the next ten taxable years or until the full credit is used, whichever occurs first. For purposes of passthrough entities (e.g., general and limited partnerships, limited liability companies, S corporations) this paragraph shall be applied to the partners, members or shareholders, as applicable.

**17 VAC 10-30-150. Transition rules for projects begun before 1997.**

A. Rehabilitation expenses incurred before January 1, 1997, do not qualify for a rehabilitation tax credit.

B. Applicants whose rehabilitation projects commenced before 1997, but were not completed until after January 1, 1997, may apply for certification of their rehabilitation work, in accordance with the provisions of 17 VAC 10-30-20, 17 VAC 10-30-30, and 17 VAC 10-30-50. In these cases, the tax credit is calculated as the appropriate percentage of expenses incurred on or after January 1, 1997.

C. For projects begun before January 1, 1997, the material rehabilitation test shall be determined by the entire project, rather than by those parts of the work completed on or after January 1, 1997.

**17 VAC 10-30-160. Coordination with the federal certified historic rehabilitation program.**

A. Certifications of properties and rehabilitation projects by the National Park Service, U.S. Department of the Interior, under Federal Law 36 CFR Part 67, are not equivalent to certification of properties and rehabilitation projects by the Virginia Department of Historic Resources under § 58.1-339.2 of the Code of Virginia, except as provided in subsection B of

this section. Taxpayers are cautioned that deadlines and requirements for certifications under these state regulations may differ from deadlines and requirements for certifications under the federal program.

B. Certifications of historic significance of properties (Part 1, Historic Preservation Certification Application) by the National Park Service, U.S. Department of the Interior, dated after January 1, 1995, shall be accepted as equivalent of certification of historic significance by the Virginia Department of Historic Resources under the provisions of 17 VAC 10-30-20.

**NOTICE:** The forms used in administering 17 VAC 10-30, Historic Rehabilitation Tax Credit, are not being published due to the number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 1 - Evaluation of Significance, DHR Form TC-1 (rev. 8/02)

State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 2 - Description of Rehabilitation, DHR Form TC-2 (rev. 8/02)

State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 3 - Request for Certification of Completed Work, DHR Form TC-3 (rev. 8/02)

State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Billing Statement, DHR Form TC-4 (rev. 8/02)

Disclosure of Ownership - State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application, DHR Form TC-5 (rev. 8/02)

VA.R. Doc. No. R01-230; Filed August 9, 2002, 10:36 a.m.



**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**BOARD OF DENTISTRY**

Title of Regulation: 18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-10; adding 18 VAC 60-20-250 through 18 VAC 60-20-331).

Statutory Authority: §§ 54.1-2400, 54.1-2709.1, and 54.1-2709.2 of the Code of Virginia.

Public Hearing Date: September 19, 2002 - 9 a.m.  
Public comments may be submitted until November 8, 2002.  
(See Calendar of Events section)

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for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

Sections 54.1-2709.1 and 54.1-2709.2 of the Code of Virginia specify the authority for the registration and certification of oral and maxillofacial surgeons.

Purpose: Regulations establishing a profile of such surgeons (including disciplinary and malpractice history), standards for minimal competency in performing certain procedures, and a system for quality assurance review of their practice are all intended to protect the health, safety and welfare of citizens of Virginia who may elect to become cosmetic surgery patients. Similar requirements and oversight for a specialized practice by a regulatory board do not exist for other health care professionals but were included to fulfill a statutory mandate in the interest of patient safety.

Substance: Proposed regulations provide requirements for the registration and profiling of all oral and maxillofacial surgeons to include a fee of \$175 for initial registration and renewal. The profiling requirements include the provision of information that is available to the public as specified in the Code of Virginia. Included on the profile is information about final disciplinary actions with the notices outlining the charges and reports on paid malpractice claims. The oral and maxillofacial surgeon is required to provide initial information and any updates within 30 days.

The regulations also set forth the requirements and qualifications for oral and maxillofacial surgeons who want to be certified to perform specified cosmetic procedures above the clavicle or within the head and neck region of the body. Certification is not required for procedures that are part of the normal care and treatment of the patient, such as treatment of facial fractures, repair of cleft lip and palate deformity, and facial augmentation procedures. The regulations establish qualifications for certification including completion of a residency program, board certification, current hospital privileges, and specialized training evidenced by documentation of proctored cases and course work. Finally, there are requirements for quality assurance review for procedures performed by a certificate holder and a process established for complaints against such practitioners.

Issues: Prior to a statutory mandate for registration and certification, oral and maxillofacial surgeons have been credentialed and have held hospital privileges to perform a variety of reconstructive surgeries in the area of the head and neck. In addition, a small number of oral and maxillofacial surgeons have performed similar elective procedures for cosmetic purposes, both in licensed hospitals and out-patient settings. There is no evidence that the public has been harmed by their practice, so the board believes the proposed

regulations are sufficient to ensure that those procedures performed for cosmetic purposes may be performed with competency and safety. In fact, public health and safety is better protected by a thorough review of credentials and training for cosmetic surgery by a committee of peers, as is now required by emergency regulations. Since the emergency regulations went into effect on December 1, 2001, there have been no reports of unsafe practice by certified oral and maxillofacial surgeons.

There are no advantages or disadvantages to the agency. The agency will continue to incur costs for registration, profiling and certification of oral and maxillofacial surgeons, but those costs are offset by additional revenue derived from fees. There has been a considerable amount of staff time involved in the development of regulations and a regulatory program, but the expenditure of personnel should level off after the initial registration and certification. Providing for a clear standard and certification may alleviate some of the concerns and questions about the ability of oral and maxillofacial surgeons to include cosmetic surgery in their scope of practice.

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

Summary of the proposed regulation. Pursuant to §§ 54.1-2709.1 and 54.1-2709.2 of the Code of Virginia, the Board of Dentistry (board) proposes to: (i) establish criteria for certification of board certified or board eligible oral or maxillofacial surgeons to perform esthetic procedures, and (ii) require oral and maxillofacial surgeons to annually register with the board and report and make available specified information.

Estimated economic impact.

Certification. The proposed regulations establish criteria for certification of oral and maxillofacial surgeons to perform eight specified esthetic procedures. Section 54.1-2709.1 B states that:

In promulgating the minimum education, training, and experience requirements for oral and maxillofacial surgeons to perform such procedures (esthetic surgery) ..., the Board of Dentistry shall consult with an advisory committee comprised of three members selected by the Medical Society of Virginia and three members selected by the Virginia Society of Oral and Maxillofacial Surgeons.

The advisory committee met and agreed that certification requirements should include: completion of an accredited oral



and maxillofacial residency, board certification or board eligibility by the American Board of Oral and Maxillofacial Surgery, credentialing for surgical procedures involving certain anatomical areas within the head and neck region of the body, and current oral and maxillofacial privileges on a hospital staff. But the representatives of the Medical Society of Virginia were not in agreement with the representatives of the Virginia Society of Oral and Maxillofacial Surgeons on several aspects of what other education, training, and experience should be required for certification. For example, following the recommendation of the Virginia Society of Oral and Maxillofacial Surgeons representatives, the proposed regulations allow certification for individual procedures. The professional judgment of the Medical Society of Virginia representatives is that certification should only be granted for the full scope of the procedures covered by § 54.1-2709.1. Writing in support of the Medical Society of Virginia view, the Virginia Board of Medicine states that:

Certification for these procedures should require a breadth and depth of knowledge and experience in all areas in order to treat patients competently, effectively and safely. It is imperative that individuals performing esthetic surgery be well prepared to identify, understand and treat appropriately the potential clinical ramifications and medical complications inherent in performing multiple procedures. Without adequate exposure to a range of procedures and the attendant pre-operative considerations and potential post-operative complications, the necessary foundation of knowledge and experience cannot be achieved. Given these critical needs, to certify applicants for only one or two procedures is illogical. Certification should only be granted for those practitioners who are qualified to deliver a full scope of surgical procedures covered by this legislation (§ 54.1-2709.1) rather than for the mastery of a singular technical surgical procedure.<sup>1</sup>

It is the professional judgment of the board and the Virginia Society of Oral and Maxillofacial Surgeons that board certified or board eligible oral and maxillofacial surgeons receive education, training and experience that includes more than enough breadth and depth of knowledge so that oral and maxillofacial surgeons can safely perform individual esthetic procedures without certification in other esthetic procedures.

The proposed regulations use the certification requirements recommended by the Virginia Society of Oral and Maxillofacial Surgeons. Using these certification requirements, as opposed to the certification requirements recommended by the Medical Society of Virginia, likely allows more oral and maxillofacial surgeons to qualify for esthetic surgery certification. Thus, the supply of esthetic surgery is larger. The market price for esthetic surgery would likely be lower with a larger supply of those services.

If the public is not unknowingly put at a higher risk of adverse health outcomes by certifying these additional individuals to conduct esthetic procedures with the proposed minimum level of training, then the public will most likely benefit by lower

market prices for esthetic surgery. If, on the other hand, permitting oral and maxillofacial surgeons to become certified via meeting the proposed requirements results in a significant increase in the frequency of adverse health outcomes, then the costs of the potential increase in the frequency of adverse health outcomes may be greater than the benefits of lower market prices. Neither the Virginia Society of Oral and Maxillofacial Surgeons nor the Medical Society of Virginia has empirical evidence to demonstrate whether or not the differences in their recommended certification requirements significantly affects the health outcomes of esthetic surgery patients.<sup>2</sup> Thus, it cannot be determined whether: (i) the Society of Oral and Maxillofacial Surgeons recommended certification requirements result in greater risk to public health than the Medical Society recommended certification requirements, and (ii) if the Society of Oral and Maxillofacial Surgeons recommended certification requirements do result in greater risk to public health than the Medical Society recommended certification requirements, whether the value of the potential increased health risk exceeds the benefit of potentially lower market prices for esthetic surgery services.

Registration. Pursuant to § 54.1-2709.2 of the Code of Virginia, the board proposes to require oral and maxillofacial surgeons to annually register with the board and report and make available specified information. The required information includes specifics on education, board certifications, number of years in active practice, insurance plans accepted, hospital affiliations, specification of privileges granted by those hospitals, dental school faculty appointments, peer-reviewed publications, approximate percentage of time spent at each practice setting, participation status in the Virginia Medicaid Program, and disciplinary actions. Also, pursuant to § 54.1-2709.4 of the Code of Virginia, the board proposes to require oral and maxillofacial surgeons to report malpractice paid claims. The collection of this information is beneficial in that it can be shared with the public who can use the information for their decisions concerning the use of oral and maxillofacial surgery services. Under the proposed regulations, oral and maxillofacial surgeons are charged \$175 annually to register. The \$175 fee per oral and maxillofacial surgeon reflects the Department of Health Professions approximate costs of running the registration program. According to a representative of the Virginia Society of Oral and Maxillofacial Surgeons, it takes approximately ten minutes to fill out the registration form. Many potential patients would likely find increased availability of information such as education, experience, and disciplinary actions, etc., significantly useful. The Virginia Society of Oral and Maxillofacial Surgeons does not object to the registration requirement and the fee.<sup>3</sup> Thus, it is likely that the proposed registration and data requirements for oral and maxillofacial surgeons produce a net benefit.

Businesses and entities affected. The proposed regulatory amendments affect the 170 dentists registered as oral and

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<sup>1</sup> Source: a document titled "Comments of the Board of Medicine as Directed by § 54.1-2709.1 Code of Virginia Relating to Certification of Oral and Maxillofacial Surgeons to Perform Cosmetic Surgery."

<sup>2</sup> DPB asked representatives of both the Virginia Society of Oral and Maxillofacial Surgeons and the Medical Society of Virginia if they could provide empirical evidence demonstrating whether the different recommended certification qualifications would affect public health.

<sup>3</sup> Source: a representative of the Virginia Society of Oral and Maxillofacial Surgeons.

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# Proposed Regulations

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maxillofacial surgeons in Virginia, physicians who potentially compete with oral and maxillofacial surgeons who provide esthetic surgery services, and citizens who either use or are considering using esthetic surgery services.

Localities particularly affected. The proposed regulatory amendments potentially affect citizens of all of Virginia's localities.

Projected impact on employment. The proposed certification of oral and maxillofacial surgeons to perform esthetic surgical procedures may result in more esthetic surgery performed by oral and maxillofacial surgeons. This may increase employment for oral and maxillofacial surgeons' support staff. Physicians who perform esthetic surgery may lose some business to oral and maxillofacial surgeons. This may decrease employment for the support staff of physicians who perform esthetic surgery.

Effects on the use and value of private property. The proposed certification of oral and maxillofacial surgeons to perform esthetic surgical procedures may result in more esthetic surgery performed by oral and maxillofacial surgeons. Increased business would likely increase the value of their practices. Physicians who perform esthetic surgery may lose some business to oral and maxillofacial surgeons, and consequently have the value of their practices reduced.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Dentistry concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 60-20 for registration and certification of oral and maxillofacial surgeons to perform certain cosmetic procedures.

## Summary:

*The Board of Dentistry has taken action to replace emergency regulations in compliance with Chapter 662 of the 2001 Acts of the Assembly requiring the board to promulgate regulations establishing rules for the registration and profiling of oral and maxillofacial surgeons and for the certification of such persons to perform certain cosmetic procedures.*

## **18 VAC 60-20-10. Definitions.**

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

*"Advertising"* means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

*"Analgesia"* means the diminution or elimination of pain in the conscious patient.

*"Approved schools"* means those dental schools, colleges, departments of universities or colleges, or schools of dental

hygiene currently accredited by the Commission on Dental Accreditation of the American Dental Association.

*"Competent instructor"* means any person appointed to the faculty of a dental school, college or department or a university or a college who holds a license or teacher's license to practice dentistry or dental hygiene in the Commonwealth.

*"Conscious sedation"* means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by a pharmacologic or nonpharmacologic method, or a combination thereof.

*"Dental assistant"* means any unlicensed person under the supervision of a dentist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

*"Direction"* means the presence of the dentist for the evaluation, observation, advice, and control over the performance of dental services.

*"General anesthesia"* means a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof.

*"Local anesthesia"* means the loss of sensation or pain in the oral cavity or its contiguous structures generally produced by a topically applied agent or injected agent without causing the loss of consciousness.

*"Monitoring general anesthesia and conscious sedation"* includes the following: recording and reporting of blood pressure, pulse, respiration, and other vital signs to the attending dentist during the conduct of these procedures and after the dentist has induced a patient and established a maintenance level.

*"Monitoring nitrous oxide oxygen inhalation analgesia"* means making the proper adjustments of nitrous oxide machines at the request of the dentist during the administration of the sedation, and observing the patient's vital signs.

*"Nitrous oxide oxygen inhalation analgesia"* means the utilization of nitrous oxide and oxygen to produce a state of reduced sensibility to pain designating particularly the relief of pain without the loss of consciousness.

*"Proctored cases"* means surgical procedures proctored by a person who either: (i) has current privileges to perform cosmetic surgery in an accredited hospital; (ii) has current certification from the board to perform cosmetic surgical procedures; or (iii) is a member of a faculty in an accredited program offering advanced specialty education in oral and maxillofacial surgery.

*"Radiographs"* means intraoral and extraoral x-rays of the hard and soft oral structures to be used for purposes of diagnosis.

PART VII.  
ORAL AND MAXILLOFACIAL SURGEONS.

**18 VAC 60-20-250. Registration of oral and maxillofacial surgeons.**

Within 60 days after the effective date of this section, every licensed dentist who practices as an oral and maxillofacial surgeon, as defined in § 54.1-2700 of the Code of Virginia, shall register his practice with the board and pay a fee of \$175.

1. After initial registration, an oral and maxillofacial surgeon shall renew his registration annually on or before December 31 by payment of a fee of \$175.
2. An oral and maxillofacial surgeon who fails to register or to renew his registration and continues to practice oral and maxillofacial surgery may be subject to disciplinary action by the board.
3. Within one year of the expiration of a registration, an oral and maxillofacial surgeon may renew by payment of the renewal fee and a late fee of \$55.
4. After one year from the expiration date, an oral and maxillofacial surgeon who wishes to reinstate his registration shall update his profile and pay the renewal fee and a reinstatement fee of \$175.

**18 VAC 60-20-260. Profile of information for oral and maxillofacial surgeons.**

A. In compliance with requirements of § 54.1-2709.2 of the Code of Virginia, an oral and maxillofacial surgeon registered with the board shall provide, upon initial request, the following information within 30 days or at a later date if so specified:

1. The address of the primary practice setting and all secondary practice settings with the percentage of time spent at each location;
2. Names of dental or medical schools with dates of graduation;
3. Names of graduate medical or dental education programs attended at an institution approved by the Accreditation Council for Graduate Medical Education, the Commission on Dental Accreditation, and the American Dental Association with dates of completion of training;
4. Names and dates of specialty board certification or board eligibility, if any, as recognized by the Council on Dental Education and Licensure of the American Dental Association;
5. Number of years in active, clinical practice in the United States or Canada, following completion of medical or dental training and the number of years, if any, in active, clinical practice outside the United States or Canada;
6. Names of insurance plans accepted or managed care plans in which the oral and maxillofacial surgeon participates and whether he is accepting new patients under such plans;
7. Names of hospitals with which the oral and maxillofacial surgeon is affiliated;

8. Appointments within the past 10 years to dental school faculties with the years of service and academic rank;

9. Publications, not to exceed 10 in number, in peer-reviewed literature within the most recent five-year period;

10. Whether there is access to translating services for non-English speaking patients at the primary practice setting and which, if any, foreign languages are spoken in the practice; and

11. Whether the oral and maxillofacial surgeon participates in the Virginia Medicaid Program and whether he is accepting new Medicaid patients;

B. The oral and maxillofacial surgeon may provide additional information on hours of continuing education earned, subspecialties obtained, honors or awards received.

C. Whenever there is a change in the information on record with the profile system, the oral and maxillofacial surgeon shall provide current information in any of the categories in subsection A of this section within 30 days.

**18 VAC 60-20-270. Reporting of malpractice paid claims and disciplinary notices and orders.**

A. In compliance with requirements of § 54.1-2709.4 of the Code of Virginia, a dentist registered with the board as an oral and maxillofacial surgeon shall report all malpractice paid claims in the most recent 10-year period. Each report of a settlement or judgment shall indicate:

1. The year the claim was paid;
2. The total amount of the paid claim in United States dollars; and
3. The city, state, and country in which the paid claim occurred.

B. The board shall use the information provided to determine the relative frequency of paid claims described in terms of the percentage who have made malpractice payments within the most recent 10-year period. The statistical methodology used will be calculated on more than 10 paid claims for all dentists reporting, with the top 16% of the paid claims to be displayed as above-average payments, the next 68% of the paid claims to be displayed as average payments, and the last 16% of the paid claims to be displayed as below-average payments.

C. Adjudicated notices and final orders or decision documents, subject to § 54.1-2400.2 D of the Code of Virginia, shall be made available on the profile. Information shall also be posted indicating the availability of unadjudicated notices and of orders that are subject to being vacated at determination of the practitioner.

**18 VAC 60-20-280. Noncompliance or falsification of profile.**

A. The failure to provide the information required in subsection A of 18 VAC 60-20-260 may constitute unprofessional conduct and may subject the licensee to disciplinary action by the board.

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B. Intentionally providing false information to the board for the profile system shall constitute unprofessional conduct and shall subject the licensee to disciplinary action by the board.

**18 VAC 60-20-290. Certification to perform cosmetic procedures; applicability.**

A. In order for an oral and maxillofacial surgeon to perform aesthetic or cosmetic procedures, he shall be certified by the board pursuant to § 54.1-2709.1 of the Code of Virginia. Such certification shall only entitle the licensee to perform procedures above the clavicle or within the head and neck region of the body.

B. Based on the applicant's education, training and experience, certification may be granted to perform one or more of these or similar procedures:

1. Rhinoplasty;
2. Blepharoplasty;
3. Rhytidectomy;
4. Submental liposuction;
5. Laser resurfacing or dermabrasion;
6. Browlift (either open or endoscopic technique);
7. Platysmal muscle plication; and
8. Otoplasty.

**18 VAC 60-20-300. Certification not required.**

Certification shall not be required for performance of the following:

1. Treatment of facial diseases and injuries, including maxillofacial structures;
2. Facial fractures, deformity and wound treatment;
3. Repair of cleft lip and palate deformity;
4. Facial augmentation procedures; and
5. Genioplasty.

**18 VAC 60-20-310. Credentials required for certification.**

A. An applicant for certification shall:

1. Hold an active, unrestricted license from the board;
2. Submit a completed application and fee of \$225;
3. Complete an oral and maxillofacial residency program accredited by the Commission on Dental Accreditation;
4. Hold board certification by the American Board of Oral and Maxillofacial Surgery (ABOMS) or board eligibility as defined by ABOMS;
5. Have current privileges on a hospital staff to perform oral and maxillofacial surgery; and
6. If his oral and maxillofacial residency or cosmetic clinical fellowship was completed after July 1, 1996, and training in cosmetic surgery was a part of such residency or fellowship, the applicant shall submit:

a. A letter from the director of the residency or fellowship program documenting the training received in the residency or in the clinical fellowship to substantiate adequate training in the specific procedures for which the applicant is seeking certification; and

b. Documentation of having performed as primary or assistant surgeon at least 10 proctored cases in each of the procedures for which he seeks to be certified.

7. If his oral and maxillofacial residency was completed prior to July 1, 1996, or if his oral and maxillofacial residency was completed after July 1, 1996, and training in cosmetic surgery was not a part of the applicant's residency, the applicant shall submit:

a. Documentation of having completed didactic and clinically approved courses to include the dates attended, the location of the course, and a copy of the certificate of attendance. Courses shall provide sufficient training in the specific procedures requested for certification and shall be offered by:

(1) An advanced specialty education program in oral and maxillofacial surgery accredited by the Commission on Dental Accreditation;

(2) A medical school accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association;

(3) The American Dental Association (ADA) or one of its constituent and component societies or other ADA Continuing Education Recognized Programs (CERP) approved for continuing dental education; or

(4) The American Medical Association approved for category 1, continuing medical education.

b. Documentation of either:

(1) Holding current privileges to perform cosmetic surgical procedures within a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(2) Having completed at least 10 cases as primary or secondary surgeon in the specific procedures for which the applicant is seeking certification, of which at least five shall be proctored cases as defined in this chapter.

**18 VAC 60-20-320. Renewal of certification.**

In order to renew his certification to perform cosmetic procedures, an oral and maxillofacial surgeon shall possess a current, active, unrestricted license to practice dentistry from the Virginia Board of Dentistry and shall submit along with the renewal application a fee of \$100 on or before December 31 of each year. If an oral and maxillofacial surgeon fails to renew his certificate, the certificate is lapsed and performance of cosmetic procedures is not permitted. To renew a lapsed certificate within one year of expiration, the oral and maxillofacial surgeon shall pay the renewal fees and a late fee of \$35. To reinstate a certification that has been lapsed for more than one year shall require completion of a reinstatement form documenting continued competency in the

procedures for which the surgeon is certified and payment of a reinstatement fee of \$225.

**18 VAC 60-20-330. Quality assurance review for procedures performed by certificate holders.**

A. On a schedule of no less than once every three years, a random audit of charts for patients receiving cosmetic procedures shall be performed by a certificate holder in a facility not accredited by Joint Commission on Accreditation of Healthcare Organizations or other nationally recognized certifying organizations as determined by the board.

B. Oral and maxillofacial surgeons certified to perform cosmetic procedures shall maintain separate files, an index, coding or other system by which such charts can be identified by cosmetic procedure.

C. Cases selected in a random audit shall be reviewed for quality assurance by a person qualified to perform cosmetic procedures according to a methodology determined by the board.

**18 VAC 60-20-331. Complaints against certificate holders for cosmetic procedures.**

Complaints arising out of performance of cosmetic procedures by a certified oral and maxillofacial surgeon shall be adjudicated solely by the Board of Dentistry. Upon receipt of the investigation report on such complaints, the Board of Dentistry shall promptly notify the Board of Medicine, and the investigation report shall be reviewed and an opinion rendered by both a physician licensed by the Board of Medicine who actively practices in a related specialty and by an oral and maxillofacial surgeon licensed by the Board of Dentistry pursuant to § 54.1-2502 of the Code of Virginia. The Board of Medicine shall maintain the confidentiality of the complaint consistent with § 54.1-2400.2 of the Code of Virginia.

**NOTICE:** The forms used in administering 18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Dentistry, 6606 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

**FORMS**

Outline and Explanation of Documentation Required for Dental Licensure by Exam, Teacher's License, Restricted License, Full Time Faculty License, and Temporary Permit (eff. 11/98).

Application for Licensure to Practice Dentistry (eff. 3/98).

Application for Restricted Volunteer Licensure to Practice Dentistry and Dental Hygiene (eff. 7/98).

Form A, Certification of Dental/Dental Hygiene School (rev. 3/98).

Form AA, Sponsor Certification for Dental/Dental Hygiene Volunteer License (eff. 7/98).

Form B, Chronology (rev. 3/98).

Form C, Certification of Dental/Dental Hygiene Boards (rev. 3/98).

Outline and Explanation of Documentation Required for Dental Hygiene Licensure by Exam, Teacher's License, Dental Hygiene by Endorsement, and Dental Hygiene Temporary Permit (rev. 11/98).

Application for Licensure to Practice Dental Hygiene (rev. 3/98).

Reinstatement Application for Dental/Dental Hygiene Licensure (rev. 3/98).

Expiration letter to licensee (rev. 7/98).

Radiology Information for Dental Assistants (rev. 7/97).

Renewal Notice and Application (Active licensure) (rev. 3/00).

Renewal Notice and Application (Inactive licensure) (rev. 3/00).

Application for Certification to Perform Cosmetic Procedures (rev. 7/02).

Rhinoplasty/similar Procedures (rev. 7/02).

Blepharoplasty/similar Procedures (rev. 7/02).

Rhytidectomy/similar Procedures (rev. 7/02).

Submental liposuction/similar Procedures (rev. 7/02).

Browlift/either open or endoscopic technique/similar Procedures (rev. 7/02).

Otoplasty/similar Procedures (rev. 7/02).

Laser Resurfacing or Dermabrasion/similar Procedures (rev. 7/02).

Platysmal muscle plication/similar Procedures (rev. 7/02).

Application Review Worksheet (rev. 7/02).

Practitioner Questionnaire (rev. 7/02).

Oral and Maxillofacial Surgeon Registration of Practice (rev. 7/02).

VA.R. Doc. No. R02-55; Filed August 7, 2002, 12:16 p.m.

**BOARD OF PHARMACY**

**Title of Regulation:** 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-20 and 18 VAC 110-20-270; adding 18 VAC 110-20-101 through 18 VAC 110-20-106, and 18 VAC 110-20-111).

**Statutory Authority:** §§ 54.1-2400, 54.1-3321, and 54.1-3322 of the Code of Virginia.

**Public Hearing Date:** September 30, 2002 - 9 a.m.

Public comments may be submitted until November 8, 2002.

(See Calendar of Events section for additional information)

**Agency Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad Street, Richmond, VA

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23230, telephone (804) 662-9911, FAX (804) 662-9114 or e-mail scottirussell@dhp.state.va.us.

**Basis:** Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

The specific statutory mandate for registration of pharmacy technicians is found in § 54.1-3321 of the Code of Virginia.

**Purpose:** While certain aspects of regulating the new occupation are already set in the Code of Virginia, amendments to 18 VAC 110-20 are necessary to establish the educational and testing criteria for registration of technicians that are essential to ensure that technicians are competent to work with the preparation of prescription drugs. While the pharmacist remains responsible for the work of technicians under his supervision, the board has an obligation to develop criteria for technician registration that are sufficient to provide for the health, safety and welfare of the public dependent on the accuracy and integrity of prescription drugs. Therefore, an applicant for registration is required to be trained in the knowledge and skills necessary to perform the technician tasks permitted by law and to pass an examination establishing minimal competence in that core knowledge area.

While the Code of Virginia permits persons enrolled in a pharmacy technician training program to engage in the acts restricted to a registered technician for the purpose of gaining practical experience, the regulations set a limitation on the length of time a person may work within a training program. The Code of Virginia also requires that regulations address continued competency for renewal of registration, so amendments were necessary to specify the number of hours of continuing education and the approved providers. Amendments to fees charged by the board were promulgated to provide an application fee, renewal fee and other miscellaneous fees as necessary to cover the anticipated administrative and disciplinary functions related to registration and practice of pharmacy technicians.

**Substance:** The substantive provisions in the amended regulations primarily involve setting criteria for training, examination and utilization of pharmacy technicians registered by the board. An applicant for registration must either provide evidence of current certification by the Pharmacy Technician Certification Board (PTCB) or complete a board-approved training program and pass a board-approved examination. To establish an approved training program, an entity must apply to the board and provide evidence that the curriculum will instruct in the applicable laws and regulations and in the tasks restricted to pharmacy technicians. Instructors are required to be licensed pharmacists, pharmacy technicians with one year of experience who are registered in Virginia or certified by PTCB, or other persons approved by the board. Pharmacies may permit a person to perform tasks that are restricted to registered technicians while that person is in a training program for no more than nine months without having that person registered. A pharmacist may monitor no more than two trainees at any one time and supervise no more than four persons, including both technicians and trainees.

Every pharmacy that employs technicians is required to maintain a site-specific training program and manual to teach such functions as proper use of equipment and computers and performing pharmacy calculations consistent with the pharmacy's practice. The examination must test entry-level competence, meet recognized test measurement standards, and be administered by an independent third party.

For renewal of registration, the technician must attest to having five contact hours of continuing education in an approved CE program. Provisions are made for extensions and exemptions of requirements and for maintenance of documentation. Fees are set at \$25 for an application or annual renewal and \$150 for approval of a training program.

**Issues:** The primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions: There are numerous factors that have increased workload and stress in pharmacies today including a significant increase in prescription volume, shortages in the pharmacist work pool, shrinking reimbursement for dispensed prescriptions, increased workload in processing prescriptions due to increased steps in processing insurance claims and increased numbers of patients participating in prescription payment plans, increased numbers of drugs in inventory, and greatly increased numbers of drugs in pharmacy inventories. These pressures have exposed many pharmacists to excessive workloads with greater risks for making dispensing errors. In a small percentage of pharmacies, new technology and robotics have been useful in addressing the problem, but in the vast majority of situations, especially retail pharmacies, the pharmacy is using the pharmacy technician to assist the pharmacist with the workload. In response to this need to handle the increasing workload, the board several years ago increased the ratio of pharmacist to technicians from 1:1 to 1:3, provided the technician held a national credential as assurance of minimal competence. It is estimated that as many as a third to a half of the technicians now hold that credential (PTCB). While this did prove helpful in some settings, there are not enough PTCB certified technicians to meet the demand. The PTCB examination is only administered three times a year and is a relatively difficult examination.

While there was a recognition of the need to allow pharmacists to supervise more technicians to handle workload, there was also a serious concern about the lack of training for some technicians and the absence of criteria for minimal competence as well as lack of accountability for the technician. Pharmacists were then and remain responsible for checking the final prescription product before it is dispensed, but a number of dispensing errors have been made by technicians and not caught by the checking pharmacist prior to dispensing.

For this reason, the General Assembly amended the Code of Virginia to require registration of technicians and mandated the board to establish educational, training and examination qualifications. The amended rules have set minimal criteria for training in an approved program and for passage of an examination in order to make registration accessible to most persons currently working in the pharmacy. There are several

advantages to the public. By requiring registration, the board will have the ability to hold the technician accountable for his actions and will be able to take action against the registration if warranted which will keep a technician who is impaired, incompetent, or otherwise not authorized to perform technician tasks from leaving one pharmacy and becoming employed by another. There will be consistent standards for training and testing providing greater assurance to the public that the persons working in the prescription department are knowledgeable in their tasks. Because of the pharmacist shortage and low reimbursements, hiring additional pharmacists is usually not an option for pharmacies with excessive workload. Pharmacies will benefit from being able to have one pharmacist supervise up to four technicians, thus increasing the capacity to provide quality pharmacy services without hiring additional pharmacists.

As with any restrictions in the ability to perform certain tasks, those restrictions may create temporary shortages in the workforce. A disadvantage to pharmacies may be higher wages demanded by registered technicians although most pharmacies already offer incentive programs with higher wages to a technician who obtains PTCB certification, because performance and retention improves. Pharmacies may have employees who are currently performing technician tasks who are not able to qualify for registration or who choose not to meet criteria for registration. These employees will not be able to continue to perform technician duties, but may be retained to perform clerical tasks. Pharmacies may have some expenses associated with costs of training personnel to meet criteria for registration, or in recruiting persons who already meet requirements.

The primary advantages and disadvantages to the agency or the Commonwealth: There are no discernable advantages or disadvantages to the agency or the Commonwealth.

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

Summary of the proposed regulation. Pursuant to §§ 54.1-3321 and 54.1-2400 of the Code of Virginia, the Board of Pharmacy proposes to establish (i) requirements for pharmacy technician registration, (ii) pharmacy technician registration fees, and (iii) criteria for approval of pharmacy technician training programs.

Estimated economic impact. According to the Department of Health Professions (department), in recent years various

pressures<sup>1</sup> have significantly added to pharmacists' workloads. Most pharmacies use pharmacy technicians to assist pharmacists with their increasing responsibilities. Under current regulations, pharmacy technicians are not required to obtain registration, certification, licensure, or any other similar sanctioning from the Commonwealth. Concerns about the risks of dispensing errors, which can cause serious adverse health outcomes,<sup>2</sup> spurred the General Assembly to amend the Code to require pharmacy technician registration to help assure minimum competency. Section 54.1-3321 of the Code of Virginia states "No person shall perform the duties of a pharmacy technician without first being registered as a pharmacy technician with the Board." The Code further details what constitutes the duties of a pharmacy technician. The board proposes to establish requirements for pharmacy technician registration, pharmacy technician registration fees, and criteria for approval of pharmacy technician training programs in order to comply with the Code.

The proposed regulations require that in order to be registered as a pharmacy technician, applicants must either hold current certification from the national Pharmacy Technician Certification Board (PTCB) or complete a board-approved training program and pass a board-approved examination. The department estimates that from one third to one half of technicians currently hold the PTCB certification. To obtain PTCB certification, a comprehensive examination must be passed. According to the department, the exam includes some difficult subject matter that may be of interest to pharmacy technicians, but which may not be necessary to perform the tasks that pharmacy technicians are permitted to conduct under Virginia law. The PTCB exam has a \$105 fee. In order to maintain certification, technicians must complete 20 hours of continuing education every two years with one hour in pharmacy law and pay a re-certification fee of \$25.

Major retail pharmacy chains already offer formalized training to their employees.<sup>3</sup> According to the department, most or all of these training programs are likely to be approved by the board. Other pharmacies may also choose to put together an in-house training program for approval before the board. The application fee for board approval of a training program is \$150. Individuals wishing to obtain the training required for the Virginia pharmacy technician registration may also obtain training from pharmacy schools or community colleges. For example, J. Sargeant Reynolds offers 19 hours of course work for pharmacy technicians at a cost of \$42 per hour. Since there are no requirements for a prescribed number of educational hours in the proposed regulations, it may not be necessary to take all 19 hours; but if a student chose to do so, the total cost would be \$798. The exam fee will depend on

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<sup>1</sup> The department cites (i) significant increases in prescription volume, (ii) shortages in the pharmacist work pool, (iii) shrinking reimbursement for dispensed prescriptions, (iv) increased workload in processing prescriptions due to increased steps in processing insurance claims, (v) increased numbers of patients participating in prescription payment plans, (vi) increased numbers of drugs in inventory, and (vii) greatly increased numbers of drugs in pharmacy inventories as putting increased pressure on pharmacists and increasing the likelihood of errors.

<sup>2</sup> According to the Department of Health Professions, at least one death in Virginia has been linked to a dispensing error by a pharmacy technician.

<sup>3</sup> Source: Department of Health Professions.

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future contracts developed for administration by one or more outside vendors, but is anticipated by the board to be less than the \$105 fee charged for the PTCB exam.

Both the initial registration fee and annual renewal fees are \$25. Pursuant to § 54.1-3321 of the Code of Virginia, the board also proposes to establish continuing education requirements as a condition of registration renewal. Specifically, technicians must complete a minimum of five contact hours of approved continuing education for each annual renewal registration. According to the department, numerous free classes pertaining to pharmacy technicians already exist and would be accepted for continuing education credit. Some of the courses are online and thus would save on transportation costs.

The costs of the proposed registration requirements include the annual registration fees, exam fees, training expenses, and the training program approval fees described above. Time spent on continuing education will also be a new required expense for technicians. In addition, the prohibition against individuals working as pharmacy technicians without Virginia registration will decrease the supply of individuals legally qualified to work as pharmacy technicians. The decreased supply will likely increase the market wages for technicians, increasing costs for pharmacies. The reduced supply may also lead to reduced staffing, which may increase dispensing errors due to rushed or tired staff.

The benefits of the proposed registration requirements include a potential decrease in the probability that dispensing errors are made. Though it does seem likely that prohibiting individuals from working as technicians who fail to prove knowledgeable in areas deemed necessary for safe dispensing will reduce the probability of dispensing errors, no evidence or research has been provided to demonstrate to what extent, if any, that dispensing mistakes will be reduced. Thus, without any data reflecting the impact of registration requirements on dispensing errors, an accurate determination on whether the potential benefits of the registration requirements exceed the costs cannot be made.

Under the current regulations a pharmacist may supervise up to three technicians if all three have PTCB certification; otherwise, the pharmacist may only work with one technician at a time. Under the proposed regulations a pharmacist may work with up to four technicians at a time. Of course, all four will need to hold Virginia registration. According to the department, it is very unusual for pharmacies to require four technicians at one time. Thus, increasing the maximum number of technicians per pharmacist will have little affect. But, to the extent that obtaining registration through completing a board-approved training program and passing a board-approved examination is easier than obtaining PTCB certification, it may become easier for pharmacies to find legally qualified individuals to fill technician positions when two or three are desired per pharmacist.

It appears that when one technician per pharmacist is desired, the supply of legally qualified technicians is reduced under the proposed regulations. (Registration is required under the proposed regulations, but not the current regulations.) When two, three, or four technicians per pharmacist are desired, to the extent that obtaining registration through completing a

board-approved training program and passing a board-approved examination is easier than obtaining PTCB certification, the supply of legally qualified technicians is increased under the proposed regulations. Considering that according to current estimates (see next section) the number of technicians in the Commonwealth is less than the number of pharmacists, the one technician per pharmacist is likely most relevant. Thus, the net effect of the proposed changes will likely be a constriction of supply of technicians with resulting upward pressure on wages.

Businesses and entities affected. The proposed regulations affect the 1,525 pharmacies, 5,485 pharmacists, and 5,000 pharmacy technicians in the Commonwealth,<sup>4</sup> as well as consumers of pharmaceuticals.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. As explained above, the proposed regulations will likely reduce the supply of legally qualified technicians and increase the market wages of those that remain or enter the profession.

Effects on the use and value of private property. The proposed regulations will to varying degrees, depending on current technician hiring practices, increase costs for pharmacies. The increased costs will have some negative impact on the value of those businesses. In most cases the impact will be relatively small compared to the overall business valuation.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 110-20 for registration of pharmacy technicians.

## Summary:

*The proposed changes add miscellaneous licensing fees for pharmacy technicians. Other amendments establish criteria for the training program, examination and evidence of continued competency for registration of technicians. Further, amendments specify that current certification from the Pharmacy Technician Certification Board qualifies a person for registration.*

## **18 VAC 110-20-20. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Fee for initial pharmacist licensure.

1. The application fee for a pharmacist license shall be \$50.
2. The fees for taking all required examinations shall be paid directly to the examination service as specified by the board.
3. The application fee for a person whose license has been revoked or suspended indefinitely shall be \$300.

C. Renewal of pharmacist license.

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<sup>4</sup> Number estimates provided by the Department of Health Professions.



1. The annual fee for renewal of a pharmacist license shall be \$50.
2. The annual fee for renewal of an inactive pharmacist license shall be \$35.
3. If a pharmacist fails to renew his license within the Commonwealth by the renewal date, he must pay the back renewal fee and a \$25 late fee within 60 days of expiration.
4. Failure to renew a pharmacist license within 60 days following expiration shall cause the license to lapse and shall require the submission of a reinstatement application, payment of all unpaid renewal fees, and a delinquent fee of \$50.

#### D. Other licenses or permits.

1. The following fees shall be required upon submission of a new facility application, change of ownership of an existing facility, or annual renewal:

a. Pharmacy permit	\$200
b. Permitted physician to dispense drugs	\$200
c. Nonrestricted manufacturing permit	\$200
d. Restricted manufacturing permit	\$150
e. Wholesale distributor license	\$200
f. Warehouse permit	\$200
g. Medical equipment supplier permit	\$150
h. Licensed humane society permit	\$10

2. The following fees shall be required for facility changes:

a. Application for a change of the pharmacist-in-charge	\$25
b. Application for a change of location or a remodeling which requires an inspection	\$100

3. The following fees shall be required for late renewals or reinstatement.

- a. If a licensee fails to renew a required license or permit prior to the expiration date, a \$25 late fee shall be assessed.
- b. If a required license or permit is not renewed within 60 days after its expiration, the license or permit shall lapse, and continued practice or operation of business with a lapsed license or permit shall be illegal. Thereafter, reinstatement shall be at the discretion of the board upon submission of an application accompanied by all unpaid renewal fees and a delinquent fee of \$50.

#### E. Controlled substances registration.

1. The annual fee for a controlled substances registration as required by § 54.1-3422 of the Code of Virginia shall be \$20.
2. If a registration is not renewed within 60 days of the expiration date, the back renewal fee and a \$10 late fee shall be paid prior to renewal.

3. If a controlled substance registration has been allowed to lapse for more than 60 days, all back renewal fees and a \$25 delinquent fee must be paid before a current registration will be issued. Engaging in activities requiring a controlled substance registration without holding a current registration is illegal and may subject the registrant to disciplinary action by the board. Reinstatement of a lapsed registration is at the discretion of the board and may be granted by the executive director of the board upon completion of an application and payment of all fees.

#### F. Other fees.

1. A request for a duplicate wall certificate shall be accompanied by a fee of \$25.
2. The fee for a returned check shall be \$15.
3. The fee for board approval of an individual CE program is \$100.
4. The fee for board approval of a robotic pharmacy system shall be \$150.
5. The fee for a board-required inspection of a robotic pharmacy system shall be \$150.

#### G. Approval of new process or procedure in pharmacy.

1. The fee for filing an application for board review of a new process, procedure or pilot project in pharmacy pursuant to § 54.1-3407.2 of the Code of Virginia shall be \$250. The initial application shall specify each pharmacy location in which the pilot is to be implemented.
2. The fee for an inspection of a pilot process or procedure, if required by the informal conference committee, shall be \$150 per location.
3. If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall be paid by the applicant.
4. The fee for a change in the name of the pharmacist responsible for the pilot program shall be \$25.

#### 5. Continued approval.

- a. In the initial order granting approval, the informal conference committee shall also set an approval period with a schedule for submission of reports and outcome data. The frequency for submission of required reports shall not exceed four times per year.
- b. The committee shall determine the appropriate fee for continued approval, which shall be based on the requirements for review and monitoring but which shall not exceed \$200 per approval period.

#### H. Pharmacy technicians.

1. *The application fee for initial registration as a pharmacy technician is \$25.*
2. *The application fee for a person whose registration has been suspended or revoked is \$125.*

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# Proposed Regulations

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3. The annual fee for renewal of a pharmacy technician registration is \$25.

4. If a pharmacy technician fails to renew his registration within the Commonwealth by the renewal date, he must pay the back renewal fee and a \$10 late fee within 60 days of expiration.

5. Failure to renew a pharmacy technician registration within 60 days following expiration shall cause the registration to lapse and shall require the submission of a reinstatement application, payment of all unpaid renewal fees, and a delinquent fee of \$25.

6. The application fee for approval of a training program for pharmacy technicians shall be \$150.

## PART III.

### REQUIREMENTS FOR PHARMACY TECHNICIAN REGISTRATION.

#### **18 VAC 110-20-101. Application for registration as a pharmacy technician.**

A. Any person wishing to apply for registration as a pharmacy technician shall submit the application fee and an application on a form approved by the board.

B. In order to be registered as a pharmacy technician, an applicant shall provide evidence of the following:

1. Satisfactory completion of an approved training program, and
2. A passing score on a board-approved examination.

C. In lieu of the requirements of subsection B of this section, an applicant may provide evidence of current PTCB certification.

#### **18 VAC 110-20-102. Criteria for approval for training programs.**

A. Any person wishing to apply for approval of a pharmacy technician training program shall submit the application fee and an application on a form approved by the board and meet the criteria established in this section.

B. The curriculum of a training program for pharmacy technicians shall include instruction in applicable laws and regulations and in the tasks that may be performed by a pharmacy technician to include the following or any other task restricted to pharmacy technicians in regulation:

1. The entry of prescription information and drug history into a data system or other recordkeeping system;
2. The preparation of prescription labels or patient information;
3. The removal of the drug to be dispensed from inventory;
4. The counting, measuring, or compounding of the drug to be dispensed;
5. The packaging and labeling of the drug to be dispensed and the repackaging thereof;
6. The stocking or loading of automated dispensing devices or other devices used in the dispensing process; and

7. The acceptance of refill authorization from a prescriber or his authorized agent provided there is no change to the original prescription.

C. Instructors shall be either (i) a pharmacist with a current unrestricted license in any jurisdiction in the United States; (ii) a pharmacy technician with at least one year of experience performing technician tasks who holds a current unrestricted registration in Virginia or a current PTCB certification; or (iii) other person approved and deemed qualified by the board to be an instructor.

D. The length of the program shall be sufficient to prepare a program participant to sit for the board-approved examination and demonstrate entry-level competency.

E. The program shall maintain records of program participants either on-site or at another location where the records are readily retrievable upon request for inspection. Records shall be maintained for two years from date of completion or termination of program.

#### **18 VAC 110-20-103. Examination.**

A. The board shall approve one or more examinations to test entry-level competency for pharmacy technicians. In order to be approved, a competency examination shall be developed in accordance with and meet the recognized acceptable test measurement standards of the Joint Technical Standards for Education and Psychological Testing (American Psychological Association, current edition), and shall be administered by an independent third party.

B. The board may contract with an examination service for the development and administration of a competency examination.

C. The board shall determine the minimum passing standard on the competency examination.

#### **18 VAC 110-20-104. Address of record.**

It shall be the duty and responsibility of each pharmacy technician to inform the board of his current address. A pharmacy technician shall notify the board in writing of any change of an address of record within 30 days. All notices required by law or by these rules and regulations are deemed to be legally given when mailed to the address given and shall not relieve the registrant of the obligation to comply.

#### **18 VAC 110-20-105. Renewal and reinstatement of registration.**

A. Pharmacy technician registrations expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee and renewal form. A pharmacy technician newly registered on or after July 1 shall not be required to renew that registration until December 31 of the following year. Failure to receive the application for renewal shall not relieve the pharmacy technician of the responsibility for renewing the registration by the expiration date.

B. A pharmacy technician who fails to renew his registration by the expiration date has 60 days in which to renew by submission of the renewal and late fee, renewal form, and proof of required continuing education.

C. Failure to renew within the 60 days of expiration shall cause his registration to lapse. Reinstatement may be granted by the executive director of the board upon completion of an application for reinstatement of registration, the payment of all back renewal fees and a delinquent fee, and submission of original continuing education certificates. Conducting tasks associated with a pharmacy technician with a lapsed registration shall be illegal and may subject the registrant to disciplinary action by the board.

D. A person who fails to reinstate a pharmacy technician registration within five years of expiration, shall not be eligible for reinstatement and shall repeat an approved training program and repeat and pass the examination, or hold current PTCB certification, before applying to be reregistered.

**18 VAC 110-20-106. Requirements for continued competency.**

A. A pharmacy technician shall be required to have completed a minimum of 0.5 CEUs or five contact hours of approved continuing education for each annual renewal of registration. Hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing education program shall meet the requirements as set forth in subsection B of 18 VAC 110-20-90.

C. Upon written request of a pharmacy technician, the board may grant an extension of up to one year in order for the pharmacy technician to fulfill the continuing education requirements for the period of time in question. The granting of an extension shall not relieve the pharmacy technician from complying with current year requirements. Any subsequent extension shall be granted for good cause shown.

D. Original certificates showing successful completion of continuing education programs shall be maintained by the pharmacy technician for a period of two years following the renewal of his registration. The pharmacy technician shall provide such original certificates to the board upon request in a manner to be determined by the board.

**18 VAC 110-20-111. Pharmacy technicians.**

A. Every pharmacy that employs or uses pharmacy technicians shall maintain a site-specific training program and manual for training pharmacy technicians to work at that pharmacy. The program shall include training consistent with that specific pharmacy practice to include, but not be limited to, training in proper use of site-specific computer programs and equipment, proper use of other equipment used at the pharmacy in performing technician duties, and pharmacy calculations consistent with the duties at that pharmacy.

B. Every pharmacy shall maintain documentation of successful completion of the site specific training program for each pharmacy technician for the duration of the employment and for a period of two years from date of termination of employment. Documentation for currently employed pharmacy technicians shall be maintained on site or at another location where the records are readily retrievable upon request for inspection. After employment is terminated, such documentation may be maintained at an off-site location where it is retrievable upon request.

C. Every pharmacy that employs or uses a person enrolled in an approved pharmacy technician training program pursuant to § 54.1-3321 D of the Code of Virginia shall allow such person to conduct tasks restricted to pharmacy technicians for no more than nine months without that person becoming registered as a pharmacy technician with the board. Every pharmacy using such a person shall have documentation on site and available for inspection showing that the person is currently enrolled in an approved training program.

PART III IV.  
PHARMACIES.

PART IV V.  
NUCLEAR PHARMACIES.

PART V VI.  
DRUG INVENTORY AND RECORDS.

PART VI VII.  
PRESCRIPTION ORDER AND DISPENSING STANDARDS.

**18 VAC 110-20-270. Dispensing of prescriptions; acts restricted to pharmacists; certification of completed prescriptions; supervision of pharmacy technicians.**

A. ~~The following acts shall be performed by a pharmacist, or by a pharmacy intern provided a method for direct monitoring by the pharmacist of such acts is provided:~~

~~1. The evaluation of a prescription for its completeness, validity, safety and appropriateness of drug therapy in conformity with provisions of §§ 54.1-3303, 54.1-3319, 54.1-3408, 54.1-3408.01, 54.1-3408.02, 54.1-3408.1, and 54.1-3410 of the Code of Virginia and to current practices in pharmacy.~~

~~2. The receiving of an oral prescription from a practitioner or his authorized agent and the transcribing of such oral or electronically transmitted prescription to hard copy or directly into a data processing system.~~

~~3. The personal supervision of the compounding of extemporaneous preparations.~~

~~4. The conducting of a prospective drug review as required by § 54.1-3319 of the Code of Virginia prior to the dispensing or refilling of any prescription.~~

~~5. The providing of drug information to the public or to a practitioner.~~

~~6. The communication with the practitioner regarding any changes in a prescription, substitution of the drug prescribed, drug therapy, or patient information.~~

~~7. The direct supervision of those persons assisting the pharmacist in the prescription department under the following conditions:~~

~~a. Only one person who is not a pharmacist may be present in the prescription department at any given time with each pharmacist for the purpose of assisting the pharmacist in preparing and packaging of prescriptions or for the purpose of requesting or receiving refill authorization provided there is no change from the original prescription. If the pharmacy is using persons who hold current certification from PTCB or any other~~

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# Proposed Regulations

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~~nationally recognized certifying body approved by the board, the ratio may be one pharmacist to three assistants.~~

~~b. In addition to the person or persons authorized in subdivision 7 a of this subsection, personnel authorized by the pharmacist may be present in the prescription department for the purpose of performing clerical functions, to include data entry of prescription and patient information into a computer system or a manual patient profile system.~~

*A. In addition to the acts restricted to a pharmacist in § 54.1-3320 A of the Code of Virginia, a pharmacist shall provide personal supervision of compounding of extemporaneous preparations by pharmacy technicians.*

*B. A pharmacist directly monitoring the activities of a person enrolled in an approved pharmacy technician training program who is performing the tasks restricted to a pharmacy technician prior to registration in accordance with § 54.1-3321 D of the Code of Virginia shall not monitor more than two such trainees at the same time, and at no time shall a pharmacist supervise more than four persons performing technician functions to include technicians and trainees.*

~~B. C.~~ After the prescription has been prepared and prior to the delivery of the order, the pharmacist shall inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of dispensing as a certification of the accuracy of, and the responsibility for, the entire transaction.

~~C. D.~~ If a pharmacist declines to fill a prescription for any reason other than the unavailability of the drug prescribed, he shall record on the back of the prescription the word "declined"; the name, address, and telephone number of the pharmacy; the date filling of the prescription was declined; and the signature of the pharmacist.

## ~~PART VIII~~ VIII.

### LABELING AND PACKAGING STANDARDS FOR PRESCRIPTIONS.

## ~~PART VIII~~ IX.

### STANDARDS FOR PRESCRIPTION TRANSACTIONS.

## ~~PART IX~~ X.

### COMPOUNDING STERILE PHARMACEUTICAL PRODUCTS.

## ~~PART X~~ XI.

### UNIT DOSE DISPENSING SYSTEMS.

## ~~PART XI~~ XII.

### PHARMACY SERVICES TO HOSPITALS.

## ~~PART XII~~ XIII.

### PHARMACY SERVICES TO LONG-TERM CARE FACILITIES.

## ~~PART XIII~~ XIV.

### OTHER INSTITUTIONS AND FACILITIES.

## ~~PART XIV~~ XV.

### EXEMPTED STIMULANT OR DEPRESSANT DRUGS AND CHEMICAL PREPARATIONS.

## PART XV XVI.

### MANUFACTURERS, WHOLESALE DISTRIBUTORS, WAREHOUSERS, AND MEDICAL EQUIPMENT SUPPLIERS.

## PART XVI XVII.

### CONTROLLED SUBSTANCES REGISTRATION FOR OTHER PERSONS OR ENTITIES.

**NOTICE:** The forms used in administering 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, are not being published due to the number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Board of Pharmacy, 6606 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

- Application for Registration as a Pharmacy Intern (rev. 12/98).
- Affidavit of Practical Experience, Pharmacy Intern (rev. 12/98).
- Application for Licensure as a Pharmacist by Examination (rev. 12/98).
- Application to Reactivate Pharmacist License (rev. 12/98).
- Application for Approval of a Continuing Education Program (rev. 3/99).
- Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 10/00).
- Application for License to Dispense Drugs (permitted physician) (rev. 11/98).
- Application for a Pharmacy Permit (rev. 4/00).
- Application for a Non-Resident Pharmacy Registration (rev. 12/98).
- Application for a Permit as a Medical Equipment Supplier (rev. 3/99).
- Application for a Permit as a Restricted Manufacturer (rev. 3/99).
- Application for a Permit as a Non-Restricted Manufacturer (rev. 3/99).
- Application for a Permit as a Warehouseman (rev. 3/99).
- Application for a License as a Wholesale Distributor (rev. 4/00).
- Application for a Non-Resident Wholesale Distributor Registration (rev. 3/99).
- Application for a Controlled Substances Registration Certificate (rev. 1/99).
- ~~Application for Controlled Substances Registration Certificate for Optometrists (rev. 12/98).~~
- License Renewal Notice and Application for Pharmacists (rev. 11/00).

License Renewal Notice and Application for Facilities (rev. 11/00).

Application to Reinstate a Pharmacist License (rev. 3/99).

Application for a Permit as a Humane Society (rev. 3/99).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 12/98).

Closing of a Pharmacy (rev. 3/99).

Application for Approval of a Robotic Pharmacy System (eff. 8/00).

Notice of Inspection Fee Due for Approval of Robotic Pharmacy System (eff. 8/00).

Application for Approval of an Innovative (Pilot) Program (eff. 1/01).

*Application for Registration as a Pharmacy Technician (eff. 8/02).*

*Application for Approval of a Pharmacy Technician Training Program (eff. 8/02).*

VA.R. Doc. No. R02-7; Filed August 7, 2002, 12:14 p.m.

## BOARD OF PSYCHOLOGY

**Title of Regulation: 18 VAC 125-20. Regulations Governing the Practice of Psychology (amending 18 VAC 125-20-30, 18 VAC 125-20-120, 18 VAC 125-20-121, and 18 VAC 125-20-130).**

**Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.**

**Public Hearing Date: October 8, 2002 - 9:45 a.m.**

Public comments may be submitted until November 8, 2002.

(See Calendar of Events section for additional information)

**Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.**

**Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations and levy fees.**

The specific statutory mandate for an increase in fees is found in § 54.1-113 of the Code of Virginia.

**Purpose: Section 54.1-113 of the Code of Virginia requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures, and it has been in a deficit since 1998. It is projected that by the close of the 2000-2002 biennium, the deficit will have grown to (\$146,872) and that the deficit will continue through the next biennium. Since the fees from**

licensees have not been sufficient funds to pay operating expenses for the board, a fee increase is essential.

The purpose of the proposed amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the board. Without adequate funding, the licensing of practitioners and registration of residencies to provide training for those seeking to become psychologists could be delayed. Sufficient funding is essential to continue the investigation of complaints and disciplinary proceedings against practitioners who are accused of substandard care, sexual exploitation or other violations of law and regulation in order to protect the public health and safety.

**Substance: Section 30 is being amended to comply with a statutory mandate for the board to provide sufficient funding to cover expenses related to application approval, licensing, investigations and disciplinary proceedings. The renewal schedule changes from biennial to annual with the fee for clinical psychologists, applied psychologists and school psychologists increased from \$225 each biennium to \$140 per year and for school psychologists-limited from \$100 biennially to \$70 annually. There would also be a one-time renewal fee due by June 30, 2003, to reduce the deficit so the board could begin to bring its revenue and expenditures into balance. Fees for late renewal and inactive licensure would also be increased proportionately. Application fees and other miscellaneous fees are not changed.**

Other sections are amended to reflect the change from a biennial to an annual renewal so the renewal schedule will be set on a fixed date of June 30 rather than a rolling renewal based on the birth month of the licensees. Regulations for continuing education are amended to require at least 14 hours each year (rather than 28 each biennium) with a minimum of 1.5 hours in professional ethics, standards of practice or laws governing the practice of psychology. Regulations for reinstatement are amended to allow late renewal within one renewal cycle, for one year rather than two, after which a licensee must be reinstated.

**Issues: While fee increases proposed by the Board of Psychology should have no specific disadvantage to the consuming public, there is some concern that the number of psychologists is dropping. According to persons in the profession, there are several causes for the decrease in supply of psychologists, especially clinical psychologists, relating primarily to difficulty faced in getting reimbursements from third-party payors and the prevalence of similar professions who provide counseling and therapy. In some states, clinical psychologists have been granted prescribing privileges, which would distinguish them from other nonmedical mental health providers, but there has been no move to do so in Virginia thus far. While the increased fee will not enhance the prospects for increasing the number of licensees, the board does not believe that licensure fees alone will result in a reduction in the number of applicants for licensure or the number of licensed persons available to provide psychological services to the public. It is also not anticipated that the proposed fee increases will have any effect on fees charged to consumers.**

There would be disadvantages to the public if the board took no action to address its deficit by increasing its fees to cover

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# Proposed Regulations

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expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of residencies. Potentially, the most serious consequence would be a reduction in or reprioritization of disciplinary cases handled by the department and the board. There could be delays in adjudicating cases of substandard practice or sexual exploitation, resulting in potential danger to patients in the Commonwealth.

Practitioners licensed by the board will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the board would be unacceptable to applicants, residents, licensees and the general public. As a special-fund agency, renewal fees pay the vast majority of the expenses of board operations, which include investigation of complaints, adjudication of disciplinary cases, review and approval of applicants, verification of licensure and education to other jurisdictions and entities, and communications with licensees about current practice and regulation.

As is stated above, the consequence of not increasing fees of the board would be a reduction in services and staff, resulting in delays in licensing, reductions or delays in the cases investigated and brought through administrative proceedings to a hearing before the board. The fees charged to applicants and licensees solely fund the board and the Department of Health Professions. If higher fees are not adopted, the agency would have to cut its staff, both within the Board of Psychology and within other divisions of the Department of Health Professions.

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

Summary of the proposed regulation. The proposed regulation increases various fees paid by licensed psychologists to the Board of Psychology. The purpose of these fee increases is to bring the board into compliance with the board's interpretation of § 54.1-113 of the Code of Virginia. Section 54.1-113 requires all regulatory boards under the Department of Health Professions to revise their fee schedules if, after the close of any biennium, there is more than a 10 percent difference between revenues and expenditures. The proposed fee changes are as follows:

Clinical Psychologists, Applied Psychologists, School Psychologists

1. The renewal fee for an active license will change from \$225 biennially to \$140 annually;
2. Renewal of an inactive license will change from \$115 biennially to \$70 annually;
3. The penalty for late renewal of a license will change from \$80 to \$50; and
4. A one-time debt reduction fee in 2003 of \$50 for active licensees and \$25 for inactive licensees will be charged.

## School Psychologists-Limited

1. The renewal fee for an active license will change from \$100 biennially to \$70 annually;
2. Renewal of an inactive license will change from \$50 biennially to \$35 annually;
3. The penalty for late renewal of a license will change from \$35 to \$25; and
4. A one-time debt reduction fee in 2003 of \$25 for active licensees and \$15 for inactive licensees will be charged.

The proposed regulation also revises references to the renewal due date, late renewals, and continuing education requirements to reflect the change from a biennial to an annual renewal cycle.

Estimated economic impact. For the past several years, expenditures of the Board of Psychology have exceeded revenue, in spite of a fee increase in 1999. The agency cites increases in staff salaries and benefits, expenses associated with new data systems and the health practitioner intervention program, a delay in the previous fee increase, and declines in the number of licensees, as factors contributing to the rising expenditures. Under the current fee structure, the Board of Psychology projects a deficit of \$160,000 for the 2002-2004 biennium.<sup>1</sup> The level of the proposed fee increases is based on revenue and expenditure projections prepared by DHP for the Board of Psychology. The proposed amounts were selected such that projected revenues would be sufficient to cover projected expenditures but would not result in anything more than a modest surplus.

The effect of the new fee schedule will be an increase in application and licensure costs for all psychologists licensed in Virginia. Specifically, renewal fees paid by psychologists will increase by approximately \$60,000 per year. The one-time debt reduction fee will generate approximately \$110,000 in 2003. According to DHP, the proposed fee increases are necessary to cover the administrative and disciplinary activities of the Board of Psychology. Sufficient funding is essential to prevent a delay in application processing, license renewals, and the investigation of complaints and disciplinary proceedings against practitioners who are accused of substandard care or violations of law and regulation, in order to protect the public health and safety of recipients of psychology services in Virginia.

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<sup>1</sup> This figure reflects the difference of the projected FY2002-2004 expenditures (\$653,159) and the projected revenue under the current fee structure (\$640,450) added to the beginning balance of -\$146,872.

Although the total increase in compliance costs is substantial, from an individual perspective these fees represent a very small portion of the total cost of entry into the psychology profession (e.g., the *total* cost of entry includes all education and training expenses). The recent decline in the number of psychologists, especially clinical psychologists, is of concern. However, according to persons in the profession, the root causes of this decline include the difficulty faced in getting reimbursements from third-party payers and the prevalence of similar professions who provide counseling and therapy. While the increased fee will not enhance the prospects for increasing the number of licensees, the board does not believe that licensure fees alone will result in a reduction in the number of applicants for licensure or the number of licensed persons available to provide clinical psychology services to the public. The proposed fee changes, therefore, are unlikely to have a significant effect on the decision of individuals to enter or exit this profession. For this reason, the proposed regulatory changes should have no economic consequences beyond the anticipated increase in licensing costs.

Businesses and entities affected. There are currently 2,035 clinical psychologists, 54 applied psychologists, 112 school psychologists, and 27 school psychologists-limited licensed by the Board of Psychology in Virginia.

Localities particularly affected. The proposed fee changes will not affect any particular localities since they apply statewide.

Projected impact on employment. Since the application and licensure renewal fees represent a very small portion of the total cost of entry into the psychology profession, no significant impact on employment in Virginia is expected.

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Psychology concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 125-20 for an increase in fees charged to licensees.

**Summary:**

*Amendments to the regulation increase certain fees for the regulants of the board, including clinical psychologists, applied psychologists, school psychologists and school psychologists-limited, as necessary to provide sufficient funding for the licensing and disciplinary functions of the board. The renewal fee for clinical psychologists, applied psychologists, and school psychologists increases from \$225 each biennium to \$140 per year and for a school psychologist-limited from \$100 biennially to \$70 annually. There is also a one-time debt-reduction fee in 2003 to reduce the deficit so the board can begin to bring its revenue and expenditures into balance.*

**18 VAC 125-20-30. Fees required by the board.**

A. The board has established fees for the following:

	Applied psychologists, Clinical psychologists, School psychologists	School psychologists- limited
1. Registration of residency (per residency request)	\$50	
2. Add or change supervisor	\$25	
3. Application processing and initial licensure	\$200	\$85
4. <del>Biennial</del> <i>Annual</i> renewal of active license	<del>\$225</del> 140	<del>\$100</del> 70
5. <del>Biennial</del> <i>Annual</i> renewal of inactive license	<del>\$145</del> 70	<del>\$50</del> 35
6. Late renewal	<del>\$80</del> 50	<del>\$35</del> 25
7. Verification of license to another jurisdiction	\$25	\$25
8. Duplicate license	\$5	\$5
9. Additional or replacement wall certificate	\$15	\$15
10. Returned check	\$25	\$25
11. Reinstatement of a lapsed license	\$270	\$125
12. Reinstatement following revocation or suspension	\$500	\$500
13. <i>One-time debt reduction due on June 30, 2003, for holders of an active license</i>	\$50	\$25
14. <i>One-time debt reduction due on June 30, 2003, for holders of an inactive license</i>	\$25	\$15

B. The fee for review of a continuing education provider seeking board approval shall be \$200.

C. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

D. Examination fees shall be established and made payable as determined by the board.

**18 VAC 125-20-120. Biennial Annual renewal of licensure.**

*Effective January 1, 2004, every license issued by the board shall expire on the last day of the licensee's birth month of each even-numbered year on June 30.*

1. Every licensee who intends to continue to practice shall, on or before the expiration date of the license, submit to the board a license renewal application on forms supplied by

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# Proposed Regulations

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the board and the renewal fee prescribed in 18 VAC 125-20-30.

2. Beginning with the 2004 renewal, licensees who wish to maintain an active license shall pay the appropriate fee and verify on the renewal form compliance with the continuing education requirements prescribed in 18 VAC 125-20-121. First-time licensees are not required to verify continuing education on the first renewal date following initial licensure.

3. A licensee who wishes to place his license in inactive status may do so upon payment of the fee prescribed in 18 VAC 125-20-30. No person shall practice psychology in Virginia unless he holds a current active license. An inactive licensee may activate his license by fulfilling the reactivation requirements set forth in 18 VAC 125-20-130.

4. Licensees shall notify the board office in writing of any change of address. Failure of a licensee to receive a renewal notice and application forms from the board shall not excuse the licensee from the renewal requirement.

## **18 VAC 125-20-121. Continuing education course requirements for renewal of an active license.**

A. After January 1, 2004, licensees shall be required to have completed a minimum of 14 hours of board-approved continuing education courses each year for ~~a total of 28 hours for each biennial~~ *annual* licensure renewal. A minimum of ~~three~~ 1.5 of these hours shall be in courses that emphasize the ethics, standards of practice or laws governing the profession of psychology in Virginia.

B. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the practice of psychology and is provided by a board-approved provider that meets the criteria specified in 18 VAC 125-20-122. At least half of the required hours shall be earned in face-to-face educational experiences.

C. Courses must be directly related to the scope of practice in the category of licensure held. Continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment and care of patients with moderate and severe mental disorders.

D. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

E. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

## **18 VAC 125-20-130. Late renewal; reinstatement; reactivation.**

A. A person whose license has expired may renew it within ~~two years~~ *one year* after its expiration date by paying the penalty fee prescribed in 18 VAC 125-20-30 and the license renewal fee for the ~~biennium~~ *year* the license was not renewed.

B. A person whose license has not been renewed for ~~two years~~ *one year* or more and who wishes to resume practice shall:

1. Present evidence to the board of having met all applicable continuing education requirements equal to the number of years the license has lapsed, not to exceed four years;

2. Pay the reinstatement fee as prescribed in 18 VAC 125-20-30; and

3. Submit verification of any professional certification or licensure obtained in any other jurisdiction subsequent to the initial application for licensure.

C. A psychologist wishing to reactivate an inactive license shall submit the renewal fee for active licensure minus any fee already paid for inactive licensure renewal, and document completion of continued competency hours equal to the number of years the license has been inactive, not to exceed four years.

VA.R. Doc. No. R02-25; Filed August 7, 2002; 12:15 p.m.

## **REAL ESTATE BOARD**

Title of Regulation: **18 VAC 135-60. Common Interest Community Management Information Fund Regulations (adding 18 VAC 135-60-10 through 18 VAC 135-60-60).**

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

Public Hearing Date: October 23, 2002 - 3 p.m.

Public comments may be submitted until 5 p.m. on November 11, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Karen W. O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or e-mail oneal@dpor.state.va.us.

Basis: The board's authority to promulgate regulations for the administration of the Common Interest Community Management Information Fund is found in § 55-530 C of the Code of Virginia, which provides the Real Estate Board with authority to prescribe regulations to accomplish the purposes of the statute.

Purpose: Chapter 958 of the 1993 Acts of the Assembly created the Common Interest Community Management Information Fund (the Fund), which was assigned to the Real Estate Board for administration and support. The Fund was established to be used by the board to "promote the improvement and more efficient operation of common interest communities through research and education." The 2001 General Assembly amended the statutes to include the establishment of the Community Association Liaison who is responsible for the administration of "the requirements of this chapter (Chapter 29 of Title 55) and serves as an information resource on issues relating to the governance, administration and operation of common interest communities, including the



laws and regulations relating thereto." These regulations will be the first set in place for the administration of the fund.

Implementing the requirement for an annual report filing fee is essential to protect the health, safety and welfare of citizens in two areas. First, moneys are used to educate association board members and residents to ensure that appropriate disclosures are made in accordance with statute when the property is sold. It is crucial that potential buyers understand the nature of the association and how being a member of the association impacts their rights. Second, the moneys are used to maintain a database of information on association officers and contact points, which is distributed to residents upon request.

Substance: Current estimates indicate that as many as one in seven individuals living in Virginia resides in a common interest community. A large number of those living in these communities are often not aware of the requirements of the various statutes involved in the day-to-day operation of the community. This includes the Condominium Act (§ 55-79.39 et seq. of the Code of Virginia), the Virginia Real Estate Cooperative Act (§ 55-424 et seq. of the Code of Virginia), and the Property Owners' Association Act (§ 55-508 et seq. of the Code of Virginia).

These regulations are necessary to implement the Acts of the 1993 General Assembly and administer the Common Interest Community Management Information Fund, as well as provide for the implementation of the Community Associations Liaison, mandated by the 2001 General Assembly. Both the Fund and the Liaison are mandated to protect the public health, safety, and welfare of the citizens of the Commonwealth by improving and enhancing the efficient operation of common interest communities through research and especially education.

Issues: The advantages to the public and the Commonwealth are that the regulations will permit compliance with the statutory intent to promote the improvement and more efficient operation of common interest communities through education and research. No disadvantages have been identified.

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

Summary of the proposed regulation. The Common Interest Community Management Information Fund (fund) was created by Acts of the 1993 General assembly (chapter 958) and assigned to the Real Estate Board (board) for administration and support. The fund was established to "promote the improvement and more efficient operation of common interest

communities through research and education." These regulations will be the first set in place for the administration of the fund.

Estimated economic impact. This proposed regulation describes the fund program, in minimal detail, as it has existed for several years. Condominium associations, cooperative associations, and property owners' associations are required to send an annual report listing the association's officers and contact information. The associations pay a \$25 annual fee that supports the fund.

The fund has been used to pay administrative costs for Department of Professional and Occupational Regulation (department) staff to provide information to the public concerning their rights under the law in regard to condominium associations, cooperative associations, and property owners' associations, as well as officer names and contact information for those organizations. The department responds to inquiries and sends informational literature to real estate agents and residents of condominium associations, cooperative associations, and property owners' associations.

The regulation states that "each annual report shall be on the form designated by the board or shall be a copy of the annual report filed with the State Corporation Commission." Thus, the required cost to associations will be the \$25 annual fee plus the time and cost of copying the annual report filed with the State Corporation Commission (or filling out the board's form) and sending it (as well as the \$25 fee) to the board. Members and prospective members of condominium associations, cooperative associations, and property owners' associations gain easier access to potentially useful information: their rights under the law in regard to the associations and officer names and contact information for those organizations. Easier access to officer contact information and specifics of the law may reduce costly misunderstandings. For example, a phone call to an association officer or to the department may clarify to an association resident what may or may not be built or conducted on their property. This may help prevent costly disputes or changes in construction that would have occurred without this information. No known data exists to quantify the value of the easier access to information. Thus, an accurate comparison of this benefit to the known costs cannot be made.

Businesses and entities affected. The proposed regulations affect the 3,500<sup>1</sup> condominium associations, cooperative associations, and property owners associations registered with the board, as well as residents and potential residents of condominiums, cooperatives, and properties within property associations.

Localities particularly affected. Localities with relatively high concentrations of condominium associations, cooperative associations, and property owners' associations are particularly affected by this regulation.

Projected impact on employment. The fund does not significantly affect employment outside of the department. The

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<sup>1</sup> Approximate figure provided by the Department of Professional and Occupational Regulation.

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# Proposed Regulations

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department employs one part-time employee to administer the fund.

Effects on the use and value of private property. On the one hand the \$25 fee plus small cost of sending the annual report increases the costs of maintaining the associations, which are in most cases paid for by their residents. On the other hand, residents have easier access to information, which may in some instances reduce costly misunderstandings, which is not easily quantifiable. Thus, it is not clear whether in net the value of properties increase or decrease. The easier access to information may decrease the instances where residents use their private property in a manner that runs afoul of association restrictions.

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

Summary:

*The proposal implements the provisions of the Common Interest Community Management Information Fund (§ 55-528 et seq.) of the Code of Virginia. The Act requires the payment of a fee into the Fund by Condominium, Cooperative, and Property Owners' Associations to be used to promote the improvement and more efficient operation of common interest communities through research and education.*

CHAPTER 60.  
COMMON INTEREST COMMUNITY MANAGEMENT  
INFORMATION FUND REGULATIONS.

**18 VAC 135-60-10. Purpose.**

*These regulations govern the exercise of powers granted to and the performance of duties imposed upon the Virginia Real Estate Board by §§ 54.1-2105.1, 55-79.93:1., 55-504.1, 55-516.1 and 55-528 of the Code of Virginia.*

**18 VAC 135-60-20. Annual report by association.**

*"Association" shall be as defined in § 55-528 of the Code of Virginia. Each association annual report shall be on the form designated by the board or shall be a copy of the annual report filed with the State Corporation Commission. Such report shall be accompanied by the fee established by this chapter.*

**18 VAC 135-60-30. Annual report by condominium association.**

*Within 30 days after the date of termination of the declarant control period, and every year thereafter, an association shall file an annual report with the board.*

**18 VAC 135-60-40. Annual report by cooperative association.**

*Within 30 days after the date of termination of the declarant control period, and every year thereafter, an association shall file an annual report with the board.*

**18 VAC 135-60-50. Annual report by property owners' association.**

*Within the meaning and intent of § 55-516.1 of the Code of Virginia:*

- 1. Within 30 days of the first anniversary of the creation of the association, and every year thereafter, an association shall file an annual report with the board.*
- 2. An association may select the month when it files its annual report with the State Corporation Commission to file the association annual report with the board.*

**18 VAC 135-60-60. Filing fee.**

*The filing fee for each annual report shall be \$25.*

<p><b>NOTICE:</b> The form used in administering 18 VAC 135-60, Common Interest Community Management Information Fund Regulations, is listed below and is published following the listing.</p>
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FORMS

*Real Estate Board Association Annual Report, POAANRPT (4/29/02).*

Commonwealth of Virginia  
Department of Professional and Occupational Regulation  
3600 West Broad Street  
Post Office Box 11066  
Richmond, Virginia 23230-1066  
(804) 367-8510



Real Estate Board  
ASSOCIATION ANNUAL REPORT  
Fee \$25.00

A check or money order payable to the *TREASURER OF VIRGINIA* must be mailed with this form.  
PLEASE TYPE OR PRINT.

- 1. Has this association previously filed with the Virginia Real Estate Board?  
 No     Yes    If yes, please enter your certificate number. **0 2 5 0** \_\_\_\_\_
- 2. Full Name of Association \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_
- 3a. Type of Association  
Property Owners  Residential Condominium  Cooperative
- b. Date Owners Association Created MMM-YY \_\_\_\_\_
- c. Number of Units/Lots \_\_\_\_\_
- 4. Declaration Recorded MMM-YY \_\_\_\_\_ CITY/COUNTY \_\_\_\_\_
- 5. Name of Contact Person \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Telephone & Facsimile Numbers ( ) - ( ) -  
Telephone Facsimile
- 6. Is the association self-managed?  OR under contract with a company?  If under contract, please answer 6a.
- 6a. Name of Management Company \_\_\_\_\_

**MEMBERS OF CURRENT BOARD OF DIRECTORS/OFFICERS**

<p>7. Name _____</p> <p>Title _____</p> <p>Address _____</p> <p>_____</p> <p>Name _____</p> <p>Title _____</p> <p>Address _____</p> <p>_____</p> <p>Name _____</p> <p>Title _____</p> <p>Address _____</p> <p>_____</p>	<p>Name _____</p> <p>Title _____</p> <p>Address _____</p> <p>_____</p> <p>Name _____</p> <p>Title _____</p> <p>Address _____</p> <p>_____</p> <p>Name _____</p> <p>Title _____</p> <p>Address _____</p> <p>_____</p>
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(If more space is needed, attach additional sheets of paper.)

Effective June 2002, a certificate's expiration date will be the last day of the month the certificate is due to expire. The certificate's expiration date will not change if payment is received and posted after the certificate's expiration date.

8. \_\_\_\_\_

	Signature	Title	Date
OFFICE USE ONLY	DATE	FEE	CLASS OF FEE
		<b>0 2 5 0</b>	LICENSE NUMBER
			ISSUE DATE

PQAANRPT (4/29/02)

Re: Est to o rd/PROP REG ANNUAL RPT

V.A.R. Doc. No. R02-9; Filed August 13, 2002, 3:32 p.m.

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# Proposed Regulations

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF MOTOR VEHICLES

**Title of Regulation: 24 VAC 20-70. Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card (REPEALING).**

**Statutory Authority:** § 46.2-203, 46.2-323, and 46.2-345 of the Code of Virginia.

**Public Hearing Dates:**

September 18, 2002 - 4:30 p.m. (Portsmouth)

September 19, 2002 - 4:30 p.m. (Richmond)

September 20, 2002 - 5:30 p.m. (Fairfax)

September 24, 2002 - 5:30 p.m. (Roanoke)

Public comments may be submitted until November 9, 2002.

(See Calendar of Events section for additional information)

**Agency Contact:** Maxine Carter, Special Assistant for Outreach, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1417, FAX (804) 367-6631, toll-free 1-800-435-5137 or e-mail dmvmwc@dmv.state.va.us.

**Basis:** Pursuant to § 46.2-203 of the Code of Virginia, the Department of Motor Vehicles (DMV) is authorized to adopt regulations necessary to carry out the laws administered by the department. Furthermore, pursuant to §§ 46.2-323 and 46.2-345 of the Code of Virginia, DMV may adopt regulations to determine the process by which applicants prove that they are residents of the Commonwealth. In each of the foregoing instances, the authority to promulgate regulations is permissive. Because the commissioner's authority to promulgate regulations in these matters is permissive, the commissioner also has, by implication, the authority to modify, amend, or repeal any regulations promulgated under such authority.

**Purpose:** The regulatory repeal will address the process and requirements by which driver's licenses, commercial driver's licenses, photo identification cards, learner's permits and temporary driver's permits (DMV credentials/documents) are issued by the Department of Motor Vehicles (DMV). The regulations that are the subject of repeal were implemented in 1994 in response to legislation that created a new residency requirement for obtaining a Virginia DMV credential/document and that permitted, but did not require, the agency to promulgate regulations pertaining to proof of residency. This action is necessary to address a threat to public safety and is essential to protect the safety and welfare of citizens of the Commonwealth and to protect and enhance national security.

This proposed repeal eliminates the requirement that DMV accept the Residency Certification Form (DL 51) when an applicant for a driver's license or identification card does not provide an acceptable document for proof of residency. The repeal also eliminates the list of acceptable documents for proof of residency. The repeal will allow the agency the

administrative discretion to determine what documents are acceptable and will enable the agency to develop the most effective process for the prevention of fraud.

This action is essential to protect public safety and welfare and enhance state and national security. The abuse and misuse of the application process by criminal organizations, facilitators and those who seek to carry out attacks against the United States and its citizens results in the issuance of driver's licenses and identification cards based upon false identity and address information and poses a threat to public health, safety and security by hindering the ability of DMV and law enforcement to accurately identify and locate individuals. These documents tend to be breeder documents and are used by the bearer to accumulate additional identification documents to further substantiate the individual's potentially fraudulent identity, residency and location. Furthermore, as long as documents that are subject to abuse are utilized in the driver's license and identification card application process, criminal organizations, facilitators and their agents will likely continue to utilize the process to victimize immigrants seeking such documentation. Hence, it is critical for DMV to have the authority to impose stringent and new requirements upon the application process and the documents used to prove residency. In particular, it is necessary for the agency to maintain the flexibility to discontinue use of a particular document should it become subject to widespread fraud and abuse, or should a determination be made that a document is no longer reliable as proof of Virginia residency.

**Substance:** DMV is proposing this regulatory action, which consists of the repeal of 24 VAC 20-70, including the regulations pertaining to proof of residency requirements for these DMV-issued documents, in order to address certain processes and requirements by which driver's licenses, commercial driver's licenses, photo identification cards, learner's permits and temporary permits are issued by DMV.

In recent years the process for obtaining a driver's license and photo identification card has been subjected to widespread abuse and fraud, primarily by an industry consisting of criminal organizations and facilitators who assist non-Virginia residents, many of them immigrants, in obtaining Virginia driver's licenses and identification cards by fraudulent means. In the recent past, these organizations and facilitators victimized immigrants by charging them large sums for assistance in obtaining driver's licenses and identification cards and by encouraging the immigrants to, in the application process, submit falsified Residency Certifications (DL-51s) that were executed by facilitators or their agents who attested to the false information contained therein. The magnitude of this abuse is evidenced by the trial and conviction of a facilitator in U.S. District Court. This facilitator had established a lucrative business in which thousands of victims were brought to Virginia from New Jersey, New York and Maryland on a routine basis in order to obtain a Virginia driver's license or identification card by fraudulent means. The primary defense put forth by the defendant in the case was the assertion that DMV promoted or encouraged this activity by virtue of the fact that the agency had created and permitted the use of these forms in the application process for photo identification cards and driver's licenses. Federal prosecutors in the case strongly encouraged elimination of the forms.

The DL-51 was eliminated by emergency regulatory action and eventually by legislation (HB 638 and SB 162), and hence, photo identification cards and driver's licenses issued after September 21, 2001, were less likely to be the product of fraudulent DL-51s. However, a significant percentage of the photo identification cards and driver's licenses in circulation today, which, according to regulations are acceptable as proof of residency, may have been issued based on potentially fraudulent documentation. In addition, as a result of a recent review by DMV of other documentation accepted in the application process as proof of residency, it has become apparent that several of these documents are likewise subject to abuse and fraud and may be targeted by criminal organizations and facilitators in lieu of the discontinued DL-51s. Accordingly, the permanent repeal of 24 VAC 20-70, including sections 10 through 50, is necessary to ensure that driver's licenses, commercial driver's licenses, photo identification cards, learner's permits and temporary driver's permits are henceforth issued under the strictest and most reliable standards possible.

Issues: The primary disadvantage/inconvenience of this regulatory action is to members of the public who seek Virginia driver's licenses, commercial driver's licenses, photo identification cards, learner's permits or temporary driver's permits. As a result of the statutory repeal of the Residency Certification (DL-51), applicants are required to provide documentary proof of Virginia residency. Further tightening of the proof of residency requirements by the repeal of regulations and rescission of the use of documents which are unreliable as proof of residency or subject to fraud and abuse may render it more difficult for applicants to prove residency.

The primary advantage of this regulatory action is directed at members of the general public. Tightening the requirements for obtaining Virginia DMV credentials/documents by increasing the standard for proving Virginia residency will serve to ensure that only those individuals who are lawfully entitled receive these credentials/documents. The agency will no longer be required to accept as proof of Virginia residency classes of documents that are unreliable as proof of residency or subject to fraud and abuse. Increasing the standards for issuing DMV credentials/documents will also help to ensure that those who would inflict harm upon the citizens of Virginia and the United States do not target the Commonwealth in order to obtain DMV-issued credentials/documents, which often serve as breeder documents and enable those individuals who obtain them to obtain various identity documents from other states. Enhancing the standards for issuing Virginia DMV credentials/documents by requiring applicants to prove that they are residents of Virginia by means of reliable documentation will help to ensure that applicants who do not live in this Commonwealth are not able to obtain a Virginia DMV credential/document as a means of obtaining other states' credentials.

The advantage to DMV of repealing the residency regulations would be to afford the agency the flexibility to expeditiously act in situations where classes of documents are targeted for fraud or abuse or otherwise are known to be unreliable as proof of Virginia residency. Repeal of the residency regulations may present a disadvantage to the agency, as elimination of proof of residency documents that required no

proof of Virginia residency for issuance could generate complaints from applicants because of the inconvenience and added complexity associated with proving residency. In response, the agency is evaluating, and will continue to evaluate, other documents that may be accepted as proof of residency, as well as methods of verifying residency, in order to ameliorate the impact on applicants and the agency.

Although emergency statutory repeal of the Residency Certification impacted other state entities, particularly the Department of Education, which issues documentation currently acceptable as proof of Virginia residency, it is not anticipated that repeal of the remainder of the residency regulations will have the same level of impact on such state agencies.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed changes will remove from the regulations the list of documents accepted by the Department of Motor Vehicles as proof of Virginia residency when issuing driver's licenses, learner's permits, commercial driver's licenses, and photo identification cards.

Estimated economic impact. Applicants of a Virginia driver's license, learner's permit, commercial driver's license, and photo identification card are required to submit proof of residency in addition to two identification documents and a proof of social security number to the Department of Motor Vehicles (the department).<sup>1</sup> These regulations contain a list of documents that are accepted by the department as proof of Virginia residency. The proof of residency document list in the current regulations include (i) a payroll check or payroll check stub, (ii) a voter registration card, (iii) a W-2 tax form, (iv) a bank statement, (v) a United States passport, (vi) a federal income tax return, (vii) a Virginia income tax return, (viii) a utility bill, (ix) a receipt of personal property taxes or real estate taxes paid to a locality in Virginia, (x) an automobile or life insurance policy, (xi) a school, college, or university transcript, (xii) a Virginia driver's license, a learner's permit, or an identification card, (xiii) a Virginia motor vehicle registration or a title, and (xiv) a residency certification.

The department indicates that the required documentation had been the target of significant abuse and fraud. For example,

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<sup>1</sup> Proof of social security number is required from photo identification card applicants only if they want to display it on the card.

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the residency certification was accepted as proof of residency in cases where the applicant did not have access to any of the other documents in the list. In these cases, an individual who possessed a Virginia driver's license, commercial driver's license, or photo identification card certified before a notary public that the applicant was also a Virginia resident. The department discovered that the residency document had been the subject of widespread abuse and fraud by criminal organizations and facilitators. These organizations and facilitators assisted individuals in obtaining driver's licenses and identification cards and encouraged these applicants to submit falsified residency certifications. In one of the recent cases in U.S. District Court, the facilitator was tried and convicted. The facilitator brought thousands of immigrants from New Jersey, New York, and Maryland routinely in order to obtain a Virginia driver's license or identification card by fraudulent means. Often, such individuals were able to be relicensed in their home states. Additionally, some of the hijackers involved in the terrorist attacks on September 11, 2001, were confirmed to have Virginia driver's licenses or identification cards obtained through fraudulent means. The department believes that other documents are also subject to abuse and fraud in lieu of the residency certification especially after emergency repeal of the use of the residency certification on September 21, 2001.

Because of the evidence of unreliability and the potential for abuse and fraud, the department proposes to repeal these regulations so that the proof of residency document list can be changed immediately at the administrative discretion of the agency. The primary goal of the proposed change is to provide flexibility to the department in terms of the speed with which the agency can respond to new information regarding illegal use of proof of residency documents.

The potential economic effects of the proposed change have several dimensions. One is related to the additional flexibility that will be afforded to the department. The proposed repeal of these regulations will provide authority to the department to add new documents and remove some of the currently required documents for proof of residency without being subject to regulatory review process. Under the Administrative Process Act, the department can propose to change the required documentation list as a response to new information through an emergency regulation or a nonemergency regulation. The department believes that the time required to promulgate an emergency or nonemergency regulation introduces delays when new information such as illegal use of proof of residency documents becomes available. The agency further points out the inability to stop continuing abuse and fraud until the regulations are amended by an emergency or nonemergency regulatory action. Provided that the department always identifies the use of residency documents that are cost effective, then the additional flexibility afforded to the department in changing the list of residency documents at its discretion would likely produce net benefits to the Commonwealth. However, that may not always be the case. The review of proposed regulations either by the Department of Planning and Budget or by the public increases the chance of identifying potentially costly mistakes and producing efficient outcomes. Thus, the net economic effect of the repeal of these regulations depends on the economic value of being able to change the list of residency documentation in a shorter

time span than that is possible under the Administrative Process Act for an emergency regulation and the economic value created by the review of these regulations. However, these two values cannot be assessed at this time and there is a great deal of other uncertainty in assessing the potential economic effects of the proposed change.

First, the potential economic effects of this change will depend on the specific circumstances when the department adds or removes a proof of residency document in the future. Although much cannot be said about the economic effects in each possible circumstance, in general, it appears that the primary concern is the potential threat to public safety. Photo identification cards issued by the department may be used for access to public safety-sensitive areas. This is also the case for other documents related to the operation of motor vehicles. Despite the fact that the intended use of some of the documents issued by the department is to authorize the bearer to operate a motor vehicle, they are often used as the primary form of identification in practice. Additionally, the fact that photo identification cards and driver licenses are breeder documents by which additional forms of identification can be accumulated to establish fraudulent identity, residency, or location further contributes to the risks posed to public safety and consequently potential economic losses. These may include documents such as credit cards, bankcards, other states' driver's licenses and identification cards, and even birth certificates. Given the use of these documents as identification cards and the fact that they are breeder documents makes it impossible to assess the potential threat posed to public safety in this report. However, it is evident from the events of September 11, 2001, that such threats have the potential to change consumer behavior and expectations and significantly harm the overall economic activity in addition to the physical damages that may occur. Simply, illegal use of these documents has the potential to create a wide array of adverse economic effects through threats to public safety.

The second difficulty in assessing the potential economic effects of the proposed change is related to the method by which the residency documents are added and removed from the list. After a specific threat and associated adverse economic affects are identified, the economic benefits and costs of having the residency documents in a regulatory list or in a nonregulatory list must be determined in order to make a conclusive statement about the net economic impact. As mentioned before, the net economic effect of the repeal of these regulations depends on the economic value of being able to change the list of residency documentation in a shorter time span than that is possible under the Administrative Process Act for an emergency regulation and the economic value created by review of these regulations. Since both of these values cannot be measured and cannot be compared at this time, the net economic effect of this proposed change is not known.

Moreover, the economic effects of this proposed change depend on the types of additional documents that will be accepted and not accepted as proof of Virginia residency in the future. Currently, the department is reevaluating the residency documents and may eliminate or may add new documentation as acceptable proof of Virginia residency.

The proposed changes will also eliminate an inconsistency between the regulations and the Code of Virginia regarding the residency certification. Pursuant to passage of HB 638 and SB 162 in the 2002 General Assembly, effective July 1, 2002, the department is no longer authorized to accept the residency certification as a proof of Virginia residency. As mentioned above, the department is aware of significant abuse and fraud of the residency certification. However, partly because the department did not keep track of supporting documents and partly because the issue is still under investigation, there is no available quantitative assessment of how much abuse and fraud of residency certification may have occurred.

Prior to being statutorily repealed, the residency certification was a convenient way especially for refugees and asylees who often cannot furnish other accepted documentation immediately upon arrival to establish Virginia residency. Without the residency certification, these individuals are believed to have some difficulty proving Virginia residency. An inconvenience is believed to be imposed on them in terms of the delay until they obtain alternate proofs of residency such as a bank statement or a utility bill. The inconvenience for nonimmigrants new to Virginia was probably less significant. Their access to alternate forms of proof of residency is probably greater than that of refugees or asylees and their need for driver's licenses and identification cards is probably lower because of other types of identification documents that may already be in their possession. Minors were also affected at the time the emergency regulation to repeal residency certification was passed on September 21, 2001. At that time, minors started using school-issued documents as proof of residency because it was the least burdensome alternative. This inconvenience to minors is not currently ongoing because the current statute allows parents to certify that their minor child is a Virginia resident. In short, the repeal of the residency certification introduced costs associated with delays in obtaining a driver's license or identification card and having to submit alternate forms of proof of residency. Though it is likely that there may have been a reduction in the potential threats to public safety and consequently prevention of some potential economic losses by the repeal of the residency certification, there is no available information on the size of such benefits.

Businesses and entities affected. The department estimates that the number of individuals who apply for documents that require proof of Virginia residency is 668,047 per year.

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

Projected impact on employment. Depending on the proposed repeal of these regulations' effect on public safety, there may be some effect on employment in the future. The direction of the potential impact on employment will depend on whether the decisions regarding the changes in the residency document list will improve public safety and consequently contribute to overall economic activity.

Similarly, the statutory repeal of the residency certification may have contributed to employment in Virginia if it resulted in a reduction in the potential threats to public safety.

Effects on the use and value of private property. The proposed repeal of the residency document list has the potential to affect the use and value of private property through its effect on the threats to public safety. A positive effect is expected if the repeal of these regulations allows the department to address fraudulent use of residency documents in an expeditious and cost effective manner. Otherwise, negative effects may result.

Similarly, the statutory repeal of the residency certification may have contributed to the use and value of private property if it resulted in a reduction in the potential threats to public safety.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Motor Vehicles has no comment regarding the Economic Impact Analysis prepared by the Department of Planning and Budget concerning the proposed repeal of the Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card.

Summary:

*The proposed regulatory action repeals current regulations pertaining to proof of residency in the procedures and requirements associated with the application process for driver's licenses, commercial driver's licenses, photo identification cards, learner's permits and temporary driver's permits. The repeal does not eliminate the requirement that an applicant prove residency, but eliminates the use of certain documents that DMV is required to accept for proof of residency because some documents are unreliable as proof of Virginia residency or could potentially become the targets of fraud or abuse. This action provides the agency with the flexibility to modify procedures and requirements in the event that fraud or abuse is detected in the process or unreliable documents are identified.*

*Chapters 767 and 834 of the 2002 Acts of Assembly repeal the authority for DMV to accept form DL 51 (certification of residency). The proposed action meets these requirements of the General Assembly.*

VA.R. Doc. No. R02-76; Filed August 21, 2002, 10:50 a.m.



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# FINAL REGULATIONS

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For information concerning Final Regulations, see Information Page.

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## Symbol Key

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

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

**REGISTRAR'S NOTICE:** Pursuant to § 2.2-4007 J of the Code of Virginia, the State Water Control Board is suspending the regulatory process on 9 VAC 25-720, Water Quality Planning Regulation and the repeal of 18 water quality management plans. The regulatory process is suspended in order to solicit additional comments on the changes made to the proposed regulations. These changes are printed below.

A detailed notice regarding the additional public comment period for these regulations is published following the regulation.

Title of Regulation: **9 VAC 25-420. James River 3(C) Wastewater Management Plan Peninsula Area (REPEALED).**

Title of Regulation: **9 VAC 25-430. Roanoke River Basin Water Quality Management Plan (REPEALED).**

Title of Regulation: **9 VAC 25-440. Upper Roanoke River Subarea Water Quality Management Plan (REPEALED).**

Title of Regulation: **9 VAC 25-450. Upper James River Basin Water Quality Management Plan (REPEALED).**

Title of Regulation: **9 VAC 25-452. Upper James-Jackson River Subarea Water Quality Management Plan (REPEALED).**

Title of Regulation: **9 VAC 25-460. Metropolitan/Regional Water Quality Management Plan for Northern Neck Planning District (No. 17) (REPEALED).**

Title of Regulation: **9 VAC 25-470. York River Basin Water Quality Management Plan. (REPEALED).**

Title of Regulation: **9 VAC 25-480. Tennessee and Big Sandy River Basins Water Quality Management Plan (REPEALED).**

Title of Regulation: **9 VAC 25-490. Rappahannock Area Development Commission (RADCO) 208 Areawide Waste Treatment Management Plan and Potomac-Shenandoah River Basin 303(E) Water Quality Management Plan (REPEALED).**

Title of Regulation: **9 VAC 25-500. State Water Quality Management Plan for the Fifth Planning District (REPEALED).**

Title of Regulation: **9 VAC 25-510. Water Quality Management Plan for the Southwest Virginia 208 Planning Area (REPEALED).**

Title of Regulation: **9 VAC 25-520. Water Quality Management Plan for the First Tennessee-Virginia Development District (REPEALED).**

Title of Regulation: **9 VAC 25-530. Water Quality Management Plan for the Hampton Roads Planning Area (Planning Districts 20 & 21) (REPEALED).**

Title of Regulation: **9 VAC 25-540. Water Quality Management Plan for the New River Basin (REPEALED).**

Title of Regulation: **9 VAC 25-550. Small Coastal River Basins and Chesapeake Bay Virginia Eastern Shore Portion Water Quality Management Plan (REPEALED).**

Title of Regulation: **9 VAC 25-560. Potomac-Shenandoah River Basin Water Quality Management Plan (REPEALED).**

Title of Regulation: **9 VAC 25-570. Richmond-Crater Interim Water Quality Management Plan (REPEALED).**

Title of Regulation: **9 VAC 25-572. Water Quality Management Plans (REPEALED).**

Title of Regulation: **9 VAC 25-720. Water Quality Management Planning [ ~~Public Participation Guidelines~~ ] Regulation (adding 9 VAC 25-720-10 through 9 VAC 25-720-140).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia and 33 USC § 1313(e) of the Clean Water Act.

Effective Date: Suspended (see suspension notice following the regulation).

#### Summary:

*The primary action of this regulation is to adopt a Water Quality Management (WQMG) regulation. This regulation sets forth the Total Maximum Daily Loads (TMDLs), stream segment classification, effluent limitations including water quality based effluent limitations, and waste load allocations.*

*The secondary action is the repeal of the existing WQMPs as state regulations. These plans are basinwide or areawide waste treatment or pollution control management plans developed in accordance with §§ 208 and 303(e) of the Clean Water Act (CWA), as implemented by 40 CFR Part 130. These plans serve as repositories for TMDLs, water quality based effluent limits, waste load allocations and the recommended pollution control measures needed to attain or maintain water quality standards.*

*There are currently 18 WQMPs that were adopted as regulations by the board during the 1970s and through the early 1990s. These plans no longer reflect current conditions and need to be updated. There are no federal or state statutory or regulatory requirements for the plans to be regulations, but they continue to be in the Virginia Administrative Code. The repeal of these plans as*



regulations allow for a more dynamic WQMP update process, reduce potential for conflicts between TMDLs, VPDES permits and the existing WQMPs, and eliminate unnecessary and outdated regulations.

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

Agency Contact: Charles Martin, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4462, FAX (804) 698-4136 or e-mail chmartin@deq.state.va.us.

CHAPTER 720.

[ VIRGINIA ] WATER QUALITY MANAGEMENT PLANNING  
[ PUBLIC PARTICIPATION GUIDELINES ] REGULATION.

[ 9-VAC-25-720-10. Definitions.

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

~~"Board" means the Commonwealth of Virginia State Water Control Board or State Water Control Board.~~

~~"Department" means the Virginia Department of Environmental Quality.~~

~~"Director" means the Director of the Virginia Department of Environmental Quality.~~

~~"CWA" means the Clean Water Act, as amended, 33 USC § 1251 et seq.~~

~~"EPA" means the United States Environmental Protection Agency.~~

~~"Impaired waters" means those water bodies or water body segments that are not fully supporting or are partially supporting of the fishable and swimmable goals of the Clean Water Act and include those waters identified as impaired according to subdivision C 1 of § 62.1-44.19:5 of the Code of Virginia.~~

~~"Nonpoint source" means a source of pollution that is not collected or discharged as a point source.~~

~~"Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.~~

~~"303(d) list" means the list, pursuant to the federal Clean Water Act (33 USC § 1313 et seq.) and § 62.1-44.19:5 C and D of the Code of Virginia, identifying all waters or stream segments that fail to attain the quality required by the water quality standards or that fail to attain the assigned beneficial uses.~~

~~"303(d) report" means the 303(d) list and other items pursuant to § 62.1-44.19:5 C of the Code of Virginia.~~

~~"305(b) report" means the biennial report describing the status of water quality for all navigable waters that each state must develop and submit to EPA pursuant to the federal Clean Water Act (33 USC § 1315 et seq.).~~

~~"Total maximum daily load (TMDL)" means the amount of a pollutant that a particular water or stream segment can assimilate and still meet all the requirements of the water quality standards and attain all the assigned beneficial uses.~~

~~"Virginia Pollutant Discharge Elimination System (VPDES) Permit" means a document issued by the board, pursuant to state regulation 9-VAC 25-31, authorizing under prescribed conditions the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to a NPDES permit.~~

~~"Wasteload allocation" means the portion of a receiving water's loading capacity that is allocated to one or more existing or future point sources of pollution.~~

~~"Wasteload allocation study" means the development or modification of a wasteload allocation for one discharger in a nonimpaired water that may modify or limit the allocations assigned to other dischargers to the same water or stream segment.~~

~~"Water quality management plans (WQMPs)" means watershed plans prepared under the federal Clean Water Act (33 USC § 1313 et seq.) containing in part the following elements: TMDLs, water quality based effluent limits, schedules for compliance of effluent limits, nonpoint source management and control strategies, provisions for intergovernmental cooperation, and implementation measures.~~

~~"Water Quality Monitoring, Information, and Restoration Act (WQMIRA)" means §§ 62.1-44.19:4 through 62.1-44.19:8 of the Code of Virginia.~~

~~"Water quality standards (WQS)" mean provisions of state or federal law that consist of designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the federal Clean Water Act (33 USC § 1251 et seq.).~~

**9-VAC-25-720-20. Purpose.**

~~This regulation sets forth the public participation procedures that the board shall follow in connection with development of TMDLs, certain wasteload allocation studies, § 303(d) lists, and WQMPs in order to provide the public and stakeholders with an adequate opportunity to participate in their development and implementation.~~

**9-VAC-25-720-30. Public notice of TMDL actions.**

~~A. The board shall give public notice of the following actions:~~

- ~~1. A TMDL development process is beginning under § 62.1-44.19:7 of the Code of Virginia;~~

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~~2. A draft TMDL has been prepared and is ready for public review and comment;~~

~~3. A TMDL implementation plan development process is beginning under § 62.1-44.19:7 of the Code of Virginia;~~

~~4. A draft TMDL implementation plan has been prepared and is ready for public review and comment; and~~

~~5. A two-year priority schedule for TMDL development has been prepared pursuant to § 62.1-44.19:7 C of the Code of Virginia and is ready for public review and comment.~~

~~B. Public notices may describe more than one TMDL or TMDL actions.~~

## ~~9 VAC 25-720-40. Public notice of wasteload allocation study.~~

~~A. For wasteloads that affect only one discharger in a nonimpaired water, opportunity for public participation shall be limited to that provided during the permit issuance procedures in accordance with 9 VAC 25-31.~~

~~B. The board shall give public notice when a wasteload allocation study in a nonimpaired water is to be prepared that may result in the modification or limitation of the allocation assigned to more than one discharger to the same water or stream segment.~~

~~C. Wasteload allocation studies are guidance only with no legally binding effect.~~

~~D. Wasteload allocation decisions will be made in accordance with 9 VAC 25-31.~~

~~E. Public notices may describe more than one wasteload allocation study.~~

## ~~9 VAC 25-720-50. Public notice of 303(d) report actions.~~

~~A. The board shall give public notice of the following actions:~~

~~1. The draft procedure for developing the 305(b) report and 303(d) report for defining impaired waters has been prepared under § 62.1-44.19:5 C of the Code of Virginia and is available for public review and comment;~~

~~2. The draft 303(d) report has been prepared under § 62.1-44.19:5 C of the Code of Virginia and is available for public review and comment; and~~

~~3. An impaired water has attained water quality standards and is to be removed from the EPA approved 303(d) list.~~

~~B. Public notices may describe more than one 303(d) report action.~~

## ~~9 VAC 25-720-60. Public notice of WQMP actions.~~

~~A. The board shall give public notice of the following actions:~~

~~1. A WQMP revision is beginning under 9 VAC 25-720-70 C;~~

~~2. WQMP advisory committee is to meet; and~~

~~3. A revised WQMP has been prepared and is ready for public review and comment.~~

~~B. Public notices may describe more than one WQMP action.~~

## ~~9 VAC 25-720-70. Conditions applicable to WQMPs.~~

~~A. WQMPs shall comply with the conditions set forth in § 303(e) of the CWA.~~

~~B. WQMPs serve as repositories for TMDLs, wasteload allocations, TMDL implementation plans, and other information pursuant to § 303(e) of the Clean Water Act and § 62.1-44.19:7 of the Code of Virginia.~~

~~C. Every five years all WQMPs shall be reviewed and the director shall determine if revisions are needed to reflect new requirements or changing water quality conditions.~~

~~D. Advisory committees shall be established to assist the board in the revision of the WQMP. WQMP advisory committees shall include, but not be limited to, representatives in the watershed from local governments, environmental groups, agriculture, silviculture, manufacturing, and mining.~~

## ~~9 VAC 25-720-80. Public notice methods.~~

~~A. Virginia Register. Public notices described under 9 VAC 25-720-30 A, 9 VAC 25-720-40 B, 9 VAC 25-720-50, and 9 VAC 25-720-60 shall be given by publication in the Virginia Register.~~

~~B. Mailings. Public notice described in 9 VAC 25-720-30 A 1 through 4, 9 VAC 25-720-40 B, and 9 VAC 25-720-60 shall be given by mailing or e-mailing a copy of a notice to the following:~~

~~1. Any VPDES permittee within the watershed that may have their wasteload allocation modified or limited by the TMDL or wasteload allocation study;~~

~~2. Any planning district commission that may have jurisdiction over the areas included in the action;~~

~~3. Persons on the mailing list maintained by the board including those who request to be on the list;~~

~~4. Federal and state agencies having jurisdiction that may be affected by the action;~~

~~5. Soil and water conservation districts having jurisdiction over areas included in the action;~~

~~6. Chief administrative officer or designee and chair of governing body or designee of any unit of local government having jurisdiction over the areas included in the action; and~~

~~7. Any adjacent state that may be affected by the results of the action.~~

~~C. Newspaper. The public notice described in 9 VAC 25-720-30 A 1 through 4, 9 VAC 25-720-40 B, and 9 VAC 25-720-60 shall be published in a newspaper of general circulation in the area.~~

~~D. Other methods. The public notice described in 9 VAC 25-720-30 A 1 through 4, 9 VAC 25-720-40 B, 9 VAC 25-720-50 A, and 9 VAC 25-720-60 shall be given by any other method reasonably calculated to give actual notice to persons potentially affected, including press releases, or any other forum or medium to elicit public participation, such as posting on the Internet.~~

~~E. Timing. Public notices described in 9 VAC 25-720-30, 9-25-VAC-720-40-B, 9 VAC 25-720-50, and 9 VAC 25-720-60 shall allow at least 30 days for public comment after publication.~~

~~F. Contents.~~

~~1. All public notices issued under this regulation shall contain the following minimum information:~~

- ~~a. Description of the action being taken;~~
- ~~b. The name of the water or stream segment, location description, and watershed for which the action is being taken;~~
- ~~c. A brief description of the procedures for submitting comments and the time and location of any public meeting that may be held;~~
- ~~d. Name and address of the department's offices responsible for the action for which public notice is being given. If the study or action will involve multiple regions, each regional office affected shall be listed; and~~
- ~~e. Name, address, telephone number and e-mail address of a person or persons from whom interested persons may obtain fact sheets and additional information.~~

~~2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public meeting shall contain the following additional information:~~

- ~~a. Reference to the date of previous public notices relating to the study;~~
- ~~b. Date, time, and place of public meetings; and~~
- ~~c. A brief description of the nature and purpose of the public meeting, including the applicable rules and procedures.~~

~~**9 VAC 25-720-90. Public meetings.**~~

~~A. The board shall hold a public meeting for actions described under 9 VAC 25-720-30 A 1 through 4, 9 VAC 25-720-40-B, 9 VAC 25-720-50 A 2, and 9 VAC 25-720-60.~~

~~B. Public notice of the public meetings shall be given as specified in 9 VAC 25-720-80.~~

~~C. Any public meeting convened pursuant to this section shall be held in the geographic area of the proposed action.~~

~~**9 VAC 25-720-100. Public comments and agency response.**~~

~~During the public comment period, any interested person may submit written comments on the actions being public noticed. All relevant comments shall be considered by the board when taking actions under 9 VAC 25-720-110. A summary response to comments shall be prepared and made available to the public.~~

~~**9 VAC 25-720-110. Board actions.**~~

~~Board actions shall be required for:~~

- ~~1. Approval of TMDLs for submittal to EPA;~~
- ~~2. Adoption of EPA approved TMDLs under § 2.2-4006 A 4 c of the Code of Virginia;~~

~~3. Authorization to include adopted TMDLs in the appropriate WQMP; and~~

~~4. Approval of WQMPs developed under 9 VAC 25-720-70 G.~~

~~**9 VAC 25-720-120. Delegation section.**~~

~~The director or his designee may perform any action contained in this regulation except those prohibited by § 62-1-44.14 of the State Water Control Law.~~

~~**9 VAC 25-720-10. Definitions.**~~

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

~~"Assimilative capacity" means the greatest amount of loading that a water can receive without violating water quality standards, significantly degrading waters of existing high quality, or interfering with the beneficial use of state waters.~~

~~"Best management practices (BMP)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. BMPs include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.~~

~~"Best practicable control technology currently available (BPT)" means control measures required of point source discharges (other than POTWs) as determined by the EPA pursuant to § 304(b)(1) of the CWA (33 USC §1251 et seq.) as of 1987.~~

~~"Board" means the State Water Control Board (SWCB).~~

~~"Clean Water Act or Act (CWA)" means 33 USC § 1251 et seq. as amended, as of 1987.~~

~~"Discharge" means when used without qualification, a discharge of a pollutant or any addition of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or ocean or other floating craft when being used for transportation.~~

~~"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates or concentrations of pollutants that are discharged from joint sources into state waters.~~

~~"Effluent limitation guidelines" means a regulation published by EPA under the Act and adopted by the board.~~

~~"Effluent limited segment (EL)" means a stream segment where the water quality does and probably will continue to meet state water quality standards after the application of technology-based effluent limitations required by §§ 301(b) and 306 of the CWA (33 USC § 1251 et seq.) as of 1987.~~

~~"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.~~

~~"Load or loading" means the introduction of an amount of matter or thermal energy into a receiving water. Loading may~~

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be either man-caused (pollutant loading) or natural (background loading).

"Load allocation (LA)" means the portion of a receiving water's loading capacity attributable either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.

"Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban storm water runoff, mine runoff, or salt water intrusion that is not collected or discharged as a point source.

"Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.

"Pollutant" means any substance, radioactive material, or heat that causes or contributes to, or may cause or contribute to, pollution. It does not mean:

- a. Sewage from vessels; or
- b. Water, gas, or other material that is injected into a well to facilitate production of oil, dry gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by the Department of Mines, Minerals and Energy unless the board determines that such injection or disposal will result in the degradation of ground or surface water resources.

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

"Publicly owned treatment works (POTW)" means any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

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

"Surface water" means all waters in the Commonwealth except ground waters as defined in § 62.1-255 of the Code of Virginia.

"Total maximum daily load (TMDL)" means the sum of the individual waste load allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, natural background loading and usually a safety factor. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the CWA (33 USC § 1251 et seq. as of 1987), which after discharge will, on the basis of available information, cause toxicity.

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

"Virginia Pollution Discharge Elimination System (VPDES) permit" means a document issued by the board, pursuant to 9 VAC 25-30, authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"Waste load allocation (WLA)" means the portion of a receiving water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality limited segment (WQL)" means any stream segment where the water quality does not or will not meet applicable water quality standards, even after the application of technology-based effluent limitations required by §§ 301(b) and 306 of the CWA (33 USC § 1251 et seq. as of 1987).

"Water quality management plan (WQMP)" means a state- or area-wide waste treatment management plan developed and updated in accordance with the provisions of §§ 205(j), 208 and 303 of the CWA (33 USC § 1251 et seq. as of 1987).

"Water quality standards (WQS)" means narrative statements that describe water quality requirements in general terms, and of numeric limits for specific physical, chemical, biological or radiological characteristics of water. These narrative statements and numeric limits describe water quality necessary to meet and maintain reasonable and beneficial uses such as swimming and, other water based recreation, public water supply and the propagation and growth of aquatic life. The adoption of water quality standards under the State Water Control Law is one of the board's methods of accomplishing the law's purpose.

## **9 VAC 25-720-20. Purpose.**

The purpose of this regulation is to list by major river basin the following:

EPA-approved and board-adopted total maximum daily loads (TMDLs) and the stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations contained in the existing water quality management plans (WQMPs).

**9 VAC 25-720-30. (Reserved)**

**9 VAC 25-720-40. (Reserved)**

**9 VAC 25-720-50. Potomac - Shenandoah River Basin.**

A. Total maximum daily load (TMDLs).

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

TABLE B1 - POTOMAC RIVER SUB-BASIN RECOMMENDED SEGMENT CLASSIFICATIONS

SEGMENT NUMBER	DESCRIPTION OF SEGMENT	MILE TO MILE	CLASSIFICATION
1-23	Potomac River tributaries from the Virginia-West Virginia state line downstream to the boundary of the Dulles Area Watershed Policy	176.2 – 149.0	WQ
1-24	Potomac River tributaries located within the boundaries of the Dulles Area Watershed Policy	149.0 – 118.4	WQ
1-25	Potomac River tributaries from the downstream limit of the Dulles Area Watershed Policy to Jones Point	118.4 – 107.6	WQ
1-26	Potomac River tributaries from Jones Point downstream to Route 301 bridge	107.6 – 50.2	WQ
1-27	All Streams included in the Occoquan Watershed Policy	_____	WQ
1-28	Potomac tributaries from Route 301 bridge downstream to the mouth of the Potomac River	0.2 – 0.0	EL

TABLE B2 – POTOMAC RIVER SUB-BASIN - RECOMMENDED PLAN FOR WASTEWATER FACILITIES

FACILITY NUMBER	NAME	RECEIVING STREAM	RECOMMENDED ACTION	SIZE	TREATMENT LEVEL (4)	BOD <sub>5</sub>	OD	TKN	P	INSTITUTIONAL ARRANGEMENT
1	Hillsboro	North Fork Catoctin Creek WQ (1–23)	Construct new facility	.043 <sup>(2)</sup>	AWT	7 <sup>(7)</sup>	-	-	-	Loudoun County Sanitation Authority (LCSA)
2	Middleburg	Wancopin Creek WQ	Construct new facility; abandon old facility	.135	AST	14 <sup>(5)</sup>	-	-	-	LCSA
3	Middleburg East and West	Unnamed tributary to Goose Creek WQ (1–23)	Abandon- pump to new facility							
4	Round Hill	North Fork Goose Creek	No further action recommended	.2	AWT	10 <sup>(5)</sup>	-	-	-	Town of Round Hill
5	St. Louis	Beaver Dam Creek	Construct new facility	.086	AST	20 <sup>(5)</sup>	-	-	-	LSCA
6	Waterford	South Fork Catoctin Creek WQ (1-23)	No further action recommended	.058	AST	24 <sup>(5)</sup>	-	-	-	LSCA
7	Hamilton	Unnamed tributary to South Fork of Catoctin Creek WQ (1-23)	Upgrade and or expand	.605 <sup>(2)</sup>	AWT	7 <sup>(7)</sup>	-	-	-	Town of Hamilton
8	Leesburg	Tuscarora Creek (1-24)	Upgrade and or expand	2.5	AWT	1 <sup>(9)</sup>	-	1	0.1	Town of Leesburg

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9	Lovettesville	Dutchman Creek WQ (1-23)	Upgrade and or expand	.269 <sup>(2)</sup>	AWT	7 <sup>(7)</sup>	-	-	-	Town of Lovetteville
10	Purcellville	Unnamed tributary to North Fork Goose Creek WQ (1-23)	No further action recommended	.5	AST	15 <sup>(5)</sup>	-	-	-	Town of Purcellville
11	Paeonian Springs	Unnamed tributary to	Construct new facility	.264 <sup>(2)</sup>	AWT	7 <sup>(7)</sup>	-	-	-	LCSA
12	Cedar Run Regional	Walnut Branch or Kettle Run WQ (1-27)	Construct new facility	1.16 <sup>(2)</sup>	AWT	1 <sup>(6)</sup>	-	1	0.1	Fauquier County Sanitation Authority
13	Vint Hill Farms	South Run (1-27)	Upgrade and/or expand	.246	AST	14 <sup>(5)</sup>	-	-	2.5	U.S. Army
14	Arlington	Four Mile Run WQ (1-25)	Upgrade and/or expand	30 <sup>(3)</sup>	AWT	3 <sup>(8)</sup>	-	1	0.2	Arlington County
15	Alexandria	Hunting Creek WQ (1-27)	Upgrade and/or expand	54	AWT	3 <sup>(8)</sup>	-	1	.02	Alexandria Sanitation Authority
16	Westgate	Potomac River WQ (1-26)	Abandon- pump to Alexandria							
17	Lower Potomac	Pohick Creek WQ (1-26)	Upgrade and/or expand	36(3)	AWT	3/8	-	1	0.2	Fairfax County
18	Little Hunting Creek	Little Hunting Creek WQ (1-26)	Abandon- pump to Lower Potomac							
19	Doque Creek	Doque Creek WQ (1-26)	Abandon- pump to Lower Potomac							
20	Fort Belvoir 1 and 2	Doque Creek WQ (1-26)	Abandon- pump to Lower Potomac							
21	Lorton	Mills Branch WQ (1-26)	Upgrade and/or expand	1.0	AWT	3 <sup>(11)</sup>	-	1	0.1	District of Columbia
22	UOSA	Tributary to Bull Run (1-27)	Expanded capacity by 5 mgd increments	10.9 <sup>(3)</sup>	AWT	1 <sup>(6)</sup>	-	1	0.1	USOA
23	Gainesville Haymarket	Tributary Rock Branch WQ (1-27)	Abandon Pump to UOSA							
24	Potomac (Mooney)	Neabaco Creek WQ (1-26)	Construct new facility	12 <sup>(3)</sup>	AWT	3 <sup>(8)</sup>	-	1	0.2	Occoquan-Woodbridge Dumfries-Triangle Sanitary District
25	Belmont	Marumscro Creek WQ (1-26)	Abandon- pump to Potomac							
26	Featherstone	Farm Creek WQ (1-26)	Abandon- pump to Potomac							
27	Neabaco	Neabaco Creek WQ (1-26)	Abandon- pump to Potomac							
28	Dumfries	Quantico Creek WQ (1-26)	Abandon- pump to Potomac							
29	Dale City #1	Neabaco Creek WQ (1-26)	Upgrade and /or expand	4.0	AWT	3 <sup>(8)</sup>	-	1	0.2	Dale Service Corporation (DSC)

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30	Dale City #8	Neabaco Creek WQ	Upgrade and /or expand	2.0	AWT	3 <sup>(8)</sup>	1	1	0.2	DSC
31	Quantico Mainside	Potomac River WQ	Upgrade and /or expand	2.0	AWT	3 <sup>(8)</sup>	-	1	0.2	U.S. Marine Corps
32	Aquia Creek	Austin Run WQ (1-26)	Construct new facility	3.0	AWT	3 <sup>(8)</sup>	-	1	0.2	Aquia Sanitary District
33	Aquia	Aquia Creek WQ (1-26)	Abandon- pump to new facility							
34	Fairview Beach	Potomac River (estuary)	Construct new facility	.05	Secondary	Secondary	-	-	-	Fairview Beach Sanitary District
35	Dahlgren	Upper Machodoc Creek WQ (1-28)	Upgrade and /or and	.2	Secondary	Secondary	-	-	-	Dahlgren Sanitary District
36	Colonial Beach	Monroe Creek	No further action recommended	.85	Secondary	28 <sup>(5)</sup> (13)				Town of Colonial Beach
37	Machodoc Kinsale		Construct new facility	.89	Secondary & Spray Irrigation	48 <sup>(10)</sup> (13)	-	-	-	Machodoc Kinsale Sanitary District
38	Callao		Construct new facility	.25	Secondary & Spray Irrigation	48 <sup>(10)</sup> (13)	-	-	-	Callao Sanitary District
39	Heathsville		Construct new facility	.10	Secondary & Spray Irrigation	48 <sup>(10)</sup> (13)	-	-	-	Heathsville Sanitary District
40	King George Courthouse	Pine Creek	Construct new facility	.039	Secondary	30 <sup>(13)</sup>	-	-	-	King George County

TABLE B2 - NOTES: POTOMAC RIVER SUB-BASIN - RECOMMENDED PLAN FOR WASTEWATER TREATMENT FACILITIES

<sup>(1)</sup> Year 2000 design flow 201 Facility Plan, P.L. 92-500, unless otherwise noted.

<sup>(2)</sup> Year 2000 average flow from Potomac/Shenandoah 303(e) Plans, Vol V-A Appendix, 1975 pp. B-33-B-44.

<sup>(3)</sup> Future expansion at unspecified date.

<sup>(4)</sup> Secondary treatment : 24-30 mg/l BOD<sub>5</sub>, advanced secondary treatment (AST): 11-23 mg/l, advanced wastewater treatment (AWT): <10mg/l BOD<sub>5</sub>. A range is given to recognize that various waste treatment processes have different treatment efficiencies.

<sup>(5)</sup> Effluent limits calculated using mathematical modeling.

<sup>(6)</sup> Effluent limits based on Occoquan Watershed Policy, presented under reevaluation.

<sup>(7)</sup> Effluent limits based on treatment levels established by the Potomac/Shenandoah 303(e) Plan, Vol. V-A 1975, p. 237, to protect low flow streams and downstream water supply.

<sup>(8)</sup> Effluent limits based on Potomac River Embayment Standards, presently under reevaluation. Nitrogen removal limits deferred until reevaluation is complete.

<sup>(9)</sup> Effluent limits based on Dulles Watershed Policy, recommended for reevaluation. Interim effluent limits of 12 mg/l BOD<sub>5</sub> and 20 mg/l Suspended Solids will be met until the Dulles Area Watershed Standards are reevaluated.

<sup>(10)</sup> Effluent limits based on Virginia Sewerage Regulation, Section 33.02.01.

<sup>(11)</sup> Interim effluent limits of 30 mg/l BOD<sub>5</sub>, 30mg/l Suspended Solids, and 4 mg/l Phosphorus, will be effective until average daily flows exceeds 0.75 MGD. At greater flows than 0.75 MGD, the effluent limitations will be defined by the Potomac Embayment Standards.

<sup>(12)</sup> Secondary treatment is permitted for this facility due to the the extended outfall into the main stem of the Potomac River.

<sup>(13)</sup> This facility was also included in the Rappahannock Area Development Commission (RADCO) 208 Areawide Waste Treatment Management Plan and Potomac-Shenandoah River Basin 303 (e) Water Quality Management Plan.

TABLE B3 - SHENANDOAH RIVER SUB-BASIN RECOMMENDED SEGMENT CLASSIFICATIONS

SEGMENT NUMBER	DESCRIPTION OF SEGMENT	MILE TO MILE	CLASSIFICATION
1-1	North River-main stream and tributaries excluding segments 1-1a, 1-1b	56.4-0.0	EL
1-1a	Muddy Creek-main stream and War Branch, RM 0.1-0.0	3.7 - 1.7	WQ
1-1b	North River-main stream	16.1 - 4.6	WQ

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1-2	Middle River-main stream and tributaries excluding segments 1-2a, 1-2b	69.9 - 0.0	EL
1-2a	Middle River-main stream	29.5 - 17.9	WQ
1-2b	Lewis Creek-main stream	9.6 - 0.0	WQ
1-3	South River-main stream and tributaries excluding segment 1-3a	52.2 - 0.0	EL
1-4	South Fork Shenandoah-main stream and tributaries excluding segments 1-4a, 1-4b, 1-4c	102.9 - 0.0	EL
1-4a	South Fork Shenandoah-main stream	88.1 - 78.2	WQ
1-4b	Hawksbill Creek-main stream	6.20 - 0.0	WQ
1-4c	Quail Run-main stream	5.2 - 3.2	WQ
1-5	North Fork Shenandoah- main stream and tributaries excluding segment 1-5a, 1-5h	108.9 - 0.0	EL
1-5a	Stony Creek-main stream	19.9 - 14.9	WQ
1-5b	North Fork Shenandoah-main stream	89.0 - 81.4	WQ
1-6	Shenandoah River-main stream and tributaries excluding segments 1-6a, 1-6b	57.4 - 19.8	EL
1-6a	Stephens Run-main stream	8.3 - 0.0	WQ
1-6b	Dog Run-main stream	5.2 - 0.0	WQ
1-7	Opequon Creek-main stream and tributaries excluding segments 1-7a, 1-7b	54.9 - 23.6	EL
1-7a	Opequon Creek-main stream	32.3 - 23.6	WQ
1-7b	Abrams Creek-main stream	8.7 - 0.0	WQ
1-8	All Virginia streams upstream of Opequon-Potomac confluence that have headwaters in Frederick County	--	EL
1-9	All Virginia streams upstream of Opequon-Potomac confluence that have headwaters in Highland County	--	EL

\* R.M. = River Mile, measured from the river mouth

TABLE B4 - SHENANDOAH RIVER SUB-BASIN - RECOMMENDED PLAN FOR SELECTED INDUSTRIAL WASTEWATER TREATMENT FACILITIES

FACILITY NUMBER	NAME <sup>(1)</sup>	INDUSTRIAL CATEGORY	RECEIVING STREAM CLASSIFICATION	RECOMMENDED WASTELOAD ALLOCATION <sup>(2)</sup>			COMPLIANCE SCHEDULE
				BOD <sub>5</sub>	TKN	NH <sub>3</sub> -N	
1	Wampler	Food Processing	War Branch WQ (1-1a)	84 <sup>(3)</sup>	-	-	None
6	Wayn-Tex	Plastic and Synthetic Materials Mfg.*	South River WQ (1-3a)	44 <sup>(5)</sup>	-	-	None
7	DuPont	Plastic and Synthetic Materials Mfg.*	South River WQ (1-3a)	600	-	50	None
8	Crompton-Shenandoah	Textile Mills*	South River WQ (1-3a)	60	173 <sup>(4)</sup>	88	None
10	General Electric	Electroplating*	South River WQ (1-3a)	BPT Effluent Limits			None
12	Merck	Miscellaneous Chemicals (Pharmaceutical)*	S. F. Shenandoah River WQ (1-4a)	3454	2846	1423	Consent Order
17	VOTAN	Leather, Tanning and Finishing*	Hawksbill Creek WQ (1-4b)	240	75	-	None



21	National Fruit	Food Processing	N. F. Shenandoah River WQ (1-5b)	(6)	(6)	(6)	None
23	Shen-Valley Meat Packers	Food Processing	N. F. Shenandoah River WQ (1-5b)	(6)	(6)	(6)	None
35	O'Sullivan	Rubber Processing* Machinery and Mechanical Products Manufacturing	Abrams Creek WQ (1-7b)	BPT Effluent Limits			None

TABLE B4 - NOTES: SHENANDOAH RIVER SUB-BASIN - RECOMMENDED PLAN SELECTED INDUSTRIAL WASTEWATER TREATMENT FACILITIES

- (1) An \* identifies those industrial categories that are included in EPA's primary industry classification for which potential priority toxic pollutants have been identified.
- (2) Allocation (lb/d) based upon 7Q10 stream flow. Tiered permits may allow greater wasteloads during times of higher flow. BPT = Best Practicable Technology.
- (3) A summer 1979 stream survey has demonstrated instream D.O. violations. Therefore, the identified wasteload allocation is to be considered as interim and shall be subject to further analysis.
- (4) The NPDES permit does not specify TKN but does specify organic-N of 85 lb/d. TKN is the sum of NH -N and organic -N.
- (5) This allocation is based upon a flow of 0.847 MGD.
- (6) The total assimilative capacity for segment WQ (1-5b) will be developed from an intensive stream survey program and development of an appropriate calibrated and verified model. Wasteload allocations for National Fruit, Rockingham Poultry and Shen-Valley will be determined after the development of the calibrated and verified model and the determination of the segment's assimilative capacity.

TABLE B5 - SHENANDOAH RIVER SUB-BASIN - RECOMMENDED PLAN FOR SELECTED MUNICIPAL WASTEWATER TREATMENT FACILITIES

FACILITY NUMBER	NAME	RECOMMENDED RECEIVING STREAM	FACILITY			WASTELOAD ALLOCATION <sup>(3)</sup> lb/d BOD <sub>5</sub>	INSTITUTIONAL ARRANGEMENT	COMPLIANCE <sup>(4)</sup> SCHEDULE
			RECOMMENDED ACTION	SIZE <sup>(1)</sup>	TREATMENT <sup>(2)</sup> LEVEL			
2	Harrisonburg Rockingham Reg. Sewer Auth.	North River WQ (1-1)	Correct I/I	12.0 <sup>(5)</sup>	AST	2,000 <sup>(6)</sup>	Harrisonburg-Rockingham Regional Sewer Authority	None
3	Verona	Middle River WQ (1-2a)	Construct new facility, abandon old plant, correct I/I	0.8	Secondary	Secondary Limits	Augusta County Service Authority	July 1, 1983
4	Staunton	Middle River WQ (1-2a)	Upgrade, provide outfall to Middle River, correct I/I	4.5	Secondary	Secondary Limits	City of Staunton	July 1, 1983
5	Fishersville	Christians Creek EL (1-2)	No further action recommended	2.0	Secondary	Secondary Limits	Augusta County Service Authority	None
9	Waynesboro	South River WQ (1-3a)	Upgrade, correct I/I	4.0	AWT with nitrification	250 <sup>(5)</sup>	City of Waynesboro	July 1, 1983
11	Grottoes	South River EL (1-3)	Construct new facility	0.225	Secondary	Secondary Limits	Town of Grottoes	No existing facility
16	Stanley	S.F. Shenandoah River EL (1-4)	Construct new facility	0.3	Secondary	Secondary limits	Town of Stanley	No existing facility
18	Luray	Hawksbill Creek WQ (1-4b)	Construct new facility, abandon old plant, correct I/I	0.8	Secondary	Secondary Limits	Town of Luray	July 1, 1983
19	Front Royal	Shenandoah River EL (1-6)	Construct new facility, abandon old plant, correct I/I	2.0	Secondary	Secondary Limits	Town of Front Royal	July 1, 1983
20	Broadway	N.F. Shenandoah River WQ (1-5b)	Upgrade, expand, investigate I/I	(6)	(6)	(6)	Town of Broadway	July 1, 1983
24	Timberville	N.F. Shenandoah River WQ (1-5b)	Upgrade, expand, investigate I/I	(6)	(6)	(6)	Town of Timberville	July 1, 1983
25	New Market	N.F. Shenandoah River EL (1-5)	Upgrade, investigate I/I	0.2	Secondary	Secondary Limits	Town of New Market	July 1, 1983
26	Mount Jackson	N.F. Shenandoah River EL (1-5)	Upgrade, expand, correct I/I	.02	Secondary	Secondary Limits	Town of Mount Jackson	July 1, 1983

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27	Edinburg	N.F. Shenandoah	Upgrade, expand, investigate I/I	0.15 0.6	Secondary AST	Secondary Limits 65	Town of Edinburg Public	July 1, 1983 None
28	Stony Creek Sanitary District	River EL (1-5) Stony Creek WQ (1-5a)	No further action required	0.5	Secondary	Secondary Limits	Town of Woodstock	July 1, 1983
29	Woodstock	N.F. Shenandoah River EL (1-5)						
30	Toms Brook-Mauertown	Toms Brook EL (1-5)	Construct new facility	0.189	Secondary	Secondary Limits	Toms Brook	No existing facility
31	Strasburg	N.F. Shenandoah River EL (1-5)	Upgrade, expand, correct I/I	0.8	Secondary	Secondary limits	Town of Strasburg	July 1, 1983
32	Middletown	Meadow Brook EL (1-5)	Upgrade, expand	0.2	Secondary	Secondary	Town of Middletown	July 1, 1983
33	Stephens City Stephens Run	Stephens Run EL (1-6a)	Upgrade, expand	0.54	AST	72	Frederick-Winchester Service Authority	July 1, 1983
34	Berryville	Shenandoah River EL (1-6)	Upgrade, provide outfall to Shenandoah River, investigate I/I	0.41	Secondary	Secondary Limits	Town of Berryville	July 1, 1983
36	Frederick-Winchester Regional	Opequon Creek WQ(1-7a)	Construct new facility, abandon county and city plans, correct I/I	6.0	AWT with nitrification	456 <sup>(7)</sup>	Frederick-Winchester Service Authority	July 1, 1983
37	Monterey	West Strait Creek EL (1-9)	Upgrade, correct I/I	0.075	Secondary	Secondary Limits	Town of Monterey	July 1, 1983

TABLE B5 - NOTES: SHENANDOAH RIVER SUB-BASIN - RECOMMENDED PLAN FOR SELECTED MUNICIPAL WASTEWATER TREATMENT FACILITIES

<sup>(1)</sup> Year 2000 design flow (MGD) unless otherwise noted.

<sup>(2)</sup> Secondary treatment: 24-30 mg/l BOD<sub>5</sub>; advanced secondary treatment (AST): 11-23 mg/l BOD<sub>5</sub>; advanced wastewater treatment (AWT): <10 mg/l BOD<sub>5</sub>. A range is given to recognize that various waste treatment processes have different treatment efficiencies.

<sup>(3)</sup> Recommended wasteload allocation calculated using mathematical modeling based upon 7Q10 stream flows. Tiered permits may allow greater wasteloads during periods of higher stream flows. Allocations other than BOD<sub>5</sub> are noted by footnote.

<sup>(4)</sup> The July 1, 1983, data is a statutory deadline required by P.L. 92-500, as amended by P.L. 92-217. The timing of construction grant funding may result in some localities to miss this deadline.

<sup>(5)</sup> Year 2008 design.

<sup>(6)</sup> This BOD loading is based on a 7Q10 flow rate of 26.8 cfs at the HRRSA discharge.

<sup>(7)</sup> NH<sub>3</sub>-N = 50 lb/d.

<sup>(8)</sup> This allocation is based on a TKN loading no greater than 84 lb/day.

TABLE B6 - RAPPAHANNOCK AREA DEVELOPMENT COMMISSION (RADCO) 208 AREAWIDE WASTE TREATMENT PLAN AND POTOMAC-SHENANDOAH RIVER BASIN 303(e) WATER QUALITY MANAGEMENT PLAN

## FACILITY

## EFFLUENT LIMITS (mg/l)

Facility Number	Name	Receiving Stream	Recommended Action	Size (MGD)	Treatment Level <sup>(4)</sup>	BOD <sub>5</sub>	OUR	TKN	P	Institutional Arrangement
36	Colonial Beach	Monroe Creek EL (1-28)	No further action recommended	.85	Secondary	28 <sup>(5)</sup>	-	-	-	Town of Colonial Beach
37	Machodoc Kinsdale		Construct new facility	.89	Secondary & Spray Irrigation	48 <sup>(10)</sup>	-	-	-	Machodoc Kinsdale Sanitary District
38	Callao		Construct new facility	.25	Secondary & Spray Irrigation	48 <sup>(10)</sup>	-	-	-	Callao Sanitary District
39	Heathsville		Construct new facility	.10	Secondary & Spray Irrigation	48 <sup>(10)</sup>	-	-	-	Heathsville Sanitary District
40	King George Courthouse	Pine Creek	Construct new facility	.039	Secondary	30	-	-	-	King George Co.

## 9 VAC 25-720-60. James River Basin.

A. Total maximum daily load (TMDLs).

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

TABLE B1 - UPPER JAMES RIVER BASIN RECOMMENDED SEGMENT CLASSIFICATION

Stream Name	Segment No.	Mile to Mile	Classification	Comments
Maury River	2-4	80.3-0.0	E.L.	Main & tributaries
James River	2-5	271.5-266.0	W.Q.	Main only
James River	2-6	266.0-115.0	E.L.	Main & tributaries except Tye & Rivanna River
Tye River	2-7	41.7-0.0	E.L.	Main & tributaries except Rutledge Creek
Rutledge Creek	2-8	3.0-0.0	W.Q.	Main only
Piney River	2-9	20.6-0.0	E.L.	Main & tributaries
Rivanna River	2-10	20.0-0.0	E.L.	Main & tributaries
Rivanna River	2-11	38.1-20.0	W.Q.	Main only
Rivanna River	2-12	76.7-38.1	E.L.	Main & tributaries
S.F. Rivanna River	2-13	12.2-0.0	E.L.	Main & tributaries
Mechum River	2-14	23.1-0.0	E.L.	Main & tributaries
N.F. Rivanna River	2-15	17.0-0.0	E.L.	Main & tributaries except Standardsville Run
Standardsville Run	2-16	1.2-0.0	W.Q.	Main only
Appomattox River	2-17	156.2-27.7	E.L.	Main & tributaries except Buffalo Creek, Courthouse Branch, and Deep Creek
Buffalo Creek	2-18	20.9-0.0	E.L.	Main & tributaries except Unnamed Tributary @ R.M. 9.3
Unnamed Tributary of Buffalo Creek @ R.M. 9.3	2-19	1.3-0.0	W.Q.	Main only
Courthouse Branch	2-20	0.6-0.0	W.Q.	Main only
Deep Creek	2-21	29.5-0.0	E.L.	Main & tributaries except Unnamed Tributary @ R.M. 25.0
Unnamed Tributary of Deep Creek @ R.M. 25.0	2-22	2.2-0.0	W.Q.	Main only

TABLE B2 - UPPER JAMES RIVER BASIN LOAD ALLOCATIONS BASED ON EXISTING DISCHARGE POINT<sup>7</sup>

Stream Name	Segment Number	Classification	Mile to Mile	Significant Discharges	Total Assimilative Capacity of Stream BOD <sub>5</sub> lbs/day	Wasteload Allocation BOD <sub>5</sub> lbs/day <sup>2</sup>	Reserve BOD <sub>5</sub> lbs/day <sup>5</sup>
Cedar Creek	2-3	E.L.	1.9-0.0	Natural Bridge, Inc. STP	35.0	28.0	7.0 (20%)
Elk Creek	2-3	E.L.	2.8-0.0	Natural Bridge Camp for Boys STP	7.0	3.3	3.7 (53%)
Little Calfpasture River	2-4	E.L.	10.9-4.0	Craigsville	12.0	9.6	2.4 (20%)

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<i>Cabin River</i>	2-4	<i>E.L.</i>	1.7-0.0	<i>Millboro</i>	<i>Self -sustaining</i>	<i>None</i>	<i>None</i>
<i>Maury River</i>	2-4	<i>E.L.</i>	19.6-12.2	<i>Lexington STP</i>	380.0	380.0	<i>None</i>
<i>Maury River</i>	2-4	<i>E.L.</i>	12.2-1.2	<i>Georgia Bonded Fibers</i>	760.0	102.0 <sup>3</sup>	238.0 (31%)
				<i>Buena Vista STP</i>		420.0	
<i>Maury River</i>	2-4	<i>E.L.</i>	1.2-0.0	<i>Lees Carpets</i>	790.0	425.0 <sup>3</sup>	290.0 (37%)
				<i>Glasgow STP</i>		75.0	
<i>James River</i>	2-5	<i>W.Q.</i>	271.5-266.0	<i>Owens-Illinois</i>	4,640.0	4,640.0 <sup>3</sup>	<i>None</i>
<i>James River</i>	2-6	<i>E.L.</i>	257.5-231.0	<i>Lynchburg STP</i>	10,100.0	8,000.0	2,060.0 (20%)
				<i>Babcock &amp; Wilcox-NNFD</i>		40.0 <sup>3</sup>	
<i>James River</i>	2-6	<i>E.L.</i>	231.0-202.0	<i>Virginia Fibre</i>	3,500.0	3,500.0	<i>None</i>
<i>Rutledge Creek</i>	2-8	<i>W.Q.</i>	3.0-0.0	<i>Amherst STP</i>	46.0	37.0	9.0 (20%)
<i>Town Creek</i>	2-7	<i>E.L.</i>	2.1-0.0	<i>Lovington STP</i>	26.0	21.0	5.0 (20%)
<i>Ivy Creek</i>	2-6	<i>E.L.</i>	0.1-0.0	<i>Schuyler</i>	13.8	11.0	2.8 (20%)
<i>James River</i>	2-6	<i>E.L.</i>	186.0-179.0	<i>Uniroyal, Inc.</i>	1,400.0	19.3 <sup>6</sup>	1,336.0 (95%)
				<i>Scottsville STP</i>		45.0	
<i>North Creek</i>	2-6	<i>E.L.</i>	3.1-0.0	<i>Fork Union STP</i>	31.0	25.0	6.0 (20%)
<i>Howells Branch and Licking Hole Creek</i>	2-14	<i>E.L.</i>	0.7-0.0	<i>Morton Frozen Foods</i>	20.0	20.03	<i>None</i>
<i>Standardsville Run</i>	2-16	<i>W.Q.</i>	1.2-0.0	<i>Standardsville STP</i>	17.9	14.3	3.6 (20%)
<i>Rivanna River</i>	2-11	<i>W.Q.</i>	23.5-20.0	<i>Lake Monticello STP</i>	480.0	380.0	100.0 (20%)
<i>Rivanna River</i>	2-10	<i>E.L.</i>	15.0-0.0	<i>Palmyra</i>	250.0	4.0	158.0 (63%)
				<i>Schwarzenbach Huber</i>		88.0 <sup>3</sup>	
<i>Unnamed Tributary of Whispering Creek</i>	2-6	<i>E.L.</i>	1.2-0.0	<i>Dillwyn STP</i>	38.0	30.0	8.0 (21%)
<i>South Fork Appomattox River</i>	2-17	<i>E.L.</i>	5.5-0.0	<i>Appomattox Lagoon</i>	18.8	15.0	3.8 (20%)
<i>Unnamed Tributary of Buffalo Creek</i>	2-19	<i>W.Q.</i>	1.3-0.0	<i>Hampden-Sydney Coll. STP</i>	10.0	8.0	2.0 (20%)

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Appomattox River	2-17	E.L.	106.1-88.0	Farmville STP	280.0	220.0	60.0 (21%)
Unnamed Tributary of Little Guinea Creek	2-17	E.L.	2.5-1.3	Cumberland H.S. Lagoon	0.6	.5	.1 (20%)
Unnamed Tributary of Tear Wallet Creek	2-17	E.L.	0.68-0.0	Cumberland Courthouse	8.8	7.0	1.8 (20%)
Courthouse Branch	2-22	W.Q.	2.2-0.0	Amella STP	21.0	17.0	4.0 (20%)
Unnamed Tributary of Deep Creek	2-22	W.Q.	2.2-0.0	Crewe STP	50.3 <sup>11,12</sup>	50.1 <sup>11,12</sup>	0.2 (0.4%) <sup>11,12,13</sup>

<sup>1</sup> Recommended classification.

<sup>2</sup> Based on 2020 loads or stream assimilative capacity less 20%.

<sup>3</sup> Load allocation based on published NPDES permits.

<sup>4</sup> This assimilative capacity is based upon an ammonia loading no greater than 125.1 lbs/day.

<sup>5</sup> Percentages refer to reserve as percent of total assimilative capacity. Minimum reserve for future growth and modeling accuracy is 20% unless otherwise noted.

<sup>6</sup> No NPDES Permits published (BPT not established) allocation base on maximum value monitored.

<sup>7</sup> This table is for the existing discharge point. The recommended plan may involve relocation or elimination of stream discharge.

<sup>8</sup> Assimilative capacity will be determined upon completion of the ongoing study by Hydrosience, Inc.

<sup>9</sup> Discharges into Karnes Creek, a tributary to the Jackson River.

<sup>10</sup> Discharges into Wilson Creek, near its confluence with Jackson River.

<sup>11</sup> Five-day Carbonaceous Biological Oxygen Demand (cBOD<sub>5</sub>).

<sup>12</sup> Revision supersedes all subsequent Crewe STP stream capacity, allocation, and reserve references.

<sup>13</sup> 0.4 percent reserve: determined by SWCB Piedmont Regional Office.

Source: Wiley & Wilson, Inc.

**TABLE B3 - UPPER JAMES RIVER BASIN ADDITIONAL LOAD ALLOCATIONS BASED ON RECOMMENDED DISCHARGE POINT**

Stream Name	Segment Number	Classification <sup>1</sup>	Mile to Mile	Significant Discharges	Total Assimilative Capacity of Stream BOD <sub>5</sub> lbs/day	Wasteload <sup>2</sup> Allocation BOD <sub>5</sub> lbs/day	Reserve <sup>4</sup> BOD <sub>5</sub> lbs/day <sup>5</sup>
Mill Creek	2-4	E.L.	5.5-0.0	Millboro	30.0	7.3	22.7(76%)
Calfpasture River	2-4	E.L.	4.9-0.0	Goshen	65.0	12.0	53.0 (82%)
Maury River	2-4	E.L.	1.2-0.0	Lees Carpet	790.0	425.0 <sup>3</sup>	235.0 (30%)
				Glasgow Regional S.T.P.		130.0	
Buffalo River	2-7	E.L.	9.6-0.0	Amherst S.T.P.	150.0	120.0	30.0 (20%)
Rockfish River	2-6	E.L.	9.5-0.0	Schuyler S.T.P.	110.0	25.0	85.0 (77%)
Standardsville Run		E.L.		Standardsville	Land Application Recommended		
South Fork Appomattox River		E.L.		Appomattox Lagoon	Connect to Recommended Facility in Roanoke River Basin		

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Buffalo Creek	2-17	E.L.	9.3-7.7	Hampden-Sydney College	46.0	23.0	23.0 (50%)
Unnamed trib. of Tear Walleet Creek		E.L.		Cumberland Courthouse	Land Application Recommended		
Courthouse Branch		E.L.		Amelia	Land Application Recommended		
Deep Creek	2-17	E.L.	25.0-12.8	Crewe S.T.P.	69.0	55.0	14.0 (20%)

<sup>1</sup>Recommended classification.

<sup>2</sup>Based on 2020 loads or stream assimilative capacity less 20%.

<sup>3</sup>Load allocation based on published NPDES permit.

<sup>4</sup>Percentages refer to reserve as percent of total assimilative capacity. Minimum reserve for future growth and modeling accuracy is 20% unless otherwise noted.

<sup>5</sup>Assimilative capacity will be determined upon completion of the ongoing study by Hydrosience, Inc.

Source: Wiley & Wilson, Inc.

TABLE B4 - SEGMENT CLASSIFICATION UPPER JAMES-JACKSON RIVER SUBAREA

Stream Name	Segment Number	Mile to Mile	Stream Classification	Comments
Back Creek	2-1	16.06-8.46	W.Q.	Main Only
Jackson River	2-1	95.70-24.90	E.L.	Main and Tributaries
Jackson River	2-2	24.90-0.00	W.Q.	Main Only
Jackson River	2-2	24.90-0.00	E.L.	Tributaries Only
James River	2-3	349.50-308.50	E.L.	Main and Tributaries
James River	2-3	308.50-279.41	E.L.	Main and Tributaries

TABLE B5 - UPPER JAMES-JACKSON RIVER SUBAREA WASTELOAD ALLOCATIONS BASED ON EXISTING DISCHARGE POINT<sup>1</sup>

MAP LOCATION	STREAM NAME	SEGMENT NUMBER	SEGMENT CLASSIFICATION STANDARDS	MILE to <sup>2</sup> MILE	DISCHARGER	VPDES PERMIT NUMBER	VPDES PERMIT LIMITS BOD <sub>5</sub> kg/day	303(e) <sup>3</sup> WASTELOAD ALLOCATION BOD <sub>5</sub> kg/day
1	Jackson River	2-1	E.L.	93.05-	Virginia Trout	VA0071722	N/A	Secondary
B	Warm Springs Run	2-1	E.L.	3.62-0.00	Warm Springs STP	VA0028233	9.10	Secondary
3	Back Creek	2-1	W.Q.	16.06-8.46	VEPCO	VA0053317	11.50	11.50
C	X-trib to Jackson River	2-1	E.L.	0.40-0.0	Bacova	VA0024091	9.10	Secondary
D	Hot Springs Run	2-1	E.L.	5.30-0.00	Hot Springs Reg. STP	VA0066303	51.10	Secondary
E	X-trib to Cascades Creek	2-1	E.L.	3.00-0.00	Ashwood-Healing Springs STP	VA0023726	11.30	Secondary
F	Jackson River	2-1	E.L.	50.36-	U.S. Forest Service Bolar Mountain	VA0032123	1.98	Secondary

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G	Jackson River	2-1	E.L.	43.55	U.S. Army COE Morris Hill Complex	VA0032115	1.70	Secondary
H	Jackson River	2-1	E.L.	29.84-	Alleghany County Clearwater Park	VA0027955	5.70	Secondary
4	Jackson River	2-1	E.L.	25.99	Covington City Water Treatment Plant	VA0058491	N/A	Secondary
5	Jackson River	2-2	W.Q.	24.64-19.03	Westvaco	VA0003646	4,195.00	4,195.00 <sup>4</sup>
6					Covington City <sup>5</sup> Asphalt Plant	VA0054411	N/A	N/A
7					Hercules, Inc <sup>6</sup>	VA0003450	94.00	94.00
J	Jackson River	2-2	W.Q.	19.03-10.5	Covington STP	VA0025542	341.00	341.00
K	Jackson River			10.5-0.0	Low Moor STP <sup>7</sup>	VA0027979	22.70	22.70
M					D.S. Lancaster CC <sup>8</sup>	VA0028509	3.60	3.60
L					Selma STP <sup>9</sup>	VA0028002	59.00	59.00
10					The Chessie System <sup>10</sup>	VA0003344	N/A	N/A
N					Clifton Forge STP <sup>11</sup>	VA0002984	227.00	227.00
11					Lydall <sup>12</sup>	VA0002984	6.00	6.00
P					Iron Gate STP <sup>13</sup>	VA0020541	60.00	60.00
8	Paint Bank Branch	2-2	E.L.	1.52	VDGIF Paint Bank Hatchery	VA0098432	N/A	Secondary
I	Jerrys Run	2-2	E.L.	6.72-	VDOT 1-64 Rest Area	VA0023159	0.54	Secondary
AA	East Branch (Sulfer Spring)	2-2	E.L.	2.16	Norman F. Nicholas	VA0078403	0.05	Secondary
BB	East Branch (Sulfer Spring)	2-2	E.L.	1.91-	Daryl C. Clark	VA0067890	0.068	Secondary
9	Smith Creek	2-2	E.L.	3.44-	Clifton Forge Water Treatment Plant	VA0006076	N/A	Secondary
O	Wilson Creek	2-2	E.L.	0.20-0.0	Cliftondale <sup>14</sup> Park STP	VA0027987	24.00	Secondary
2	Pheasanty Run	2-3	E.L.	0.01-	Coursey Springs	VA0006491	434.90	Secondary
Q	Grannys Creek	2-3	E.L.	1.20-	Craig Spring Conference Grounds	VA0027952	3.40	Secondary
CC	X-trib to Big Creek	2-3	E.L.	1.10-	Homer Kelly Residence	VA0074926	0.05	Secondary

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12	Mill Creek	2-3	E.L.	0.16-	Columbia Gas Transmission Corp.	VA0004839	N/A	Secondary
R	John Creek	2-3	E.L.	0.20-	New Castle STP(old)	VA0024139	21.00	Secondary
S	Craig Creek	2-3	E.L.	48.45-36.0	New Castle STP (new)	VA0064599	19.90	Secondary
T	Craig Creek	2-3	E.L.	46.98-	Craig County Schools McCleary E.S.	VA0027758	0.57	Secondary
DD	Eagle Rock Creek	2-3	E.L.	0.08-	Eagle Rock STP <sup>15</sup> (Proposed)	VA0076350	2.30	Secondary
U	X-trib to Catawba Creek	2-3	E.L.	0.16	VDMH & R Catawba Hospital	VA0029475	13.60	Secondary
14	Catawba Creek	2-3	E.L.	23.84	Tarmac-Lonestar	VA0078393	0.80	Secondary
FF	Borden Creek	2-3	E.L.	2.00-	Shenandoah Baptist Church Camp	VA0075451	0.88	Secondary
EE	X-trib to Borden Creek	2-3	E.L.	0.36	David B. Pope	VA0076031	0.07	Secondary
V	X-trib to Catawba Creek	2-3	E.L.	3.21-	U.S. FHA Flatwood Acres	VA0068233	0.03	Secondary
W	Catawba Creek	2-3	E.L.	11.54-	Fincastle STP	VA0068233	8.50	Secondary
X	Looney Mill Creek	2-3	E.L.	1.83-	VDOT I-81 Rest Area	VA0023141	0.91	Secondary
Y	X-trib to Stoney	2-3	E.L.	0.57	VDOC Field Unit No. 25 Battle Creek	VA0023523	1.10	Secondary
Z	James River	2-3	E.L.	308.5-286.0	Bunchanan STP	VA0022225	27.00	Secondary

**TABLE B5 - NOTES:**

N/A Currently No BOD<sup>5</sup> limits or wasteload have been imposed by the VPDES permit. Should BOD<sup>5</sup> limits (wasteload) be imposed a WQMP amendment would be required for water quality limited segments only.

<sup>1</sup> Secondary treatment levels are required in effluent limiting (E.L.) segments. In water quality limiting (W.Q.) segments quantities listed represent wasteload allocations.

<sup>2</sup> Ending river miles have not been determined for some Effluent Limited segments.

<sup>3</sup> These allocations represent current and original (1977 WQMP) modeling. Future revisions may be necessary based on Virginia State Water Control Board modeling.

<sup>4</sup> The total assimilative capacity at critical stream flow for this portion of Segment 2-2 has been modeled and verified by Hydrosience, Inc. (March 1977) to be 4,914 kg/day BOD<sub>5</sub>.

<sup>5</sup> The discharge is to an unnamed tributary to the Jackson River at Jackson River mile 22.93.

<sup>6</sup> The discharge is at Jackson River mile 19.22.

<sup>7</sup> The discharge is to the mouth of Karnes Creek, a tributary to the Jackson River at Jackson River mile 5.44.

<sup>8</sup> The discharge is at Jackson River mile 6.67.

<sup>9</sup> The discharge is at Jackson River mile 5.14.

<sup>10</sup> The discharge is at Jackson River mile 4.72.



<sup>11</sup> The discharge is at Jackson River mile 3.46.

<sup>12</sup> The discharge is at Jackson River mile 1.17

<sup>13</sup> The discharge is at Jackson River mile 0.76

<sup>14</sup> The discharge is to the mouth of Wilson Creek, a tributary to the Jackson River at Jackson River mile 2.44.

<sup>15</sup> The discharge is to the mouth of Eagle Rock Creek, a tributary to the Jackson River at Jackson River mile 330.35.

**TABLE B6 - RICHMOND CRATER INTERIM WATER QUALITY MANAGEMENT PLAN STREAM CLASSIFICATIONS - JAMES RIVER BASIN**

SEGMENT	SEGMENT NUMBER	MILE TO MILE	CLASSIFICATION
USGS HUC02080206 James River	2-19	115.0-60.5	W.Q.
USGS HUC02080207 Appomattox	2-23	30.1-0.0	W.Q.

**TABLE B6-** \* Note: A new stream segment classification for the Upper James Basin was adopted in 1981. The SWCB will renumber or realign these segments in the future to reflect these changes. This Plan covers only a portion of these segments.

**TABLE B7 - RICHMOND CRATER INTERIM WATER QUALITY MANAGEMENT PLAN- CURRENT PERMITTED WASTE LOADS (March 1988)**

	SUMMER (June-October)					WINTER (November-May)						
	FLOW (mgd)	BOD <sub>5</sub>		NH <sub>3</sub> -N <sup>1</sup>		DO <sup>2</sup> (mg/l)	FLOW (mgd)	BOD <sub>5</sub>		NH <sub>3</sub> -N <sup>1</sup>		DO <sup>2</sup> (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)			(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP <sup>3</sup>	45.00	3002	8.0	-	-	-	45.00	5367		-	-	-
E.I. DuPont-Spruance	8.68	936	-	-	-	-	8.68	936	-	-	-	-
Falling Creek STP	9.00	1202	16.0	-	-	5.9	9.00	2253	30.0	-	-	5.9
Proctor's Creek STP	6.40	1601	30.0	-	-	5.9	11.80	2952	30.0	-	-	5.9
Reynolds Metals Company	0.39	138	-	7	-	-	0.39	138	-	7	-	-
Henrico STP	30.00	3005	12.0	-	-	5.9	30.00	7260	29.0	-	-	5.9
American Tobacco Company	1.94	715	-	-	-	-	1.94	716	-	-	-	-
ICI Americas, Inc.	0.20	152	-	-	-	-	0.20	152	-	-	-	-
Phillip Morris- Park 500	1.50	559	-	-	-	-	1.50	557	-	-	-	-
Allied (Chesterfield)	51.00	1207	-	-	-	-	51.00	1207		-	-	-
Allied (Hopewell)	150.00	2500	-	-	-	-	150.00	2500	-	-	-	-
Hopewell Regional WTF	34.08	12507	44.0	-	-	4.8	34.08	12507	44.0	-	-	4.8
Petersburg STP	15.00	2804	22.4	-	-	5.0	15.00	2804	22.4	-	-	5.0
<b>TOTAL</b>	<b>353.19</b>	<b>30328</b>					<b>358.59</b>	<b>39349</b>				

<sup>1</sup> NH<sub>3</sub>-N values represent ammonia as nitrogen.

<sup>2</sup> Dissolved oxygen limits represent average minimum allowable levels.

<sup>3</sup> Richmond STP's BOD<sub>5</sub> is permitted as CBOD<sub>5</sub>

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TABLE B7 - WASTE LOAD ALLOCATIONS FOR THE YEAR 1990

	SUMMER (June-October)					WINTER (November-May)					
	FLOW (mgd)	CBOD <sub>5</sub>		NH <sub>3</sub> -N <sup>1,3</sup>		DO <sup>2</sup> (mg/l)	CBOD <sub>5</sub>		NH <sub>3</sub> -N <sup>1</sup>		DO <sup>2</sup> (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.00	3002	8.0	2403	6.4	5.6	5367	14.3	5707	15.2	5.6
E.I. DuPont-Spruance	11.05	948		590		4.4	948		756		2.9
Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	12.00	1602	16.0	961	9.6	5.9	2403	24.0	1402	14.0	5.9
Reynolds Metals Co.	0.49	172		8		6.5	172		8		6.5
Henrico STP	30.00	3002	12.0	2403	9.6	5.6	4756	19.0	3504	44.0	5.6
American Tobacco Co.	2.70	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris- Park 500	2.20	819		92		4.6	819		92		4.6
Allied (Chesterfield)	53.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	165.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	34.07	12502	44.0	12091	36.2	4.8	12502	44.0	10291	36.2	4.8
Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
<b>TOTAL</b>	<b>380.81</b>	<b>31084</b>		<b>28978</b>			<b>36679</b>	<b>35958</b>			

<sup>1</sup> NH<sub>3</sub>-N values represent ammonia as nitrogen.

<sup>2</sup> Dissolved oxygen limits represent average minimum allowable levels.

<sup>3</sup> Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

Table B7- Waste Load Allocation for the Year 2000

	SUMMER (June-October)					WINTER (November-May)					
	FLOW (mgd)	CBOD <sub>5</sub>		NH <sub>3</sub> -N <sup>1,3</sup>		DO <sup>2</sup> (mg/l)	CBOD <sub>5</sub>		NH <sub>3</sub> -N <sup>1</sup>		DO <sup>2</sup> (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.08	3002	8.0	2403	6.4	5.6	5367	14.3		15.2	5.6
E.I. DuPont-Spruance	196.99	948		590		4.4	948		756		2.9
Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	16.80	1602	11.4	961	6.9	5.9	2403	17.1	1402	10.0	5.9
Reynolds Metals Co.	0.78	172		13		6.5	172		13		6.5
Henrico STP	32.80	3002	11.0	2403	8.8	5.6	4756	17.4	3504	12.8	5.6
American Tobacco Co.	3.00	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris- Park 500	2.90	819		92		4.6	819		92		4.6
Allied (Chesterfield)	56.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	170.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	36.78	12502	40.7	12091	33.5	4.8	12502	40.7	10291	33.5	4.8

Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
TOTAL	406.43	31084		28982			36679		35963		

<sup>1</sup> NH<sub>3</sub>-N values represent ammonia as nitrogen.

<sup>2</sup> Dissolved oxygen limits represent average minimum allowable levels.

<sup>3</sup> Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

**TABLE B7- WASTE LOAD ALLOCATIONS FOR THE YEAR 2010**

	SUMMER (June-October)					WINTER (November-May)					
	FLOW (mgd)	CBOD <sub>5</sub>		NH <sub>3</sub> -N <sup>1,3</sup>		DO <sup>2</sup> (mg/l)	CBOD <sub>5</sub>		NH <sub>3</sub> -N <sup>1</sup>		DO <sup>2</sup> (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.86	3002	7.8	2403	6.3	5.6	5367	14.0		14.9	5.6
E.I. DuPont-Spruance	16.99	948		590		4.4	948		756		2.9
Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	24.00	1602	8.0	961	4.8	5.9	2403	12.0	1402	7.0	5.9
Reynolds Metals Co.	0.78	172		13		6.5	172		13		6.5
Henrico STP	38.07	3002	9.5	2403	7.6	5.6	4756	15.0	3504	11.0	5.6
American Tobacco Co.	3.00	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris- Park 500	2.90	819		92		4.6	819		92		4.6
Allied (Chesterfield)	56.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	180.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	39.61	12502	37.8	12091	31.1	4.8	12502	37.8	10291	31.1	4.8
Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
TOTAL	432.1	31084		28982			36679		35963		

<sup>1</sup> NH<sub>3</sub>-N values represent ammonia as nitrogen.

<sup>2</sup> Dissolved oxygen limits represent average minimum allowable levels.

<sup>3</sup> Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

**9 VAC 25-720-70. Rappahannock River Basin.**

A. Total maximum Daily Load (TMDLs).

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

9 VAC 25-720-70 Rappahannock Area Development Commission (RADCO) 208 Area Wide Waste Treatment Management Plan And Potomac-Shenandoah River Basin 303(e) Water Quality Management Plan is included in The Potomac River Basin section.

**9 VAC 25-720-80. Roanoke River Basin.**

A. Total maximum Daily Load (TMDLs).

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

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TABLE B1 - STREAM SEGMENT CLASSIFICATION

Classification	Segment description
WQMA IV	
	<i>E All tributaries to the Roanoke River not previously classified in the WQMA.</i>
WQMA V	
	<i>E Roanoke River and all tributaries in this WQMA.</i>
WQMA VI	
	<i>WQ Ash Camp Creek.</i>
	<i>EL Twittys Creek.</i>
	<i>E Roanoke Creek to include all tributaries not previously classified in the WQMA.</i>
WQMA VII	
	<i>WQ Banister River from /confluence of Polecat Creek to confluence of Dan and Banister Rivers (River only).</i>
	<i>EL Dan River from confluence Miry Creek to backwaters of Kerr Reservoir (River only).</i>
	<i>WQ Kerr Reservoir.</i>
	<i>WQ Little Bluestone Creek.</i>
	<i>WQ Butcher Creek</i>
	<i>WQ Flat Creek.</i>
	<i>E All tributaries to Kerr Reservoir, Dan River and Banister River not previously classified in this WQMA.</i>
	<i>E Roanoke River from confluence Clover Creek to backwaters of Kerr Reservoir.</i>
	<i>E All tributaries to the Roanoke River in this WQMA not previously classified.</i>
WQMA VIII	
WQMA IX	
	<i>E Banister River through this WQMA</i>
	<i>EL Georges Creek.</i>
	<i>EL Cherrystone Creek.</i>
	<i>E All tributaries to the Banister River not previously classified in this WQMA.</i>
WQMA X	
	<i>E Dan River from NC-VA State Line to one mile above the confluence of Sandy River (River only).</i>
	<i>E Sandy River to include all tributaries.</i>
	<i>WQ Dan River from one mile above confluence of Sandy River to NC-VA line.</i>
	<i>E Dan River from NC-VA line to confluence Miry Creek</i>
	<i>E All tributaries to the Dan River in Virginia not previously classified in this WQMA.</i>
WQMA XII	
	<i>E Smith River from its headwaters to Philpot Dam.</i>
	<i>WQ Smith River from Philpott Dam to the NC-VA State Line.</i>
	<i>EL Marrowbone Creek.</i>
	<i>EL Leatherwood Creek.</i>
	<i>E All tributaries to the Smith River not previously classified in this WQMA.</i>

WQMA XIII		
	E	North Mayo River from its headwaters to the NC-VA State Line to include all tributaries.
WQMA XIV		
	E	Headwaters South Mayo River to confluence North Fork South Mayo River.
	EL	South Mayo River from confluence with North Fork to NC-VA Line.
	E	All tributaries of the South Mayo River not previously classified in this WQMA.
WQMA XV		
	E	All streams in this WQMA.

Source: Hayes, Seay, Mattern & Mattern

TABLE B2 - SEWERAGE SERVICE AREAS

NPDES Limits<sup>3</sup>

SSA <sup>1</sup>	Municipality	Receiving Stream Classification <sup>2</sup>	Flow (mgd)	BOD <sub>5</sub> (lbs/day)	SS (lbs/day)	Status of Applicable <sup>4</sup> Section 201 Programs (May, 1976)
G	Altavista	EL	0.56	224	224	Construction to begin July, 1976 Estimated completion April, 1977
K	Appomattox	EL	0.1	*30/50	*30/50	Step I to be submitted in Fiscal Year 1976
		EL	0.084	34	34	
BB	Bassett		Not applicable <sup>5</sup>			To be served by Henry County Regional Plant
E	Bedford	E	1.5	275	275	Construction completed in June 1974
A	Blacksburg	EL	0.04	*12/20	*12/20	Pump to Struble's Creek in New River Basin
		WQ	0.4	80	80	Step II to be submitted Summer 1976
D	Boones Mill		Required Permit to be issued <sup>6</sup>			Step II grant application submitted
W	Boydton	E	0.8	320	320	Step I-II to be submitted Fiscal Year 1976
X	Brodnax		Not applicable <sup>5</sup>			To be served by South Hill
J	Brookneal	EL	0.078	31	31	No grant application yet submitted
		EL	0.082	33	33	
M	Charlotte Courthouse		Required Permit to be issued <sup>6</sup>			Continue use of existing community septic tank system; to be rated for grant in Fiscal Year 1977
U	Chase City	WQ	0.1	*30/50	*30/50	No grant application yet submitted
		WQ	0.28	112	112	
Z	Chatham	EL	0.54	522	400	Step I to be submitted in Fiscal Year 1976
V	Clarksville	WQ	0.35	380	292	No grant application yet submitted
Q	Clover		Not applicable <sup>5</sup>			To be served by South Boston
BB	Collinsville	EL	0.95	*285/475	*285/475	STP to be abandoned and area served by Henry County Regional Plant

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AA	Danville (2 plants)	WQ	24.0	4203	4203	Construction completed in Spring 1976
		WQ	15.0	2127	3735	
N	Drakes Branch	EL	0.0575	75	58	Step I to be submitted Fiscal Year 1976
A	Ellet		Not applicable <sup>5</sup>			
B	Elliston		Not applicable <sup>5</sup>			
DD	Ferrum	WQ	0.25	50	50	No grant application yet submitted
BB	Fieldale		Not applicable <sup>5</sup>			To be served by Henry County Regional Plant
Y	Gretna	EL	0.153	61	61	No grant application yet submitted
R	Halifax		0.15	195	150	To be served by South Boston; Step I for connector awarded in Fiscal Year 1975
BB	Henry County Regional Plant		Required permit to be issued <sup>6</sup> (4.0            567            567 )			Construction to begin April 1976 Estimated completion April 1977
G	Hurt		Not applicable <sup>5</sup>			To be served by Altavista
B	Ironto		Not applicable <sup>5</sup>			No grant application yet submitted
P	Keysville	WQ	0.09	27	27	Step I to be submitted Fiscal Year 1976
X	LaCrosse	WQ	0.072	29	29	To be served by South Hill
		WQ	0.04	16	16	
B	Lafayette		Required permit to be issued <sup>6</sup>			Step I to be submitted Fiscal Year 1976
BB	Martinsville	EL	4.0	5603	3536	Construction to begin April 1976 Estimated completion June 1977
G	Motley		Not Applicable <sup>5</sup>			Continue use of individual septic tanks
L	Pamplin City		Not Applicable <sup>5</sup>			No grant application yet submitted
CC	Patrick Springs		Not Applicable <sup>5</sup>			Continue use of individual septic tanks
C	Roanoke	WQ	28.0	3503	4904	Construction completed in Fall 1976
EE	Rocky Mount	E	0.8	*240/400	*240/400	No grant application yet submitted
H	Rustburg	WQ	0.156	62	62	Step III submitted; construction to begin Summer 1976
S	Scottsburg		Not Applicable <sup>5</sup>			To be served by South Boston; Step 1 for connection to be submitted Fiscal Year 1976
B	Shawsville	EL	0.1	25	25	Construction completed in October 1975
R	South Boston	EL	1.3	1410	1410	Construction completed in December 1976
X	South Hill	E	.012	48	48	Construction to begin Fall 1976
		E	0.384	154	154	

		<i>E</i>	.33	275	165	
<i>BB</i>	<i>Stanleytown</i>					<i>To be served by Henry County Regional Plant</i>
<i>CC</i>	<i>Stuart</i>		<i>Required Permit to be issued<sup>6</sup></i> <i>(0.30            130            47.5)</i>			<i>Construction completed March 1976</i>
<i>F</i>	<i>Timberlake</i>		<i>Not</i> <i>Applicable<sup>5</sup></i>			<i>To be served by Lynchburg in James River Basin</i>
<i>C</i>	<i>Vinton</i>		0.6	180	180	<i>To be served by Roanoke Regional Plant</i>
<i>T</i>	<i>Virgilina</i>		<i>Not</i> <i>Applicable<sup>5</sup></i>			<i>No grant application yet submitted</i>

<sup>1</sup> Sewerage Service Areas (SSA) shown on Plate II.

<sup>2</sup> Effluent Limiting (EL) or Water Quality (WQ).

<sup>3</sup> For existing sewage treatment facility.

<sup>4</sup> For new Sewage treatment facility.

<sup>5</sup> No existing or future sewage treatment plant planned, wastes to be transferred to other sewerage service areas.

<sup>6</sup> No existing discharge but new sewage treatment plant is under construction or planned.

\*Seasonal NPDES allowable loading: April to September/October to March.

# Step III construction grant funded.

Source: Haynes, Seay, Mattern & Mattern

**TABLE B3 - SEGMENT CLASSIFICATION - STANDARDS UPPER ROANOKE RIVER SUBAREA  
HUC CODE 03010101**

303(e)		Stream		
Stream Name	Segment Number	Mile to Mile	Classification	Comments
<i>N.F. Roanoke River</i>	<i>4A-1</i>	<i>30.80 to 0.00</i>	<i>E.L.-P</i>	<i>Main and tributaries.</i>
<i>S.F. Roanoke River</i>	<i>4A-1</i> <i>16.60 to 0.00</i> <i>E.L.-P</i> <i>Main and tributaries.</i>	<i>16.60 to 0.00</i>	<i>E.L.-P</i> <i>W.Q.-FC</i>	<i>Main and tributaries.</i> <i>Main only.</i>
<i>Roanoke River</i>	<i>4A-2</i>	<i>227.74 to 202.20</i>	<i>W.Q.-DO,P</i>	<i>Main only to 14th Street Bridge.</i>
<i>Peters Creek</i>	<i>4A-2</i>	<i>8.00 to 0.00</i>	<i>W.Q.-DO,P</i>	<i>Main only.</i>
<i>Roanoke River</i>	<i>4A-2</i>	<i>202.20 to 195.87</i>	<i>W.Q.-DO,P</i>	<i>Main to confluence with Prater Creek.</i>
<i>Tinker Creek</i>	<i>4A-2</i>	<i>19.40 to 0.00</i>	<i>W.Q.-DO,P,FC</i>	<i>Main only.</i>
<i>Back Creek</i>	<i>4A-2</i>	<i>25.70 to 0.00</i>	<i>E.L.-P</i>	<i>Main and tributaries.</i>
<i>Roanoke River</i>	<i>4A-2</i>	<i>195.87 to 158.20</i>	<i>W.Q.- DO,P</i>	<i>Main and impounded tributaries (impounded portions only) to Smith Mtn. Dam.</i>
<i>Other tributaries to the Roanoke River</i>	<i>4A-2</i>	<i>227.74 to 158.20</i>	<i>E.L.-P</i>	<i>Tributaries only.</i>
<i>Blackwater River</i>	<i>4A-3</i>	<i>58.80 to 19.75</i>	<i>E.L.-P</i>	<i>Main and tributaries.</i>

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<i>Blackwater River</i>	4A-3	19.75 to 0.00	W.Q.-DO,P	Main and impounded tributaries(impounded portions only) to mouth of Blackwater River.
<i>Other tributaries to the Blackwater River</i>	4A-3	58.80 to 0.00	E.L.-P	Tributaries only.
<i>Pigg River</i>	4A-4	79.80 to 58.00	E.L.	Main and tributaries from the headwaters to the confluence with Furnace Creek - except Story Creek.
<i>Storey Creek</i>	4A-4	10.30 to 0.00	W.Q.-DO	Main Only.
<i>Pigg River</i>	4A-4	58.00 to 47.60	W.Q.-DO	Main only from Furnace Creek to the confluence with Powder Mill Creek.
<i>Pigg River</i>	4A-4	47.60 to 0.00	E.L.	Main and tributaries.
<i>Roanoke River</i>	4A-5	158.20 to 140.54	E.L.	Main and tributaries. (Leesville Lake)
<i>Goose Creek</i>	4A-5	39.30 to 0.00	E.L.	Main and tributaries.
<i>Little Otter River</i>	4A-5	17.15 to 14.36	E.L.	Main and tributaries to confluence with Johns Creek.
<i>Johns Creek</i>	4A-5	4.00 to 0.00	W.Q.-DO	Main only.
<i>Little Otter River</i>	4A-5	14.36 to 0.00	W.Q.-DO	Main only from confluence with Johns Creek to Big Otter River.
<i>Big Otter River</i>	4A-5	42.68 to 0.00	E.L.	Main and tributaries.
<i>Roanoke River</i>	4A-5	140.54 to 123.79	E.L.	Main and tributaries.

**Legend:**

DO = Dissolved Oxygen  
P = Phosphorus  
FC = Fecal Coliform  
T = Temperature

**TABLE B4 - WASTELOAD ALLOCATIONS BASED ON EXISTING DISCHARGE POINT 1 UPPER ROANOKE RIVER SUBAREA HUC 03010101**

MAP LOCATION	STREAM NAME	SEGMENT NUMBER	SEGMENT CLASSIFICATION STANDARDS	MILE to MILE	DISCHARGER	VPDES PERMIT NUMBER	VPDES PERMIT LIMITS BOD <sub>5</sub> <sup>4</sup> kg/day	303(e) 3/ WASTELOAD ALLOCATION BOD <sub>5</sub> <sup>4</sup> kg/day	TOTAL MAXIMUM DAILY LOAD W. Q. SEGMENTS BOD <sub>5</sub> <sup>4</sup> kg/day
A	S.F. Roanoke R.	4A-1	E.L.-P WQ-FC	6.33-	Montgomery County PSA Shawsville STP	VA0024031	11.40	Secondary	
B	S.F. Roanoke R.	4A-1	E.L.-P	0.76-	Montgomery County PSA Elliston-Lafayette STP	VA0062219	28.00	Secondary	
C	X-trib to N.F. Roanoke R.	4A-1	E.L.-P	0.25-	Lonnie J. Weddle Residence	VA0073229	0.03	Secondary	
D	X-trib to N.F. Roanoke R.	4A-1	E.L.-P	0.25-	James Luther Residence	VA0073237	0.05	Secondary	



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E	N.F. Roanoke R.	4A-1	E.L.-P	17.57-	Blacksburg Country Club, Inc.	VA0027481	4.00	Secondary	
1	Cedar Run	4A-1	E.L.-P	2.64-0.46-	Wolverine Gasket Co., Inc	VA0052825	N/A	Secondary	
F	Cedar Run	4A-1	E.L.-P	0.40-	Wendell Hensley Residence	VA0066737	0.07	Secondary	
G	X-trib to Cedar Run	4A-1	E.L.-P	0.20-	Ivan Gary Bland Residence	VA0077488	0.05	Secondary	
H	Cedar Run	4A-1	E.L.-P	0.46-	Velma D. Compton Residence	VA0080021	0.06	Secondary	
2	N.F. Roanoke R.	4A-1	E.L.-P	15.21-	Federal Mogal, Inc.	VA0001619	N/A	Secondary	
I	N.F. Roanoke R.	4A-1	E.L.-P	0.76-	VDOT-I-81 Ironto Rest Area	VA0060941	2.80	Secondary	
3	X-trib to Roanoke R.	4A-2	E.L.-P	1.04-	Salem Stone Corp.	VA0006459	N/A	Secondary	
4	Roanoke R.	4A-2	W.Q.-D0,P	218.13 -	Roanoke Electric Steel Salem Plant	VA0001333	N/A	N/A	N/A
5	Roanoke R.	4A-2	W.Q.-D0,P	216.33 -	Roanoke Electric Steel Salem Plant	VA0001341	N/A	N/A	N/A
6	Snyders Br.	4A-2	E.L.P	0.17-	Graham White Mfg., Inc.	VA0030031	N/A	Secondary	
7	Bowmans's Br.	4A-2	E.L.P.	0.20-	Mechanical Development Co., Inc.	VA002311	N/A	Secondary	
8	Roanoke R.	4A-2	W.Q-DO,P	212.61 -	Rowe Furniture Corp., Inc.	VA0024716	N/A	N/A	N/A
9	Roanoke R.	4A-2	W.Q.L.-DO,P	212.39 -	Valleydale Packers, Inc.	VA0001317	N/A	N/A	N/A
J	X-trib to Mason Cr.	4A-2	E.L.P.	0.21	Gary L. Bryant Residence	VA0063398	0.07	Secondary	
K	Mason Cr.	4A-2	E.L.P.	0.30-	Roanoke County Schools Mason Cove E.S.	VA0027545	0.45	Secondary	
L	Mason Cr.	4A-2	E.L.P.	7.79-	Roanoke Moose Lodge 284	VA00 77895	0.53	Secondary	
M	Gish Br.	4A-2	E.L.P.	1.80-	Eddie Miller	VA0076759	0.06	Secondary	
10	Roanoke R.	4A-2	W.Q.-D0,P	209.58 -	Virginia Plastics Co., Inc.	VA0052477	N/A	N/A	N/A
10	X-trib to Mud Lick	4A-2	E.L.P.	0.47-	Virginia Plastics Co., Inc.	VA002477	2.70	Secondary	

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11	Peters Cr.	4A-2	W.Q.-D0,P	0.26-	Roanoke Electric Steel Roanoke Plant	VA0001589	N/A	N/A	N/A
12	Roanoke R.	4A-2	W.Q.-D0,P	207.60 -	Fuel Oil & Equipment Co., Inc.	VA0001252	N/A	N/A	N/A
13	Roanoke R.	4A-2	W.Q.-D0,P	207.24	Norfolk & Western Railways Co., Inc.-Schaffers Crossing	VA0001597	N/A	N/A	N/A
13	Horton Cr.	4A-2	E.L.P.	0.41-	Norfolk & Western Railways Co., Inc.-Schaffers Crossing	VA0001597	N/A	Secondary	
N	Roanoke	4A-2	W.Q.-D0,P	201.81 -	Roanoke City Regional STP	VA0025020	662.00	757.40	927.72
14	Carvin Cr.	4A-2	E.L.P.	5.77-	Roanoke City Carvin Cove	VA0001473	N/A	Secondary	
15	Carvin Cr.	4A-2	E.L.P.	4.98-	ITT Electro-Optical Products Division	VA0020443	N/A	Secondary	
16	Tinker Cr	4A-2	W.Q.-D0,P,FC	5.17	Elizabeth Arden, Inc.	VA0001635	N/A	N/A	N/A
17	Tinker Cr	4A-2	W.Q.-D0,P,FC	1.45	Exxon Company, USA, Inc.	VA0079006	N/A	N/A	N/A
18	Lick Run	4A-2	E.L.P.	3.51-	Norfolk & Western Railways Co., Inc.-Schaffers Crossing	VA0001597	N/A	Secondary	
18	Lick Run	4A-2	E.L.P.	1.12-	Norfolk & Western Railways Co., Inc.-East End Shops	VA0001511	N/A	Secondary	
O	X-trib to Glade Cr	4A-2	E.L.P.	1.60-	R.W. Bowers Commerical	VA0068497	0.06	Secondary	
P	X-trib to Glade Cr	4A-2	E.L.P.	1.24-	Geraldine B. Carter Residence	VA0076546	0.06	Secondary	
Q	Coyner Spring Br.	4A-2	E.L.P.	0.50-	Roanoke City-Coyner Springs	VA0021121	0.80	Secondary	
R	Back Cr.	4A-2	E.L.P.	16.14-	Roanoke Sanitary Disposal Corp.-Starkey STP	VA0027103	45.40	Secondary	
19	E.L.P.	4A-2	E.L.P.	1.48-	Shell Oil Co., Inc.	VA0001431	N/A	Secondary	

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S	X-trib to Back Cr.	4A-2	E.L.P.	1.00-	Suncrest Development Co., Inc.- Suncrest Heights STP	VA0028711	2.30-	Secondary	
20	Falling Cr.	4A-2	E.L.P.	7.70-	Roanoke City- Falling Cr. WTP	VA0001465	N/A	Secondary	
T	X-trib to Falling Cr.	4A-2	E.L.P.	0.32-	Oak Ridge Mobile Home Park	VA0078392	3.40	Secondary	
U	Nat Branch	4A-2	E.L.P.	0.59-	Bedford County Schools Stewartsville E.S.	VA0020842	0.50	Secondary	
V	Roanoke R.	4A-2	W.Q.-D0,P	182.76 -	L. Jack & Vicki S. Browning Residence	VA00 67229	0.07	0.07	170.07
W	X-trib to Little Cr.	4A-2	E.L.P.	0.16-	Robert R. Walter Residence	VA0074004	0.05	Secondary	
X	X-trib to Teals Cr.	4A-3	E.L.P.	0.96-	Franklin County Schools Boones Mill E.S.	VA0060291	.50	Secondary	
21	Blackwater R.	4A-3	E.L.P.	40.05-	Rocky Mount Town Blackwater R. WTP	VA0055999	N/A/	Secondary	
Y	Blackwater R.	4A-3	E.L.P.	38.95-	Franklin Manor Home for Adults	VA006755	1.70	Secondary	
Z	X-trib to Blackwater R.	4A-3	E.L.P.	1.15-	Franklin County Schools	VA0060283	0.80	Secondary	
AA	X-trib to Maggodee Cr.	4A-3	E.L.P.	0.28-	Boones Mill Town- Sand Filter	VA0078401	0.50	Secondary	
AB	Maggodee Cr.	4A-3	E.L.P.	14.51	Boones Mill Town STP	VA0067245	3.40	Secondary	
AC	Roanoke R.	A-5	E.L.P.	158.09 -	APCO- SML Dam Visitors Center	VA0074179	0.57	Secondary	
AD	Roanoke R.	4A-5	E.L.P.	157.49 -	APCO- SML Dam Picnic Area	VA0074217	0.57	Secondary	
AE	Storey Cr.	4A-4	W.Q.-DO	9.78-	Ferrum Water & Sewage Authority Ferrum STP	VA0029254	14.20	14.20	14.60
23	X-trib to Piggs R.	4A-4	W.Q.-DO	1.28-	The Lane Company- Rocky Mount Plant	VA0098438	N/A	Secondary	
22	Piggs R.	4A-4	W.Q.-DO	57.24-	Ronile, Inc.	VA0076015	14.80	14.80	34.98

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AF	Piggs R.	4A-4	W.Q.-DO	56.72-	Rocky Mt. Town Existing STP	VA0023728	133.00		
				52.68-	Rocky Mt. Town Proposed STP	VA0085952	133.00		
24	X-trib to Powder Mill Cr.	4A-4	E.L.	1.64-	Rocky Top Wood Preservers Inc.	VA0080071	N/A	Secondary	
AG	Willow Cr.	4A-4	E.L.	1.30-	Town & Country Subdivision	VA0028657	4.50	Secondary	
25	S.F. Goose Cr.	4A-5	E.L.	6.77-	Blue Ridge Stone Corp.- Blue Ridge Plant	VA0050636	N/A	Secondary	
AH	X-trib to Goose Cr.	4A-5	E.L.	0.66-	Woodhaven Village, Inc.	VA0074870	0.50	Secondary	
26	X-trib to Goose Cr.	4A-5	E.L.	0.08	Conoco, Inc.	VA0055328	N/A	Secondary	
27	S.F. Goose Cr.	4A-5	E.L.	2.58-	Chevron USA, Inc.	VA0026051	N/A	Secondary	
28	X-trib to Goose Cr.	4A-5	E.L.	0.20-	Phillips Petroleum Co., Inc.	VA0051446	N/A	Secondary	
29	X-trib to Goose Cr.	4A-5	E.L.	0.04-	Amoco Oil Co., Inc.	VA0054577	N/A	Secondary	
29	X-trib to Goose Cr.	4A-5	E.L.	0.06-	Amoco Oil Co., Inc.	VA0054577	N/A	Secondary	
29	X-trib to Goose Cr..	4A-5	E.L.	0.14-	Amoco Oil Co., Inc.	VA0054577	N/A	Secondary	
30	S.F. Goose Cr.	4A-5	E.L.	2.30-	Colonial Pipeline Co., Inc.	VA0051721	N/A	Secondary	
AI	X-trib to Goose Cr..	4A-5	E.L.	0.20-	Bedford County Schools- Montvale E.S.	VA0066206	N/A	Secondary	
31	S.F. Goose Cr.	4A-5	E.L.	2.18-	Texaco, Inc.	VA0001490	N/A	Secondary	
AJ	X-trib to Day Cr.	4A-5	E.L.	1.79-	Camp Virginia Jaycee Inc.	VA0060909	N/A	Secondary	
AK	X-trib to Reed Cr.	4A-5	E.L.	0.84-	Robincrest Mobile Home Park	VA0078413	N/A	Secondary	
AL	X-trib to Wolf Cr.	4A-5	E.L.	0.95	Bedford County Schools Thaxton E.S.	VA0020869	N/A	Secondary	
AM	X-trib to Shoulder Run	4A-5	E.L.	0.95-	Bedford County Schools- Staunton River H.S.	VA0068063	N/A	Secondary	

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AN	Goose Cr.	4A-5	E.L.	19.55-	Camp Tipacano Inc.	VA0023515	N/A	Secondary	
AO	Mattock Cr.	4A-5	E.L.	3.76-	VDOC- Filed Unit #24 Smith Mtn. Lake	VA0023515	N/A	Secondary	
32	Staunton (Roa.) R.	4A-5	E.L.	129.72 -	Burlington Industries-Klopman Division Altavista Plant	VA0001678	530.00	Secondary	
33	Staunton (Roa.) R	4A-5	E.L.	128.96 -	Altavista Town WTP	VA0027189	N/A	Secondary	
34	Staunton (Roa.) R	4A-5	E.L.	128.94 -	The Lane Co., Inc. Altavista Plant	VA0001520	N/A	Secondary	
				Town of Hurt (Proposed)	Secondary				
AP	Staunton (Roa.) R	4A-5	E.L.	127.96 -	Altavista Town STP	VA0020451	204.00	Secondary	
35	Staunton (Roa.) R	4A-5	E.L.	126.39 -	Ross Laboratories	VA0001716	66.20 4	Secondary	
36	X-trib to Big Otter R.	4A-5	E.L.	1.63-	Bedford City WTP	VA0001503	N/A	Secondary	
37	Roaring Run	4A-5	E.L.	3.26-	Gunnoe Sausage Co., Inc.	VA0001449	0.55	Secondary	
AQ	X-trib to Big Otter R.	4A-5	E.L.	1.15-	Bedford County Schools Otter River E.S.	VA0020851	0.40	Secondary	
38	X-trib to Little Otter R.	4A-5	E.L.	0.76-	Wheelbrator Frye, Inc.	VA0058033	N/A	Secondary	
AR	X-trib to Little Otter R.	4A-5	E.L.	0.42-	Bedford County Schools - Liberty H.S.	VA0020796	2.80	Secondary	
AS	Little Otter R.	4A-5	W.Q.-DO	14.36-	Bedford City STP	VA0022390	52.80	52.80	64.15
39	Johns Cr.	4A-5	W.Q.-DO	2.61-	Golden West Foods, Inc.	VA0056430	N/A	N/A	N/A
AT	X-trib to Wells Cr.	4A-5	E.L.	2.22-	Bedford County Schools New London Academy	VA0020818	0.40	Secondary	
AU	X-trib to Big Otter R.	4A-5	E.L.	1.20-	David T. Callahan Residence	VA0080667	0.57	Secondary	
AV	X-trib to Buffalo Cr	4A-5	E.L.	0.67-	Bedford County Schools New London Academy	VA0020826	0.50	Secondary	

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AW	Buffalo Cr	4A-5	E.L.	12.42-	Alum Springs Center	VA0078999	4.50	Secondary	
40	Big Otter R.	4A-5	E.L.	11.74-	Campbell Country USA (Proposed WTP)	VA007846	N/A	Secondary	
BF	X-trib to Big Otter R	4A-5	E.L.	1.07-	Otterwood Grocery Store	VA0082732	0.05	Secondary	
AX	Flat Cr.	4A-5	E.L.	13.34-	Virginia Track & Equipment Corp.	VA0068594	0.03	Secondary	
BD	X-trib to Flat Cr.	4A-5	E.L.	0.68	Montague Betts Co, Inc.	VA0075116	0.45	Secondary	
41	Flat Cr.	4A-5	E.L.	12.62-	Blue Ridge Stone Corp. Lynchburg	VA0050628	N/A	Secondary	
AY	X-trib to Flat Cr.	4A-5	E.L.	0.12-	Winebarger Corp	VA0074969	0.70	Secondary	
AZ	Smith Br.	4A-5	E.L.	2.82-	Briarwood Village	VA0031194	2.70	Secondary	
BE	X-trib to Flat Cr.	4A-5	E.L.	0.88-	Ralph P. Shepard Residence	VA0081591	0.05	Secondary	
BA	X-trib to Flat Cr.	4A-5	E.L.	1.16-	Phillips, Arthur, Phillips Tract #6	VA0068098	0.05	Secondary	
BB	X-trib to Flat Cr.	4A-5	E.L.	1.12-	Kyle E. & Annette D. Shupe Residence	VA0068080	0.05	Secondary	
BC	X-trib to Flat Cr.	4A-5	E.L.	1.08-	Wayne E. & Sherina D. Shupe Residence	VA0068071	0.5	Secondary	
BG	X-trib to Troublesome Cr.	4A-5	E.L.	2.15-	Kelly Convenience Store	VA0067078	0.11	Secondary	

## 9 VAC 25-720-90. Tennessee- Big Sandy River Basin.

A. Total maximum Daily Load (TMDLs).

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

9 VAC 25-720-90 Sewerage Service Areas.

TABLE B1 - SEWERAGE SERVICE AREAS

Map <sup>1</sup> No.	Locality	Receiving Stream Classification <sup>2</sup>	NPDES LIMITS <sup>3</sup>			Status of Applicable <sup>4</sup> Section 201 Programs (March 1977)
			FLOW (mgd)	BOD <sub>5</sub> (1lbs/day)	SS (lbs/day)	
14T	Abingdon	EL	0.6	840	840	Step III at EPA for award.
14B	Amonate	EL	Permit to be issued in future			Not on priority list.
4T	Appalachia	EL	0.3	75	75	To be studied with Big Stone Gap

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5T	Big Stone Gap	EL	0.8	240	240	Recommended for FY 77 Step 1.
13B	Bishop	EL	Permit to be issued in future			Not on priority list.
	Bristol	EL	Served by plant in Tennessee			Health hazard area to be served by collection system funded in FY 76. Extension of existing interceptor into Bearer Creek & Sinking Creek area to be funded by Region IV EPA and Tennessee. Also infiltration/inflow study to be funded in FY 77.
23T	Chilhowie	EL	0.265	68.5	79.6	Proposed Step I study with Marion.
	Cleveland	WQ	0.05	12.5	12.5	Step III grant awarded by EPA.
	Clinchport	WQ	Not to exceed present discharge			Town and Country Authority has not yet applied for Step I from FY 76 funds.
2B	Clintwood	WQ	0.235	*70.5/117.5	*70.5/117.5	On FY 77 list for Step I.
18T	Damascus	EL	0.25	62.5	62.5	Final audit and inspection of facility completed.
6T	Duffield	EL	0.075	30	30	Not on priority list.
	Dungannon-Fort Blackmore	WQ	Permit to be issued in future			Not on priority list.
10T	Gate City-Weber City	EL	0.504	*151/252	*151/252	Step I in progress.
3B, 5B	Harmon-Big Rock		1.25	156	312	System is approved by state and submitted to EPA.
6B, 7B	Grundy-Vansant	WQ	Permit to be issued in future			System is approved and submitted to EPA.
9B	Haysi	WQ	Permit to be issued in future			Step I plan is complete. Town disapproved plan. SWCB evaluating alternatives.
8B T	Hurley	WQ	Permit to be issued in future			Step I plan complete and under review by state.
1T	Jonesville	EL	0.15	38	38	Not on priority list.
13T	Lebanon	WQ	0.2	60	60	Step III application at EPA.
25T	Marion	EL	1.7	510	510	Step I recommended for FY 77. Marion is proceeding on infiltration/inflow study under prior approval from EPA.
	Nickelsville	WQ	Permit to be issued in future			Not on priority list.
7T,8T	Norton	WQ	0.77,0.22	832,371	640,0184	Step I in process ( with Wise).
2T	Pennington Gap	EL	0.315	410	315	Step I recommended for FY 76. Community has not yet completed Step I application.
1 B	Pound	WQ	0.175	44	44	Step III funded by EPA. Facility nearly completed.
19T	Raven-Doran	WQ	0.26	67.2	78	System to remain unchanged.
20T	Richlands	WQ	0.8	845	650	Step I in process. Step II recommended in FY 77.
	Rosedale	WQ	Permit to be issued in future			Not on priority list.
	Rose Hill-Ewing	EL	Permit to be issued in future			Not on priority list.

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3T	St. Charles	EL	0.125	25	25	Abandonment proposed. Then to be served by Pennington Gap, subject to recommendations of Facility Plan.
12T	St. Paul	WQ	0.4	100	100	Complete and audited by EPA.
22T	Saltville	EL	0.5	125	125	Complete and audited by EPA.
	Sugar Grove-Teas	EL	Permit to be issued in future			Not on priority list.
15T	Swords Creek-Honaker	EL	0.144	187	144	Step I in FY 76. Step II recommended in FY 77.
24 T	Tazewell Town of	EL	0.70	*210/350	*210/350	Step I recommended in FY 77.
9T	Wise	WQ	0.28	112	112	Step I in progress (with Norton).

<sup>1</sup> Dischargers are shown on Plate 3-B (Map No. with "B" designates Big Sandy) and 3-T (Map No. with "T" designates Tennessee).

<sup>2</sup> Effluent Limiting (EL) or Water Quality (WQ).

<sup>3</sup> For existing sewage treatment facility.

<sup>4</sup> For new sewage treatment facility.

\*Seasonal NPDES allowable loading: April to September/ October to March

Source: Thompson & Litton and State Water Control Board

## 9 VAC 25-720-100. Chowan River- Dismal Swamp River Basin (Reserved).

## 9 VAC 25-720-110. Chesapeake Bay – Small Coastal – Eastern Shore River Basin.

A. Total maximum Daily Load (TMDLs).

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

### Small Coastal and Chesapeake Bay-

TABLE B1 - CURRENT STREAM SEGMENT CLASSIFICATION

Segment No.	Name	Current State
7-12A	Pocomoke Sound	EL
7-12B	Messongo Creek	EL
7-12C	Beasley Bay	EL
7-12D	Chesconessex Creek	EL
7-13	Onancock Creek	WQ
7-14	Pungoteague	WQ
7-12E	Nandua Creek	EL
7-15	Occohannock Creek	WQ
7-12F	Nassawadox Creek	EL
7-12G	Hungars Creek	EL
7-12H	Cherrystone Inlet	EL
7-12I	South Bay	EL
7-12J	Tangier Island	_____
7-11A	Chincoteague	EL
7-11B	Hog Bogue	EL



7-11C	Metomkim Bay	EL
7-11D	Machipongo River	EL
7-11E	South Ocean	EL

*Small Coastal and Chesapeake Bay*

TABLE B2 - EASTERN SHORE WASTELOAD ALLOCATIONS

NAME	RECEIVING STREAM OR ESTUARY	INTERIM WASTELOAD ALLOCATIONS <sup>(1)</sup>			FINAL WASTELOAD ALLOCATIONS		
		BOD <sub>5</sub> (lb/d)	SUSPENDED SOLIDS (lb/d)	OIL & GREASE (lb/d)	(Current Permit Limits)		
					BOD <sub>5</sub> (lb/d)	SUSPENDED SOLIDS (lb/d)	OIL & GREASE (lb/d)
Commonwealth of Va. Rest Area	Pitts Cr.	4.3	4.3	--	4.3	4.3	--
Edgewood Park	Bullbegger Cr.	0.80	0.80	--	0.80	0.80	--
Holly Farms	Sandy Bottom Cr.	167(3)	167(3)	10 mg/l	Stream survey/model and determination of final wasteload allocations planned for the summer of 1980.		
Taylor Packing Company	Messongo Cr.	7006(3)	13010(3)	--	Stream survey/model was run previously. No change in permit anticipated.		
No. Accomack E.S.	Messongo Cr.	1.8	1.4	--	1.8	1.4	--
Messick & Wessels Nelsonia	Muddy Cr.	30mg/l <sup>(4)</sup>	30mg/l <sup>(4)</sup>	--	Interim wasteload allocations may be changed based on BAT guidance.		
Whispering Pines Motel	Deep Cr.	4.8	4.8	--	4.8	4.8	--
Town of Onancock	Onancock Cr.	21	21	--	21	21	--
Messick & Wessels	Onancock Cr.	30mg/l <sup>(4)</sup>	30mg/l <sup>(4)</sup>	--	Interim wasteload allocations may be changed based on guidance.		
So. Accomack E.S.	Pungoteague Cr.	1.8	1.4	--	1.8	1.4	--
A & P Exmore	Nassawadox Cr.	0.38	0.38	--	0.38	0.38	--
Norstrom Coin Laundry	Nassawadox Cr.	60mg/l <sup>(4)</sup> max.	60mg/l <sup>(4)</sup> max.	--	Interim wasteload allocation may be changed based on BAT guidance.		
NH-Acc. Memorial Hospital	Warehouse Cr.	12.5	12.5	--	21.5	12.5	--
Machipongo E.S. & H.H. Jr. High	Trib. To Oresbus Cr.	5.2	5.2	--	5.2	5.2	--
Town of Cape Charles	Cape Charles Harbor	62.6	62.6	--	62.6	62.6	--
America House	Chesapeake Bay	5	5	--	5	5	--
U.S. Coast Guard Chesapeake Bay	Chesapeake Bay	--	--	10/mg/l <sup>(5)</sup>	--	--	10/mg/l <sup>(5)</sup>
U.S. Government Cape Charles AFB	Magothy Bay	Currently No Discharge					

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Exmore Foods (Process Water)	Trib. To Parting Cr.	200	100	--	Stream survey/model and determination of final wasteload allocations planned for the summer of 1980.		
Exmore Foods (Sanitary)	Trib. To Parting Cr.	30mg/l <sup>(5)</sup>	30mg/l <sup>(5)</sup>	--	30mg/l <sup>(5)</sup>	30mg/l <sup>(5)</sup>	--
Perdue Foods (process water)	Parker Cr.	May-Oct 275 367 Nov-Apr. 612 797	--	--	Interim Permit in process. Stream survey/models were run. No substantial change in permit anticipated.		
Perdue Foods (parking lot)	Parker Cr.	30mg/l(5)	30mg/l(5)	--	30mg/l(5)	30mg/l(5)	--
Accomack Nursing Home	Parker Cr.	2.7	2.6	--	2.7	2.6	--
U.S. Gov't NASA Wallops Island	Mosquito Cr.	75	75	--	75	75	--
U.S. Gov't NASA Wallops Island	Cat Cr.	1.25	1.25	--	1.25	1.25	--
F & G Laundromat	Chincoteague Channel	10	4.8	--	Interim wasteload allocations may be changed based on BAT guidance.		
U.S. Coast Guard	Chincoteague Channel	--	--	15mg/l (max.)	--	--	15mg/l (max.)
Carolina Seafood	Chincoteague Bay	342	264	5.5	342	264	5.5
Reginald Stubbs Seafood Co. (VA0005813)	Assateague Channel	--	20	95	--	20	95
Reginald Stubbs Seafood Co. (VA00056421)	Assateague Channel	--	20.4 <sup>(2)</sup>	98	--	20.4 <sup>(2)</sup>	98
Shreaves	Chincoteague Bay	--	16 <sup>(2)</sup>	1.4 <sup>(2)</sup>	--	16 <sup>(2)</sup>	1.4 <sup>(2)</sup>
Chincoteague Seafood	Chincoteague Bay	342	264	5.5	342	264	5.5

TABLE B3 - EXISTING OR POTENTIAL SOURCES OF WATER POLLUTION

Location No.	Name	Receiving Estuary	Stream	Flow (MGD)	CBOD (mg/l/#D)	NBOD (mg/l/#D)	Total Suspended Solids (mg/l/#d)	D.O. (mg/l)	FC (MPN/100ml)	Treatment/Operation
1	Comm. Va. Rest Area	Pocomoke Sound	Pitts Cr.	.003	7/0.18		10/0.3	7.5	1	Extended aeration. Sec. Holding pond, CL <sub>2</sub>
2	H.E. Kelley	Pocomoke Sound	Pitts Cr.							Currently no discharges. Out of business
3	Edgewood Park	Pocomoke Sound	Bullbegger Creek	.006 <sup>(3)</sup>	16/0.8 <sup>(2)</sup>		16/0.8 <sup>(2)</sup>			PRI, CL <sub>2</sub> . Holding Pond
4	Holly Farms	Pocomoke Sound	Sand Bottom Creek	0.18	6/40		15/100	8.0	100	Aerated Lagoons, CL <sub>2</sub>

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5	J.W. Taylor	Messongo Creek	Trib. To Messongo	.001	60/50		150/125	8.0		Aerated Lagoons
6	No. Accomack E.S.	Messongo Creek	Trib. To Messongo	.005	22/0.9		30/1.3	9.0		Sec., Septic Tank, Sand Filter Holding Pond
7	Messick & Wessells-Nelsonia	Beasly Bay	Muddy Creek	.005	125/5.2		100/4.2			Sec., Extended Aeration
8	Willets Laundromat	Beasly Bay	Hunting Creek							Prl., Septic Tank
9	Byrd Food	Beasly Bay								No discharge industry
10	Whispering Pines Motel	Beasly Bay	Deep Creek	.009	25/1.9		30/2.3	6.0		Sec., Extended Aeration Holding Pond, CL <sub>2</sub>
12	Messick & Wessells-Onley	Onancock Creek	Joynes Branch	.005	100/4.2		150/6.3			Sec., Extended Aeration
13	So. Accomack E.S.	Pungoteague	Trib. To Pungoteague		24/1.8 <sup>(2)</sup>		19/1.4 <sup>(2)</sup>			Sec., Septic Tank, Grease Trap, Sand Filter, Holding Pond. No discharge in 4 yrs.
14	Great Atlantic & Pacific Tea Company	Nassawadox	Nassawadox	.001	140/1.2		150/1.3		6.5	Sec., Extended Aeration CL <sub>2</sub>
15	Norstrom Coin Laundry	Nassawadox	Trib. To Nassawadox	.008						Sec., Extended Aeration, permit in process
17	N.H.-Acc. Memorial Hospital	Nassawadox	Warehouse Creek	.03	25/1.6		35/2.2	6.5	750	Secondary Aerated Lagoon, CL <sub>2</sub> Holding pond Stab-Lagoon
18	Machipongo E.S. & N.H. Jr. High School	Hungars Creek	Trib. To Oresbus		.03 <sup>(1)</sup> 30/5.2 <sup>(2)</sup>		30/5.2 <sup>(2)</sup>			Sec., Stab-Lagoon, Holding Pond no discharge in 4 yrs.
19	B & B Laundromat	Cherry Stone Inlet	Old Castle Creek							Prl. Septic Tank w/discharger
20	KMC Foods, Inc.	Cherry Stone Inlet								No-Discharge industry
21	Herbert West Laundromat	Cherry Stone Inlet	Kings Creek							Prl. Septic Tank w/Discharger
22	Town of Cape Charles	Cape Charles Harbor	Cape Charles Harbor	.165 <sup>(2)</sup>	290/400 <sup>(3)</sup>		139/192 <sup>(3)</sup>			Raw Sewage, Sewage Treatment to be completed by 1982
23	American House Inn	Chesapeake Bay	Chesapeake Bay		30/5 <sup>(2)</sup>		30/5 <sup>(2)</sup>			
24	U.S. Coast Guard	Chesapeake Bay	Chesapeake Bay	.001 <sup>(2)</sup>	30/			5.0 <sup>(2)</sup>	200 <sup>(2)</sup>	Bilgewater

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25	U.S. Gov't Cape Charles AFS	Magothy	Magothy	.001 <sup>(2)</sup>				5.0 <sup>(3)</sup>		Sec., CL <sub>2</sub> , Aerated Lagoon, currently no-discharge
27	Exmore Frozen Foods	Machipongo	Trib. To Parting Cr.	.56	29/135		18/84	6.5		Grass Bays, Screening
28	Exmore Foods (Domestic)	Machipongo	Trib. To Parting Cr.	.02	5/0.8		9/1.5			Septic Tank, Sand Filter
30	Perdue Foods	Metomkin Bay	Parker Creek	1.7	11/156		15/213	6.5	150	Sec., Aerated Lagoon, Holding Pond, CL <sub>2</sub>
31	Perdue Foods	Metomkin Bay	Parker Cr.	.01 <sup>(4)</sup>			15/1.3			
32	Accomack Co. Nursing Home	Metomkin Bay	Parker Cr. North Fork	.011	20/1.8		28/2.6	6.5	100	Sec., Extended Aeration, Holding Pond, CL <sub>2</sub>
33	U.S. Gov't NASA (Wallops Island)	Hog Creek	Cat Creek	.005	30/		30/			Sec., Stab., Pond, Holding Pond, CL <sub>2</sub>
34	Robo Automatic Car	Chincoteague Channel	Little Simoneaton							
35	U.S. Gov't NASA	Chincoteague Channel	Mosquito Creek	.105	10.6/9.3 <sub>(3)</sub>	112/28	2.0/1.8			Sec., Trickling Filter
36	Trail's End Rec. Vehicle Dev.	Chincoteague Channel	Trib to Mosquito Cr.							Septic Tank and Drainfield
37	Coin-Op Laundromat	Chincoteague Channel	Chincoteague Channel							No discharge
38	F & G Laundromat	Chincoteague Channel	Chincoteague Channel	.005						
39	U.S. Coast Guard	Chincoteague Channel	Chincoteague Channel	.001 <sup>(2)</sup>			30/0.2 <sup>(2)</sup>		200 <sup>(2)</sup>	Discharge- Bilgewater
40	Phillip Custis	Ramshorn Bay								Spray Irrigation, no Discharge
43	Boggs (Melfa)	Nickowampus Creek								Septic tank waste lagoons, no discharge
44	Blake (Greenbush)	Deep Creek								Septic tank waste lagoon, no discharge
45	Cherrystone Campground	Kings Creek or Cherrystone Inlet								Stab-Lagoon, Holding pond, no discharge
46	Wallops Sanitary Landfill									Solid waste disposal site, no discharge
47	Chincoteague Dumpsite									Solid waste disposal site, no discharge
48	Bob Town Sanitary Landfill									Solid waste disposal site, no discharge

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49	Northampton Sanitary Landfill								Solid waste site, no discharge
52	Dorsey's Seafood Market	Chincoteague							Oysters <sup>(5)</sup>
54	Va-Carolina Seafood Company, Inc.	Hog-Bogue				1152 <sup>(2)</sup> Clams 68 <sup>(2)</sup> Oysters 7.0 <sup>(2)</sup> Scallops			Surf Clams, Oysters, Scallops
55	Chincoteague Island Oyster Farm	Chincoteague							(Oyster-Boat Operation (grows oysters & clams from larvae) <sup>(6)</sup> )
	Reginald Stubbs Seafood Company	Assateague Channel		.002 <sup>(4)</sup>	4.2		2.8		Oyster
58	Shreaves Bros.	Chincoteague		.002 <sup>(4)</sup>	2.07		8.0		Oyster
60	Chincoteague Seafood Co.	Chincoteague		.063 <sup>(4)</sup>	972		79.9		Surf-Clam
61	Ralph E. Watson Oyster Co.	Chincoteague		.003 <sup>(4)</sup>	57		53		Oyster
62	McCready Bros. Inc.	Chincoteague							Oyster, no discharge
63	Wm. C. Bunting	Chincoteague		.001 <sup>(4)</sup>	12		4.8		Oyster
64	Carpenters Seafood	Chincoteague		.001 <sup>(4)</sup>	4.1`		2.1		Oyster
64a	Burtens Seafood, Inc.	Chincoteague		.006 <sup>(4)</sup>	10.3		.35		Oyster shell stock deal no discharge
69	Jones Bros. Seafood	Chincoteague	Sheepshead Cr.						Oyster & Clams
70	W.E. Jones Seafood	Chincoteague	Sheepshead Creek				46.4 <sup>(2)</sup>		Oyster & Clams
71	Conner & McGee Seafood	Chincoteague	Sheepshead Creek						Oyster & Clams <sup>(6)</sup> <sub>1</sub>
72	Hills Oyster Farm	Chincoteague							Oyster & Clams <sup>(5)</sup>
73	Thomas E. Reed Seafood	Chincoteague	Deep Hole Creek						Oyster & Clams <sup>(6)</sup>
74	Mears & Powell	Metomkin							Oyster-Building, also used to clean fish <sup>(5)</sup>
75	Wachapreague Seafood Company	Metomkin	Finney Creek	.036 <sup>(4)</sup>	4.2		144		Sea Clam

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76	George D. Spence and Son	Machipongo							Crab Shedding <sup>(6)</sup>
77	George D. Spence and Son	Machipongo							Crab Picking, no discharge
78	George T. Bell	Machipongo							No Discharge, Oyster
79	George D. Spence and Son	Machipongo	Upshur Bay						Oyster <sup>(6)</sup>
80	Peters Seafood	Machipongo							Oyster <sup>(6)</sup>
81	J.E. Hamblin	Machipongo							Oyster, No discharge
83	Nathan Bell Seafood	Machipongo							Clams, Hard <sup>(5)</sup>
84	John L. Marshall Seafood	Machipongo							Clams <sup>(5)</sup>
86	Harvey & Robert Bowen	Machipongo	Parting Creek	.0006 <sup>(4)</sup>	6.2		1.7		Oyster
87	H.M. Terry	Machipongo	Parting Creek	.0004 <sup>(4)</sup>	3.3		.62		Oyster
89	Webb's Island Seafood	South Ocean Area							Clams <sup>(6)</sup>
90	Cliff's Seafood	South Ocean Area	Mockhorn Bay						Oyster & Clam <sup>(6)</sup>
92	H. Allen Smith	South Ocean Area		.037 <sup>(4)</sup>	213		522		Sea Clam
94	C & D Seafood, Inc.	South Ocean Area	Oyster Harbor	.04 <sup>(4)</sup>	427		204 sea clam 34 <sup>(2)</sup> oyster		Sea Clam, Oyster
95	B.L. Bell & Sons	South Ocean Area	Oyster Harbor	.001 <sup>(4)</sup>	12		.9		Oyster
98	Lance Fisher Seafood Co.	Pocomoke		.02 <sup>(4)</sup>	38		12.8		Oyster and Clam
99	Fisher & Williams/Lester Fisher	Messongo							Building used to shed soft crabs <sup>(5)</sup>
100	Grady Rhodes Seafood	Messongo							Sold business, Building used to shed soft crabs <sup>(5)</sup>
101	Bonowell Bros.	Messongo	Pocomoke Sound	.001 <sup>(4)</sup>	12		2.5		Oyster
102	John H. Lewis & Co.	Messongo	Starling Creek						Oyster SS only, no discharge
103	Eastern Shore Seafood	Beasly							Crab, no discharge

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106	Ashton's Seafood, Inc.	Pungoteague							Shell stock dealer-no discharge
107	Nandua Seafood Co.	Nandua		.0001 <sup>(4)</sup>	.2		.9		Crab
108	A.M. Acuff	Cherrystone							Building used for storage, no discharge
110	D.L. Edgerton Co.	Cherrystone	Mud Creek						Conch. In operation. Retort drains overboard & fish wash-down <sup>(6)</sup>
111 & 112	Tangier Island Seafood, Inc.	Tangier							Crab <sup>(5)</sup>
113	Tangier	Chesapeake Bay							1000 KW Power Station
114	Chincoteague	Chincoteague Channel							2100 KW Power Station
115	Parksley								2400 KW Power Station
116	Tasley								1400 KW Power Station
117	Bayview								10,000 KW Power Station
118	Cape Charles	Cape Charles Harbor							1200 KW Power Station
119	Burdick Well & Pump Company								Holding Pond, no discharge
120	Marshall & Son Crab Company	Messongo Cr.							Crab Shedding <sup>(6)</sup>
121	Linton & Lewis Crab Co.	Pocomoke Sound							Crab Shedding <sup>(6)</sup>
122	D.L. Edgerton	Chincoteague							Fish Washdown <sup>(6)</sup>
123	Evans Bros. Seafood Co.	Pocomoke Sound							Crab Shedding <sup>(6)</sup>
124	Stanley F. Linton	Messongo	Starling Cr.						Crab Shedding <sup>(6)</sup>
125	H.V. Drewer & Son	Messongo	Starling Cr.	.035 <sup>(4)</sup> .018 <sup>(4)</sup>			736-clam 198-oyster		Oyster & Clam
126	Chincoteague Fish Co., Inc.	Chincoteague Channel							Fish Washdown <sup>(6)</sup>
127	Chincoteague Crab Company	Assateague Channel			.18 <sup>(2)</sup>		.54 <sup>(2)</sup>		Crab & Crab Shedding
128	Aldon Miles & Sons	Pocomoke Sound							Crab Shedding <sup>(6)</sup>
129	Saxis Crab Co.	Messongo	Starling Cr.						Crab Shedding <sup>(6)</sup>

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	Paul Watkinson SFD	Pocomoke Sound							Crab Shedding <sup>(6)</sup>
131	Russell Fish Co., Inc	Chincoteague Channel							Fish <sup>(6)</sup>
132	Mason Seafood Co.	Chincoteague Channel		.002 <sup>(4)</sup>	7.7		13.7		Oysters

NOTE: <sup>(1)</sup> Water quality data taken from Discharge Monitoring Reports or special studies unless indicated.

<sup>(2)</sup> NPDES Permit limits given since the permit is new and discharge monitoring reports not yet available.

<sup>(3)</sup> Data from Accomack-Northampton Co. Water Quality Management Plan.

<sup>(4)</sup> Estimated.

<sup>(5)</sup> May need a permit--either company has not responded to SWCB letter or operation has just started up.

<sup>(6)</sup> No limits -- has an NPDES permit, but is not required to monitor.

## 9 VAC 25-720-120. York River Basin.

A. Total Maximum Daily Load (TMDLs).

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

TABLE B1 - RECOMMENDED STREAM SEGMENTS IN THE YORK RIVER BASIN

Segment Number	Classification	Name of River (Description)*
8-1	EL	North Anna River (main and tributaries except Goldmine Creek and Contrary Creek) R.M. 68.4-0.0
8-2	EL	Goldmine Creek
8-3	WQ	Contrary Creek (main only) R.M. 9.5-0.0
8-4	EL	South Anna River (main and tributaries) R.M. 101.2-97.1
8-5	EL	South Anna River (main only) R.M. 97.1-77.4
8-6	EL	South Anna River (main and tributaries) R.M.77.4-0.0
8-7	EL	Pamunkey River (main and tributaries) R.M. 90.7-12.2
8-8	WQ	Pamunkey River (main only) R.M. 12.2-0.0
8-9	EL	Mattaponi River (main and tributaries) R.M.102.2-10.2
8-10	EL	Mattaponi River (main only) R.M.10.2-0.0
8-11	WQ	York River (main only) R.M. 30.4-22.4
8-12	EL	York River (main and tributaries except King Creek and Carter Creek) --R.M. 22.4-0.0
8-13	EL	Carter Creek (main and tributaries) R.M. 5.4-2.0
8-14	EL	Carter Creek (main only) R.M. 2.0-0.0
8-15	EL	King Creek (main only) R.M.5.6-0.0
8-16	WQ	Condemned shellfish areas- Timberneck, Queens, and Sarah Creeks and portions of the main stream of the York River.

\*R.M.= River Mile, measured from the river mouth

Source: Roy F. Western



**TABLE B2 - WASTE LOAD ALLOCATIONS (IN LBS PER DAY)**

POINT SOURCE	1977 WASTE LOAD <sup>2</sup>		MAXIMUM <sup>7</sup> DAILY LOAD		RECOMMENDED ALLOCATION			RAW WASTE LOAD AT 1995		REQUIRED & REMOVAL EFFICIENCY 1995	
	CBOD <sub>5</sub>	UBOD <sup>1</sup>	CBOD <sub>5</sub>	UBOD	CBOD <sub>5</sub>	UBOD	PERCENT RESERVE	CBOD <sub>5</sub>	UBOD	CBOD <sub>5</sub>	UBOD
Gordonsville	145	398	150	412	150	412	0	1950	2730	92	85
Louisa-Mineral	50	108	55	118	55	118	0	850	1150	93	90
Doswell	52	110	862 <sup>8</sup>	1407 <sup>8</sup>	690 <sup>8</sup>	1125 <sup>8</sup>	20	1080	1444	85(4)	71
Thornburg	63	150	68	162	68	162	0	1240	1690	94	90
Bowling Green	27	64	29	68	29	68	0	680	926	96	93
Ashland	160	303	235	559	188	447	20	2250	3825	92	88
Hanover (Regional STP)	170	437	280	820	280	820	0	5730	7930	96	90
Chesapeake Corp.	6400	8000	10445 <sup>5</sup>	15000 <sup>5</sup>	10445 <sup>5</sup>	15000 <sup>5</sup>	N/A	51700	64630	90	90
West Point	105	380	281 <sup>3</sup>	1020	225	814	20	1000	1600	85 <sup>4</sup>	66

<sup>1</sup> BOD is Ultimate Biochemical Oxygen Demand. Its concentration is derived by the following:  $BOD_5 / 0.80 + 4.5(TKN) = (UBOD)$ . NOTE: The amount of TKN utilized depends on the location in the basin.

<sup>2</sup> Projected for 1977 based on population projections.

<sup>3</sup> Recommended allocation based on BPCTCA effluent guidelines applied to raw waste loads at 2020.

<sup>4</sup> Minimum removal efficiency.

<sup>5</sup> Allocation based on BPCTCA effluent guidelines; amended by Minute 25, June 3-5, 1979 board meeting.

<sup>6</sup> Based on assumed influent characteristics.

<sup>7</sup> Assimilative capacity.

<sup>8</sup> Amended by Minute 1, August 17, 1978, board meeting.

Source: Roy F. Weston, Inc.

## 9 VAC 25-720-130. New River.

A. Total maximum Daily Load (TMDLs).

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

**TABLE B1- SEWERAGE SERVICE AREAS**

Map <sup>1</sup> No.	Locality	Receiving <sup>2</sup> Stream Classification	NPDES Limits <sup>3</sup>			Status of Applicable <sup>4</sup> Section 201 Programs (January 1980)
			Flow (mgd)	BOD <sub>5</sub> (kg/day)	SS (kg/day)	
	Abbs Valley	WQ	Permit not needed at present			Not on priority list
	Austinville	EL	Permit not needed at present			Not on priority list
	Bastian	EL	Permit not needed at present			Continue to use septic tanks for present
1	Blacksburg	EL	6.0	544.8	544.8	Completed
	Bland	EL	Permit to be issued in future			Not on priority list
29	Bluefield	WQ	3.5	106	106	Near Completion
	Boissevain	WQ	Effluent treated at Pocahontas			Redesign to treat at Pocahontas underway
2	Christiansburg	WQ	2.0	113.5	113.5	Completed

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3	Dublin	EL	.22	29.9/49.9	29.9/49.9	To be connected to Pepper's Ferry STP (Radford Cluster) in FY-80
	Elk Creek	EL	Permit not needed at present			Continue to use septic tanks
4	Fairlawn	EL	.26	47	47	To be connected to Pepper's Ferry STP (Radford Cluster)
	Falls Mills	WQ	.144	5.5	5.5	Step I approved; limits for new plant
	Flat Ridge	EL	Permit not needed at present			Not on priority list
*5	Floyd	EL	.1	59.0	45.4	Small community; Step IV
13	Fries	EL	.02	11.8	9.1	Step I approved
14			.16	94.5	72.7	
17	Galax	EL	1.5	170	170	Not on priority list
	Glen Lyn	EL	Permit not needed at present			Not on priority list
15	Hillsville	EL	.2	23	23	Step I to be approved soon
16			.15	17	17	
*18	Independence	EL	.2	22.7	22.7	Step I approved; selected alternative was for one plant
19			.1	11.4	11.4	
	Ivanhoe	EL	Permit not needed at present			Continue to use septic tanks
	Max Meadows	EL	Permit to be issued in future			Not on priority list
	Mechanicsburg	EL	Permit not needed at present			Not on priority list
6	Narrows	EL	0.60	354.0	272.0	Step I at EPA; Step II - FY-80
	Newport	EL	Permit not needed at present			Not on priority list
7	Pearisburg	EL	0.30	177.0	136.0	Step I at EPA; Step II - FY-80; Step III - FY-84
	Pembroke	EL	Permit not needed at present			Not on priority list
*30	Pocahontas	WQ	.15	17	17	Step I grant approved to correct I/I problems
8	Pulaski	EL	2.0	234/303	234	To be connected to Pepper's Ferry STP (Radford Cluster) in FY-80 (Step II)
9	Radford STP	EL	2.5	1475	925	Step II - FY-80
*10	Rich Creek	EL	.12	71	54	Step I at EPA, Step IV - FY-83
31	Riner	EL	.035	4.0	4.0	Completed
	Rocky Gap	EL	Permit not needed at present			Continue to use septic tanks for present
12	Rural Retreat	EL	0.15	37.5	37.5	Step I to be completed in FY-80
	Speedwell	EL	Permit not needed at present			Continue to use individual septic tanks for present
	Troutdale	EL	Permit not needed at present			Continue to use individual septic tanks for present
	Woodlawn	EL	Permit to be issued in future			Not on priority list
11	Wytheville	EL	20	400	200	Sewage treatment plant completed

<sup>1</sup> Discharges are shown on Plate 3.

<sup>2</sup> Effluent Limiting (E.L.) or Water Quality Limiting (WQ).

<sup>3</sup> For existing sewage treatment facility.

<sup>4</sup> For new sewage treatment facility.

\*Small communities with combined Step II and III Grants.

**TABLE B2- EFFLUENT LIMITS<sup>(1) (4)</sup> NEW RIVER BASIN**

<i>Discharge</i>	<i>Receiving Stream</i>	<i>Maximum BOD<sub>5</sub> Loading Limits (kg/day)</i>
<i>Troutdale</i>	<i>Fox Creek</i>	<i>6.1</i>
<i>Independence</i>	<i>Peachbottom Creek</i>	<i>13.5</i>
<i>Fries</i>	<i>New River</i>	<i>50.5</i>
<i>Galax</i>	<i>Chestnut Creek</i>	<i>240.3</i>
<i>Hillsville</i>	<i>Little Reed Island Creek</i>	<i>99.6</i>
<i>Woodlawn</i>	<i>Crooked Creek</i>	<i>69.5</i>
<i>Speedwell</i>	<i>Cripple Creek</i>	<i>17.4</i>
<i>Austinville</i>	<i>New River</i>	<i>19.5</i>
<i>Rural Retreat</i>	<i>South Fork</i>	<i>50.5</i>
<i>Wytheville</i>	<i>Reed Creek</i>	<i>298.3</i>
<i>Max Meadows</i>	<i>Reed Creek</i>	<i>82.4</i>
<i>Pulaski</i>	<i>Peak Creek</i>	<i>316.8</i>
<i>Floyd</i>	<i>Dodd Creek</i>	<i>24.1</i>
<i>Riner</i>	<i>Mill Creek</i>	<i>9.8</i>
<i>Blacksburg</i>	<i>New River</i>	<i>583.4</i>
<i>Christiansburg</i>	<i>Crab Creek</i>	<i>359.4</i>
<i>Troutdale</i>	<i>Fox Creek</i>	<i>6.1</i>
<i>Newport</i>	<i>Sinking Creek</i>	<i>2.9</i>
<i>Pembroke</i>	<i>New River</i>	<i>28.4</i>
<i>Bland</i>	<i>Walker Creek</i>	<i>10.3</i>
<i>Mechanicsburg</i>	<i>Walker Creek</i>	<i>3.1</i>
<i>Narrows-Pearisburg</i>	<i>New River</i>	<i>110.8</i>
<i>Bastian</i>	<i>Wolf Creek</i>	<i>10.4</i>
<i>Rocky Gap</i>	<i>Wolf Creek</i>	<i>9.0</i>
<i>Rich Creek</i>	<i>Rich Creek</i>	<i>19.9</i>
<i>Glen Lyn</i>	<i>New River</i>	<i>5.7</i>
<i>Bluefield</i>	<i>Bluestone River</i>	<i>136.4</i>
<sup>(2)</sup> <i>Abbs Valley</i>	<i>Laurel Fork</i>	<i>11.4</i>
<sup>(2)</sup> <i>Pocahontas</i>	<i>Laurel Fork</i>	<i>5.5</i>
<sup>(2)</sup> <i>Boissevain</i>	<i>Laurel Fork</i>	<i>5.9</i>

<sup>(1)</sup> Other effluent limitations will be determined by Water Quality Standards and/or Best Available Technology requirements.

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<sup>(2)</sup> Secondary treatment will be required until a further verification of the model is made to document the need for treatment beyond secondary.

<sup>(3)</sup> To join Radford Cluster.

<sup>(4)</sup> This table supersedes Table 152, page 199, Thompson & Litton, Inc., New River Basin Comprehensive Water Resources Plan, Volume V-A.

**TABLE B3- NEW RIVER BASIN INDUSTRIAL EFFLUENT LIMITATIONS\***

Parameters in Average kg/day or (Concentration) as mg/l

**FACILITY NUMBER**

MAP NUMBER 20 APCO 004 401 501 006	BOD <sub>5</sub>  1.14	SS  382 1.14 318	OIL & GREASE  192  159	IRON  (1.0) MAX	COPPER  (1.0) MAX	
21 Burlington Industries 001	BOD <sub>5</sub>  346	SS  354	PHENOLS  1.7	SULFIDE  0.9	ALUMINUM  1.0	
22 Celanese Fibers Co. 002 003	FLOW (MGD) 2.8 3.5	BOD <sub>5</sub>  (30) 2,999	SS   2,023	COD   27,694		
23 Hercules, Inc. 001	SS  34					
24 Lynchburg Foundry 001	SS  143	OIL & GREASE 53.1	PHENOLS  1.04			
25 RAAP Combined Ind. 026	FLOW (MGD) 1.0	BOD <sub>5</sub>  114	SS  6,714 114	COD  237	OXIDIZED NITROGEN  18,697	SULFATE  565 67
26 New Jersey Zinc 001 002 003 004 005 006	BOD <sub>5</sub>     2.3	SS (38) (.30) (20) (30) (30) 2.3	TOTAL CYANIDE  (0.02) (0.02) (0.25)	DISSOLVED LEAD (0.25) (0.25) (0.35) (1.0) (0.25) -----	DISSOLVED ZINC (1.0) (1.0) (1.0) (0.25) (1.0) -----	DISSOLVED IRON (0.3) (0.25) (0.25)  (0.25)  -----
27 Elk Creek Raycarl Products	SS  (5)	OIL & GREASE (10)	IRON  (1)	PHOSPHATE  (2)	ZINC  (0.5)	
28 Fields Mfg	BOD <sub>5</sub> 3.6	SS 4.1	OIL & GREASE 0.8	TEMP. 75°F		

**9 VAC 25-720-140. Delegation section.**

The director or his designee may perform any action contained in this regulation except those prohibited by § 62.1-44.14 of the State Water Control Law. ]

VA.R. Doc. No. R01-27; Filed August 8, 2002, 12:07 p.m.

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**Suspension of Regulatory Process**

Title of Regulation: **9 VAC 25-720. Water Quality Management Planning Regulation.**

**NOTICE OF SUSPENSION OF EFFECTIVE DATE AND PUBLIC COMMENT PERIOD ON THE FINAL WATER QUALITY MANAGEMENT PLANNING REGULATION (9 VAC 25-720) AND REPEAL OF 18 WATER QUALITY MANAGEMENT PLANS**

Notice is hereby given in accordance with § 2.2-4007 J of the Code of Virginia that the State Water Control Board is suspending the effective date of this regulatory action and is

seeking comments on the changes made in the final regulation since it was proposed.

On November 5, 2001, the board published for public comment a proposed regulation concerning public participation guidelines for water quality management planning and the proposed repeal of 18 existing water quality management plans (WQMPs) as state regulations. After completion of the public comment period, several changes were made to the original proposal, including a decision to have the board (i) establish a public participation process in guidance, not regulation, and (ii) have a WQMP Regulation that would contain total maximum daily loads (TMDLs), stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations. The final regulatory actions are being published in the Virginia Register on September 9, 2002.

The board is now seeking comment on those changes to the final regulation and suspending the effective date of the final regulation. A public meeting will be held on October 15, 2002, at 1:30 p.m. at the Department of Environmental Quality Piedmont Regional Office, Training Room, 4949-A Cox Road, Glen Allen, Virginia. Comments may be submitted by personal appearance at the meeting, mail, or facsimile transmission. Comments must be received by the contact person listed below by 4:30 p.m. on November 8, 2002.

The contact person for copies of material or questions about the regulatory action and for submittal of comments is Mr. Charles H. Martin, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4462, FAX (804) 698-4522, or e-mail [chmartin@deq.state.va.us](mailto:chmartin@deq.state.va.us).

◆ ————— ◆  
**TITLE 12. HEALTH**

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

Title of Regulation: **12 VAC 30-120. Waivered Services (Mental Retardation Waiver) (adding 12 VAC 30-120-211 through 12 VAC 30-120-219, 12 VAC 30-120-221 through 12 VAC 30-120-229, 12 VAC 30-120-231 through 12 VAC 30-120-237, and 12 VAC 30-120-241 through 12 VAC 30-120-249; repealing 12 VAC 30-120-210, 12 VAC 30-120-220, 12 VAC 30-120-230, 12 VAC 30-120-240, and 12 VAC 30-120-250).**

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

Effective Date: October 16, 2002.

Summary:

*The permanent regulations allow full implementation of the new Mental Retardation (MR) Waiver, as approved by the Centers for Medicare and Medicaid Services (CMS) (formerly HCFA) and address the following: (i) continued coverage of consumer-directed personal attendant, companion, and respite services; (ii) continued coverage of personal emergency response systems; (iii) continuing the*

*prevocational service that had been deleted in 1994; (iv) maintaining the work allowance for individuals on this waiver pursuant to the 2000 Appropriation Act; and (v) continuing to address CMS' concerns about the health and welfare of MR waiver recipients.*

*Numerous changes were made to the proposed regulation. Definitions were revised as appropriate for consistency with other regulatory changes made. Some revisions were made to enhance internal language consistency within the MR waiver regulations as well as across other waiver programs. Language changes were made to reflect preferences of the affected community. Regulations were reorganized to improve readability and clarity for the affected community.*

*The restriction was added that an individual's case manager cannot be staff or supervisor of a services provider. A provision was added that the individual must be informed of all potential service providers of the needed services. Provisions were added to ensure the active inclusion of family members/caregivers. The consumer-directed model of care was added for several services previously covered only when provided by health care agencies. Personal Emergency Response Systems (PERS) was added as a covered service. Exclusions were added to the environmental modification service for those that are already required by the Virginians with Disabilities Act and the Rehabilitation Act. Training goals and timetables have been removed from several services. The annual limit on supported employment services was removed. Increased supervision standards for individuals residing in adult care residences were added to improve waiver recipients' health, safety, and welfare.*

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

Agency Contact: Sherry Cofer, Policy Analyst, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6995, FAX (804) 786-1680 or e-mail [scofer@dmas.state.va.us](mailto:scofer@dmas.state.va.us).

PART V.  
~~HOME AND COMMUNITY-BASED CARE SERVICES FOR INDIVIDUALS WITH MENTAL RETARDATION WAIVER.~~

Article 1.  
~~Definitions and General Requirements.~~

**12 VAC 30-120-210. Definitions. (Repealed.)**

~~The following words and terms as used in this part shall have the following meanings unless the context indicates otherwise:~~

~~"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control or communicate with the environment in which they live or which are necessary to the proper functioning of such items.~~

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*"Case management"* means the assessment, planning, linking and monitoring for individuals referred for mental retardation community-based care waiver services. Case management (i) ensures the development, coordination, implementation, monitoring, and modification of the individual service plan; (ii) links the individual with appropriate community resources and supports; (iii) coordinates service providers; and (iii) monitors quality of care.

*"Case managers"* means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills and abilities, as established by DMHMRSAS, necessary to perform case management services.

*"Community based care waiver services"* or *"waiver services"* means the range of community support services approved by the Health Care Financing Administration pursuant to § 1915(e) of the Social Security Act to be offered to mentally retarded and developmentally disabled individuals who would otherwise require the level of care provided in an intermediate care facility for the mentally retarded.

*"Community services board"* or *"CSB"* means the public organization authorized by the Code of Virginia to provide services to individuals with mental illness or retardation, operating autonomously but in partnership with the DMHMRSAS.

*"Consumer Service Plan"* or *"CSP"* means that document addressing the needs of the recipient of home and community-based care mental retardation services, in all life areas. The Individual Service Plans developed by service providers are to be incorporated in the CSP by the case manager. Factors to be considered when this plan is developed may include, but are not limited to, the recipient's age, primary disability, and level of functioning.

*"Crisis stabilization"* means direct intervention to persons with mental retardation who are experiencing serious psychiatric or behavioral problems, or both, which jeopardize their current community living situation by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional admission or prevent other out of home placement. This service shall be designed to stabilize the individual and strengthen the current living situation so that the individual can be maintained in the community during and beyond the crisis period. Services will include, as appropriate, psychiatric, neuropsychiatric, and psychological assessment and other functional assessments and stabilization techniques; medication management and monitoring; behavior assessment and positive behavioral support; intensive care coordination with other agencies and providers to assist planning and delivery of services and supports to maintain community placement of the recipient; training of family members, other care givers, and service providers in positive behavioral supports to maintain the individual in the community; and temporary crisis supervision to ensure the safety of the individual and others.

*"DMAS"* means the Department of Medical Assistance Services.

*"DMHMRSAS"* means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

*"DMHMRSAS staff"* means individuals employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to perform utilization review, recommendation of preauthorization for service type and intensity, and review of individual level of care criteria.

*"DRS"* means the Department of Rehabilitative Services.

*"DSS"* means the Department of Social Services.

*"Day support"* means training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self-care, physical development, transportation to and from training sites, services and support activities, and prevocational services aimed at preparing an individual for paid or unpaid employment.

*"Developmental risk"* means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through diagnostic and evaluative criteria.

*"Environmental modifications"* means physical adaptations to a house, place of residence, vehicle, or work site, when the modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act, necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual.

*"EPSDT"* means the Early Periodic Screening, Diagnosis and Treatment program administered by the Department of Medical Assistance Services for children under the age of 21 according to federal guidelines which prescribe specific preventive and treatment services for Medicaid-eligible children.

*"HCFA"* means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

*"Individual Service Plan"* or *"ISP"* means the service plan developed by the individual service provider related solely to the specific tasks required of that service provider. ISPs help to comprise the overall Consumer Service Plan of care for the individual. The ISP is defined in DMHMRSAS licensing regulations 12 VAC 35-102-10 et seq.

*"Mental retardation"* means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.

*"Nursing services"* means skilled nursing services listed in the plan of care which are ordered by a physician and required to prevent institutionalization, not available under the State Plan for Medical Assistance, are within the scope of the state's

Nurse Practice Act and are provided by a registered professional nurse, or licensed practical nurse under the supervision of a registered nurse, licensed to practice in the state.

*"Personal assistance"* means assistance with activities of daily living, medication and/or other medical needs and monitoring health status and physical condition for individuals who do not receive residential support services and for whom training and skills development are not primary objectives or are provided through another program or service.

*"Persons with related conditions served by this waiver"* means persons residing in nursing facilities who have been determined through annual resident review to require specialized services and who, consistent with 42 CFR 435.1009, are individuals who have severe, chronic disabilities that meet all of the following conditions:

1. It is attributable to:
  - a. Cerebral palsy or epilepsy; or
  - b. Any other condition other than mental illness found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons and requires treatment or services similar to those required for these persons.
2. It is manifested before the person reaches age 22.
3. It is likely to continue indefinitely.
4. It results in substantial functional limitations in three or more of the following areas of major life activity:
  - a. Self-care.
  - b. Understanding and use of language.
  - c. Learning.
  - d. Mobility.
  - e. Self-direction.
  - f. Capacity for independent living.

*"Prevocational services"* means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job or task oriented but focus on goals such as attention span and motor skills. Compensation, if provided, would be for persons whose productivity is less than 50% of the minimum wage.

*"Qualified mental retardation professional"* means individuals possessing (i) at least one year of documented experience working directly with individuals who have mental retardation or developmental disabilities; (ii) a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, and psychology; and (iii) the required Virginia or national license, registration or certification in accordance with his profession.

*"Residential support services"* means support provided in a licensed or certified residence or in the individual's home. This service is one in which support and supervision is routinely provided. Support includes training, assistance, and

supervision in enabling individuals to maintain or improve their health, to develop skills in activities of daily living, and safety, in the use of community resources, and adapting their behavior to community and home-like environments. Reimbursement for residential support shall not include the cost of room, board, and general supervision.

*"Respite care"* means services given to individuals unable to care for themselves provided on a short-term basis because of the absence or need for relief of those persons normally providing the care.

*"State Plan for Medical Assistance"* or *"Plan"* means the regulations identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

*"Supported employment"* means training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized supervision to enable a consumer to maintain paid employment provided to mentally retarded individuals.

*"Therapeutic consultation"* means consultation provided by members of psychology, social work, behavioral analysis, speech therapy, occupational therapy, therapeutic recreation, physical therapy disciplines, or behavior consultation to assist the individual, parents/family members, Part H early intervention providers, residential support, day support and any other providers of support services in implementing an individual service plan.

## 12 VAC 30-120-211. Definitions.

*"Activities of daily living"* or *"ADL"* means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

[ *"Appeal"* means the process used to challenge adverse actions regarding services, benefits and reimbursement provided by Medicaid pursuant to 12 VAC 30-110 and 12 VAC 30-20-500 through 12 VAC 30-20-560. ]

*"Assistive technology"* or *"AT"* means specialized medical equipment and supplies to include devices, controls, or appliances, specified in the consumer service plan but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and nondurable medical equipment not available under the Medicaid State Plan.

*"Behavioral health authority"* or *"BHA"* means the local agency, established by a city or county under Chapter 15 (§ 37.1-242 et seq.) of Title 37.1 of the Code of Virginia that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the locality that it serves.

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"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Case management" means the [ ~~assessment~~ assessing ] and planning of services; linking the individual to services and supports identified in the consumer service plan; assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the individual; enhancing community integration; making collateral contacts to promote the implementation of the consumer service plan and community integration; monitoring to assess ongoing progress and ensuring services are delivered; and education and counseling that guides the individual and develops a supportive relationship that promotes the consumer service plan.

"Case manager" means [ the individual on behalf of ] the community services board or behavioral health authority [ ~~staff~~ ] possessing a combination of mental retardation work experience and relevant education that indicates that the [ ~~staff individual~~ ] possesses the knowledge, skills and abilities, at entry level, as established by the Department of [ ~~Mental Health, Mental Retardation and Substance Abuse Services, necessary to perform case management services~~ Medical Assistance Services in 12 VAC 30-50-450 ].

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities or cities and counties under Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Companion" means, for the purpose of these regulations, a person who provides companion services.

"Companion services" means nonmedical care, support, and socialization, provided to an adult (age 18 and over). The provision of companion services does not entail hands-on nursing care. It is provided in accordance with a therapeutic goal in the consumer service plan and is not purely diversional in nature.

"Comprehensive assessment" means the gathering of relevant social, psychological, medical and level of care information by the case manager and is used as a basis for the development of the consumer service plan.

"Consumer-directed services" means services for which the individual or family/caregiver is responsible for hiring, training, supervising, and firing of the staff.

"Consumer-directed (CD) services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the Consumer-Directed Services Individual Service Plan, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed companion, personal assistance, and respite services.

"Consumer service plan" or "CSP" means [ ~~that document documents~~ ] addressing needs in all life areas of individuals who receive [ ~~home and community-based~~ ] mental retardation waiver services, and is comprised of individual service plans as dictated by the individual's health care and support needs. The individual service plans are incorporated in the CSP by the case manager.

"Crisis stabilization" means direct intervention to persons with mental retardation who are experiencing serious psychiatric or behavioral challenges that jeopardize their current community living situation, by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent other out-of-home placement. This service [ ~~must~~ shall be designed to ] stabilize the individual and strengthen the current living situation so the individual can be supported in the community during and beyond the crisis period.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMHMRSAS staff" means persons employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place [ ~~separately from~~ outside ] the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his [ ~~or her~~ ] maximum functional level.

"Developmental risk" means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through existing diagnostic and evaluative criteria.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or family/caregiver, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.



[ "Enroll" means that the individual has been determined by the case manager to meet the eligibility requirements for the MR Waiver and DMHMRSAS has verified the availability of a MR Waiver slot for that individual. ]

"Entrepreneurial model" means a small business employing ~~[ fewer than ]~~ eight [ or fewer ] individuals who have disabilities on a shift and usually involves interactions with the public and with coworkers without disabilities.

"Environmental modifications" means physical adaptations to a house, place of residence, or vehicle that are necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines that prescribe preventive and treatment services for Medicaid-eligible children [ as defined in 12 VAC 30-50-130 ].

[ "Facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the Consumer-Directed Services Individual Service Plan, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed companion, personal assistance, and respite services. ]

"Fiscal agent" means an agency or organization within DMAS or contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed personal assistance, respite, and companion services.

"Health and safety standard" means that an individual's right to receive a service is dependent on a finding that the individual needs the service, based on appropriate assessment criteria and a written [ individual service ] plan [ ~~of care~~ ].

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to § 1915(c) of the Social Security Act to be offered to persons with mental retardation and children younger than age six who are at developmental risk who would otherwise require the level of care provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR.)

"ICF/MR" means a facility or distinct part of a facility certified by the Virginia Department of Health, as meeting the federal certification regulations for an Intermediate Care Facility for the Mentally Retarded and persons with related conditions. These facilities must address the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, and must provide active treatment.

"Individual" means the person receiving the services [ ~~and~~ or ] evaluations established in these regulations.

"Individual service plan" or "ISP" means the service plan related solely to the specific waiver service. Multiple ISPs help to comprise the overall consumer service plan.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

[ "ISAR" means the Individual Service Authorization Request and is the DMAS form used by providers to request prior authorization for MR waiver services. ]

[ ~~"Legally responsible relative" means the individual's spouse or parent (for children under age 18). ]~~

"Mental retardation" or "MR" means mental retardation as defined by the American Association on Mental Retardation (AAMR).

[ ~~"Nursing services" means skilled nursing services that are ordered by a physician and required to prevent institutionalization, that are not otherwise available under the State Plan for Medical Assistance, that are within the scope of the Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Subtitle III of Title 54.1 of the Code of Virginia, and that are provided by a registered professional nurse or by a licensed practical nurse under the supervision of a registered nurse who is licensed to practice in the Commonwealth. ]~~

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and DMHMRSAS, and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of an individual's request for services until all required information is received by DMHMRSAS.

"Personal assistance services" means assistance with activities of daily living, [ instrumental activities of daily living, ] access to the community, self-administration of medication, or other medical needs, and the monitoring of health status and physical condition.

"Personal assistant" means a person who provides personal assistance services.

"Personal emergency response system (PERS)" is an electronic device that enables certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

[ "Preauthorized" means that an individual service has been approved by DMHMRSAS prior to commencement of the service by the service provider for initiation and reimbursement of services. ]

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage.

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"Qualified mental retardation professional" means a professional possessing: (i) at least one year of documented experience working directly with individuals who have mental retardation or developmental disabilities; (ii) a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession, if applicable.

"Residential support services" means support provided in the individual's home by a DMHMRSAS-licensed residential provider or a DSS-approved provider [ of adult foster care services ]. This service is one in which training, assistance, and supervision is routinely provided to enable individuals to maintain or improve their health, to develop skills in activities of daily living and safety in the use of community resources, [ ~~and in adapting to adapt~~ ] their behavior to community and home-like environments [ , to develop relationships, and participate as citizens in the community ].

"Respite services" means services provided to individuals who are unable to care for themselves, furnished on a short-term basis because of the absence or need for relief of those unpaid persons normally providing the care.

[ "Skilled nursing services" means services that are ordered by a physician and required to prevent institutionalization, that are not otherwise available under the State Plan for Medical Assistance and that are provided by a licensed registered professional nurse, or by a licensed practical nurse under the supervision of a licensed registered professional nurse, in each case who is licensed to practice in the Commonwealth. ]

"Slot" means an opening or vacancy of waiver services for an individual.

"State Plan for Medical Assistance" or "Plan" means the regulations identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supported employment" means work in settings in which persons without disabilities are typically employed. It includes training in specific skills related to paid employment and the provision of ongoing or intermittent assistance and specialized supervision to enable an individual with mental retardation to maintain paid employment.

[ "Support plan" means the report of recommendations resulting from a therapeutic consultation. ]

"Therapeutic consultation" means activities to assist the individual, family/caregivers, staff of residential support, day support, and any other providers in implementing an individual [ ~~program~~ service ] plan.

## **12 VAC 30-120-213. General coverage and requirements for [ ~~home and community-based~~ ] MR waiver services.**

A. Waiver service populations. Home and community-based [ waiver ] services shall be available through a § 1915(c) of the Social Security Act waiver for the following individuals who have been determined to require the level of care provided in an ICF/MR.

1. Individuals with mental retardation; [ or ]

2. Individuals younger than the age of six who are at developmental risk. At the age of six years, these individuals must have a diagnosis of mental retardation to continue to receive home and community-based [ waiver ] services specifically under this program.

### B. Covered services.

1. Covered services shall include: residential support services, day support, supported employment, personal assistance (both consumer and agency-directed), respite services (both consumer and agency-directed), assistive technology, environmental modifications, skilled nursing services, therapeutic consultation, crisis stabilization, prevocational services, personal emergency response systems (PERS), and companion services (both consumer and agency-directed.)

2. These services shall be [ ~~clinically~~ ] appropriate and necessary to maintain the individual in the community. Federal waiver requirements provide that the average per capita fiscal year expenditures under the waiver must not exceed the average per capita expenditures for the level of care provided in Intermediate Care Facilities for the Mentally Retarded under the State Plan that would have been provided had the waiver not been granted.

3. Under this § 1915(c) waiver, DMAS waives § 1902(a)(10)(B) of the Social Security Act related to comparability.

C. All requests for increased services by MR waiver recipients will be reviewed under the health and safety standard. This standard assures that an individual's right to receive a service is dependent on a finding that the individual needs the service, based on appropriate assessment criteria [ and a written ISP ].

D. Appeals. Individual appeals shall be considered pursuant to 12 VAC 30-110-10 through 12 VAC 30-110-380. Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-560.

E. Urgent criteria. The CSB/BHA will determine, from among the individuals included in the urgent category, who should be served first, based on the needs of the individual at the time a slot becomes available and not on any predetermined numerical or chronological order.

1. The urgent category will be assigned when the individual is in need of services because he is determined to meet one of the criteria established in subdivision 2 of this subsection. Assignment to the urgent category may be requested by the individual, his legally responsible relative, or primary caregiver. The urgent category may be assigned only when the individual [ ~~or legally responsible relative~~ , the individual's spouse, or the parent of an individual who is a minor child ] would accept the [ ~~preferred~~ requested ] service if it were offered. Only after all individuals in the Commonwealth who meet the urgent criteria have been served can individuals in the nonurgent category be served. [ Individuals in the nonurgent category are those who meet the diagnostic and functional criteria for the waiver, including the need for services within 30 days, but who do not meet the urgent criteria. ] In the event that a CSB/BHA

has a vacant slot and does not have an individual who meets the urgent criteria, the slot can be held by the CSB/BHA for 90 days from the date it is identified as vacant, in case someone in an urgent situation is identified. If no one meeting the urgent criteria is identified within 90 days, the slot will be made available for allocation to another CSB/BHA in the Health Planning Region (HPR). If there is no urgent need at the time that the HPR is to make a regional reallocation of a waiver slot, the HPR shall notify DMHMRSAS. DMHMRSAS shall have the authority to reallocate said slot to another HPR or CSB/BHA where there is unmet urgent need. Said authority must be exercised, if at all, within 30 days from receiving such notice.

2. Satisfaction of one or more of the following criteria shall indicate that the individual should be placed on the urgent need of waiver services list:

- a. [ Both ] primary [ caregiver or caregivers is or are caregivers are 55 years of age or older, or if there is one primary caregiver, that primary caregiver is ] 55 years of age or older;
- b. The individual is living with a primary caregiver, who is providing the service voluntarily and without pay, and the primary caregiver indicates that he can no longer care for the individual with mental retardation;
- c. There is a clear risk of abuse, neglect, or exploitation;
- d. [ The One ] primary caregiver [ , or both caregivers, ] has a chronic or long-term physical or psychiatric condition or conditions which significantly [ limit his ability limits the abilities of the primary caregiver or caregivers ] to care for the individual with mental retardation;
- e. Individual is aging out of publicly funded residential placement or otherwise becoming homeless (exclusive of children who are graduating from high school); or
- f. The individual with mental retardation lives with the primary caregiver and there is a risk to the health or safety of the individual, primary caregiver, or other individual living in the home due to either of the following conditions:
  - (1) The individual's behavior or behaviors present a risk to himself or others which cannot be effectively managed by the primary caregiver even with generic or specialized support arranged or provided by the CSB/BHA; or
  - (2) There are physical care needs (such as lifting or bathing) or medical needs that cannot be managed by the primary caregiver even with generic or specialized supports arranged or provided the CSB/BHA.

F. Reevaluation of service need and utilization review. Providers shall meet the documentation requirements as specified in [ ~~42 VAC 30-120-214-B~~ 12 VAC 30-120-217 B ].

- 1. The consumer service plan (CSP).
  - a. The CSP shall be developed by the case manager mutually with the individual, the individual's family/caregiver, other service providers, consultants, and

other interested parties based on relevant, current assessment data. The CSP development process identifies the services to be rendered to individuals, the frequency of services, the type of service provider or providers, and a description of the services to be offered. The ISP from each waiver service provider shall be incorporated into the CSP. Only services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS. [ ~~There shall be a limit of 780 units per CSP year for day support, prevocational and supported employment services, either as stand-alone services or combined.~~ ]

b. The case manager is responsible for continuous monitoring of the appropriateness of the individual's [ supporting documentation services ] and revisions to the CSP as indicated by the changing needs of the individual. At a minimum, the case manager must review the CSP every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

c. Any modification to the amount or type of services in the CSP must be authorized by DMHMRSAS [ staff ] or DMAS.

2. Review of level of care.

a. The case manager shall complete a comprehensive assessment annually, in coordination with the individual, family/caregiver, and service providers. If warranted, the case manager shall coordinate a medical examination and a psychological evaluation for the individual. The reassessment shall include an update of the level of care and functional assessment instrument and any other appropriate assessment data. The CSP shall be revised [ if as ] appropriate.

b. A medical examination must be completed for adults based on need identified by the individual, family/caregiver, provider, case manager, or DMHMRSAS staff. Medical examinations [ and screenings ] for children must be completed according to the recommended frequency and periodicity of the EPSDT program.

c. A psychological evaluation or standardized developmental assessment for children under six years of age must reflect the current psychological status (diagnosis), adaptive level of functioning, and cognitive abilities. A new psychological evaluation shall be required whenever the individual's functioning has undergone significant change and is no longer reflective of the past psychological evaluation.

3. Case manager must [ ensure the receipt of request ] an updated DMAS-122 form [ from DSS ] annually [ ~~The case manager must~~ and ] forward a copy of the updated DMAS-122 form to all service providers [ when obtained ].

**12 VAC 30-120-215. Individual eligibility requirements.**

A. Individuals receiving services under this waiver must meet the following requirements. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy. Virginia has elected to cover the optional categorically needy groups under 42 CFR 435.211, 435.217,

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and 435.230. The income level used for 42 CFR 435.211, 435.217 and 435.230 is 300% of the current Supplemental Security Income payment standard for one person.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care criteria. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based [waiver] services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the deductions listed below:

a. For individuals to whom § 1924(d) applies and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual, which is equal to the SSI payment for one person. [~~For the period beginning with October 17, 2001, through December 31, 2001, those individuals involved in a planned habilitation program carried out as either a supported employment, prevocational, or vocational training shall be allowed to retain an additional amount not to exceed the first \$75.00 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum earnings allowance of \$190 monthly.~~] As of January 1, 2002, due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% of SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.)

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the plan.

b. For individuals to whom § 1924(d) does not apply and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual, which is equal to the SSI payment for one person. [~~For the period beginning with October 17, 2001, through December 31, 2001, those individuals involved in a planned habilitation program carried out as either supported employment, prevocational, or vocational training shall be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum earnings allowance of \$190 monthly.~~] As of January 1, 2002, due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% of SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.)

(2) For an individual with a dependent child or children, an additional amount for the maintenance needs of the child or children, which shall be equal to the Title XIX medically needy income standard based on the number of dependent children.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the State Medical Assistance Plan.

3. The following four criteria shall apply to all mental retardation waiver services:

- a. Individuals qualifying for mental retardation waiver services must have a demonstrated clinical need for the service resulting in significant functional limitations in major life activities. The need for the service must arise from either (i) an individual having a diagnosed condition of mental retardation or (ii) a child younger than six years of age being at developmental risk of significant functional limitations in major life activities;
- b. The CSP and services that are delivered must be consistent with the Medicaid definition of each service;
- c. Services must be recommended by the case manager based on a current functional assessment using a DMHMRSAS approved assessment instrument and a demonstrated need for each specific service; and
- d. Individuals qualifying for mental retardation waiver services must meet the ICF/MR level of care criteria.

B. Assessment and authorization of home and community-based [waiver] services.

1. To ensure that Virginia's home and community-based waiver programs serve only individuals who would otherwise be placed in an ICF/MR, home and community-based services shall be considered only for individuals who are eligible for admission to an ICF/MR with a diagnosis of mental retardation, or who are under six years of age and at developmental risk. Home and community-based [waiver] services shall be the critical service that enables the individual to remain at home and in the community rather than being placed in an ICF/MR.

2. The [individual's need case manager shall recommend the individual] for home and community-based services [shall be determined by the case manager] after completion of a comprehensive assessment of the individual's needs and available supports. The comprehensive assessment includes relevant medical, social, level of care and psychological data, and identifies all services received by the individual. Medical examinations and social assessments shall be current, completed prior to the individual's entry to the waiver, and no earlier than 12 months prior to beginning waiver services. Psychological evaluations or standardized developmental evaluations for children under the age of six years must reflect the current psychological status (diagnosis), current cognitive abilities, and current adaptive level of functioning of the individuals.

3. An essential part of the case manager's assessment process shall be determining the level of care required by applying the existing DMAS ICF/MR criteria (12 VAC 30-130-430 et seq.).

4. The case manager shall complete the assessment, determine whether the individual meets the ICF/MR criteria and develop the CSP with input from the individual, family/caregivers, and service and support providers involved in the individual's support in the community. Completion of this assessment process for home and community-based [waiver] services by the case manager is mandatory before Medicaid will assume payment

responsibility of home and community-based [waiver] services. For the case manager to make a recommendation for waiver services, [community-based waiver services MR Waiver services] must be determined to be an appropriate service alternative to delay or avoid placement in an ICF/MR, or promote exiting from either an ICF/MR placement or inappropriate institutional placement.

5. The case manager shall provide the individual and family/caregiver with the choice of MR waiver services or ICF/MR placement, choice of [medically necessary needed] services available under the MR waiver, including agency or consumer-directed services, and explore alternative settings and services to provide the services needed by the individual. A CSP shall be developed for the individual based on the assessment of needs as reflected in the level of care and functional assessment instruments and the individual's, family/caregiver's preferences.

6. The case manager must submit the results of the comprehensive assessment and a recommendation to the DMHMRSAS staff for final determination of ICF/MR level of care and authorization for community-based services. DMHMRSAS will communicate in writing to the case manager whether the recommended services have been approved and the amounts and type of services authorized or if any have been denied. Medicaid will not pay for any home and community-based [waiver] services delivered prior to the authorization date approved by DMHMRSAS if prior authorization is required.

7. [Community-based Mental retardation] waiver services may be recommended by the case manager only if:

- a. The individual is Medicaid eligible as determined by the local office of the Department of Social Services;
- b. The individual has a diagnosis of mental retardation as defined by the American Association on Mental Retardation, or is a child under the age of six at developmental risk, who would in the absence of waiver services, require the level of care provided in an ICF/MR facility the cost of which would be reimbursed under the Plan;
- c. The contents of the individual service plans are consistent with the Medicaid definition of each service; and
- d. The individual requesting waiver services is not receiving such services while an inpatient of a nursing facility, an ICF/MR, or hospital.

8. All consumer service plans are subject to approval by DMAS. DMAS shall be the single state agency authority responsible for the supervision of the administration of the [community-based MR] waiver and is responsible for conducting utilization review activities. DMAS has contracted with DMHMRSAS for recommendation of preauthorization of waiver services.

C. Waiver approval process: accessing services.

1. Once the case manager has determined an individual meets the functional criteria for mental retardation (MR) waiver services, has determined that a slot is available [ , ]

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and that the individual has chosen this service, the case manager [ ~~and the individual or individual's family/caregiver will meet within 30 calendar days to discuss the individual's needs and existing supports, and to develop a CSP that will establish and document the needed services~~ shall submit enrollment information to DMHMRSAS to confirm level of care eligibility and the availability of a slot. DMHMRSAS shall only enroll the individual if a slot is available ].

[ ~~The case manager submits enrollment information to DMHMRSAS to confirm level of care eligibility and the availability of a slot. DMHMRSAS shall only enroll the individual if a slot is identified.~~ 2. If no slot is available, the individual's name will be placed on [ either ] the [ urgent or nonurgent ] statewide waiting list until such time as a slot becomes available. [ Once notification has been received from DMHMRSAS that the individual has been placed on either the urgent or nonurgent waiting list, the case manager must notify the individual in writing within 10 working days of his placement on either list, and offer appeal rights. ]

3. Once the individual has been enrolled by DMHMRSAS, the case manager will submit a DMAS-122 along with a written confirmation from DMHMRSAS of level of care eligibility, to the local DSS to determine financial eligibility for the waiver program and any patient pay responsibilities. After the case manager has received written notification of Medicaid eligibility by DSS and written enrollment from DMHMRSAS, the case manager shall inform the individual [ or family/caregiver ] so that [ ~~services listed in the CSP can be initiated~~ the CSP can be developed. The individual or individual's family/caregiver will meet with the case manager within 30 calendar days to discuss the individual's needs and existing supports, and to develop a CSP that will establish and document the needed services]. The individual or case manager shall contact [ chosen ] service providers so that [ ~~the individual may receive~~ ] services [ can be initiated ] within 60 days. If services are not initiated by the provider within 60 days, the case manager must submit written information to DMHMRSAS requesting more time to initiate services. A copy of the request must be provided to the individual or the individual's family/caregiver. DMHMRSAS has the authority to approve the request in 30-day extensions or deny the request to retain the waiver slot for that individual. [ DMHMRSAS shall provide a written response to the case manager indicating denial or approval of the extension. DMHMRSAS shall submit this response within 10 working days of the receipt of the request for extension. ]

4. The service providers will develop Individual Service Plans (ISP) for each service and will submit a copy of these plans to the case manager. The case manager will review and ensure the ISP meets the established service criteria for the identified needs and forward the required documentation to DMHMRSAS for prior authorization. DMHMRSAS shall, within 10 working days of receiving all supporting documentation, [ either review and ] approve, pend for more information, or deny the individual service requests.

5. The case manager will monitor the service providers' ISPs to ensure that all providers are working toward the identified goals of the affected individuals.

6. Case managers will be required to conduct monthly onsite visits for all MR waiver individuals residing in DSS-licensed [ assisted living facilities ] or approved [ adult foster care ] placements.

## **12 VAC 30-120-217. General requirements for home and community-based participating providers.**

A. Providers approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS and DMHMRSAS, in writing, of any change in the information that the provider previously submitted to DMAS and DMHMRSAS;

2. Assure freedom of choice to individuals in seeking [ ~~medical care~~ services ] from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid program at the time the service or services were performed;

3. Assure the individual's freedom to refuse medical care [ ~~and~~ , ] treatment [ and services ];

4. Accept referrals for services only when staff is available to initiate services and perform such services on an ongoing basis;

5. Provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d et seq.), which prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;

6. Provide services and supplies to individuals of the same quality and in the same mode of delivery as provided to the general public;

7. Submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public [ ~~The provider must~~ and ] accept as payment in full the amount established by DMAS payment methodology from the individual's authorization date for the waiver services;

8. Use program-designated billing forms for submission of charges;

9. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided;

a. In general, such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

10. The provider agrees to furnish information on request and in the form requested to DMAS, DMHMRSAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement;

11. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid;

12. [ Pursuant to 42 CFR Part 431, Subpart F, 12 VAC 30-20-90, and any other applicable state law, ] all providers shall hold confidential and use for authorized DMAS or DMHMRSAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits [ or , ] the data is necessary for the functioning of the DMAS [ in conjunction with the cited laws ];

13. Change of ownership. When ownership of the provider changes, DMAS shall be notified at least 15 calendar days before the date of change;

14. All facilities covered by § 1616(e) of the Social Security Act in which home and community-based [ waiver ] services will be provided shall be in compliance with applicable standards that meet the requirements for board and care facilities. Health and safety standards shall be monitored through the DMHMRSAS' licensure standards or through DSS-approved standards for adult foster care providers;

15. Suspected abuse or neglect. Pursuant to [ ~~§ 63.1-55.3~~ §§ 63.2-1509 and 63.2-1606 ] of the Code of Virginia, if a participating provider knows or suspects that a home and community-based [ waiver ] service individual is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately from first knowledge to the local DSS adult or child protective services worker and to DMHMRSAS Offices of Licensing and Human Rights as applicable; and

16. Adherence to provider participation agreement and the DMAS provider service manual. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider participation agreements and in the DMAS provider manual.

## B. Documentation requirements.

1. The case manager must maintain the following documentation for utilization review by DMAS for a period of not less than five years from each individual's last date of service:

a. The comprehensive assessment and all CSPs completed for the individual;

b. All ISPs from every provider rendering waiver services to the individual;

c. All supporting documentation related to any change in the CSP;

d. All related communication with the individual, family/caregiver, consultants, providers, DMHMRSAS, DMAS, DSS, DRS or other related parties; and

e. An ongoing log that documents all contacts made by the case manager related to the individual and family/caregiver.

2. The service providers must maintain, for a period of not less than five years [ from the individual's last date of service ], documentation necessary to support services billed. Utilization review of individual-specific documentation shall be conducted by DMAS staff. This documentation shall contain, up to and including the last date of service, all of the following:

a. All assessments and reassessments.

b. All ISP's developed for that individual and the written reviews.

c. An attendance log that documents the date services were rendered and the amount and type of services rendered.

d. Appropriate data, contact notes, or progress notes reflecting an individual's status and, as appropriate, progress or lack of progress toward the goals on the ISP.

e. Any documentation to support that services provided are appropriate and necessary to maintain the individual in the home and in the community.

[ C. An individual's case manager shall not be the direct staff person or the immediate supervisor of a staff person who provides MR Waiver services for the individual. ]

## **12 VAC 30-120-219. Participation standards for home and community-based [ waiver services ] participating providers.**

A. Requests for participation will be screened to determine whether the provider applicant meets the basic requirements for participation.

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B. For DMAS to approve provider agreements with home and community-based [waiver] providers, the following standards shall be met:

1. For services that have licensure and certification requirements, licensure and certification requirements pursuant to [ ~~42 CFR 441.352~~ 42 CFR 441.302 ];

2. Disclosure of ownership pursuant to 42 CFR 455.104 and 455.105; [ and ]

[ ~~3. Administrative and financial management capacity to meet state and federal requirements; and ]~~

[ 4. 3. ] The ability to document and maintain individual case records in accordance with state and federal requirements.

C. [ ~~Providers~~ The case manager ] must inform the [waiver] individual of all [ ~~other~~ ] available waiver providers in the community in which he desires services and he shall have the option of selecting the provider of his choice from among those providers meeting the individual's needs.

D. DMAS shall be responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for participation agreement renewal with DMAS to provide home and community-based [waiver] services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's participation agreement, may result in a written request from DMAS for a corrective action plan that details the steps the provider must take and the length of time permitted to achieve full compliance with the plan to correct the deficiencies that have been cited.

E. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification. [ ~~DMAS shall be permitted to administratively terminate a provider from participation upon 30 days' written notification. DMAS may also cancel a participation agreement immediately or may give notification of cancellation in the event of a breach of the agreement by the provider. DMAS may terminate at will a provider's participation agreement on 30 days written notice~~ ] as specified in the DMAS participation agreement. [ ~~DMAS may also immediately terminate a provider's participation agreement if the provider is no longer eligible to participate in the program.~~ ] Such action precludes further payment by DMAS for services provided to individuals subsequent to the date specified in the termination notice.

F. A provider shall have the right to appeal adverse action taken by DMAS. Adverse actions may include, but shall not be limited to, termination of the provider agreement by DMAS, and retraction of payments from the provider by DMAS for noncompliance with applicable law, regulation, policy, or procedure. All disputes regarding provider reimbursement or termination of the agreement by DMAS for any reason shall be resolved through administrative proceedings conducted at the office of DMAS in Richmond, Virginia. These administrative proceedings and judicial review of such administrative proceedings shall be conducted pursuant to the Virginia Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia, the State Plan for

Medical Assistance provided for in § 32.1-325 of the Code of Virginia, and duly promulgated regulations. Court review of final agency determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act.

G. Section 32.1-325 of the Code of Virginia mandates that "any such [Medicaid] agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states or Washington, DC, must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider agreement. [ ~~Reinstatement will be contingent upon provisions of state law.~~ ] In addition, termination of a provider participation agreement will occur as may be required for federal financial participation.

H. Case manager's responsibility for the Individual Information Form (DMAS-122). It shall be the responsibility of the case management provider to notify DMHMRSAS and DSS, in writing, when any of the following circumstances occur. Furthermore, it shall be the responsibility of DMHMRSAS to update DMAS [ , as requested, ] when any of the following events occur:

1. Home and community-based [waiver] services are implemented.

2. A recipient dies.

3. A recipient is discharged from all MR waiver services.

4. Any other circumstances (including hospitalization) that cause home and community-based [waiver] services to cease or be interrupted for more than 30 days.

5. A selection by the individual or family/caregiver of a different community services board/behavioral health authority providing case management services.

I. Changes or termination of services. It is the DMHMRSAS staff's responsibility to authorize changes to an individual's CSP based on the recommendations of the case management provider. Providers of direct service are responsible for modifying their individual service plans with the involvement of the individual or family/caregiver, and submitting it to the case manager any time there is a change in the individual's condition or circumstances which may warrant a change in the amount or type of service rendered. The case manager will review the need for a change and may recommend a change to the ISP to the DMHMRSAS staff. DMHMRSAS will review and approve, deny, or [ ~~request~~ ~~pend~~ ] additional information regarding the requested change to the individual's ISP [ , ] and communicate this to the case manager within 10 working days of [ ~~receipt of the~~ receiving all supporting documentation regarding the ] request for change or in the case of an emergency, within 72 hours of receipt of the request for change.

The individual [ or family/caregiver ] will be notified, in writing, of the right to appeal the decision or decisions to reduce, terminate, suspend or deny services pursuant to DMAS client appeals regulations, Part I (12 VAC 30-110-10 et seq.) of 12 VAC 30-110. [ The case manager must submit this notification to the individual in writing within 12 days of the



decision.] All CSPs are subject to approval by the Medicaid agency.

1. In a nonemergency situation, the participating provider shall give the individual or family/caregiver and case manager [ 40 12 ] days written notification of the provider's intent to discontinue services. The notification letter shall provide the reasons and the effective date the provider is discontinuing services. The effective date shall be at least [ ten 12 ] days from the date of the notification letter. The individual is not eligible for appeal rights in this situation and may pursue services from another provider.

2. In an emergency situation when the health and safety of the individual [ , other individuals in that setting, ] or provider personnel is endangered, the case manager and DMHMRSAS must be notified prior to discontinuing services. The [ 40 12- ] day written notification period shall not be required. If appropriate, the local DSS adult protective services or child protective services and DMHMRSAS Offices of Licensing and Human Rights must be notified immediately.

3. In the case of termination of home and community-based [ waiver ] services by the CSB/BHA, DMHMRSAS or DMAS staff, individuals shall be notified of their appeal rights by the case manager pursuant to Part I (12 VAC 30-110-10 et seq.) of 12 VAC 30-110. The case manager shall have the responsibility to identify those individuals who no longer meet the level of care criteria or for whom home and community-based [ waiver ] services are no longer an appropriate alternative.

**12 VAC 30-120-220. General coverage and requirements for home and community-based care services. (Repealed.)**

A. Waiver service populations. Home and community based services shall be available through a § 1915(c) waiver. Coverage shall be provided under the waiver for the following individuals who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded:

1. Individuals with mental retardation.
2. Individuals with related conditions currently residing in nursing facilities but who are being discharged to the community and determined to require specialized services.
3. Individuals under the age of six at developmental risk. At age six, these individuals must be determined to be mentally retarded to continue to receive home and community based care services.

**B. Covered services.**

1. Covered services shall include: residential support, day support, supported employment, personal assistance, respite care, assistive technology, environmental modifications, nursing services, therapeutic consultation, and crisis stabilization.
2. These services shall be clinically appropriate and necessary to maintain these individuals in the community. Federal waiver requirements provide that the average per

capita fiscal year expenditure under the waiver must not exceed the average per capita expenditures for the level of care provided in an intermediate care facility for the mentally retarded under the State Plan that would have been made had the waiver not been granted.

**C. Patient eligibility requirements.**

1. Virginia shall apply the financial eligibility criteria contained in the State Plan for the categorically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.217 and 435.230. The income level used for 435.211, 435.217 and 435.230 is 300% of the current Supplemental Security Income payment standard for one person.

2. Under this waiver, the coverage groups authorized under §1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

3. Virginia shall reduce its payment for home and community based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and §1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community based waiver services by the amount that remains after deducting the following amounts in the following order from the individual's income:

a. For individuals to whom §1924(d) applies, Virginia intends to waive the requirement for comparability pursuant to §1902(a)(10)(B) to allow for the following:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training shall be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with §1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

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~~(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with §1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.~~

~~(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.~~

~~b. For all other individuals:~~

~~(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training will be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).~~

~~(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.~~

~~(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.~~

~~4. The following four criteria shall apply to all mental retardation waiver services:~~

~~a. Individuals qualifying for mental retardation waiver services must have a demonstrated clinical need for the service resulting in significant functional limitations in major life activities. The need for the service must arise from (i) a diagnosed condition of mental retardation; (ii) a child younger than six years of age who is at developmental risk of significant functional limitations in major life activities; or (iii) a person with a related condition as defined in these regulations;~~

~~b. The Plan of Care and services which are delivered must be consistent with the Medicaid definition of each service;~~

~~c. Services must be approved by the case manager based on a current functional assessment using the Inventory for Client and Agency Planning (ICAP) or other DMHMRSAS approved assessment and demonstrated need for each specific service; and~~

~~d. Individuals qualifying for mental retardation waiver services must meet the ICF/MR level of care criteria.~~

~~D. Assessment and authorization of home and community-based care services.~~

~~1. The individual's need for home and community-based care services shall be determined by the CSB case manager after completion of a comprehensive assessment of the individual's needs and available support. The case manager shall complete the assessment, determine whether the individual meets the intermediate care facility for the mentally retarded (ICF/MR) criteria and develop the Consumer Service Plan (CSP) with input from the recipient, family members, service providers and any other individuals involved in the individual's maintenance in the community.~~

~~2. An essential part of the case manager's assessment process shall be determining the level of care required by applying the existing DMAS ICF/MR criteria (12 VAC 30-130-430 et seq.).~~

~~3. The case manager shall gather relevant medical, social, and psychological data and identify all services received by the individual. Medical examinations shall be current, completed prior to the individual's entry to the waiver, no earlier than 12 months prior to beginning waiver services. Social assessments must have been completed within 12 months prior to beginning waiver services. Psychological evaluations or standardized developmental evaluations for children under the age of six years must reflect the current psychological status (diagnosis), current cognitive abilities, and current adaptive level of functioning of the individuals.~~

~~4. The case manager shall explore alternative settings to provide the care needed by the individual. Based on the individual's preference, preference of parents or guardian for minors, or preference of guardian or authorized representative for adults, and the assessment of needs, a plan of care shall be developed for the individual. For the case manager to make a recommendation for waiver services, community-based care services must be determined to be an appropriate service alternative to delay, avoid placement in an ICF/MR, or promote exiting from either an ICF/MR placement or inappropriate nursing facility placement.~~

~~5. Community-based care waiver services may be recommended by the case manager only if:~~

~~a. The individual is Medicaid eligible as determined by the local office of the Department of Social Services;~~

~~b. The individual is either mentally retarded as defined in § 37.1-1 of the Code of Virginia, is a child under the age of six at developmental risk, or is a person with a related condition who would, in the absence of waiver services, require the level of care provided in an ICF/MR facility, the cost of which would be reimbursed under the Plan;~~

~~c. The individual requesting waiver services shall not receive such services while an inpatient of a nursing facility or hospital.~~

~~6. The case manager must submit the results of the comprehensive assessment and a recommendation to the DMHMRSAS staff for final determination of ICF/MR level of care and authorization for community-based care services. DMHMRSAS authorization must be obtained prior to referral~~

~~for service initiation and Medicaid reimbursement for waiver services. DMHMRSAS will communicate in writing to the case manager whether the recommended service plan has been approved or denied and, if approved, the amounts and type of services authorized.~~

~~7. All Consumer Service Plans are subject to approval by DMAS. DMAS is the single state authority responsible for the supervision of the administration of the community based care waiver. DMAS has contracted with DMHMRSAS for recommendation of preauthorization of waiver services and utilization review of those services.~~

## Article 2.

### Covered Services and Limitations and Related Provider Requirements.

#### **12 VAC 30-120-221. Assistive technology.**

A. *Service description.* Assistive technology (AT) is the specialized medical equipment and supplies including those devices, controls, or appliances, specified in the consumer service plan but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of such items.

B. *Criteria.* In order to qualify for these services, the individual must have a demonstrated need for equipment or modification for remedial or direct medical benefit primarily in the individual's home, vehicle, community activity setting, or day program to specifically serve to improve the individual's personal functioning. This shall encompass those items not otherwise covered under the State Plan for Medical Assistance. AT shall be covered in the least expensive, most cost-effective manner.

C. *Service units and service limitations.* Assistive technology is available to individuals who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. A maximum limit of \$5,000 may be reimbursed per CSP year. Costs for assistive technology cannot be carried over from year to year and must be preauthorized each CSP year. AT shall not be approved for purposes of convenience of the caregiver or restraint of the individual. An independent professional consultation must be obtained from staff knowledgeable of that item for each AT request prior to approval by DMHMRSAS. All AT must be preauthorized by DMHMRSAS each CSP year. Any equipment/supplies/technology not available through a durable medical equipment provider may be purchased and billed to DMAS for Medicaid reimbursement as documented in the ISP, recommended by the case manager, and authorized by DMHMRSAS.

D. *Provider requirements.* In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, assistive technology shall be provided by ~~[ providers having participation agreements with DMAS;~~ a DMAS-enrolled Durable Medical Equipment provider or a DMAS-enrolled CSB/BHA with a MR Waiver provider

agreement to provide assistive technology. The provider documentation requirements are as follows:

1. The appropriate ISAR form, to be completed by the case manager, may serve as the ISP, provided it adequately documents the need for the service, the process to obtain this service (contacts with potential vendors or contractors, or both, of service, costs, etc.), and the time frame during which the service is to be provided. This includes a separate notation of evaluation or design, or both, labor, and supplies or materials, or both. The ISP/ISAR must include documentation of the reason that a rehabilitation engineer is needed, if one is to be involved. A rehabilitation engineer may be involved if disability expertise is required that a general contractor will not have. The ISAR must be submitted to DMHMRSAS for authorization to occur;

2. Written documentation regarding the process and results of ensuring that the item is not covered by the State Plan for Medical Assistance as durable medical equipment and supplies and that it is not available from a DME-provider when purchased elsewhere;

3. Documentation of the recommendation for the item by a qualified professional;

4. Documentation of the date services are rendered and the amount of service needed;

5. Any other relevant information regarding the device or modification;

6. Documentation in the case management record of notification by the designated individual or individual's representative of satisfactory completion or receipt of the service or item; and

7. Instructions regarding any warranty, repairs, complaints, or servicing that may be needed. ]

#### **12 VAC 30-120-223. Companion services (agency-directed model).**

A. *Service description.* Companion services provide nonmedical care, socialization, or support to an adult (age 18 or older). Companions may assist or support the individual with such tasks as meal preparation, community access [ and activities ], laundry and shopping, but do not perform these activities as discrete services. Companions may also perform light housekeeping tasks. This service is provided in accordance with a therapeutic goal in the CSP and is not purely diversional in nature.

B. *Criteria.* In order to qualify for companion services, the individual shall have demonstrated a need for assistance with IADLs, light housekeeping, community access, medication self-administration or support to assure safety. The provision of companion services does not entail hands-on nursing care.

C. *Service units and service limitations.*

1. The unit of service for companion services is one hour and the amount that may be included in the ISP shall not exceed eight hours per 24-hour day. There is a limit of 8 hours per 24-hour day for ~~[ agency-directed and consumer-directed companion services, either as stand-alone services~~

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~~or combined~~ companion services, either agency or consumer-directed or combined].

2. A companion shall not be permitted to provide the care associated with ventilators, continuous tube feedings, or suctioning of airways.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, companion service providers must meet the following qualifications:

1. Companion services provider shall include DMHMRSAS-licensed residential services providers, DMHMRSAS-licensed supportive residential services providers, DMHMRSAS-licensed day support service providers, DMHMRSAS-licensed respite service providers, and DMAS-enrolled personal care/respite care providers.

2. Companion qualifications. Providers must employ staff to provide companion services who meet the following requirements:

- a. Be at least 18 years of age;
- b. Possess basic reading, writing, and math skills;
- c. Be capable of following an ISP with minimal supervision;
- d. Submit to a criminal history record check. The companion will not be compensated for services provided to the individual if the records check verifies the companion has been convicted of crimes described in § 37.1-183.3 of the Code of Virginia;
- e. Possess a valid Social Security number; and
- f. Be capable of aiding in instrumental activities of daily living.

3. Companion service providers may not be the parents of individuals who are minors [ ~~or~~ ] the individual's spouse [ ~~or the legally responsible relative of the individual. Payment may not be made for services furnished by.~~ ] Other family members living under the same roof as the individual being served [ may not provide companion services ] unless there is objective written documentation as to why there are no other providers available to provide the service. Companion services shall not be provided by adult foster care/family care providers or any other paid caregivers. This service shall not be provided in congregate settings by staff employed by the congregate provider.

4. Family members [ who are reimbursed to provide companion services ] must meet the companion qualifications.

5. Companions will be employees of providers that will have participation agreements with DMAS to provide companion services. Providers will be required to have a companion services supervisor to monitor companion services. The supervisor must have a bachelor's degree in a human services field and at least one year of experience working in the mental retardation field, or be an LPN or an RN with at least one year of experience working in the mental

retardation field. An LPN or RN must have a current license or certification to practice nursing in the Commonwealth within his or her profession.

6. The provider must conduct an initial home visit prior to initiating companion services to document the efficacy and appropriateness of services and to establish an individual service plan for the individual. The provider must provide follow-up home visits to monitor the provision of services quarterly or as often as needed. [ ~~A written quarterly review is required and must be sent to the case manager. The individual must be reassessed for services annually.~~ ]

7. Required documentation in the individual's record. The provider must maintain a record of each individual receiving companion services. At a minimum these records must contain:

a. An initial assessment completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation;

b. The ISP goals, objectives, and activities. The ISP [ ~~must be reviewed at least annually by the provider, the individual receiving the services, and the case manager. In addition, the ISP must be reviewed by the provider quarterly, modified as appropriate and submitted to the case manager;~~ goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver. ]

c. All correspondence to the individual, family/caregiver, case manager, DMAS, and DMHMRSAS;

d. Contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual;

[ e. The companion services supervisor must document in the individual's record in a summary note following significant contacts with the companion and quarterly home visits with the individual:

- (1) Whether companion services continue to be appropriate;
- (2) Whether the plan is adequate to meet the individual's needs or changes are indicated in the plan;
- (3) The individual's satisfaction with the service; and
- (4) The presence or absence of the companion during the supervisor's visit. ]

[ ~~e. f.~~ ] All companion records. The companion record must contain:

- (1) The specific services delivered to the individual by the companion, dated the day of service delivery, and the individual's responses;
- (2) The companion's arrival and departure times;

(3) The companion's weekly comments or observations about the individual to include observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

(4) The companion's and individual's or family/caregiver's weekly signatures recorded on the last day of service delivery for any given week to verify that companion services during that week have been rendered.

[ ~~£~~ g. ] A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 from the case manager.

**12 VAC 30-120-225. Consumer-directed services: personal assistance, companion, and respite.**

A. Service definition.

1. Consumer-directed personal [ ~~services~~ ] assistance [ ~~services~~ ] is hands-on care of either a supportive or health-related nature [ ~~, or both,~~ ] and may include, but is not limited to, assistance with activities of daily living, access to the community, monitoring of self-administration of medication or other medical needs, monitoring health status and physical condition, and work-related personal assistance [ ~~that will extend the ability of the personal assistant to provide assistance to the individual in the workplace~~ ]. When specified, such supportive services may include assistance with instrumental activities of daily living (IADLs). Personal assistance does not include either practical or professional nursing services or those practices regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Subtitle III of Title 54.1 of the Code of Virginia, as appropriate.

2. Consumer-directed respite services are specifically designed to provide temporary, periodic, or routine relief to the unpaid primary caregiver of an individual. Respite services include, but are not limited to, assistance with personal hygiene, nutritional support, and environmental support. This service may be provided in the individual's home or other community settings.

3. Consumer-directed companion services provide nonmedical care, socialization, [ ~~and~~ or ] support to an adult (age 18 and older). [ Companions may assist or support the individual with such tasks as meal preparation, community access and activities, laundry and shopping, but do not perform these activities as discrete services. Companions may also perform light housekeeping tasks. This service is provided in accordance with a therapeutic goal in the CSP and is not purely diversional in nature. ]

4. DMAS shall either provide for fiscal agent services or contract for the services of a fiscal agent for consumer-directed personal assistance services, consumer-directed companion services, and consumer-directed respite services. The fiscal agent will be reimbursed by DMAS to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle responsibilities for the individual for employment taxes. The fiscal agent will seek and obtain all necessary authorizations and approvals of the

Internal Revenue Services in order to fulfill all of these duties.

5. Individuals choosing consumer-directed services must receive support from a CD services facilitator. This is not a separate waiver service, but is required in conjunction with consumer-directed personal assistance, respite, or companion services. The CD Service Facilitator will be responsible for assessing the individual's particular needs for a requested CD service, assisting in the development of the ISP, providing training to the individual and family/caregiver on his responsibilities as an employer, and providing ongoing support of the consumer-directed services. The CD service facilitator cannot be the individual [ , the individual's case manager, direct service provider, spouse, or parent of the individual who is a minor child, ] or [ a ] family/caregiver employing the assistant/companion.

B. Criteria.

1. In order to qualify for consumer-directed personal assistance services, the individual must demonstrate a need for personal assistance in activities of daily living, community access, self-administration of medication, or other medical needs, or monitoring health status or physical condition.

2. Consumer-directed respite services may only be offered to individuals who have an unpaid caregiver living in the home that requires temporary relief to avoid institutionalization of the individual. Respite services are designed to focus on the need of the unpaid caregiver for temporary relief and to help prevent the breakdown of the unpaid caregiver due to the physical burden and emotional stress of providing continuous support and care to the individual.

3. The inclusion of consumer-directed companion services in the CSP shall be appropriate when the individual has a demonstrated need for assistance with IADLs, community access [ and activities ], self-administration of medication, or support to assure safety.

4. Individuals who are eligible for consumer-directed services must have the capability to hire and train their own personal assistants or companions and supervise the assistant's or companion's performance. If an individual is unable to direct his own care [ or is under 18 years of age ], a family/caregiver may serve as the employer on behalf of the individual.

5. The individual, or if the individual is unable, then a family/caregiver, shall be the employer in this service, and therefore shall be responsible for hiring, training, supervising, and firing assistants and companions. Specific employer duties include checking of references of personal assistants/companions, determining that personal assistants/companions meet basic qualifications, training assistants/companions, supervising the assistant's/companion's performance, and submitting timesheets to the fiscal agent on a consistent and timely basis. The individual or family/caregiver must have a back-up plan in case the assistant/ companion does not show up for work as expected or terminates employment without prior notice.

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## C. Service units and service limitations.

1. ~~[ The unit of service for consumer-directed respite services is one hour. ] Consumer-directed respite services are limited to a maximum of 720 hours per calendar year. Individuals who receive consumer-directed respite and agency-directed respite services may not receive more than 720 hours combined.~~

2. No more than two [ unrelated ] individuals who live in the same home are permitted to share the authorized work hours of the assistant or companion.

[ 3. The unit of service for consumer-directed personal assistance services is one hour. Each individual must have a back-up plan in case the assistant does not show up for work as expected or terminates employment without prior notice. Consumer-directed personal assistance is not available to individuals who receive congregate residential services or live in assisted living facilities. ]

[ ~~3~~ 4. The unit of service for consumer-directed companion services is one hour. ] The amount of consumer-directed companion time must be included in the ISP. The amount of companion services included in the ISP may not exceed eight hours per 24-hour day. There is a limit of 8 hours per 24-hour day for [ ~~agency-directed and~~ ] consumer-directed [ ~~companion~~ ] services, either as [ a ] stand-alone [ services service ] or combined [ with agency-directed services ]. A companion shall not be permitted to provide the care associated with ventilators, [ ~~continuous~~ ] tube feedings, or suctioning of airways.

[ 4. For consumer-directed personal assistance, ~~consumer-directed companion, and consumer-directed respite services, individuals or family/caregivers will hire their own personal assistants/companions and manage and supervise their performance. The assistant/companion must meet the following requirements:~~

~~a. Be 18 years of age or older;~~

~~b. Have the required skills to perform consumer-directed services as specified in the individual's supporting documentation;~~

~~c. Possess basic math, reading, and writing skills;~~

~~d. Possess a valid Social Security number;~~

~~e. Submit to a criminal records check and, if the individual is a minor, the child protective services registry review. The personal assistant/companion will not be compensated for services provided to the individual if either of these records checks verifies the personal assistant/companion has been convicted of crimes described in § 37.1-183.3 of the Code of Virginia or if the personal assistant/companion has a complaint confirmed by the DSS child protective services registry.~~

~~f. Be willing to attend training at the individual's or family/caregiver's request;~~

~~g. Understand and agree to comply with the DMAS-MR waiver requirements; and~~

~~h. Receive periodic tuberculosis (TB) screening, cardiopulmonary resuscitation (CPR) training and an annual flu shot (unless medically contra-indicated).~~

~~5. Assistants/companions may not be the parents of individuals who are minors, the individuals' spouses, or legally responsible relatives of the individuals. Payment may not be made for services furnished by other family/caregivers living under the same roof as the individual being served unless there is objective written documentation as to why there are no other providers available to provide the care. Companion services shall not be provided by adult foster care/family care providers or any other paid caregivers. This service shall not be provided in congregate settings by staff employed by the congregate provider.~~

~~6. Family members must meet the assistant/companion qualifications.~~

~~7. Upon the individual's request, the CD services facilitator shall provide the individual or family/caregiver with a list of persons who can provide temporary assistance until the assistant/companion returns or the individual is able to select and hire a new personal assistant/companion. If an individual is consistently unable to hire and retain the employment of an assistant/companion to provide consumer-directed personal assistance, companion, or respite services, the CD services facilitator will make arrangements with the case manager to have the services transferred to an agency-directed services provider. ]~~

D. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, the CD services facilitator must meet the following qualifications:

1. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator shall have sufficient resources to perform the required activities. In addition, the CD services facilitator must have the ability to maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

2. It is preferred that the CD services facilitator possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator have two years of satisfactory experience in a human service field working with persons with mental retardation. The facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills, and abilities must be documented on the provider's application form, found in supporting documentation, or be observed during a job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

a. Knowledge of:

(1) Types of functional limitations and health problems that [ ~~are common to~~ may occur in ] persons with

mental retardation, [ ~~different disability types~~ or persons with other disabilities ], as well as strategies to reduce limitations and health problems;

(2) Physical assistance that may be required by people with mental retardation, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(3) Equipment and environmental modifications that may be required by people with mental retardation that reduces the need for human help and [ ~~improves~~ improve ] safety;

(4) Various long-term care program requirements, including nursing home and ICF/MR placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal assistance, respite, and companion services;

(5) MR waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(6) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in service planning;

(7) Interviewing techniques;

(8) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed personal assistance, companion, and respite services, including hiring, training, managing, approving time sheets, and firing an assistant/companion;

(9) The principles of human behavior and interpersonal relationships; and

(10) General principles of record documentation.

b. Skills in:

(1) Negotiating with individuals, family/caregivers, and service providers;

(2) [ ~~Managing~~ Assessing, supporting ], observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to individuals with mental retardation; and

(4) Identifying services within the established services system to meet the individual's needs.

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for individuals who have visual impairments;

(2) Demonstrate a positive regard for individuals and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, orally and in writing; and

(6) Develop a rapport and communicate with persons of diverse cultural backgrounds.

3. If the CD services facilitator is not a RN, the CD services facilitator must [ ~~have RN consulting services available, either by a staffing arrangement, a letter of agreement, or through a contracted consulting arrangement. The RN consultant is to be available as needed to consult with the individual and CD services facilitator on issues related to the health needs of the individual~~ inform the primary health care provider that services are being provided and request consultation as needed ].

4. Initiation of services and service monitoring.

a. For consumer-directed [ ~~personal assistance~~ ] services, the CD services facilitator must make an initial comprehensive home visit to collaborate with the individual and family/caregiver to identify the needs, assist in the development of the ISP with the individual or family/caregiver, and provide employee management training. [ ~~The CD services facilitator will continue to monitor the ISP quarterly and on an as-needed basis.~~ ] The initial comprehensive home visit is done only once upon the individual's [ ~~initial~~ ] entry into the service. If a waiver individual changes CD services facilitators, the new CD services facilitator must [ ~~bill for complete~~ ] a reassessment [ ~~visit~~ ] in lieu of a comprehensive visit.

b. [ ~~For consumer directed respite and companion services, the CD services facilitator must make an initial comprehensive home visit to collaborate with the individual and family/caregiver to identify the needs, assist with the development of the ISP with the individual or family/caregiver, and provide employee management training. The initial comprehensive home visit is done only once upon the individual's initial entry into the service.~~ ] After the initial visit, [ ~~the CD services facilitator will continue to monitor the companion or assistant ISP quarterly and on an as-needed basis.~~ ] The CD services facilitator will review the utilization of consumer-directed [ ~~companion services quarterly or for~~ ] respite services, either every six months or upon the use of 300 respite services hours, whichever comes first. [ ~~If an individual changes CD services facilitators, the new CD services facilitator must bill for a reassessment in lieu of a comprehensive visit.~~ ]

c. A face-to-face meeting with the individual must be conducted at least every six months to ensure appropriateness of any CD services received by the individual.

5. During visits [ ~~to with~~ ] the [ ~~individual's home~~ individual ], the CD services facilitator must observe, evaluate, and consult with the individual or family/caregiver, and document the adequacy and appropriateness of consumer-directed services with regard to the individual's current functioning and cognitive status, medical, and social needs. The CD services facilitator's written summary of the visit must include, but is not necessarily limited to:

a. Discussion with the individual or family/caregiver whether the service is adequate to meet the individual's needs;

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- b. Any suspected abuse, neglect, [ or ] exploitation [ ~~suspected~~ ] and who it was reported to;
  - c. Any special tasks performed by the assistant/companion and the assistant's/companion's qualifications to perform these tasks;
  - d. Individual's or family/caregiver's satisfaction with the service;
  - e. Any hospitalization or change in medical condition, functioning, or cognitive status; and
  - f. The presence or absence of the assistant/companion in the home during the CD services facilitator's visit.
6. The CD services facilitator must be available to the individual by telephone.
7. The CD services facilitator must submit a criminal record check pertaining to the [ ~~personal~~ ] assistant/companion on behalf of the individual and report findings of the criminal record check to the individual or the family/caregiver and the program's fiscal agent. If the individual is a minor, the [ ~~personal~~ ] assistant/companion must also be screened through the DSS Child Protective Services [ Central ] Registry. [ ~~Personal~~ ] Assistants/companions will not be reimbursed for services provided to the individual effective [ ~~with~~ ] the date that the criminal record check confirms [ ~~a~~ ~~personal~~ ] assistant/companion has been found to have been convicted of a crime as described in § 37.1-183.3 of the Code of Virginia or if the [ ~~personal~~ ] assistant/companion has a confirmed record on the DSS Child Protective Services Registry. The criminal record check and DSS Child Protective Services Registry finding must be requested by the CD services facilitator prior to beginning CD services.
8. The CD services facilitator shall review timesheets during the face-to-face visits to ensure that the number of ISP-approved hours are not exceeded. If discrepancies are identified, the CD services facilitator must discuss these with the individual to resolve discrepancies and must notify the fiscal agent.
9. The CD services facilitator must maintain a list of persons [ ~~whose availability the facilitator is aware of~~ ] who are available ] to provide consumer-directed personal assistance, consumer-directed companion, or consumer-directed respite services.
10. The CD services facilitator must maintain records of each individual. At a minimum these records must contain:
- a. Results of the initial comprehensive home visit completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation;
  - b. The ISP goals and activities. The [ ~~ISP must be reviewed at least annually by the CD services facilitator, the individual and family/caregiver receiving the services, and the case manager. In addition, the ISP must be reviewed by the CD services facilitator quarterly, modified as appropriate, and submitted to the case manager;~~ companion or personal assistance ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and the results of these reviews submitted to the case manager. Respite ISP goals, objectives, and activities must be reviewed by the provider annually and every six months or when 300 service hours have been used. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual; ]
  - c. CD services facilitator's dated notes documenting any contacts with the individual, family/caregiver, and visits to the individual's home;
  - d. All correspondence to the individual, case manager, DMAS, and DMHMRSAS;
  - e. Records of contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual;
  - f. All training provided to the assistants/companions on behalf of the individual or family/caregiver;
  - g. All employee management training provided to the individual or family/caregiver, including the individual's or family/caregiver's receipt of training on their responsibility for the accuracy of the assistant's/companion's timesheets;
  - h. All documents signed by the individual or the individual's family/caregiver that acknowledge the responsibilities as the employer; and
  - i. A copy of the most recently completed DMAS-122. The facilitator must clearly document efforts to obtain the completed DMAS-122 from the case manager.
- [ 11. For consumer-directed personal assistance, consumer-directed companion, and consumer-directed respite services, individuals or family/caregivers will hire their own personal assistants/companions and manage and supervise their performance. The assistant/companion must meet the following requirements:
- a. Be 18 years of age or older;
  - b. Have the required skills to perform consumer-directed services as specified in the individual's supporting documentation;
  - c. Possess basic math, reading, and writing skills;
  - d. Possess a valid Social Security number;
  - e. Submit to a criminal records check and, if the individual is a minor, consent to a search of the DSS Child Protective Services Central Registry. The assistant/companion will not be compensated for services provided to the individual if either of these records checks verifies the assistant/companion has been convicted of crimes described in § 37.1-183.3 of the Code of Virginia or if the assistant/companion has a founded complaint confirmed by the DSS Child Protective Services Central Registry;
  - f. Be willing to attend training at the individual's or family/caregiver's request;



g. Understand and agree to comply with the DMAS MR waiver requirements; and

h. Receive periodic tuberculosis (TB) screening, cardiopulmonary resuscitation (CPR) training and an annual flu shot (unless medically contraindicated).

12. Assistants/companions may not be the parents of individuals who are minors or the individuals' spouses. Payment may not be made for services furnished by other family/caregivers living under the same roof as the individual being served unless there is objective written documentation as to why there are no other providers available to provide the care. Companion services shall not be provided by adult foster care/family care providers or any other paid caregivers. This service shall not be provided in congregate settings by staff employed by the congregate provider.

13. Family members who are reimbursed to provide consumer-directed services must meet the assistant/companion qualifications.

14. Upon the individual's request, the CD services facilitator shall provide the individual or family/caregiver with a list of persons who can provide temporary assistance until the assistant/companion returns or the individual is able to select and hire a new personal assistant/companion. If an individual is consistently unable to hire and retain the employment of an assistant/companion to provide consumer-directed personal assistance, companion, or respite services, the CD services facilitator will make arrangements with the case manager to have the services transferred to an agency-directed services provider or to discuss with the individual or family/caregiver other service options. ]

**12 VAC 30-120-227. Crisis stabilization services.**

A. Crisis stabilization services involve direct interventions [ ~~to~~ that provide temporary intensive services and support that avert emergency psychiatric hospitalization or institutional placement of] persons with mental retardation who are experiencing serious psychiatric or behavioral problems that jeopardize their current community living situation [ ~~by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement~~]. Crisis stabilization services will include, as appropriate, neuro-psychiatric, psychiatric, psychological, and other functional assessments and stabilization techniques, medication management and monitoring, behavior assessment and positive behavioral support, and intensive service coordination with other agencies and providers. This service [ ~~shall be~~ is ] designed to stabilize the individual and strengthen the current living situation, so that the individual remains in the community during and beyond the crisis period. These services shall be provided to:

1. Assist with planning and delivery of services and supports to enable the individual to remain in the community;

2. Train family/caregivers and service providers in positive behavioral supports to maintain the individual in the community; and

3. Provide temporary crisis supervision to ensure the safety of the individual and others.

B. Criteria.

1. In order to receive crisis stabilization services, the individual must meet at least one of the following criteria:

- a. The individual is experiencing a marked reduction in psychiatric, adaptive, or behavioral functioning;
- b. The individual is experiencing extreme increase in emotional distress;
- c. The individual needs continuous intervention to maintain stability; or
- d. The individual is causing harm to self or others.

2. The individual must be at risk of at least one of the following:

- a. Psychiatric hospitalization;
- b. Emergency ICF/MR placement;
- c. Disruption of community status (living arrangement, day placement, or school); or
- d. Causing harm to self or others.

C. Service units and service limitations. Crisis stabilization services may only be authorized following a documented face-to-face assessment conducted by a qualified mental retardation professional.

1. The unit for each component of the service is one hour. This service may only be authorized in 15-day increments but no more than 60 days in a calendar year may be used. The actual service units per episode shall be based on the documented clinical needs of the individual being served. Extension of services, beyond the 15-day limit per authorization, may only be authorized following a documented face-to-face reassessment conducted by a qualified mental retardation professional.

2. Crisis stabilization services may be provided directly in the following settings (examples below are not exclusive):

- a. The home of an individual who lives with family, friends, or other primary caregiver or caregivers;
- b. The home of an individual who lives independently or semi-independently to augment any current services and supports;
- c. A community-based residential program to augment current services and supports;
- d. A day program or setting to augment current services and supports; or
- e. A respite care setting to augment current services and supports.

3. Crisis supervision may be provided as a component of crisis stabilization only if clinical or behavioral interventions allowed under this service are also provided during the authorized period. Crisis supervision must be provided one-to-one and face-to-face with the individual. Crisis

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supervision, if provided as a part of this service, shall be separately billed in hourly service units.

4. Crisis stabilization services shall not be used for continuous long-term care. Room, board, and general supervision are not components of this service.

5. If appropriate, the assessment and any reassessments, shall be conducted jointly with a licensed mental health professional or other appropriate professional or professionals.

D. Provider requirements. In addition to the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, the following crisis stabilization provider qualifications apply:

1. Crisis stabilization services shall be provided by providers licensed by DMHMRSAS as a provider of outpatient services, residential, or supportive residential services, or day support services. The provider must employ or utilize qualified mental retardation professionals, licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to individuals with mental retardation who are experiencing serious psychiatric or behavioral problems. The qualified mental retardation professional shall have: (i) at least one year of documented experience working directly with individuals who have mental retardation or developmental disabilities; (ii) a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession;

2. To provide the crisis supervision component, agencies must be licensed by DMHMRSAS as providers of residential services, supportive residential services, or day support services;

3. Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving crisis stabilization services. At a minimum, the record must contain the following:

a. Documentation of the face-to-face assessment and any reassessments completed by a qualified mental retardation professional;

b. An ISP which contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports ~~[ , and training needs ]~~;

(2) The individual's goals ~~[ and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes ]~~;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP [ ; . ]

c. An ISP must be developed or revised and submitted to the case manager for submission to DMHMRSAS within 72 hours of assessment or reassessment;

d. Documentation indicating the dates and times of crisis stabilization services, the amount and type of service or services provided, and specific information regarding the individual's response to the services and supports as agreed to in the ISP objectives; and

e. Documentation of qualifications of providers must be maintained for review by DMHMRSAS and DMAS staff.

## 12 VAC 30-120-229. Day support services.

A. Service description. Day support services shall include a variety of training, [ assistance, ] support, and specialized supervision [ for the acquisition, retention, or improvement of self-help, socialization, and adaptive skills. These services are ] typically offered in a nonresidential setting that allows peer interactions and community and social integration.

B. Criteria. For day support services, individuals must demonstrate the need for functional training, assistance, and specialized supervision offered primarily in settings other than the individual's own residence that allows an opportunity for being productive and contributing members of communities.

C. Levels of day support. The amount and type of day support included in the individual's service plan is determined according to the services required for that individual. There are two types of day support: center-based, which is provided ~~[ partly or entirely ]~~ primarily [ at one location/building, or noncenter-based, which is provided ~~[ entirely ]~~ primarily ] in community settings. Both types of day support may be provided at either intensive or regular levels.

D. [ Intensive level criteria. ] To be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) requires physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) ~~[ have has ]~~ extensive disability-related difficulties and ~~[ require ]~~ requires additional, ongoing support to fully participate in programming and to accomplish his service goals; or (iii) ~~[ the individual ]~~ requires extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

E. Service units and service limitations. [ Day support services are billed in units. ] Day support cannot be regularly or temporarily provided in an individual's home or other residential setting (e.g., due to inclement weather or individual illness) without prior written approval from DMHMRSAS. Noncenter-based day support services must be separate and distinguishable from either residential support services or personal assistance services. There must be separate supporting documentation for each service and each must be

clearly differentiated in documentation and corresponding billing. The supporting documentation must provide an estimate of the amount of day support required by the individual. Service providers are reimbursed only for the amount and type of day support services included in the individual's approved ISP based on the setting, intensity, and duration of the service to be delivered. This service, either as a stand-alone service or in combination with prevocational and supported employment services shall be limited to 780 units per CSP year.

*F. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, day support providers need to meet additional requirements.*

*1. The provider of day support services must be licensed by DMHMRSAS as a provider of day support services. Day support staff must also have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations.*

*2. A functional assessment must be conducted by the provider to evaluate each individual in the day support environment and community settings.*

*3. An ISP must be developed which contains, at a minimum, the following elements:*

- a. The individual's strengths, desired outcomes, required or desired supports and training needs;*
- b. The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;*
- c. Services to be rendered and the frequency of services to accomplish the above goals and objectives;*
- d. A timetable for the accomplishment of the individual's goals and objectives [ as appropriate ] ;*
- e. The estimated duration of the individual's needs for services; and*
- f. The provider staff responsible for the overall coordination and integration of the services specified in the ISP.*

*4. Documentation must confirm the individual's attendance and amount of time in services and provide specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives.*

*a. The ISP goals, objectives, and activities must be reviewed by the provider [ quarterly, ] annually, [ or and ] more often as needed with the individual receiving the services [ or his family/caregiver ] , and [ this the results of the ] review submitted to the case manager. [ In addition, the ISP goals, objectives, and activities must be reviewed by the provider quarterly, modified as appropriate and submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver. ]*

*b. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units provided.*

*c. Documentation must indicate whether the services were center-based or noncenter-based.*

*d. In instances where [ day support ] staff are required to ride with the individual to and from day support [ activities ] , the [ day support ] staff time can be billed as day support, provided that the billing for this time does not exceed 25% of the total time spent in the day support activity for that day. Documentation must be maintained to verify that billing for [ day support ] staff coverage during transportation does not exceed 25% of the total time spent in the day support [ activity ] for that day.*

*e. If intensive day support services are requested, documentation must be present in the individual's record to indicate the specific supports and the reasons they are needed. For ongoing intensive day support services, there must be clear documentation of the ongoing needs and associated staff supports.*

*f. Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.*

## **12 VAC 30-120-230. General conditions and requirements for all home and community-based care participating providers. (Repealed.)**

~~A. General requirements. Providers approved for participation shall, at a minimum, perform the following:~~

- ~~1. Immediately notify DMAS in writing of any change in the information which the provider previously submitted to DMAS.~~
- ~~2. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the services required and participating in the Medicaid Program at the time the service was performed.~~
- ~~3. Assure the recipient's freedom to refuse medical care and treatment.~~
- ~~4. Accept referrals for services only when staff is available to initiate services.~~
- ~~5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin and of Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of a handicap and both the Virginians with Disabilities Act and the Americans with Disabilities Act.~~
- ~~6. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.~~
- ~~7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.~~

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- ~~8. Accept Medicaid payment from the first day of the recipient's eligibility.~~
  - ~~9. Accept as payment in full the amount established by DMAS.~~
  - ~~10. Use program-designated billing forms for submission of charges.~~
  - ~~11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.
    - ~~a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.~~
    - ~~b. Policies regarding retention of records shall apply even if the agency discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.~~~~
  - ~~12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.~~
  - ~~13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.~~
  - ~~14. Hold confidential and use for authorized DMAS or DMHMRSAS purposes only all medical assistance information regarding recipients.~~
  - ~~15. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days of such change.~~
- ~~B. Requests for participation. DMAS will screen requests to determine whether the provider applicant meets the following basic requirements for participation:~~
- ~~C. Provider participation standards. For DMAS to approve contracts with home and community-based care providers the following standards shall be met:~~
- ~~1. The provider must have the ability to serve individuals in need of waiver services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement.~~
  - ~~2. The provider must have the administrative and financial management capacity to meet state and federal requirements.~~
  - ~~3. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements.~~
- ~~4. The provider of residential and day support services must be licensed by DMHMRSAS as a provider of residential services, supportive residential services, or day support services. These licensing requirements address standards for personnel, residential and day program environments, and program and service content. They must also have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations. Residential support services may also be provided in programs licensed by DSS (adult care residences) or in adult foster care homes approved by local DSS offices pursuant to state DSS regulations. In addition to licensing requirements, persons providing residential support services are required to pass an objective, standardized test of skills, knowledge and abilities developed by DMHMRSAS and administered according to DMHMRSAS policies.~~
  - ~~5. Supported employment or prevocational training services shall be provided by agencies that are either licensed by DMHMRSAS as a day support service or are vendors of extended employment services, long-term employment support services or supportive employment services for DRS.~~
  - ~~6. Services provided by members of professional disciplines shall meet all applicable state licensure or certification requirements. Persons providing behavior consultation shall be certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities. Persons providing rehabilitation engineering shall be contracted with DRS.~~
  - ~~7. All facilities covered by § 1616(e) of the Social Security Act in which home and community-based care services will be provided shall be in compliance with applicable standards that meet the requirements of 45 CFR Part 1397 for board and care facilities. Health and safety standards shall be monitored through the DMHMRSAS's licensure standards, 12 VAC 35-102-10 et seq. or through DSS licensure standards 22 VAC 40-70-10 et seq.~~
  - ~~8. Personal assistance services shall be provided by a DMAS certified personal care provider whose staff has passed the DMHMRSAS objective standardized test for residential support services, or by a DMHMRSAS licensed residential support provider.~~
  - ~~9. Respite care services shall be provided by a DMAS certified personal care provider; a DMHMRSAS licensed supportive residential provider, respite care services provider (center based or out-of-home) or in-home respite care provider; an approved DSS foster care home for children or adult foster home provider; or be registered with the CSB as an individual provider of respite care as defined in 12 VAC 35-102-10.~~
  - ~~10. Nursing services shall be provided by a DMAS certified private duty nursing or home health provider or by a licensed registered nurse or licensed practical nurse contracted or employed by the CSB.~~
  - ~~11. Environmental modifications shall be provided in accordance with all applicable state or local building codes~~
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by contractors of the CSB or DRS who shall be reimbursed for the amount charged by said contractors.

~~12. Assistive technology shall be provided by agencies under contract with DMAS as a durable medical equipment and supply provider. Any equipment/supplies/technology not available through a durable medical equipment provider may be purchased and billed to DMAS for Medicaid reimbursement as documented in the Plan of Care, approved by the case manager, and monitored by DMHMRSAS.~~

~~13. Crisis stabilization services shall be provided by agencies licensed by DMHMRSAS as a provider of outpatient services or residential or supportive residential services or day support services. To provide the crisis supervision component, agencies must be licensed by DMHMRSAS as providers of residential services or supportive residential services. The provider agency must employ or utilize qualified mental retardation professionals, licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to individuals with mental retardation who are experiencing serious psychiatric or behavioral problems. The qualified mental retardation professional shall have (i) at least one year of documented experience working directly with individuals who have mental retardation or developmental disabilities; (ii) a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession.~~

~~D. Adherence to provider contract and DMAS provider service manual. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider contracts and in the DMAS provider service manual.~~

~~E. Recipient choice of provider agencies. The waiver recipient shall be informed of all available providers in the community and shall have the option of selecting the provider agency of his choice from among those agencies which can appropriately meet the individual's needs.~~

~~F. Termination of provider participation. DMAS may administratively terminate a provider from participation upon 60 days' written notification. DMAS may also cancel a contract immediately or may give such notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided recipients subsequent to the date specified in the termination notice.~~

~~G. Reconsideration of adverse actions. Adverse actions may include, but are not limited to, disallowed payment of claims for services rendered which are not in accordance with DMAS policies and procedures, contract limitation or termination. The following procedures shall be available to all providers when DMAS takes adverse action which includes termination or suspension of the provider agreement.~~

~~1. The reconsideration process shall consist of three phases:~~

- ~~a. A written response and reconsideration of the preliminary findings.~~
- ~~b. The informal conference.~~
- ~~c. The formal evidentiary hearing.~~

~~2. The provider shall have 30 days to submit information for written reconsideration, 15 days from the date of the notice to request the informal conference, and 15 days from the date of the notice to request the formal evidentiary hearing.~~

~~3. An appeal of adverse actions shall be heard in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia. Court review of the final agency determination shall be made in accordance with the Administrative Process Act.~~

~~H. Responsibility for sharing recipient information. It shall be the responsibility of the case management provider to notify DMHMRSAS and DSS, in writing, when any of the following circumstances occur. Furthermore, it shall be the responsibility of DMHMRSAS to update DMAS when any of the following events occur:~~

- ~~1. Home and community based care services are implemented.~~
- ~~2. A recipient dies.~~
- ~~3. A recipient is discharged or terminated from services.~~
- ~~4. Any other circumstances (including hospitalization) which cause home and community based care services to cease or be interrupted for more than 30 days.~~

~~I. Changes or termination of care. It is the DMHMRSAS staff's responsibility to authorize any changes to a recipient's CSP based on the recommendation of the case management provider.~~

- ~~1. Agencies providing direct service are responsible for modifying their individual service plan and submitting it to the case manager any time there is a change in the recipient's condition or circumstances which may warrant a change in the amount or type of service rendered.~~
- ~~2. The case manager will review the need for a change and may recommend a change to the plan of care to the DMHMRSAS staff.~~
- ~~3. The DMHMRSAS staff will approve or deny the requested change to the recipient's plan of care and communicate this authorization to the case manager within 10 days of receipt of the request for change or in the case of an emergency, within 72 hours of receipt of the request for change.~~
- ~~4. The case manager will communicate in writing the authorized change in the recipient's plan of care to the individual service provider and the recipient, in writing, providing the recipient with the right to appeal the decision~~

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~~pursuant to DMAS Client Appeals Regulations (12 VAC 30-140-10 et seq.).~~

~~5. Nonemergency termination of home and community-based care services by the individual service provider. The individual service provider shall give the recipient and/or family and case manager 10 days written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least 10 days from the date of the termination notification letter.~~

~~6. Emergency termination of home and community-based care services by the individual services provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, the case manager and DMHMRSAS staff must be notified prior to termination. The 10 day written notification to the individual shall not be required.~~

~~7. Termination of home and community-based care services for a recipient by the DMHMRSAS staff. The effective date of termination shall be at least 10 days from the date of the termination notification letter. The case manager has the responsibility to identify those recipients who no longer meet the criteria for care or for whom home and community-based services are no longer an appropriate alternative. The DMHMRSAS staff has the authority to terminate home and community-based care services.~~

~~J. Suspected abuse or neglect. Pursuant to § 63.1-55.3 of the Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation shall report this to the local DSS.~~

~~K. DMAS monitoring. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider will take and the length of time required to achieve full compliance with deficiencies which have been cited.~~

## **12 VAC 30-120-231. Environmental modifications.**

*A. Service description. Environmental modifications shall be defined as those physical adaptations to the home or vehicle, required by the individual's CSP, that are necessary to ensure the health, welfare, and safety of the individual, or which enable the individual to function with greater independence and without which the individual would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the individual. All services shall*

*be provided in the individual's home in accordance with applicable federal, state, and local building codes and laws. Modifications can be made to an automotive vehicle if it is the primary vehicle being used by the individual.*

*B. Criteria. In order to qualify for these services, the individual must have a demonstrated need for equipment or modifications of a remedial or medical benefit offered in an individual's home or vehicle to specifically improve the individual's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program.*

*C. Service units and service limitations. Environmental modifications shall be available to individuals who are receiving at least one other waiver service in addition to targeted mental retardation case management. A maximum limit of \$5,000 may be reimbursed per CSP year. Costs for environmental modifications shall not be carried over from CSP year to CSP year and must be prior authorized by DMHMRSAS for each CSP year. Modifications may not be used to bring a substandard dwelling up to minimum habitation standards. Excluded are those adaptations or improvements to the home that are of general utility, such as carpeting, roof repairs, central air conditioning, etc., and are not of direct medical or remedial benefit to the individual. Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act [ , the Virginians with Disabilities Act, and the Rehabilitation Act ]. Adaptations that add to the total square footage of the home shall be excluded from this service.*

*D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, environmental modifications must be provided in accordance with all applicable federal, state or local building codes and laws by contractors of the CSB/BHA or providers who have a participation agreement with DMAS who shall be reimbursed for the amount charged by said contractors. The following are provider documentation requirements:*

~~[ 1. Documentation that the modifications are needed by the individual;~~

~~2. 1.] An ISP that documents the need for the service, the process to obtain the service, and the time frame during which the services are to be provided. The ISP must include documentation of the reason that a rehabilitation engineer or specialist is needed, if one is to be involved;~~

~~[ 3. 2.] Documentation of the time frame involved to complete the modification and the amount of services and supplies;~~

~~[ 4. 3.] Any other relevant information regarding the modification;~~

~~[ 5. 4.] Documentation of notification by the individual or family/caregiver of satisfactory completion of the service; and~~

~~[ 6. 5.] Instructions regarding any warranty, repairs, complaints, and servicing that may be needed.~~

## 12 VAC 30-120-233. Personal assistance services (agency-directed model).

A. Service description. Personal assistance services are provided to individuals in the areas of activities of daily living, [instrumental activities of daily living,] access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition. It may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities.

B. Criteria. In order to qualify for these services, the individual must demonstrate a need for assistance with activities of daily living, self-administration of medications or other medical needs, or monitoring of health status or physical condition.

C. Service units and service limitations. The unit of service for personal assistance services is one hour. Each individual must have a back-up plan in case the personal assistant does not show up for work as expected or terminates employment without prior notice. Personal assistance is not available [to individuals]: (i) [to individuals] who receive residential services or live in assisted living facilities; (ii) who would benefit from personal assistance training and skill development; or (iii) who receive [comparable] services provided through another program or service.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, personal assistance providers must meet additional provider requirements.

1. Personal assistance services shall be provided by an enrolled DMAS personal care/respite care provider or by a DMHMRSAS-licensed residential support provider. All personal assistants must pass the DMHMRSAS objective standardized test of skills, knowledge, and abilities developed by DMHMRSAS and administered according to DMHMRSAS policies [; For DMHMRSAS-licensed residential support providers, a residential supervisor will provide ongoing supervision of all personal assistants. ]

2. For DMAS-enrolled personal care/respite care providers, the personal assistance provider must employ or subcontract with and directly supervise a RN or an LPN who will provide ongoing supervision of all personal assistants. The supervising RN or LPN must be currently licensed to practice nursing in the Commonwealth and have at least two years of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/MR or nursing facility. [For DMHMRSAS-licensed providers, a residential supervisor will provide ongoing supervision of all personal assistants. ]

a. The supervisor must make a home visit to conduct an initial assessment prior to the start of services for all individuals [newly admitted to requesting] personal assistance services. The supervisor must also perform any subsequent reassessments or changes to the supporting documentation.

b. The supervisor must make supervisory home visits as often as needed to ensure both quality and appropriateness of services. The minimum frequency of these visits is every 30 to 90 days depending on the individual's needs.

c. Based on continuing evaluations of the assistant's performance and individual's needs, the supervisor shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.

[ d. The supervisor's written summary of the supervision visits must note the following:

~~(1) The supervising RN and LPN must be currently licensed to practice nursing in the Commonwealth and have at least two years of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/MR or nursing facility.~~

~~(2) The supervisor must make an initial assessment comprehensive home visit prior to the start of services for all new individuals admitted to personal assistance. The supervisor must also perform any subsequent reassessments or changes to the supporting documentation.~~

~~(3) The supervisor must make supervisory visits as often as needed to ensure both quality and appropriateness of services. The minimum frequency of these visits is every 30 to 90 days depending on the individual's needs.~~

~~(4) Based on continuing evaluations of the assistant's performance and the individual's needs, the supervisor shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.~~

~~(5) The written summary of the supervision visits must note:~~

~~(a) Whether personal assistance services continue to be appropriate;~~

~~(b) Whether the ISP is adequate to meet the need or if changes are indicated in the ISP;~~

~~(c) Any special tasks performed by the assistant and the assistant's qualifications to perform these tasks;~~

~~(d) The individual's satisfaction with the service;~~

~~(e) Any hospitalization or change in medical condition or functioning status;~~

~~(f) Other services received and their amount; and~~

~~(g) The presence or absence of the assistant in the home during the supervisor's visit.~~

e. d.] The personal assistance provider must employ and directly supervise personal assistants who will provide direct service to individuals receiving personal assistance. Each assistant hired by the provider shall be evaluated by the provider to ensure compliance with minimum

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qualifications as required by the DMAS. Each assistant must:

- (1) Be 18 years of age or older;
- (2) Be able to read and write [ English to the degree necessary to perform the tasks expected ];
- (3) Complete a training curriculum consistent with DMAS requirements. Prior to assigning an assistant to an individual, the provider must obtain documentation that the assistant has satisfactorily completed a training program consistent with DMAS requirements. DMAS requirements may be met in one of three ways:
  - (a) Registration as a certified nurse aide;
  - (b) Graduation from an approved educational curriculum that offers certificates qualifying the student as a nursing assistant, geriatric assistance, or home health aide;
  - (c) Completion of provider-offered training, which is consistent with the basic course outline approved by DMAS;
- (4) Be physically able to do the work;
- (5) Have a satisfactory work record, as evidenced by two references from prior job experiences, including no evidence of possible abuse, neglect, or exploitation of aged or incapacitated adults or children; and

[ ~~(6)~~ 3. ] Personal assistants may not be the parents of individuals who are minors, [ or ] the individuals' spouses [ , or legally responsible relatives of the individuals ]. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the service. [ ~~(7)~~ These ] Family members who are approved to be reimbursed for providing this service must meet the personal assistant qualifications.

[ ~~3~~ 4. ] Provider inability to render services and substitution of assistants.

a. When a personal assistant is absent [ ~~and the provider has no other assistant available to provide services~~ ], the provider is responsible for ensuring that services continue to be provided to individuals. The provider may either [ provide another assistant, ] obtain a substitute assistant from another provider, if the lapse in coverage is to be less than two weeks in duration, or transfer the individual's services to another provider. The personal assistance provider that has the authorization to provide services to the individual must contact the case manager to determine if additional preauthorization is necessary.

b. If no other provider is available who can supply a substitute assistant, the provider shall notify the individual, family [ / ] caregiver and case manager so that the case manager may find another available provider [ of the individual's choice ].

c. During temporary, short-term lapses in coverage not to exceed two weeks in duration, the following procedures must apply:

- (1) The preauthorized personal assistance provider must provide the supervision for the substitute assistant;
- (2) The provider of the substitute assistant must send a copy of the assistant's daily documentation signed by the individual [ or family/caregiver on his behalf ] and the assistant to the personal assistance provider having the authorization; and
- (3) The preauthorized provider must bill DMAS for services rendered by the substitute assistant.

d. If a provider secures a substitute assistant, the provider agency is responsible for ensuring that all DMAS requirements continue to be met including documentation of services rendered by the substitute assistant and documentation that the substitute assistant's qualifications meet DMAS' requirements. [ The two providers involved are responsible for negotiating the financial arrangements of paying the substitute assistant. ]

[ 4. 5. ] Required documentation in the individual's record. The provider must maintain records regarding each [ ~~personal assistance~~ ] individual [ receiving personal assistance ]. At a minimum these records must contain:

- a. An initial assessment [ completed ] by the supervisor [ ~~completed~~ ] prior to or on the date services are initiated;
- b. An ISP, that contains, at a minimum, the following elements:

- (1) The individual's strengths, desired outcomes, required or desired supports [ ~~and training needs~~ ];
- (2) The individual's goals [ ~~and, for a training goal, a sequence of measurable~~ and ] objectives to meet the above identified outcomes;
- (3) Services to be rendered and the frequency of services to accomplish the above goals and objectives; [ and
- ~~(4) A timetable for the accomplishment of the individual's goals and objectives;~~
- ~~(5) The estimated duration of the individual's needs for services; and~~
- ~~(6) (4) ] The provider staff responsible for the overall coordination and integration of the services specified in the ISP.~~

c. The ISP goals, objectives, and activities must be reviewed by the provider [ quarterly, ] annually, [ ~~or and~~ ] more often as needed [ ~~with the individual receiving the services, modified as appropriate~~ ] and [ ~~this review results of these reviews~~ ] submitted to the case manager. [ ~~In addition, the ISP goals, objectives, and activities must be reviewed by the provider quarterly, modified as appropriate and submitted to the case manager; For the~~



annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual. ]

d. Dated notes of any contacts with the personal assistant [ ~~and~~, individual and family/caregiver ] during supervisory visits to the individual's home [ §. The written summary of the supervision visits must include:

- (1) Whether personal assistance services continue to be appropriate;
- (2) Whether the ISP is adequate to meet the need or if changes are indicated in the ISP;
- (3) Any special tasks performed by the assistant and the assistant's qualifications to perform these tasks;
- (4) The individual's satisfaction with the service;
- (5) Any hospitalization or change in medical condition or functioning status;
- (6) Other services received and their amount; and
- (7) The presence or absence of the assistant in the home during the supervisor's visit. ]

e. All correspondence to the individual, family/caregiver, case manager, DMAS, and DMHMRSAS;

f. Reassessments and any changes to supporting documentation made during the provision of services;

g. Contacts made with family/caregivers, physicians, formal and informal service providers, and all professionals concerning the individual;

h. All personal assistant records. The personal assistant record must contain:

- (1) The specific services delivered to the individual by the assistant, dated the day of service delivery, and the individual's responses;
- (2) The assistant's arrival and departure times;
- (3) The assistant's weekly comments or observations about the individual to include observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and
- (4) The assistant's and individual's or family/caregiver's weekly signatures recorded on the last day of service delivery for any given week to verify that personal assistance services during that week have been rendered.

i. Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

## **12 VAC 30-120-235. Personal Emergency Response System (PERS).**

A. *Service description.* PERS is a service which monitors individual safety in the home and provides access to emergency assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the individual's

home telephone line. PERS may also include medication monitoring devices.

B. *Criteria.* PERS can be authorized when there is no one else in the home who is competent or continuously available to call for help in an emergency.

C. *Service units and service limitations.*

1. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, [ ~~and~~ ] monitoring [ , and adjustments ] of the PERS. A unit of service is the one-month rental price set by DMAS. The one-time installation of the unit includes installation, account activation, individual and caregiver instruction, and removal of PERS equipment.

2. PERS services must be capable of being activated by a remote wireless device and be connected to the individual's telephone line. The PERS console unit must provide hands-free voice-to-voice communication with the response center. The activating device must be waterproof, automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the individual.

D. *Provider requirements.* In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, PERS providers must also meet the following qualifications:

1. A PERS provider is a personal assistance agency, a durable medical equipment provider, a hospital, a licensed home health provider, or a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e. installation, equipment maintenance and service calls), and PERS monitoring.

2. The PERS provider must provide an emergency response center with fully trained operators who are capable of receiving signals for help from an individual's PERS equipment 24-hours a day, 365, or 366, days per year as appropriate, of determining whether an emergency exists, and of notifying an emergency response organization or an emergency responder that the PERS individual needs emergency help.

3. A PERS provider must comply with all applicable Virginia statutes, applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed.

4. The PERS provider has the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required, to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the individual's notification of a malfunction of the console unit, activating devices, or medication-monitoring unit while the original equipment is being repaired.

5. The PERS provider must properly install all PERS equipment into a PERS individual's functioning telephone line and must furnish all supplies necessary to ensure that the system is installed and working properly. [ ~~The PERS provider must test the PERS device monthly or more~~

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~~frequently as needed to ensure that the device is operational.]~~

6. The PERS installation includes local seize line circuitry, which guarantees that the unit will have priority over the telephone connected to the console unit should the phone be off the hook or in use when the unit is activated.

7. A PERS provider must maintain a data record for each PERS individual at no additional cost to DMAS. The record must document the following:

- a. Delivery date and installation date of the PERS;
- b. Individual or family/caregiver signature verifying receipt of PERS device;
- c. Verification by a test that the PERS device is operational, monthly or more frequently as needed;
- d. Updated and current individual responder and contact information, as provided by the individual, the individual's family/caregiver, or case manager; and
- e. A case log documenting the individual's utilization of the system and contacts and communications with the individual, family/caregiver, case manager, and responders.

8. The PERS provider must have back-up monitoring capacity in case the primary system cannot handle incoming emergency signals.

9. Standards for PERS equipment. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard Number 1635 for Digital Alarm Communicator System Units and Number 1637, which is the UL safety standard for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring manual reset by the individual.

10. A PERS provider must furnish education, data, and ongoing assistance to [ DMAS,] DMHMRSAS and case managers to familiarize staff with the service, allow for ongoing evaluation and refinement of the program, and must instruct the individual, family/caregiver, and responders in the use of the PERS service.

11. The emergency response activator must be activated either by breath, by touch, or by some other means, and must be usable by individuals who are visually or hearing impaired or physically disabled. The emergency response communicator must be capable of operating without external power during a power failure at the individual's home for a minimum period of 24-hours and automatically transmit a low battery alert signal to the response center if the back-up battery is low. The emergency response console unit must also be able to self-disconnect and redial the back-up monitoring site without the individual resetting the system in the event it cannot get its signal accepted at the response center.

12. Monitoring agencies must be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It is the PERS provider's responsibility to ensure that the monitoring agency and the agency's equipment meets the following requirements. The monitoring agency must be capable of simultaneously responding to signals for help from multiple individuals' PERS equipment. The monitoring agency's equipment must include the following:

- a. A primary receiver and a back-up receiver, which must be independent and interchangeable;
- b. A back-up information retrieval system;
- c. A clock printer, which must print out the time and date of the emergency signal, the PERS individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;
- d. A back-up power supply;
- e. A separate telephone service;
- f. A toll free number to be used by the PERS equipment in order to contact the primary or back-up response center; and
- g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds.

13. The monitoring agency must maintain detailed technical and operations manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment, emergency response protocols, and recordkeeping and reporting procedures.

14. The PERS provider shall document and furnish within 30 days of the action taken a written report to the case manager for each emergency signal that results in action being taken on behalf of the individual. This excludes test signals or activations made in error.

15. The PERS provider is prohibited from performing any type of direct marketing activities to Medicaid recipients.

16. The provider must obtain and keep on file a copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

## **12 VAC 30-120-237. Prevocational services.**

A. Service description. Prevocational services are services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services, (excluding supported employment programs). Activities included in this service are not primarily directed at teaching specific job skills but at underlying habilitative goals such as accepting supervision, attendance, task completion, problem solving, and safety.

B. *Criteria.* In order to qualify for prevocational services, the individual shall have a demonstrated need for support in skills that are aimed toward preparation of paid employment that may be offered in a variety of community settings.

C. *Service units and service limitations.* [ Billing is for one unit of service. ] This service, either as a stand-alone service or in combination with day support and supported employment services is limited to 780 units per CSP year. Prevocational services can be provided in center- or noncenter-based settings.

There must be documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or [ ~~in Special Education services~~ ] through [ ~~§ 602 (16) and (17) of~~ ] the Individuals with Disabilities Education Act [ (IDEA) ]. If the individual is [ ~~older than 22 years, and therefore~~ ] not eligible for [ ~~special education funding services through the IDEA~~ ], documentation is required only for lack of DRS funding. When services are provided through these sources, the ISP shall not authorize them as a waiver expenditure. Prevocational services can only be provided when the individual's compensation is less than 50% of the minimum wage.

D. *Provider requirements.* In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, prevocational providers must also meet the following qualifications:

1. The provider of prevocational services must be a vendor of extended employment services, long-term employment services, or supported employment services for DRS, or be licensed by DMHMRSAS as a provider of day support services. Providers must ensure and document that persons providing prevocational services have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations.

2. Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving prevocational services. At a minimum, the records must contain the following:

a. A functional assessment [ ~~must be~~ ] conducted by the provider to evaluate each individual in the prevocational environment and community settings.

b. An ISP, which contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports, and training needs;

(2) The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

3. The ISP goals, objectives, and activities must be reviewed by the provider [ quarterly, ] annually, [ ~~of and~~ ] more often as needed, [ ~~with the individual receiving the services, modified as appropriate, ] and [ ~~this written review results of these reviews~~ ] submitted to the case manager. [ ~~In addition, the ISP goals, objectives, and activities must be reviewed by the provider quarterly, modified as appropriate, and the results of such review must be submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual. ]~~~~

4. Documentation must confirm the individual's attendance, amount of time spent in services, and type of services rendered, and provide specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives.

5. In instances where [ prevocational ] staff are required to ride with the individual to and from prevocational services, the [ prevocational ] staff time can be billed for prevocational services, provided that billing for this time does not exceed 25% of the total time spent in prevocational services for that day. Documentation must be maintained to verify that billing for [ prevocational ] staff coverage during transportation does not exceed 25% of the total time spent in the prevocational services for that day.

6. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

## **12 VAC 30-120-240. Covered services and limitations. (Repealed.)**

~~A. Residential support services shall be provided in the recipient's home (including the home of a relative or other person, a foster home or an adult family care home), in a licensed adult care residence or licensed group home. The service shall be designed to enable individuals qualifying for the mental retardation waiver to be maintained in living arrangements in the community and shall include: (i) training in or reinforcement of functional skills and appropriate behavior related to a recipient's health and safety, personal care, activities of daily living and use of community resources; (ii) assistance with medication management and monitoring health, nutrition and physical condition; and (iii) assistance with personal care activities of daily living and use of community resources. Service providers shall be reimbursed only for the amount and type of residential support services included in the individual's approved plan of care. Residential support services shall not be authorized in the plan of care unless the individual requires these services and these services exceed the care included in the individual's room and board arrangement for individuals residing in an adult care residence or group home, or, for other individuals, if these services exceed services provided by the family or other caregiver. In order to qualify for this service in an adult care~~

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residence or a group home, the individual shall have a demonstrated need for continuous training, assistance, and supervision for up to 24 hours in a residential setting provided by paid staff. For other individuals, services will not routinely be provided across a continuous 24-hour period.

1. All individuals must meet the following criteria in order for Medicaid to reimburse for mental retardation residential support services. The individual must meet the eligibility requirements for this waiver service as herein defined. The individual shall have a demonstrated need for supports to be provided by paid staff by the residential support provider.

2. An individual's case manager shall not be the direct service staff person or the immediate supervisor of a staff person who provides supported living services to the individual.

3. This service must be provided on an individualized basis according to the plan of care and service setting requirements.

4. This service may not be provided to any individual who receives personal assistance services under the mental retardation community waiver or other residential program that provides a comparable level of care.

5. Room and board and general supervision shall not be components of this service.

6. This service shall not be used solely to provide routine or emergency respite care for parent or other care givers with whom the individual lives.

B. Day support services include a variety of training, support, and supervision offered in a setting which allows peer interactions and community integration. If prevocational services are offered, the plan of care must contain documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Individuals with Disabilities Education Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Compensation for prevocational services can only be made when the individual's productivity is less than 50% of the minimum wage. Service providers are reimbursed only for the amount and type of day support services included in the individual's approved plan of care based on the setting, intensity and duration of the service to be delivered. In order to qualify for prevocational service, the individual shall have a demonstrated need for support in skills which are aimed towards preparation of paid employment which may be offered in a variety of community settings. For day support services, individuals shall have demonstrated the need for functional training, assistance and specialized supervision offered in settings, other than the individual's own residence, which allow an opportunity for being productive and contributing members of their communities.

C. Supported employment services shall include training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized supervision to enable a consumer to maintain paid employment. Each plan of care must contain documentation regarding whether

supported employment services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Individuals with Disabilities Education Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Service providers are reimbursed only for the amount and type of habilitation services included in the individual's approved plan of care based on the intensity and duration of the service delivered. Reimbursement shall be limited to actual interventions by the provider of supported employment, not for the amount of time the individual is in the supported employment environment. In order to qualify for these services, the individual shall have a demonstrated need for training, specialized supervision, or assistance in paid employment and for whom competitive employment at or above the minimum wage is unlikely without this support and who, because of the disability, needs ongoing support, including supervision, training and transportation to perform in a work setting.

D. Therapeutic consultation is available under the waiver for Virginia licensed or certified practitioners in psychology, social work, occupational therapy, physical therapy, therapeutic recreation, rehabilitation engineering, and speech therapy. Behavior consultation performed by persons certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities may also be a covered waiver service. These services may be provided, based on the individual plan of care, for those individuals for whom specialized consultation is clinically necessary to enable their utilization of waiver services. Therapeutic consultation services, other than behavior consultation, may be provided in residential or day support settings or in office settings in conjunction with another waiver service. Behavior consultation may be offered in the absence of any other waiver service when the consultation provided to informal caregivers is determined to be necessary to prevent institutionalization. Service providers are reimbursed according to the amount and type of service authorized in the plan of care based on an hourly fee for service. In order to qualify for these services, the individual shall have a demonstrated need for consultation in any of these services. Documented need indicates that the Plan of Care could not be implemented effectively and efficiently without such consultation from this service.

E. Environmental modifications shall be available to individuals who are receiving at least one other waiver service. It is provided primarily in the individual's home or other community residence in accordance with all applicable state or local building codes. A maximum limit of \$5,000 may be reimbursed in a year. In order to qualify for these services, the individual shall have a demonstrated need for equipment or modifications of a remedial or medical benefit offered primarily in a consumer's home, vehicle, community activity setting, or day program to specifically serve to improve the individual's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance.

F. Personal assistance is available only for individuals who do not receive residential services or live in adult care residences

and for whom training and skills development are not objectives or are provided through another program or service. In order to qualify for these services, the individual shall have demonstrated a need for personal assistance in activities of daily living, medication or other medical needs or monitoring health status or physical condition.

G. Respite care services are limited to a maximum of 30 days or 720 hours per year. In order to qualify for these services, the individual shall have a demonstrated need for substitute care/temporary care which is normally provided by a primary care giver to provide relief for the family or surrogate family/care giver. This care shall not be provided to relieve group home or adult care residence staff where residential care is provided in paid shifts.

H. Nursing services are for individuals with serious medical conditions and complex health care needs which require specific skilled nursing services which cannot be provided by non-nursing personnel. Skilled nursing is provided in the individual's home or other community setting on a regularly scheduled or intermittent need basis. The plan of care must indicate that the service is necessary to prevent institutionalization and is not available under the State Plan for Medical Assistance. In order to qualify for these services, the individual shall have demonstrated complex health care needs which require specific skilled nursing services which are ordered by a physician and which cannot be otherwise accessed under the Title XIX State Plan.

I. Assistive technology is available to individuals who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. A maximum limit of \$5,000 may be reimbursed in a year. In order to qualify for these services, the individual shall have a demonstrated need for equipment or modification for remedial or medical benefit primarily in a consumer's home, vehicle, community activity setting, or day program to specifically serve to improve the individual's personal functioning. This shall encompass those items not otherwise covered under the State Plan.

J. Crisis stabilization services shall provide, as appropriate, neuropsychological, psychiatric, psychological and other assessments and stabilization, functional assessments, medication management and behavior assessment, behavior support, intensive care coordination with other agencies and providers to assist planning and delivery of services and supports to maintain community placement of the recipient; training of family members and other care givers and service providers in positive behavioral supports to maintain the recipient in the community; and temporary crisis supervision to ensure the safety of the recipient and others. The unit for each component of the service shall equal one hour. This service may be authorized for provision of a maximum period of 15 days and during no more than 60 days in a calendar year. The actual service units per episode shall be based on the documented clinical needs of the individuals being served.

1. These services shall be available to individuals who meet at least one of the following criteria:

a. Individual is experiencing a marked reduction in psychiatric, adaptive, or behavioral functioning;

b. Individual is experiencing extreme increase in emotional distress;

c. Individual needs continuous intervention to maintain stability; or

d. Individual is causing harm to himself or others.

2. This service shall be designed to stabilize the recipient and strengthen the current semi-independent living situation, or situation with family or other primary care givers so the recipient can be maintained during and beyond the crisis period. These services may be provided directly in, but not limited to, the following settings:

a. The home of an individual who lives with family, friends, or other primary care giver or givers;

b. The home of an individual who lives independently/semi-independently to augment any current services and supports;

c. A community-based residential program to augment current services and supports;

d. A day program or setting to augment current services and supports; or

e. A respite care setting to augment current services and supports.

3. These services may be initiated following a documented face-to-face assessment by a qualified mental retardation professional. If appropriate, the assessment shall be conducted jointly with a licensed mental health professional or other appropriate professional or professionals. Crisis supervision, if provided as part of this service, shall be separately billed in hourly service units. The need for this service or an extension of the authorization for this service must be clearly documented following a documented face-to-face reassessment conducted by a qualified mental retardation professional. If appropriate, the reassessment will be conducted jointly with a licensed mental health professional or other appropriate professional or professionals.

4. An Individualized Service Plan (ISP) must be developed or revised within 72 hours of assessment or reassessment. Crisis supervision may be provided as a component of this service only if clinical/behavioral intervention allowable under this service also is provided during authorized period. Crisis supervision must be provided one-to-one and face-to-face with the recipient.

5. This service shall not be used for continuous long-term care beyond the service limits. Room and board and general supervision shall not be components of this service and shall not be included in reimbursement.

## **12 VAC 30-120-241. Residential support services.**

A. *Service description. Residential support services [are designed to assist individuals in acquiring, retaining and improving consist of training, assistance or specialized supervision provided primarily in an individual's home or in a licensed or approved residence to enable an individual to acquire, retain, or improve] the self-help, socialization, and*

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adaptive skills necessary to reside successfully in home and community-based settings.

Service providers shall be reimbursed only for the amount and type of residential support services included in the individual's approved ISP. Residential support services shall be authorized in the ISP only when the individual requires these services and these services exceed the services included in the individual's room and board arrangements for individuals residing in group homes, or, for other individuals, if these services exceed [services supports] provided by the family/caregiver. Services will not be routinely reimbursed for a continuous 24-hour period.

## B. Criteria.

1. In order for Medicaid to reimburse for residential support services, the individual shall have a demonstrated need for supports to be provided by staff who are paid by the residential support provider.
2. In order to qualify for this service in a congregate setting, the individual shall have a demonstrated need for continuous training, assistance, and supervision for up to 24 hours per day provided by a DMHMRSAS-licensed residential provider.
3. A functional assessment must be conducted to evaluate each individual in his home environment and community settings.
4. The residential support ISP must indicate the necessary amount and type of activities required by the individual, the schedule of residential support services, and the total number of projected hours per [day week] of waiver reimbursed residential support.

C. Service units and service limitations. Residential supports shall be reimbursed [~~on an hourly basis~~] for time the residential support staff is working directly with the individual. Total [monthly] billing cannot exceed the [total hours] authorized [amount] in the ISP. The provider must maintain documentation of the date and times that services were provided, and specific circumstances that prevented provision of all of the scheduled services.

1. This service must be provided on an individual-specific basis according to the ISP and service setting requirements;
2. [ Congregate ] residential support services [ (~~in-home and congregate~~) ] may not be provided to any individual who receives personal assistance services under the MR Waiver or other residential services that provide a comparable level of care. Respite services may be provided in conjunction with in-home residential support services to unpaid caregivers.
3. Room, board, and general supervision shall not be components of this service;
4. This service shall not be used solely to provide routine or emergency respite for the family/caregiver with whom the individual lives; [ and ]
5. Medicaid reimbursement is available only for residential support services provided when the individual is present

and when a qualified provider is providing the services [ ; and . ]

[ ~~6. An individual's case manager shall not be the direct service staff person or the immediate supervisor of a staff person who provides residential support services to the individual. ]~~

## D. Provider requirements.

1. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, the provider of residential services must have the appropriate DMHMRSAS residential license.
2. Residential support services may also be provided in adult foster care homes approved by local DSS offices pursuant to state DSS regulations.
3. In addition to licensing requirements, persons providing residential support services are required to participate in training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for individuals with mental retardation and functional limitations. All persons providing residential support services must pass an objective, standardized test of skills, knowledge, and abilities developed by DMHMRSAS and administered according to DMHMRSAS policies.
4. Required documentation in the individual's record. The provider agency must maintain records of each individual receiving residential support services. At a minimum these records must contain the following:
  - a. A functional assessment [ ~~must be~~ ] conducted by the provider to evaluate each individual in the residential environment and community settings.
  - b. An ISP containing the following elements:
    - (1) The individual's strengths, desired outcomes, required or desired supports, or both, and training needs;
    - (2) The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;
    - (3) The services to be rendered and the schedule of services to accomplish the above goals [ and , ] objectives [ , and desired outcomes ];
    - (4) A timetable for the accomplishment of the individual's goals and objectives;
    - (5) The estimated duration of the individual's needs for services; and
    - (6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.
  - c. The ISP goals, objectives, and activities must be reviewed by the provider [ quarterly, ] annually, [ ~~or~~ and ] more often as needed [ ~~with the individual receiving the services, modified as appropriate~~ ], and [ ~~the~~ ] results of

[ ~~this review~~ these reviews ] submitted to the case manager. [ ~~In addition, the ISP goals, objectives, and activities must be reviewed by the provider quarterly, modified as appropriate and submitted to the case manager.~~ For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver. ]

d. Documentation must confirm attendance, the amount of time in services, and provide specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives.

e. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

## 12 VAC 30-120-243. Respite services (agency-directed model).

A. Service description. Respite services are [ supports for that which is normally ] provided [ ~~to individuals unable to care for themselves,~~ by the family or other unpaid primary caregiver of an individual. These services are ] furnished on a short-term basis because of the absence or need for relief of those unpaid caregivers normally providing the care for the individuals.

B. Criteria. Respite services may only be offered to individuals who have an unpaid primary caregiver living in the home who requires temporary relief to avoid institutionalization of the individual. Respite services are designed to focus on the need of the unpaid caregiver for temporary relief and to help prevent the breakdown of the unpaid caregiver due to the physical burden and emotional stress of providing continuous support and care to the individual.

C. Service units and service limitations. The unit of service is one hour. Respite services shall be limited to a maximum of 720 hours per calendar year. This service shall not be provided to relieve group home or assisted living facility staff where residential care is provided in shifts. Respite services shall not be provided by adult foster care/family care providers for an individual residing in that home. Training of the individual is not provided with respite services. Individuals who are receiving consumer-directed respite and agency-directed respite services cannot exceed 720 hours per calendar year combined.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, respite providers must meet the following qualifications:

1. Respite services shall be provided by a DMAS enrolled personal care/respite care provider, a DMHMRSAS-licensed residential provider, a DMHMRSAS-licensed respite services provider, or a DSS-approved foster care home for children or adult foster home provider [ ; . For DMHMRSAS-licensed residential or respite services providers, a residential supervisor will provide ongoing supervision of all respite assistants.

2. For DMAS-enrolled personal care/respite care providers, the respite services provider must employ or subcontract

with and directly supervise a RN or an LPN who will provide ongoing supervision of all respite assistants. The supervising RN or LPN must be currently licensed to practice nursing in the Commonwealth and have at least two years of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/MR or nursing facility.

a. The supervisor must make an initial assessment visit prior to the start of care for any individual requesting respite services. The supervisor must also perform any subsequent reassessments or changes to the supporting documentation; and

b. The supervisor must make supervisory visits as often as needed to ensure both quality and appropriateness of services;

(1) When respite services are received on a routine basis, the minimum acceptable frequency of these supervisory visits shall be every 30 to 90 days based on the needs of the individual;

(2) When respite services are not received on a routine basis, but are episodic in nature, the supervisor is not required to conduct a supervisory visit every 30 to 90 days. Instead, the supervisor must conduct the initial home visit with the respite assistant immediately preceding the start of services and make a second home visit within the respite period;

(3) When respite services are routine in nature and offered in conjunction with personal assistance, the 30- to 90-day supervisory visit conducted for personal assistance may serve as the supervisory visit for respite services. However, the supervisor must document supervision of respite services separately. For this purpose, the same individual record can be used with a separate section for respite services documentation;

c. Based on continuing evaluations of the assistants' performances and individuals' needs, the supervisor shall identify any gaps in the assistants' ability to function competently and shall provide training as indicated; ]

[ ~~2. d.~~ ] Basic qualifications for respite assistants include:

[ ~~a.~~ (1) ] Be at least 18 years of age or older;

[ ~~b.~~ (2) ] Be physically able to do the work;

[ ~~c.~~ (3) ] Have the ability to read and write [ in English to the degree necessary to perform the tasks expected ];

[ ~~d.~~ (4) ] Have completed a training curriculum consistent with DMAS requirements. Prior to assigning an assistant to an individual, the provider must obtain documentation that the assistant has satisfactorily completed a training program consistent with DMAS requirements. DMAS requirements may be met in one of three ways:

[ ~~(4)~~ (a) ] Registration as a certified nurse aide;

[ ~~(2)~~ (b) ] Graduation from an approved educational curriculum which offers certificates qualifying the

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student as a nursing assistant, geriatric assistance, or home health aide; or

[ ~~(3)~~ (c) Completion of ] provider-offered training, which is consistent with the basic course outline approved by DMAS.

[ ~~e.~~ (5) ] Have a satisfactory work record, as evidenced by two references from prior job experiences, including no evidence of possible abuse, neglect, or exploitation of aged or incapacitated adults or children;

[ ~~f.~~ 3. ] Respite assistants may not be the parents of individuals who are minors, [ or ] the individuals' spouses [ , or legally responsible relatives for the individuals ]. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the care. [ Family members who are approved to provide paid respite services must meet the qualifications for respite assistants. ]

[ ~~g.~~ Family members who are approved to provide paid respite services must meet the qualifications for respite assistants.

~~h.~~ For DMAS-enrolled personal care/respite care providers, the respite services provider must employ or subcontract with and directly supervise an RN or an LPN who will provide ongoing supervision of all respite assistants. The supervising RN or LPN must be currently licensed to practice nursing in the Commonwealth and have at least two years of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/MR or nursing facility. For DMHMRSAS-licensed providers, a residential supervisor will provide ongoing supervision of all respite assistants.

~~(1) The RN and LPN must be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience, which may include work in an acute care hospital, ICF/MR, public health clinic, home health agency, or nursing facility;~~

~~(2) Based on continuing evaluations of the assistants' performances and individuals' needs, the supervisor shall identify any gaps in the assistants' ability to function competently and shall provide training as indicated;~~

~~(3) The supervisor must make an initial assessment visit prior to the start of care for any individual admitted to respite services. The supervisor must also perform any subsequent reassessments or changes to the supporting documentation; and~~

~~(4) The supervisor must make supervisory visits as often as needed to ensure both quality and appropriateness of services;~~

~~(a) When respite services are received on a routine basis, the minimum acceptable frequency of these supervisory visits shall be every 30 to 90 days based on the needs of the individual;~~

~~(b) When respite services are not received on a routine basis, but are episodic in nature, the supervisor is not required to conduct a supervisory visit every 30 to 90 days. Instead, the supervisor must conduct the initial home visit with the respite assistant immediately preceding the start of services and make a second home visit within the respite period;~~

~~(c) When respite services are routine in nature and offered in conjunction with personal assistance, the 30- to 90-day supervisory visit conducted for personal assistance may serve as the supervisory visit for respite services. However, the supervisor must document supervision of respite services separately. For this purpose, the same individual record can be used with a separate section for respite services documentation;~~

~~i. The supervisor must document in a summary note of the supervision visit:~~

~~(1) Whether respite services continue to be appropriate;~~

~~(2) Whether the supporting documentation is adequate to meet the individual's needs or if changes need to be made;~~

~~(3) The individual's or family/caregiver's satisfaction with the service;~~

~~(4) Any hospitalization or change in medical condition or functioning status;~~

~~(5) Other services received and the amount; and~~

~~(6) The presence or absence of the assistant in the home during the supervisor's visit;~~

~~3. Inability to provide services and substitution of assistants. When a respite assistant is absent and the respite provider has no other assistant available to provide services, the provider is responsible for ensuring that services continue to individuals.~~

~~a. If a provider cannot supply a respite assistant to render authorized services, the provider may either obtain a substitute assistant from another provider, if the lapse in coverage is to be less than two weeks in duration, or may transfer the individual's services to another provider. The personal assistance provider that has the authorization to provide services to the individual must contact the case manager to determine if additional preauthorization is necessary.~~

~~b. If no other provider is available who can supply an assistant, the provider shall notify the individual, family/caregiver, and case manager so that the case manager may locate another available provider.~~

~~c. During temporary, short-term lapses in coverage, not to exceed two weeks in duration, a substitute assistant may be secured from another respite provider. Under these circumstances, the following requirements apply:~~



~~(1) The preauthorized respite services provider is responsible for providing the supervision for the substitute assistant;~~

~~(2) The preauthorized respite services provider must obtain a copy of the assistant's daily records signed by the individual and the substitute assistant from the respite services provider providing the substitute assistant. All documentation of services rendered by the substitute assistant must be in the individual's record. The documentation of the substitute assistant's qualifications must also be obtained and recorded in the personnel files of the provider having individual care responsibility. The two providers involved are responsible for negotiating the financial arrangements of paying the substitute assistant; and~~

~~(3) Only the provider authorized for services may bill DMAS for services rendered by the substitute assistant.~~

~~d. Substitute assistants obtained from other providers may be used only in cases where no other arrangements can be made for individual respite services coverage and may be used only on a temporary basis. If a substitute assistant is needed for more than two weeks, the case must be transferred to another respite services provider that has the assistant capability to serve the individual or individuals.~~

~~4. Required documentation for individual's record. The provider must maintain records of each individual receiving respite services. These records must be separated from those of other services. At a minimum these records must contain:~~

~~a. Initial assessment completed prior to or on the date services are initiated and subsequent reassessments and changes to supporting documentation by the supervisor, if required;~~

~~b. An ISP, which contains, at a minimum, the following elements:~~

~~(1) The individual's strengths, desired outcomes, required or desired supports, and training needs;~~

~~(2) The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;~~

~~(3) Services to be rendered, the approximate hours that will be allowed for each activity, and the frequency of services to accomplish the above goals and objectives;~~

~~(4) A timetable for the accomplishment of the individual's goals and objectives;~~

~~(5) The estimated duration of the individual's needs for services; and~~

~~(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP;~~

~~c. Dated contact notes documenting contacts with the respite services assistant and of supervisory visits to the individual's home when required;~~

~~d. All correspondence to the individual, family/caregiver, case manager, DMAS, and DMHMRSAS;~~

~~e. Significant contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual; and~~

~~f. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 from the case manager.~~

~~5. Respite assistant record of services rendered and individual's responses. The assistant record must contain:~~

~~a. The specific services delivered to the individual by the respite assistant and the individual's response;~~

~~b. The arrival and departure time of the assistant for respite services only;~~

~~c. Comments or observations recorded weekly about the individual. Assistant comments must include, at a minimum, observation of the individual's physical and emotional condition, daily activities, and the individual's responses to services rendered; and~~

~~d. The signature of the assistant, individual, or family/caregiver as appropriate, for each respite event to verify that respite services have been rendered.~~

~~6. Respite assistants may not be the parents of individuals who are minors, the individuals' spouses, or legally responsible relatives for the individuals. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the service.~~

~~7. Family members who have been approved for paid reimbursement must meet the respite assistant qualifications.~~

~~4. Inability to provide services and substitution of assistants.~~

~~a. When a respite assistant is absent, the provider is responsible for ensuring that services continue to individuals. The provider may provide another assistant, obtain a substitute assistant from another provider if the lapse in coverage is to be less than two weeks in duration, or transfer the individual's services to another provider. The respite provider that has the authorization to provide services to the individual must contact the case manager to determine if additional preauthorization is necessary.~~

~~b. If no other provider is available who can supply an assistant, the provider shall notify the individual, family/caregiver, and case manager so that the case manager can locate another available provider of the individual's choice.~~

~~c. During temporary, short-term lapses in coverage, not to exceed two weeks in duration, a substitute assistant may be secured from another respite provider. Under these circumstances, the following requirements apply:~~

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(1) The preauthorized respite services provider is responsible for providing the supervision for the substitute assistant;

(2) The provider of the substitute assistant must send a copy of the assistant's records signed by the individual or family/caregiver on his behalf and the substitute assistant to the respite provider having the authorization. All documentation of services rendered by the substitute assistant must be in the individual's record. The documentation of the substitute assistant's qualifications must also be obtained and recorded in the personnel files of the provider having individual care responsibility. The two providers involved are responsible for negotiating the financial arrangements of paying the substitute assistant; and

(3) Only the provider authorized for services may bill DMAS for services rendered by the substitute assistant.

d. Substitute assistants obtained from other providers may be used only in cases where no other arrangements can be made for individual respite services coverage and may be used only on a temporary basis. If a substitute assistant is needed for more than two weeks, the case must be transferred to another respite services provider that has the assistant capability to serve the individual or individuals.

5. Required documentation for individual's record. The provider must maintain records of each individual receiving respite services. These records must be separated from those of other services. At a minimum these records must contain:

a. Initial assessment completed prior to or on the date services are initiated and subsequent reassessments and changes to supporting documentation by the supervisor, if required;

b. An ISP, which contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports;

(2) The individual's goals;

(3) The estimated duration of the individual's needs for services and the amount of hours needed; and

(4) The provider staff responsible for the overall coordination and integration of the services specified in the ISP;

c. Dated notes documenting contacts with the respite services assistant and of supervisory visits to the individual's home when required. The supervisor must document in a summary note of the supervision visit:

(1) Whether respite services continue to be appropriate;

(2) Whether the service is adequate to meet the individual's needs or if changes need to be made;

(3) The individual's or family/caregiver's satisfaction with the service;

(4) Any hospitalization or change in medical condition or functioning status;

(5) Other services received and the amount;

(6) The presence or absence of the assistant in the home during the supervisor's visit; and

(7) Any special tasks performed by the assistant (e.g., assistance with bowel/bladder programs, range of motion exercises, etc.) and the assistant's qualifications to perform these tasks.

d. All correspondence to the individual, family/caregiver, case manager, DMAS, and DMHMRSAS;

e. Significant contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual;

f. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 from the case manager; and

g. Respite assistant record of services rendered and individual's responses. The assistant record must contain:

(1) The specific services delivered to the individual by the respite assistant and the individual's response;

(2) The arrival and departure time of the assistant for respite services only;

(3) Comments or observations about the individual. Assistant comments must include, at a minimum, observation of the individual's physical and emotional condition, daily activities, and the individual's responses to services rendered; and

(4) The signature of the assistant, individual, or family/caregiver as appropriate, for each respite event to verify that respite services have been rendered. ]

## **12 VAC 30-120-245. Skilled nursing services.**

A. Service description. Skilled nursing services shall be provided for individuals with serious medical conditions and complex health care needs that require specific skilled nursing services that cannot be provided by non-nursing personnel. Skilled nursing may be provided in the individual's home or other community setting on a regularly scheduled or intermittent need basis. [ It may include consultation and training for other providers. ]

B. Criteria. In order to qualify for these services, the individual shall have demonstrated complex health care needs that require specific skilled nursing services ordered by a physician and that cannot be otherwise accessed under the Title XIX State Plan for Medical Assistance. The CSP must indicate that the service is necessary in order to prevent institutionalization and is not available under the State Plan for Medical Assistance.

C. Service units and service limitations. Skilled nursing services to be rendered by either registered or licensed practical nurses are provided in hourly units. The services must be explicitly detailed in an ISP and must be specifically

ordered by a physician as medically necessary to prevent institutionalization.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, participating skilled nursing providers must ~~[ maintain meet ]~~ the following ~~[ documentation qualifications ]~~:

[ 1. Skilled nursing services shall be provided by either a DMAS-enrolled home care organization provider or home health provider, or by a registered nurse licensed by the Commonwealth or licensed practical nurse licensed by the Commonwealth (under the supervision of a registered nurse licensed by the Commonwealth), contracted or employed by DMHMRSAS-licensed day support, respite, or residential providers.

2. Skilled nursing services providers may not be the parents of individuals who are minors, or the individual's spouse. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the care. Family members who provide skilled nursing services must meet the skilled nursing requirements.

3. Foster care providers may not be the skilled nursing services providers for the same individuals to whom they provide foster care.

4. Required documentation. The provider must maintain a record that contains:

[ 4. a. ] An ISP that contains, at a minimum, the following elements:

[ a. (1) ] The individual's strengths, desired outcomes, required or desired supports ~~[ , and training needs ]~~;

[ b. (2) ] The individual's goals ~~[ and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes ]~~;

[ c. (3) ] Services to be rendered and the frequency of services to accomplish the above goals and objectives;

[ d. A timetable for the accomplishment of the individual's goals and objectives; ]

[ e. (4) ] The estimated duration of the individual's needs for services; [ and ]

[ f. (5) ] The provider staff responsible for the overall coordination and integration of the services specified in the ISP; ~~[ and ]~~

~~[ g. Any b. Documentation of any ]~~ training of family/caregivers or staff, or both, to be provided, including the person or persons being trained and the content of the training, consistent with the Nurse Practice Act ~~[ ; ]~~

[ 2. c. ] Documentation of the determination of medical necessity by a physician prior to services being rendered;

~~[ 3. d. ] Documentation of nursing license/qualifications of providers;~~

[ 4. e. ] Documentation indicating the dates and times of nursing services and the amount and type of service or training provided;

~~[ 5. The ISP must be reviewed by the provider with the individual receiving the services, and the results of this review must be submitted to the case manager, at least annually and as needed. In addition, the ISP with goals, objectives, and activities modified as appropriate, must be reviewed quarterly and submitted to the case manager; f. Documentation that the ISP was reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual. ]~~

[ 6. g. ] Documentation that the ISP has been reviewed by a physician within 30 days of initiation of services, when any changes are made to the ISP, and also reviewed and approved annually by a physician; and

[ 7. h. ] A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

~~[ E. Skilled nursing services shall be provided by either a DMAS-enrolled private duty nursing provider or a home health provider, or by a registered nurse or licensed practical nurse, (under the supervision of a registered nurse licensed by the Commonwealth of Virginia) and contracted or employed by DMHMRSAS-licensed day support, respite, or residential providers.~~

~~1. Skilled nursing services providers may not be the parents of individuals who are minors, the individual's spouse, or legally responsible relatives for the individual. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the care. Family members must meet the skilled nursing requirements.~~

~~2. Foster care providers may not be the skilled nursing services providers for the same individuals to whom they provide foster care. ]~~

## 12 VAC 30-120-247. Supported employment services.

### A. Service description.

1. Supported employment services is work in settings in which persons without disabilities are employed. It is especially designed for individuals with developmental disabilities, including individuals with mental retardation, who face severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential.

2. Supported employment services are available to individuals for whom competitive employment at or above the minimum wage is unlikely without ongoing supports and

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who because of their disability need ongoing support to perform in a work setting.

3. Supported employment can be provided in one of two models. Individual supported employment shall be defined as intermittent support, usually provided one-on-one by a job coach to an individual in a supported employment position. Group supported employment shall be defined as continuous support provided by staff to eight or fewer individuals with disabilities in an enclave, work crew, bench work, or entrepreneurial model. The individual's assessment and CSP must clearly reflect the individual's need for training and supports.

## B. Criteria.

1. Only job development tasks that specifically include the individual are allowable job search activities under the MR waiver supported employment and only after determining this service is not available from DRS.

2. In order to qualify for these services, the individual shall have demonstrated that competitive employment at or above the minimum wage is unlikely without ongoing supports, and who because of his disability, needs ongoing support to perform in a work setting.

3. A functional assessment must be conducted to evaluate the individual in his work environment and related community settings.

4. The ISP must document the amount of supported employment required by the individual. Service providers are reimbursed only for the amount and type of supported employment included in the individual's ISP based on the intensity and duration of the service delivered.

## C. Service units and service limitations.

1. Supported employment for individual job placement is provided in one hour units. [~~This service is limited to 780 units per CSP year.~~] This service, [~~either as a stand-alone service or when~~] in combination with prevocational and day support, is limited to 780 units per CSP year.

2. Group models of supported employment (enclaves, work crews, bench work and entrepreneurial model of supported employment) will be billed at the unit rate. This service is limited to 780 units per CSP year. This service, either as a stand-alone service or in combination with prevocational and day support, is limited to 780 units per CSP year.

3. For the individual job placement model, reimbursement of supported employment will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the individual is in the supported employment situation.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, supported employment provider qualifications include:

1. Supported employment shall be provided only by agencies that are DRS vendors of supported employment services;

2. Individual ineligibility for supported employment services through DRS or [~~special education services IDEA~~] must be documented in the individual's record, as applicable. If the individual is [~~older than 22 years and therefore~~] not eligible [~~for special education funding through IDEA~~], documentation is required only for the lack of DRS funding;

3. There must be an ISP that contains, at a minimum, the following elements:

a. The individual's strengths, desired outcomes, required/desired supports and training needs;

b. The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

c. Services to be rendered and the frequency of services to accomplish the above goals and objectives;

d. A timetable for the accomplishment of the individual's goals and objectives;

e. The estimated duration of the individual's needs for services; and

f. Provider staff responsible for the overall coordination and integration of the services specified in the plan.

4. [~~The ISP must be reviewed by the provider with the individual receiving the services and this written review submitted to the case manager, at least annually or as needed. In addition, the ISP with goals, objectives, and activities modified as appropriate, must be reviewed quarterly and submitted to the case manager. The ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and the results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver.~~]

5. In instances where [~~supported employment~~] staff are required to ride with the individual to and from supported employment activities, the [~~supported employment~~] staff time can be billed for supported employment provided that the billing for this time does not exceed 25% of the total time spent in [~~the~~] supported employment [~~activity~~] for that day. Documentation must be maintained to verify that billing for [~~supported employment~~] staff coverage during transportation does not exceed 25% of the total time spent in [~~the~~] supported employment [~~activity~~] for that day.

6. There must be a copy of the completed DMAS-122 in the record. Providers must clearly document efforts to obtain the DMAS-122 form from the case manager.

## 12 VAC 30-120-249. Therapeutic consultation.

A. Service description. Therapeutic consultation [~~is available under the waiver and may be provided by Virginia licensed or certified practitioners in psychology, psychiatry, social work, counseling, occupational therapy, physical therapy, therapeutic recreation, rehabilitation, psychiatric clinical nursing, and speech/language therapy~~] provides expertise, training and technical assistance in any of the following specialty areas to assist family members, caregivers, and

other service providers in supporting the individual. The specialty areas are (i) psychology, (ii) behavioral consultation, (iii) therapeutic consultation, (iv) speech and language pathology, (v) occupational therapy, (vi) physical therapy, and (vii) rehabilitation engineering]. The need for any of these services, is based on the [~~individuals' CSPs~~ individual's CSP], and provided to those individuals for whom specialized consultation is clinically necessary and who have additional challenges restricting their ability to function in the community. Therapeutic consultation services may be provided in the [~~individuals' homes~~ individual's home] [~~or~~ , and] in appropriate community settings and are intended to [~~enhance the individuals' utilization of waiver services~~ facilitate implementation of the individual's desired outcomes as identified in his CSP].

**B. Criteria.** In order to qualify for these services, the individual shall have a demonstrated need for consultation in any of these services. Documented need must indicate that the CSP cannot be implemented effectively and efficiently without such consultation from this service.

1. The individual's [therapeutic consultation] ISP must clearly reflect the individual's needs, as documented in the social assessment, for specialized consultation provided to family/caregivers and providers in order to implement the ISP effectively.

2. Therapeutic consultation services may not include direct therapy provided to waiver individuals or monitoring activities, and may not duplicate the activities of other services that are available to the individual through the State Plan for Medical Assistance.

**C. Service units and service limitations.** The unit of service shall equal one hour. The services must be explicitly detailed in the ISP. Travel time, written preparation, and telephone communication are in-kind expenses within this service and are not billable as separate items. Therapeutic consultation may not be billed solely for purposes of monitoring. Only behavioral consultation may be offered in the absence of any other waiver service when the consultation is determined to be necessary to prevent institutionalization.

**D. Provider requirements.** In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, professionals rendering therapeutic consultation services shall meet all applicable state licensure or certification requirements. Persons providing rehabilitation consultation shall be rehabilitation engineers or certified rehabilitation specialists. Behavioral consultation may be performed by professionals based on the professionals' work experience, education, and demonstrated knowledge, skills, and abilities.

The following documentation is required for therapeutic consultation:

1. An ISP, that contains at a minimum, the following elements:

a. Identifying information:

b. Targeted objectives, time frames, and expected outcomes; [~~and~~]

c. Specific consultation activities; [~~and~~]

[~~d. A written support plan detailing the interventions or support strategies.~~]

2. Ongoing documentation of consultative services rendered in the form of contact-by-contact [~~or monthly~~] notes [~~that identify each contact~~].

3. If the consultation service extends beyond the one year, the ISP must be reviewed by the provider with the individual receiving the services and the case manager, and this written review must be submitted to the case manager, at least annually, or [~~more~~] as needed. If the consultation services extend three months or longer, written quarterly reviews are required to be completed by the service provider and are to be forwarded to the case manager. [~~Any changes to the ISP must be reviewed with the individual or family/caregiver.~~]

4. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain a copy of the completed DMAS-122 from the case manager.

5. A written support plan, detailing the interventions and strategies for providers and family/caregivers to use to better support the individual in the service; and

6. A final disposition summary that must be forwarded to the case manager within 30 days following the end of this service.

## **12 VAC 30-120-250. Reevaluation of service need and utilization review. (Repealed.)**

### ~~A. The Consumer Service Plan.~~

~~1. The Consumer Service Plan shall be developed by the case manager mutually with other service providers, the individual, consultants, and other interested parties based on relevant, current assessment data. The plan of care process determines the services to be rendered to individuals, the frequency of services, the type of service provider, and a description of the services to be offered. Only services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.~~

~~2. The case manager is responsible for continuous monitoring of the appropriateness of the individual's plan of care and revisions to the CSP as indicated by the changing needs of the recipient. At a minimum, the case manager shall review the plan of care every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.~~

~~3. DMHMRSAS staff shall review the plan of care every 12 months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the CSP must be authorized by DMHMRSAS staff or DMAS.~~

### ~~B. Review of level of care.~~

~~1. The case manager shall complete an annual comprehensive reassessment, in coordination with the consumer, family, and service providers. If warranted, the~~

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~~case manager shall coordinate a medical examination and a psychological evaluation for every waiver recipient. The reassessment shall include an update of the assessment instrument and any other appropriate assessment data.~~

~~2. A medical examination shall be completed for adults based on need identified by the provider, consumer, case manager, or DMHMRSAS staff. Medical examinations for children shall be completed according to the recommended frequency and periodicity of the EPSDT program.~~

~~3. A psychological evaluation or standardized developmental assessment for children under six years of age must reflect the current psychological status (diagnosis), adaptive level of functioning, and cognitive abilities. A new psychological evaluation shall be required whenever the individual's functioning has undergone significant change and is no longer reflective of the past psychological evaluation.~~

## C. Documentation required.

~~1. The case management agency must maintain the following documentation for review by the DMHMRSAS staff and DMAS utilization review staff for each waiver recipient:~~

~~a. All assessment summaries and CSP's completed for the recipient maintained for a period not less than five years from the recipient's start of care.~~

~~b. All ISP's from any provider rendering waiver services to the recipient.~~

~~c. All supporting documentation related to any change in the plan of care.~~

~~d. All related communication with the providers, recipient, consultants, DMHMRSAS, DMAS, DSS, DRS or other related parties.~~

~~e. An ongoing log which documents all contacts made by the case manager related to the waiver recipient.~~

~~2. The individual service providers must maintain the following documentation for review by the DMHMRSAS staff and DMAS utilization review staff for each waiver recipient:~~

~~a. All ISP's developed for that recipient maintained for a period not less than five years from the date of the recipient's entry to waiver services.~~

~~b. An attendance log which documents the date services were rendered and the amount and type of service rendered.~~

~~c. Appropriate progress notes reflecting recipient's status and, as appropriate, progress toward the goals on the ISP.~~

**NOTICE:** The forms used in administering 12 VAC 30-120, Waivered Services, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 E. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

~~[ Virginia Uniform Assessment Instrument (UAI) (1994).~~

~~Medicaid Funded Long Term Care Service Authorization Form, DMAS-96 (rev. 8/97).~~

~~Service Coordinator Plan of Care, DMAS-97B (rev. 6/97).~~

~~Patient Information, DMAS-122 (rev. 12/98).~~

~~Questionnaire: Assessing a Recipient's Ability to Independently Manage Personal Attendant Services (2/98).~~

~~Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).~~

~~DD Waiver Enrollment Request, DMAS-453 (eff. 1/01).~~

~~DD Waiver Consumer Service Plan, DMAS-456 (eff. 1/01).~~

~~DD Medicaid Waiver Level of Functioning Survey Summary Sheet, DMAS-458 (eff. 1/01).~~

~~Documentation of Recipient Choice between Institutional Care or Home and Community-Based Services (eff. 8/00).~~

~~AIDE Record, DMAS-90 (rev. 11/90).~~

~~AIDS Waiver Authorization Form, DMAS-114 (eff. 7/94).~~

~~Adult Day Health Care Daily Log, DMAS-302 (rev. 7/90).~~

~~Adult Day Health Care Interdisciplinary Plan of Care, DMAS-301 (rev. 7/90).~~

~~Community-Based Care Recipient Assessment Report, DMAS-99 (rev. 9/98).~~

~~Consent to Exchange Information, DMAS-20 (eff. 6/94).~~

~~Consumer-Directed Personal Attendant Services Recipient Assessment Report, DMAS-99B (eff. 2/98).~~

~~Consumer Directed Services Plan of Care, DMAS-97B (rev. 1/98).~~

~~DD Waiver Supporting Documentation, DMAS-457 (eff. 9/00).~~

~~DD Medicaid Waiver Level of Functioning Survey Summary, DMAS-458 (eff. 1/01).~~

~~DD Waiver Consumer Service Plan, DMAS-456 (eff. 9/00).~~

~~DD Waiver Enrollment Request, DMAS-453 (eff. 9/00).~~

~~DMAS Private Duty Nursing Plan of Care, DMAS-102R (rev. 4/00).~~

~~Private Duty Nursing Plan of Care, (HCFA) 485.~~

~~Department of Mental Health, Mental Retardation and Substance Abuse Services MR Waiver Enrollment Request, DMAS-437 (rev. 1/02).~~

~~MR Waiver Plan of Care Summary, DMAS-438 (rev. 1/02).~~

~~Documentation of Recipient Choice between Institutional Care or Home and Community Based Services, DMAS-99A (rev. 1/02).~~

- MI/MR Level 1 Supplement for Elderly and Disabled Waiver Applicants, DMAS-101A (eff. 5/98).*
- Assessment of Active Treatment Needs for Individuals with MI or MR Who Request Services Under the Elderly & Disabled Waiver, DMAS-101B (eff. 5/98).*
- MR Waiver 60-Day Assessment Individual Service Authorization Request, DMAS-439 (rev. 1/02).*
- MR Waiver Assistive Technology Individual Service Authorization Request, DMAS-447 (rev. 1/02).*
- MR Waiver Agency-directed Companion Individual Service Authorization Request, DMAS-423 (rev. 1/02).*
- MR Waiver Crisis Stabilization Individual Service Authorization Request, DMAS-430 (rev. 1/02).*
- MR Waiver Day Support Individual Service Authorization Request, DMAS-442 (rev. 1/02).*
- MR Waiver Environmental Modifications Individual Service Authorization Request, DMAS-446 (rev. 1/02).*
- MR Waiver Nursing Services Individual Service Authorization Request, DMAS-448 (rev. 1/02).*
- MR Waiver Agency-directed Personal Assistance Individual Service Authorization Request, DMAS-443 (rev. 1/02).*
- MR Waiver Agency-directed Residential Support Individual Service Authorization Request, DMAS-440 (rev. 1/02).*
- MR Waiver Respite Individual Service Authorization Request, DMAS 444 (rev. 1/02).*
- MR Waiver Supported Employment Individual Service Authorization Request, DMAS-441 (rev. 1/02).*
- MR Waiver Therapeutic Consultation Individual Service Authorization Request, DMAS-445 (rev. 1/02).*
- Medicaid Funded Long-term Care Service Authorization Form, DMAS-96 (rev. 8/00).*
- Medicaid HIV Waiver Services Pre-Screening Assessment, DMAS-113-A-1 (rev. 9/93).*
- Medicaid HIV Waiver Services Pre-Screening Plan of Care, DMAS-113-B (rev. 9/93).*
- Monthly Nursing Status Report, DMAS-103 (rev. 4/00).*
- MR Waiver Personal Assistance Services Individual Service Plan, DMAS-435R (rev. 9/98).*
- Notice of Need for Level II Assessment, DMAS-303 (rev. 8/00).*
- Nutritional Status Evaluation Form, DMAS-115 (rev. 10/99).*
- Patient Information, DMAS-122 (eff. 12/98).*
- Provider Agency Plan of Care, DMAS-97A (rev.8/94).*
- Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the Consumer Directed Personal Attendant Services Waiver, DMAS-95-Addendum (eff. 2/98).*
- Request for Personal Emergency Response System (PERS), DMAS 100-A (eff. 4/02).*
- Request for Supervision in Personal Care Plan of Care, DMAS-100 (eff. 11/93).*
- Level of Functioning Assessment, LOF (eff. 1/02).*
- Respite Care Needs Assessment and Plan of Care, DMAS-300 (rev. 7/90).*
- Screening Team Plan of Care for Medicaid funded Long Term Care, DMAS-97 (eff. 10/00).*
- Virginia Uniform Assessment Instrument, UAI (eff. 1994).*
- MR Waiver Consumer-Directed Companion Services Individual Service Authorization Request, DMAS-427 (rev. 1/02).*
- MR Waiver Consumer-Directed Personal Assistance Individual Service Authorization Request, DMAS-428 (rev. 1/02).*
- MR Waiver Consumer-Directed Respite Individual Service Authorization Request, DMAS-419 (rev. 1/02).*
- MR Waiver Personal Emergency Response System Individual Service Authorization Request, DMAS-418 (rev. 1/02).*
- MR Waiver Prevocational Services Individual Service Authorization Request, DMAS-426 (rev. 1/02).*
- Mental Retardation Community Medicaid Services Individual Service Plan – MR Case Management (90 day Assessment), DMAS-433 (rev. 1/02).*
- Mental Retardation Community Medicaid Services Individual Service Plan – MR Case Management, DMAS-452 (rev. 9/98).*
- Mental Retardation Community Medicaid Services Individual Service Plan (60 day Assessment), DMAS-434 (rev. 7/01).*
- Mental Retardation Community Medicaid Services Individual Service Plan (Environment Mods/Assistive Technology), DMAS-451 (eff. 12/95).*
- Mental Retardation Community Medicaid Services Individual Service Plan (Residential/Supported Employment/Day Support), DMAS-432 (rev. 12/95).*
- Mental Retardation Community Medicaid Services Individual Service Plan (Therapeutic Consultation), DMAS-431 (rev. 9/98).*
- Aide Record, DMAS-90 (rev. 11/90).*
- MR Waiver Level of Care Eligibility Form, To be assigned (eff. 7/01).*
- DD Waiver Level of Care Eligibility Form, To be assigned (eff. 7/01).*
- MR Waiver Residential Support Individual Service Authorization Request, DMAS-440 (rev. 1/02).*
- MR Waiver Day Support Individual Service Authorization Request, DMAS-442 (rev. 1/02).*
- MR Waiver Agency Directed Personal Assistance Individual Service Authorization Request, DMAS-443 (rev. 1/02).*

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*MR Waiver Assistive Technology Individual Service Authorization Request, DMAS-447 (rev. 1/02).*

*MR Community Medicaid Services Individual Service Plan Personal Assistance/Respite Care Agency Directed, DMAS-436 (eff. 9/98). ]*

VA.R. Doc. No. R02-53; Filed August 20, 2002, 3:53 p.m.

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## TITLE 14. INSURANCE

### STATE CORPORATION COMMISSION

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** 14 VAC 5-210. Rules Governing Health Maintenance Organizations (amending 14 VAC 5-210-70 and 14 VAC 5-210-90).

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

**Effective Date:** September 1, 2002.

**Summary:**

*The amendments delete the mandatory maximum copayment requirements for health maintenance organizations and make them voluntary. The revisions clarify the various cost sharing arrangements that may be imposed for supplemental health care services, and clarify the requirement for dental services resulting from an accident.*

**Agency Contact:** Athelia Battle, Principal Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23219, telephone (804) 371-9154, FAX (804) 371-9944, toll free 1-800-552-7945 or e-mail [abattle@scc.state.va.us](mailto:abattle@scc.state.va.us).

AT RICHMOND, AUGUST 20, 2002

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2002-00170

**Ex Parte:** In the matter of  
Adopting Revisions to the Rules  
Governing Health Maintenance  
Organizations

#### ORDER ADOPTING REVISIONS TO RULES

By order entered herein June 27, 2002, all interested persons were ordered to take notice that the Commission would consider the entry of an order subsequent to August 16, 2002,

adopting certain revisions proposed by the Bureau of Insurance to the Commission's Rules Governing Health Maintenance Organizations effective September 1, 2002, unless on or before August 16, 2002, any person objecting to the adoption of the proposed revisions filed a request for a hearing with the Clerk of the Commission.

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the proposed revisions on or before August 16, 2002.

The proposed revisions delete the mandatory maximum copayment requirements for health maintenance organizations and make them voluntary. The revisions also clarify the various cost sharing arrangements which may be imposed for supplemental health care services and the requirement for dental services resulting from an accident.

As of the date of this Order, no request for a hearing has been filed with the Clerk of the Commission, and, as of the date of this Order, no comments have been filed with the Clerk of the Commission.

The Bureau has recommended that the proposed revisions be adopted; and

THE COMMISSION, having considered the proposed revisions and the Bureau's recommendation, is of the opinion that the proposed revisions should be adopted.

THEREFORE, IT IS ORDERED THAT:

(1) The revisions to Chapter 210 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Health Maintenance Organizations," which amend the rules at 14 VAC 5-210-70 and 14 VAC 5-210-90, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective September 1, 2002.

(2) AN ATTESTED COPY hereof 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 adoption of the revisions to the rules by mailing a copy of this Order, together with a clean copy of the revised rules, to all persons licensed by the Commission to transact the business of a health maintenance organization.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, including a copy of the attached revised rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) On or before August 23, 2002, the Commission's Division of Information Resources shall make available this Order and the attached revised rules on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) above.



**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 18:23 VA.R. 3011-3015 July 29, 2002, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R02-232; Filed August 21, 2002, 11:04 a.m.

**TITLE 16. LABOR AND EMPLOYMENT**

**VIRGINIA EMPLOYMENT COMMISSION**

Title of Regulation: **Regulation Governing Unemployment Benefits.**

**16 VAC 5-10-10 et seq. Definitions and General Provisions (amending 16 VAC 5-10-10, 16 VAC 5-10-20, and 16 VAC 5-10-30; adding 16 VAC 5-10-21 and 16 VAC 5-10-22).**

**16 VAC 5-60-10 et seq. Benefits (amending 16 VAC 5-60-10, 16 VAC 5-60-20, and 16 VAC 5-60-40).**

**16 VAC 5-70-10 et seq. Interstate and Multistate Claimants (amending 16 VAC 5-70-10 and 16 VAC 5-70-20).**

**16 VAC 5-80-10 et seq. Adjudication (amending 16 VAC 5-80-10, 16 VAC 5-80-20, 16 VAC 5-80-30, and 16 VAC 5-80-40).**

Statutory Authority: § 60.2-111 of the Code of Virginia.

Effective Date: November 3, 2002.

Summary:

*The amendments establish the regulatory framework to allow filing for benefits via telephone and the Internet and for conducting adjudication via the telephone. In addition, the amendments conform existing regulations to changes in state and federal law and to changes in federal and commission policy that have been adopted since the last amendments made in 1994.*

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

Agency Contact: Lynette H. Coughlin, Regulatory Coordinator, Virginia Employment Commission, 703 E. Main Street, P.O. Box 1358, Richmond, VA 23218, telephone (804) 786-1070 or FAX (804) 225-3925.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 17:23 VA.R. 3412-3430 July 30, 2001, with the additional changes shown below. Pursuant to § 2.2-4031 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.

**16 VAC 5-10-10. [ No change from proposed. ]**

**16 VAC 5-10-20. Development of regulations.**

A. Pursuant to § [ ~~9-6.14:7.4~~ 2.2-4000 *et seq.* ] of the Code of Virginia, the commission shall solicit the input of interested

parties in the formulation and the development of its rules and regulations. The commission shall receive petitions from any party proposing new regulations or amendment of existing regulations. All such proposals shall be reviewed by the commission and receive response within 180 days. Formulation and development of all new or amended regulations shall be subject to the following public participation guidelines.

B. Interested parties for the purpose of this chapter shall be:

1. The Governor's Cabinet Secretaries.
2. Members of the Senate Committee on Commerce and Labor.
3. Members of the House Committee on Labor and Commerce.
- ~~4. Members of the State Advisory Board.~~
- ~~5.~~ 4. Special interest groups known to the Virginia Employment Commission.
- ~~6.~~ 5. Any individual or entity ~~requesting~~ *submitting a written request to be included as an interested party.*
- ~~7.~~ 6. Those parties who have expressed an interest in VEC regulations through oral or written comments in the past.

*C. An ad hoc advisory committee will be established to develop regulatory changes upon petition of five or more people during the Notice of Intended Regulatory Action public comment period established pursuant to § [ ~~9-6.14:7.4~~ 2.2-4008 ] B of the Code of Virginia. Such ad hoc advisory committee shall be chosen from individuals registering with the agency as interested parties and shall include representatives of business, labor, the bar, and public interest associations.*

~~C.~~ D. Prior to the formulation of a proposed regulation, notice of an ~~intent to draft a regulation~~ *shall intended regulatory action may appear in a Richmond newspaper and may appear in any newspaper circulated in localities particularly affected by the proposed regulation and on the commission's web page.* Other media may also be utilized where appropriate, including but not limited to, trade or professional publications. Notice of an ~~intent to draft a regulation~~ *intended regulatory action shall also be mailed to all interested parties and shall be posted in all VEC offices across the Commonwealth and on the Virginia Regulatory Town Hall.* These individuals, groups and the general public shall be invited to submit written data, views, and arguments on the formulation of the proposed regulation to the commission at its administrative office in Richmond, Virginia.

~~D.~~ E. Publication of the intent to draft a regulation, as well as the proposed regulation, shall also appear in the Virginia Register of Regulations *and on the Virginia Regulatory Town Hall.*

~~E.~~ *The Virginia Employment Commission intends for the State Advisory Board to participate in all meetings of the agency's Regulatory Review Committee during the process in which regulatory amendments are being formulated. Any proposed amendments shall be submitted to members of the advisory board and to special interest groups and others registering*

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~~interest in working with the commission. If sufficient interest is expressed to the commission in forming additional advisory groups, the commission will constitute such advisory groups as may be appropriate to solicit a full range of views. These groups shall be invited to submit data, views, and arguments regarding the proposed amendments. Any responses to such solicitation shall be considered by the commission in its deliberations.~~

F. Failure of any interested party to receive notice to submit data, views, or oral or written arguments to the commission shall not affect the implementation of any regulation ~~otherwise if such regulation was formulated, developed and adopted pursuant to in compliance with the Administrative Process Act, [ Chapter 1.1:1 ] (§ [ 9-6.14:4 2.2-4000 ] et seq.) of Title 9 of the Code of Virginia.~~

G. The public participation guidelines of this chapter shall not apply to emergency regulations or those regulations excluded or exempted by any section of the Administrative Process Act.

H. During the formal procedures required by the Administrative Process Act and these public participation guidelines, written input will be solicited from interested parties and the general public. At the discretion of the commission, and in accordance with applicable law, one or more public hearings ~~will~~ *may* be held in Richmond ~~and~~ or at any other location deemed appropriate to ensure adequate public participation.

**16 VAC 5-10-21. [ No change from proposed. ]**

**16 VAC 5-10-22. [ No change from proposed. ]**

**16 VAC 5-10-30. [ No change from proposed. ]**

**16 VAC 5-60-10. Total and part-total unemployment.**

A. An individual's week of total or part-total unemployment shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day he files his claim at the ~~local unemployment insurance field office and registers with a Job Service office for work, except as provided in subdivisions 1 and 2 of this subsection; and, thereafter, the seven-consecutive-day period following any week of such employment unemployment, provided the individual reports as required by subsection C of this section. An initial claim may be filed in person at a field office, or at the discretion of the commission, by telephone or Internet. Upon implementation of [ a Internet and ] telephonic claims [ process, the in-person filing of initial claims shall be discontinued except where circumstances preclude the filing of claims by any other method processes, a claimant may file an initial claim for benefits by any of the three methods described herein ] .~~

1. A week of total or part-total unemployment of an individual located in an area served only by the itinerant service of the commission shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of such individual's unemployment, provided that such individual registers in person with such itinerant service at the first available opportunity following the commencement of his total or part-total unemployment except as provided in subdivision 2 of this subsection; and, thereafter, the seven-consecutive-day period following any

week of such unemployment provided the individual reports as required by subsection C of this section.

2. A week of total or part-total unemployment of an individual affected by a mass separation ~~or a labor dispute~~ with respect to which arrangements are made for group ~~reporting~~ *filing* by the employer shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of his unemployment provided that the group ~~reporting~~ *filing* is conducted within 13 days following the first day of unemployment.

B. Whenever an employing unit receives an Employer's Report of Separation and Wage Information form from the commission informing it that an individual has filed a claim for benefits, such employing unit shall, within ~~five calendar~~ *eight* days ~~after receipt of such information form from the date of mailing,~~ complete the report and return it to the office from which the informatory notice was sent. That portion of the Employer's Report of Separation and Wage Information to be completed by the employing unit shall set forth:

1. The date the worker began working;
2. The last day on which he actually worked;
3. A check mark in the block indicating the reason for separation and a brief statement of the reason for the separation;
4. Such other information as is required by such form. The employing unit's official name and account number, if any, assigned to such employing unit by the commission shall appear on the signed report;
5. The name and title of the official signing the report shall be provided as well as certification that the information contained in the report is accurate and complete to the best knowledge of that official.

C. In cases involving a mass separation, as defined in 16 VAC 5-10-10, an employer shall ~~not be required to file individual reports for such workers as otherwise provided by this section if such employer files a list of workers involved in the mass separation with the unemployment insurance office nearest such workers' place of employment within commission as soon as possible, but in no case later than 24 hours of~~ after the date of separation ~~(except as provided below), and shall not be required to file individual reports for such workers as otherwise provided by this section. Such list shall include the workers' social security account numbers and any other information the commission may require.~~

~~Where the total unemployment is due to a labor dispute, the employer shall file with the local unemployment insurance office nearest his place of business, in lieu of a mass separation notice or individual workers separation notices, a notice setting forth the existence of such dispute and the approximate number of workers affected. Upon request by the commission, such employer shall furnish to the commission the names and social security account numbers of the workers ordinarily attached to the department or the establishment where unemployment is caused by a labor dispute.~~

D. To file a claim for benefits, a claimant shall ~~appear personally at the unemployment insurance office most accessible to him or at a location designated~~ report in a manner prescribed by the commission, and shall ~~there~~ file a claim for benefits setting forth (i) his unemployment and that he claims benefits, (ii) that he is able to work and is available for work, and (iii) such other information as is required. A claim for benefits, when filed, may also constitute the individual's registration for work.

*Upon written request by the claimant, an initial claim for benefits, not to include combined-wage claims, may be canceled if (i) the request is made within the appeal period shown on the monetary determination; (ii) there has been no payment made on the claim; and (iii) the deputy has not rendered a determination based on the claimant's separation from employment. Notwithstanding the foregoing, a claim that was filed in error by an employer on behalf of a claimant may be canceled upon the claimant's written request. All records of a canceled claim shall be deleted from the agency's automated benefits database. Upon written request by the claimant, a claim may be withdrawn if the commission determines that the provisions of § 60.2-107 of the Code of Virginia have been met and any benefits paid the claimant have been repaid.*

*Combined wage claims may be canceled under the provisions set forth in 16 VAC 5-70-20 B.*

1. Except as otherwise provided in this section the claimant shall continue to report as directed during a continuous period of unemployment. ~~The commission, however, for reasons found to constitute good cause for any claimant's inability to continue to report to the unemployment insurance office at which he registered and filed his claim for benefits, may permit such claimant to report to any other unemployment insurance office.~~

2. The commission shall permit continued claims to be filed by mail, or such other means as the commission may authorize, unless special conditions require or allow in-person reporting. Such special conditions may include:

a. When a claimant is reporting back to claim his first week(s) after filing an initial, additional, or reopened claim and he has not returned to work in the meantime;

b. When a claimant needs assistance in order to completely and accurately fill out his claim forms so as to avoid delays in processing his claims by mail;

c. When, in the opinion of the ~~local unemployment insurance field office~~ manager or deputy, there is a question of eligibility or qualification which must be resolved through an in-person interview;

d. When a claimant who would normally be reporting by mail receives no additional claim forms and he wishes to continue claiming benefits;

e. When a claimant requests to report in person due to problems associated with the receipt of mail.

E. All initial total or part-total unemployment claims shall be effective consistent with the provisions set forth in subsection

A of this section, except that an earlier effective date may apply for late filing of claims in the following cases:

1. The commission is at fault due to a representative of the commission giving inadequate or misleading information to an individual about filing a claim;

2. A previous claim was filed against a wrong liable state;

3. Filing was delayed due to circumstances attributable to the commission;

4. A transitional claim is filed within 14 days from the date the Notice of Benefit Year Ending was mailed to the claimant by the commission;

5. When claiming benefits under any special unemployment insurance program, the claimant becomes eligible for regular unemployment insurance when the calendar quarter changes;

6. The wrong type of claim was taken by a ~~local unemployment insurance~~ field office;

7. With respect to reopened or additional claims only, the claimant can show circumstances beyond his control which prevented or prohibited him from reporting earlier.

F. In order to claim benefit rights with respect to a given week, the claimant must file a continued claim form for such week. The first continued claim form must be filed within 28 days of the day the initial claim was filed. Thereafter, subsequent continued claim must be filed within 28 days after the *week ending date of the last week claimed. If filing by mail, the postmark date constitutes the date of claim filing with the commission. If no postmark appears on the envelope, the continued claim shall be presumed to be filed on the date it was received by the commission.* If the 28th day falls upon a date when the ~~unemployment insurance field office~~ is closed, the final date for filing shall be extended to the next day the office is open. Failure to file a continued claim within the 28-day period will result in the denial of benefits for the weeks in question unless good cause is shown, and an additional or reopened claim must be filed in order to initiate any further claim for benefits. Good cause for a delay in filing may be shown for any of the following reasons:

1. The commission is at fault due to a representative of the commission giving inadequate or misleading information to an individual about filing a claim;

2. Filing was delayed due to circumstances attributable to the commission; or

3. The claimant can show circumstances beyond his control which prevented or prohibited him from filing earlier.

G. Normally, all claimants whose unemployment is total or part-total must make an active search for work by contacting prospective employers in an effort to find work during each week claimed in order to meet the eligibility requirements of § 60.2-612 of the Code of Virginia. A claimant who is temporarily unemployed with an expected return to work date within a reasonable period of time as determined by the commission which can be verified from employer information may be considered attached to his regular employer so as to meet the requirement that he be actively seeking and unable

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to find suitable work if he performs all suitable work which his regular employer has for him during the week or weeks claimed while attached. Attachment will end if the claimant does not return to work as scheduled or if changed circumstances indicate he has become separated.

H. In areas of high unemployment as defined in 16 VAC 5-10-10, the commission has the authority, in the absence of federal law to the contrary, to adjust the work search requirement of the Act. Any adjustment will be made quarterly within the designated area of high unemployment as follows:

1. The adjustment will be implemented by requiring claimants filing claims for benefits through the ~~full-service unemployment insurance~~ office serving an area experiencing a total unemployment rate of 10% through ~~19.9%~~ 14.9% to make one job contact with an employer each week.
2. The adjustment will be implemented by waiving the search for work requirement of all claimants filing claims for benefits through the ~~full-service unemployment insurance~~ office serving an area experiencing a total unemployment rate of ~~20%~~ 15% or more.
3. No adjustment will be made for claimants filing claims for benefits through the ~~full-service unemployment insurance~~ office serving an area experiencing a total unemployment rate below 10%.

**16 VAC 5-60-20. [ No change from proposed. ]**

**16 VAC 5-60-40. [ No change from proposed. ]**

**FORMS [ No change from proposed. ]**

**16 VAC 5-70-10. [ No change from proposed. ]**

**16 VAC 5-70-20. [ No change from proposed. ]**

**16 VAC 5-80-10 through 16 VAC 5-80-40. [ No change from proposed. ]**

VA.R. Doc. Nos. R00-285, R00-288, R00-289 and R00-290; Filed August 5, 2002, 3:34 p.m.

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**Title of Regulation: 16 VAC 5-20. Unemployment Taxes (amending 16 VAC 5-20-10 and 16 VAC 5-20-20).**

**Statutory Authority: § 60.2-111 of the Code of Virginia.**

**Effective Date: November 3, 2002.**

**Summary:**

*The amendments eliminate the requirement for "reimbursable" employers to post a surety bond. Reimbursable employers are government and nonprofit entities who are not required to pay unemployment taxes, but are required to reimburse the unemployment insurance trust fund for benefits paid to qualified individuals separated from such employers.*

**Summary of Public Comment and Agency Response: No public comments were received by the promulgating agency.**

**Agency Contact: Lynette H. Coughlin, Regulatory Coordinator, Virginia Employment Commission, 703 E. Main Street, P.O. Box 1358, Richmond, VA 23218, telephone (804) 786-1070 or FAX (804) 225-3925.**

**REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 17:23 VA.R. 3431-3433 July 30, 2001, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.**

VA.R. Doc. No. R00-286; Filed August 5, 2002, 3:35 p.m.

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**Title of Regulation: 16 VAC 5-32. Required Records and Reports (amending 16 VAC 5-32-10 and 16 VAC 5-32-20).**

**Statutory Authority: § 60.2-111 of the Code of Virginia.**

**Effective Date: November 3, 2002.**

**Summary:**

*The amendment codifies in regulation current state and federal policies regarding the records employers may be required to produce in order to verify income reporting in the event of an audit. The amendment also lays the groundwork to allow employers to submit required wage reports electronically, which will eliminate postage costs and transmission time. The amendments also include technical changes.*

**Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.**

**Agency Contact: Lynette H. Coughlin, Regulatory Coordinator, Virginia Employment Commission, 703 E. Main Street, P.O. Box 1358, Richmond, VA 23218, telephone (804) 786-1070 or FAX (804) 225-3925.**

**REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 17:23 VA.R. 3433-3437 July 30, 2001, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.**

VA.R. Doc. No. R00-287; Filed August 5, 2002, 3:36 p.m.



TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20 VAC 5-312. Rules Governing Retail Access to Competitive Energy Services (amending 20 VAC 5-312-100; adding 20 VAC 5-312-120).

Statutory Authority: §§ 12.1-13, 56-235.8, and 56-581.1 of the Code of Virginia.

Effective Date: January 1, 2003.

Summary:

The amendment deletes subsection H of 20 VAC 5-312-100, an existing provision addressing interval metering, from the load profiling provisions. Similar but revised language from deleted subsection H of 20 VAC 5-312-100 is included in the new section for electricity metering, 20 VAC 5-312-120. The purpose of the new electricity metering section is to ensure the availability of metering services that will enhance the development of a competitive electricity market in Virginia.

20 VAC 5-312-120 is changed to explicitly (i) require the customer to complete prerequisites prior to obtaining interval metering, (ii) identify the access of data from utility-supplied equipment as a component of interval metering service, and (iii) identify the reading of interval meters as a component of interval metering service. 20 VAC 5-312-120 is also changed to allow the local distribution company to submit to the customer within 30 days, instead of requiring such information within five business days, an explanation of the cost, prerequisites, and process for providing special metering functionality not normally provided, and to require the customer to complete prerequisites prior to obtaining the special metering functionality.

Agency Contact: W. Timothy Lough, Division of Energy Regulation, State Corporation Commission, 1300 East Main Street, Fourth Floor, Richmond, Virginia 23219, telephone (804) 371-9590 or e-mail tough@scc.state.va.us.

AT RICHMOND, AUGUST 19, 2002

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE-2001-00298

Ex parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric

Utility Restructuring Act for Competitive Metering Services

ORDER ADOPTING RULES

Pursuant to the provisions of the Virginia Electric Utility Restructuring Act, § 56-576 et seq. ("Act") of the Code of Virginia, specifically, § 56-581.1, and the Commission's December 21, 2001, Order issued in this docket, the Staff filed a report on February 14, 2002 ("Report"), with the State Corporation Commission ("Commission") presenting proposed rules for competitive electric metering services. On February 19, 2002, the Commission issued an Order Inviting Comments ("Order") providing interested parties an opportunity to comment and/or request a hearing on Staff's proposed competitive metering rules. Pursuant to the Order, we received comments on the proposed competitive metering rules from the following eight parties: the AG, AEP-VA, AP, Virginia Power, NewEnergy, AEI, and, together, BA/EC.<sup>1</sup> No party requested a hearing on the proposed rules.

The majority of the parties' comments generally supported Staff's proposed rules. Many of the parties' comments expressed their agreement with Staff that the proposed rules address the most critical element of electricity metering – accessibility to data. Pursuant to the provisions of Va. Code § 56-581.1 and the Commission's December 21, 2001, Order, the Commission is to implement the provision of competitive metering services by licensed providers for large industrial and large commercial customers of investor-owned distributors on January 1, 2003.<sup>2</sup>

The market for competitive metering services continues to be in the early stages of development. Staff and the parties who filed comments in this proceeding, some of whom are electricity marketers ready to participate in the market for competitive generation, have impressed upon us that customers' accessibility to usage data is a critical element to the development of a well-functioning competitive generation market. We believe that Staff's proposed rules, as amended herein, take a thoughtful and deliberate approach that is consistent with the Act and appropriate at this stage of development of the market for these competitive services.

The proposed competitive metering rules seek to ensure electric customers access to their meter data. Meter data are important tools in customers' decisions to enter – and marketers' efforts to entice them into – the market for electric generation. We agree with those parties and Staff who assert that access to timely meter data may boost the development of the competitive generation market because such information can assist in providing improved price signals and competitive energy management services to customers.

<sup>1</sup> The Division of Consumer Counsel, of the Office of the Attorney General ("AG"), Appalachian Power Company d/b/a American Electric Power-Virginia ("AEP-VA"), Allegheny Power Company ("AP"), Virginia Electric and Power Company ("Virginia Power"), AES NewEnergy, Inc. ("NewEnergy"), American Energy Institute ("AEI"), and, together, Brayden Automation, Inc. and Energy Consultants, Inc. ("BA/EC").

<sup>2</sup> Also, in our December 21, 2001, Order, we found it premature to rule on requests to delay implementation for residential and small business customers.

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Virginia Power expressed concern in its comments that Staff's proposal for implementing competitive metering for large industrial and large commercial customers is inconsistent with the enabling statute for competitive metering, Va. Code § 56-581.1 E. Virginia Power argues that the plain language of the statute indicates that the implementation of the provision of competitive metering services must include the provision of such services by "licensed providers" and that the term "competitive metering services by licensed providers" implies something more than the provision of interval meters and metering data by a single market participant, the local distribution company ("LDC"). The Staff has taken the position that its proposed rules, which provide for customer access to data through the LDC are consistent with Va. Code § 56-581.1.

Virginia Code § 56-581.1 E provides:

The Commission shall implement the provision of competitive metering services by licensed providers for large industrial and large commercial customers of investor-owned distributors on January 1, 2002, and may approve such services for residential and small business customers of investor-owned distributors on or after January 1, 2003, as determined to be in the public interest by the Commission. <sup>3</sup> (Emphasis added.)

This section goes on to state that:

Such implementation and approvals shall:

1. Be consistent with the goal of facilitating and development of effective competition in electric service for all customer classes;
2. Take into account the readiness of customers and suppliers to buy and sell such services;
3. Take into account the technological feasibility of furnishing any such services on a competitive basis;
4. Take into account whether reasonable steps have been or will be taken to educate and prepare customers for the implementation of competition for any such services;
5. Not jeopardize the safety, reliability or quality of electric service;
6. Consider the degree of control exerted over utility operations by utility customers;
7. Not adversely affect the ability of an incumbent electric utility authorized or obligated to provide electric service to customers who do not buy such services from competitors to provide electric service to such customers at reasonable rates;
8. Give due consideration to the potential effects of such determinations on utility tax collection by state and local governments in the Commonwealth; and

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<sup>3</sup> As discussed above, and as provided for in Va. Code § 56-581.1, in its December 21, 2001, Order, the Commission delayed the implementation of competitive metering services for one year.

9. Ensure the technical and administrative readiness of a distributor to coordinate and facilitate the provision of competitive metering services for its customers. (Emphasis added.)

We believe that the language in the statute is clear that the nine criteria apply to both the implementation for large industrial and commercial customers, and the approval for residential and small business customers. The language in Va. Code § 56-581.1 E states specifically that the nine criteria are to apply to "[s]uch implementation and approvals" listed in the statute. Virginia Code § 56-581.1 E mandates implementation of competitive metering services for large industrial and commercial customers and allows the Commission to approve these services for residential and small business customers. In addition, Staff's proposed rules oblige both the LDCs and competitive suppliers to provide customers access to interval meter data, and therefore, begin the implementation of competitive metering. Thus, we find that the proposed rules are consistent with the Act, including Va. Code § 56-581.1.

In its comments, AEP-VA requests that the Commission extend approval of its tariff provisions permitting the Company to offer fully unbundled competitive metering services that will expire at the end of 2002. The Company requests the Commission extend approval of the tariff provisions until full implementation of competitive metering services is achieved. We granted approval of AEP-VA's tariff for the calendar year 2002 in anticipation that final rules for full, unbundled competitive metering services would be approved and in place by January 1, 2003. The rules we adopt herein do not address fully unbundled competitive metering services. As we directed in previous orders issued in this docket, the Staff, with the assistance of the competitive metering work group, continues to meet to examine further additional elements of competitive metering services and is to submit a report addressing these issues on or before August 30, 2002. Based on the current and foreseeable environment of competition in metering services, we cannot predict with certainty when final rules addressing fully unbundled competitive metering services will be in place. We will grant AEP-VA's request and extend the approval of AEP-VA's competitive metering tariff until such time the Commission adopts rules providing for full implementation of competitive metering services or until the Commission determines otherwise.

The majority of the comments generally supported Staff's recommendation for a measured approach and a gradual movement toward implementing full competitive metering services. We agree that, at this time, a thoughtful and deliberate approach to implementing these services is appropriate. Consistent with the Act, we agree with Staff that the proposed rules implement competitive metering services on January 1, 2003, by providing for meter functionality choices and data access choices, including access to meter data on a near real-time, on-command basis.

The market for competitive metering services is expected to develop gradually. The proposed rules provide customers initial options for accessing their meter data. We believe the proposed rules take appropriate steps that will advance the efforts toward the implementation of unbundled competitive

metering services. We have directed the competitive metering work group to continue to meet to address additional implementation efforts, and the Staff to file a report, now due August 30, 2002, relative to those issues.<sup>4</sup> We request that the work group continue to meet to determine a schedule for implementation of additional elements of competitive metering services.

In its comments, the AG continues to support implementing fully unbundled competition in these services as soon as practicable. NewEnergy supports competitive metering options being made available to consumers. Virginia Power proposes in its comments a target date of January 1, 2004, for the competitive provision of all metering services to large commercial and industrial customers. The competitive metering statute provides for an earlier implementation of these services for large customers than for small customers. Many large customers already have interval meters, and it is these customers that will most likely realize any potential benefits from initial implementation efforts. We also believe that implementation efforts may be advanced if, in addition to having access to interval meter data, customers are given additional meter functionality options. Accordingly, we direct the work group to examine the issue of implementing meter ownership for large customers, as soon as practicable.

With regard to residential and small business customers, in its comments, AEI asked Staff to make a recommendation, and the Commission to consider any Staff recommendation, regarding the desirability of competitive metering for residential and small business customers. AEI believes that competitive metering for residential and small business customers is not economically viable and would thwart the provision of advanced meters to those customers.

The Act provides that the Commission may approve competitive metering services for residential and small business customers, as determined to be in the public interest. In our adoption of the proposed rules, these customers will get the advantages that result from access to interval meter information. What is not clear at this time, however, is whether implementing competition in metering services now will bring additional benefits to residential and small business customers. The work group has examined and continues to study this issue. We believe that full competitive metering services should be offered to residential and small business customers if it appears that implementation, carefully considering the nine criteria as required by § 56-581.1 of the Code of Virginia, is in the public interest. We ask the work group to continue to examine whether the implementation of full competitive metering services for residential and small business customers would be in the public interest, and ask the members of the work group to respond to this key issue.

In its comments, BA/EC, a manufacturer of energy management equipment, discusses the issue of implementation of competitive metering in the context that any

initiative should empower customers to gain more control over their electricity costs. This is accomplished, BA/EC asserts, through the combination of real-time access to electricity usage information and real-time rate structures that allow customers to impact their electricity costs. BA/EC proposes that the LDC should be required to offer a rate with a demand reduction incentive, and that rate should be compatible with the competitive suppliers' offer of real-time price signaling.

In addressing BA/EC's stated concerns, we believe that Staff's proposed rules take initial steps for customers to gain more control over their electricity costs by providing customers options to access meter data. We understand, however, that economic barriers may exist to residential and small business customers purchasing interval data meters; in contrast, many large customers already use interval data meters. We agree that customers cannot take advantage of competitive offers utilizing time-of-use rates without access to real-time usage information. Some utilities' tariffs on file with the Commission include time of use rate schedules available to both large and small customers. Thus, we believe that the work group should study the possibility of the utilities establishing voluntary and/or expanding time-of-use rate programs for residential and small business customers. We have not seen yet in Virginia, a list of suppliers offering competitive generation services to residential and small business customers. We believe that providing customers access to time-of-use rates may be an effective way to promote retail competition.

## Rules Adopted

After consideration of the parties' comments and the Staff Report, we adopt Staff's proposed rules as amended herein. Most of the parties who filed comments had few if any substantial objections to Staff's proposed rules. We will not discuss in detail every change made, but we discuss below certain key provisions identified in the various comments.

Several parties stated that the language in proposed Rule 20 VAC 5-312-120 B needed to be clarified. AP wanted the language clarified to reflect that all applicable up-front costs should be paid by the customer prior to the LDC completing the work. NewEnergy sought clarification that the term "net incremental cost" should include cost savings associated with any avoided costs that the advanced meter may provide, such as avoided manual meter read costs, avoided operational costs or avoided costs as a result of enhanced meter reliability. AEP-VA supported the rule as an interim solution and believes it should be removed as soon as an orderly transition to competition in metering services will allow because the rule adopts a cost methodology that provides too little cost recovery for the charges for LDC interval metering.

The Commission notes the concerns expressed by AP, NewEnergy and AEP-VA relative to net incremental costs, but we find that no change is necessary to the rule. We believe the language in the rule as written is adequate to address parties' concerns. The rule requires customers to pay the net incremental cost above the basic metering service provided by the LDC. We suggest that AP may propose in its tariff compliance filing to include a prerequisite for customers to pay certain costs up front in its statement of prerequisites for completing the work.

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<sup>4</sup> In our December 21, 2001, Order, we directed the Staff to file a report addressing additional implementation efforts on or before June 30, 2002. On June 17, 2002, the Staff filed a motion requesting to extend the time for filing its report from June 30, 2002, until August 30, 2002. On June 19, 2002, we issued an order granting the Staff's Motion.

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# Final Regulations

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In addition, NewEnergy requests that the Commission reexamine and reduce the 45-day time period for the utility to complete the customer request. AEP-VA requests that the rule be clarified to reflect that the 45-day period begins once the customer has met all of the prerequisites. Virginia Power, similarly, wants that calculation of the 45-day period to start after the customer completes the required prerequisites. The Staff stated in its Report that it anticipated that the work in many cases will be completed much sooner but may take longer than 45 days in unusual cases.

The Commission agrees with AEP-VA and Virginia Power with respect to establishing completion of the prerequisites as a necessary condition to the beginning of the 45-day period. We have added language to the rule to reflect that condition. We also agree with NewEnergy's position that the utilities should not consider the 45-day limit the acceptable norm. The utilities shall endeavor to complete installation of the meters as soon as feasible, with the goal of completing the request well in advance of the maximum time allowed of 45 calendar days.

With regard to 20 VAC 5-312-120 C, AP would like clarification that there will be customer costs associated with all three options provided for in the rule. AEP-VA similarly recommends that language be added to the rule reflecting that the customer shall pay the cost of providing such options. In its Report, the Staff stated its position that to the extent that any of the required options cost more than the basic metering service provided by the LDC, the customer would be expected to pay the net incremental cost of providing the service.

We believe that the requirements in rule C are considered part of "interval metering service," and, therefore, subject to the net incremental costs provisions of Rule B. Thus, we do not believe additional language relative to cost assignment is necessary. In addition, AEP-VA believes the rule should be clarified to state that the LDC is required to provide only LDC-approved equipment that is consistent with its communication protocol. We agree with this recommendation, and have amended the rule to reflect that change. AEP-VA also recommended that the last sentence of the rule listing the interval metering service options the LDC must make available be amended to replace the word "and" with "or." We disagree. The word "and" is appropriate because the clear intent of rule is to require the LDC to make available to customers all three interval data options.

Finally, several of the utilities requested that clarifying language be added to rule 5 VAC 5-312-20 E addressing LDC processing of customer requests for special meter functionality. Virginia Power requested that the rule be modified to give the LDC five days to acknowledge the request and 30 days to identify the cost, prerequisites and process for completing the work, and that the 45 day clock would not begin until the customer has satisfied all prerequisites. AP indicated that the five business day period may not be sufficient time for the LDC to identify all of the necessary costs. AP also requested the rule be clarified to reflect that the work shall be completed within 45 days after all applicable costs have been paid. AEP-VA suggested language that would specify the work to be performed, and that the LDC will be permitted to recover its costs.

We will amend rule E to reflect the various recommendations providing the LDCs additional time to determine costs and completion of the work after the customer has completed all applicable prerequisites. We find additional language is not needed relative to the customer cost issue; the rule indicates that there are costs associated with the special meter functionality implying that the customer shall pay those costs.

Accordingly, IT IS ORDERED THAT:

Regulations for competitive metering services are hereby adopted as set forth in Attachment A to this Order.

On or before September 30, 2002, each incumbent electric utility in Virginia shall file tariffs for competitive metering services reflecting the adopted regulations.

A copy of this Order and the rules adopted herein shall be forwarded promptly for publication in the Virginia Register of Regulations. The rules shall be effective as of January 1, 2003.

The Commission Staff shall proceed with the assistance of the work group to address those issues identified in this Order, issues we have identified in previous orders, as well as issues that arise during the efforts of the work group.

Approval of AEP-VA's tariffs for competitive metering services is extended until such time the Commission adopts rules for full implementation of competitive metering services or until the Commission determines otherwise.

This matter shall be continued for further proceedings consistent with this Order.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

## **20 VAC 5-312-100. Load profiling.**

A. The local distribution company shall conduct its load profiling activities in a nondiscriminatory and reasonably transparent manner.

B. The local distribution company shall ensure that profile classes are easily identifiable, that load profiles used are representative of the customer class being profiled, and that customer loads are represented in a nondiscriminatory manner. Load profiles and load profiling methodologies shall be reviewable and verifiable by the State Corporation Commission.

C. The local distribution company shall provide a competitive service provider, through the appropriate regulatory process, access to sample data, excluding any customer-specific identifier, that is necessary to verify the validity and reliability of load profiles and methodologies.

D. The local distribution company shall use a load profiling method that balances ease of implementation with the need for the load profile to reasonably represent and predict the customer's actual use. The method used shall balance the need for accuracy, cost-effectiveness for the market,



predictability, technical innovation, lead time to implement, demonstrated need for market data, and sample bias. The validity of the approach needs to be reconfirmed periodically or as markets evolve, and corresponding load profiles shall be updated accordingly and made available to competitive service providers.

E. The local distribution company shall make available to a competitive service provider the validated and edited customer class or segment load profile via a website in a read-only, downloadable format or by other appropriate cost-effective electronic media. The information shall be date stamped with the date posted and the date created, and the website or other electronic media shall clearly indicate when updated information has become available.

F. A customer's assigned load profile shall remain the same regardless of the provider of electricity supply service. Customer loads that are not metered, such as streetlights, may be represented by load profiles deemed to closely reflect their known patterns of usage.

G. The load sample may include both customers served by the local distribution company, or the default service provider as determined by the State Corporation Commission pursuant to § 56-585 of the Code of Virginia, and customers served by a competitive service provider, such that a customer is not automatically removed from the load sample when the customer begins to receive service from a competitive service provider.

~~H. Upon a customer's request, the local distribution company shall provide interval metering service to the customer at the net incremental cost above the basic metering service provided by the local distribution company. If the local distribution company provides interval metering as the basic metering service in accordance with its applicable tariff, interval metering of a customer's load shall continue to be required if such customer purchases electricity supply service from a competitive service provider.~~

~~H.~~ The local distribution company shall post its distribution and transmission loss factors via the appropriate electronic methodology.

## **20 VAC 5-312-120. Electricity metering.**

A. If the local distribution company provides interval metering as ~~the~~ a customer's ] basic metering service in accordance with its applicable tariff, interval metering of [ a that ] customer's load shall continue to be required if the customer purchases electricity supply service from a competitive service provider. Unless other arrangements are agreed upon between the local distribution company and the customer, the local distribution company may remove the interval meter if the customer's load deteriorates below previously established interval metering thresholds.

B. Upon a customer's request, the local distribution company shall provide interval metering service to the customer at the net incremental cost above the basic metering service provided by the local distribution company. The local distribution company shall reply to the customer in writing within five business days of the request for interval metering service, acknowledging [ receipt of ] the request [ ~~and~~

~~identifying the prerequisites and proposed, explaining the] process [ for , and identifying the prerequisites for commencing and ] completing the work. [ Once the customer has completed the applicable prerequisites, ] the local distribution company shall complete the work within 45 calendar days, or as promptly as working conditions permit.~~

C. The local distribution company shall offer each of the following [ interval metering service ] options to customers or their authorized competitive service provider to access unedited interval data [ from the local distribution company's interval metering equipment and ] consistent with the local distribution company's communication protocol: (i) read-only electronic access to the interval billing meter, (ii) receipt of a stream of data pulses proportional to energy usage, and (iii) both of the foregoing.

D. [ As a component of interval metering service, ] the local distribution company shall read interval meters at a frequency in accordance with its applicable terms and conditions and shall store interval meter data at intervals compatible with wholesale load settlement requirements. Interval meter data may be estimated on occasion as necessary. The local distribution company shall make available to customers or their authorized competitive service provider 12 months of historical edited interval data through electronic communication medium [ ~~or unless otherwise requested by~~ ] mail, as mutually agreed.

E. The local distribution company shall [ ~~consider reasonable respond to~~ ] requests from customers or their authorized competitive service provider to evaluate special metering functionality [ ~~and that may not be provided normally under the local distribution company's tariff but that is determined by the local distribution company to be within the capability of its interval metering equipment. The local distribution company~~ ] shall [ ~~reply to acknowledge receipt of~~ ] the requests in writing within five business days, [ ~~acknowledging the request and identifying~~ indicating that ] the [ net incremental ] cost [ , prerequisites ] and process for [ ~~completing the work providing the special metering functionality will be submitted in writing within 30 days~~ ]. [ Once the customer has completed the applicable prerequisites, ] the local distribution company shall [ ~~complete the work provide the special metering functionality~~ ] within 45 calendar days, or as promptly as working conditions permit.

VA.R. Doc. No. R02-130; Filed August 21, 2002, 11:04 a.m.

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# EMERGENCY REGULATIONS

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## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-70. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care (amending 12 VAC 30-70-201).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Dates: September 1, 2002, through August 31, 2003.

Preamble:

*This regulatory action qualifies as an emergency, pursuant to the authority of § 2.2-4011 of the Code of Virginia, because it is responding to a change in the Virginia Appropriations Act that must be effective within 280 days from the date of enactment of the Appropriations Act (2002 Acts of Assembly, Chapter 899, Item 325 KK) and this regulatory action is not otherwise exempt under the provisions of § 2.2-4006 of the Code of Virginia. Since the Department of Medical Assistance Services intends to continue regulating the two issues contained in this emergency regulation past the effective period permitted by this emergency action, it is also requesting approval of its Notice of Intended Regulatory Action in conformance to § 2.2-4007.*

*This regulatory action proposes to amend the reimbursement to hospitals to achieve the mandatory savings specified in the 2002 Acts of Assembly.*

*In accordance with 42 CFR 447.250 through 447.252, which implements § 1902(a)(13)(A) of the Social Security Act, DMAS establishes payment rates for services that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. The General Assembly has considered the hospital component of the Medicaid program and has determined that a total reduction of payments to hospitals participating in the Virginia Medicaid Program in the amount of \$8,935,825 and \$9,227,815 total funds for the respective state fiscal years of 2003 and 2004 is prudent and necessary.*

*An amendment to 12 VAC 30-70-201, hospital reimbursement system, is proposed to accommodate this mandated payment reduction.*

Agency Contact: N. Stanley Fields, Director, Division of Cost Settlement and Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-5590, FAX (804) 786-1680 or e-mail sfields@dmass.state.va.us.

#### **12 VAC 30-70-201. Application of payment methodologies.**

A. The state agency will pay for inpatient hospital services in general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals under a

prospective payment methodology. This methodology uses both per case and per diem payment methods. Article 2 (12 VAC 30-70-221 et seq.) describes the prospective payment methodology, including both the per case and the per diem methods.

B. Article 3 (12 VAC 30-70-400 et seq.) describes a per diem methodology that applied to a portion of payment to general acute care hospitals during state fiscal years 1997 and 1998, and that will continue to apply to patient stays with admission dates prior to July 1, 1996. Inpatient hospital services that are provided in long stay hospitals and state-owned rehabilitation hospitals shall be subject to the provisions of Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130).

C. Transplant services shall not be subject to the provisions of this part. Reimbursement for covered liver, heart, and bone marrow/stem cell transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. If the actual charges are lower than the fee, the agency shall reimburse the actual charges. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540 through 12 VAC 30-50-580.

#### *D. Reduction of payments methodology.*

*1. For state fiscal years (FYE) 2003 and 2004, the DMAS shall reduce payments to hospitals participating in the Virginia Medicaid Program by \$8,935,825 total funds, and \$9,227,815 total funds respectively. For purposes of distribution, each hospital's share of the total reduction amount shall be determined as follows:*

#### *2. Determine base for revenue forecast:*

*a. The Department of Medical Assistance Services (DMAS) shall use, as a base for determining the payment reduction distribution for hospitals Type I and Type II, net Medicaid inpatient operating reimbursement and outpatient reimbursed cost, as recorded by the DMAS for state fiscal year 1999 from each individual hospital settled cost reports. This figure is further reduced by 18.73%, which represents the estimated statewide HMO average percent of Medicaid business for those hospitals engaged in HMO contracts, to arrive at net baseline proportion of non-HMO hospital Medicaid business.*

b. For freestanding psychiatric hospitals, the DMAS shall use estimated Medicaid revenues for the 6-month period (1-1-01 through 6-30-01), times two, and adjusted for inflation by 4.3% for state fiscal '02, 3.1% for state fiscal '03, and 3.7% for state fiscal '04 as reported by DRI-WEFA, Inc.'s hospital input price level percentage moving average.

3. Determine forecast revenue:

a. Each Type I hospital's individual state fiscal '03 & '04 forecast reimbursement is based on the proportion of non-HMO business (see 2 a above) with respect to DMAS forecast of SFY '03 & '04 inpatient and outpatient operating revenue for Type I hospitals.

b. Each Type II, including freestanding psychiatric, hospital's individual state fiscal '03 & '04 forecast reimbursement is based on the proportion of non-HMO business (see 2 a and 2 b above) with respect to the DMAS forecast of SFY '03 & '04 inpatient and outpatient operating revenue for Type II hospitals.

4. Each hospital's total yearly reduction amount is equal to their respective state fiscal '03 and '04 forecast reimbursement as described above in 3 a and 3 b, times 3.235857 percent for state fiscal '03, and 3.235857 percent, subject to revision by DMAS annual budget forecast, for state fiscal '04, not to be reduced by more than \$500,000 per year.

5. Reductions shall occur quarterly in four amounts as offsets to remittances. Each hospital's payment reduction shall not exceed that calculated in 4 above. Payment reduction offsets not covered by claims remittance by May 15, 2003, and 2004, will be billed by invoice to each provider with the remaining balances payable by check to the Department of Medical Assistance Services before June 30.

/s/ Mark R. Warner  
Governor  
Date: August 6, 2002

VA.R. Doc. No. R02-331; Filed August 8, 2002, 10:40 a.m.



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# GOVERNOR

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EXECUTIVE ORDER NUMBER 31 (2002)

## DECLARATION OF A STATE OF EMERGENCY DUE TO EXTREME DROUGHT CONDITIONS THROUGHOUT THE COMMONWEALTH

The health and general welfare of the citizens of the Commonwealth require that state action be taken to help prepare for and alleviate the drought-related conditions that currently exist throughout the Commonwealth. I find that the potential effects of this drought constitute a natural disaster wherein human life and public and private property are imperiled, as described in § 44-75.1 A 4 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby proclaim that a state of emergency exists throughout the Commonwealth and direct that appropriate assistance be rendered by agencies of both state and local governments to prevent and alleviate any conditions resulting from drought, forest fires or extreme heat, and to implement prevention and recovery operations and activities so as to alleviate impacted areas from the effects of these conditions insofar as possible.

In accordance with my authority contained in § 44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following measures:

A. Appropriate activation of the Virginia Emergency Operations Center (VEOC) and State Emergency Response Team (SERT). Furthermore, I am directing that the VEOC and SERT coordinate state operations in support of affected localities and the Commonwealth, to include issuing mission assignments to agencies designated in the COVEOP and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property and implementation of recovery activities.

B. The authorization of the Departments of State Police, Transportation and Motor Vehicles to grant temporary overweight/overwidth/registration/license exemptions to carriers transporting essential emergency relief supplies into and through the Commonwealth in order to support the disaster response and recovery.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds

Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

In addition to described overweight transportation privileges, carriers are also exempt from registration with Department of Motor Vehicles. This includes the vehicles enroute and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight transportation privileges and the regulatory exemption provided by § 52-8.4 A of the Code of Virginia, and implemented in 19 VAC 30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for sixty (60) days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

C. The discontinuance of provisions authorized in paragraph B above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

D. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28 (b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

This Executive Order shall be effective July 31, 2002 and shall remain in full force and effect until July 31, 2003, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 31st day of July 2002.

/s/ Mark R. Warner  
Governor

VA.R. Doc. No. R02-334; Filed August 21, 2002, 10:22 a.m.

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Total Maximum Daily Loads (TMDLs) for Linville Creek

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 Total Maximum Daily Loads (TMDLs) for Linville Creek. This stream is listed on the 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for Fecal Coliform and the General Standard (Benthics). The Linville Creek stream segment is located in Rockingham County. It is 13.6 miles in length and begins at the headwaters and continues to the confluence with the North Fork of the Shenandoah River.

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 first public meeting on the development of these TMDLs will be held on Thursday, September 26, 2002, 3:30 p.m. in the library of the Linville-Edom Elementary School, 3653 Linville Edom Road, Linville, VA 22834.

The public comment period for this phase of the TMDL development will end on October 25, 2002. A fact sheet on the development of these TMDLs is available upon request. Questions or information requests should be addressed to Sandra Mueller. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Sandra T. Mueller, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, fax (540) 574-7878 or e-mail [stmueller@deq.state.va.us](mailto:stmueller@deq.state.va.us).

## DEPARTMENT OF HEALTH

### Drinking Water State Revolving Fund Program Intended Use Plan for FY 2003

The Virginia Department of Health (VDH) received numerous loan requests and set-aside suggestions following our announcement in February 2002, of funds available from the Drinking Water State Revolving Fund Program. Through the Safe Drinking Water Act, Congress authorizes capitalization grants to the states but authorization has not been finalized.

The VDH's Division of Drinking Water (DDW) has prepared a draft Intended Use Plan (IUP) using information submitted via the loan requests and set-aside suggestions. This IUP is available for review and comment. The document dated January 28, 2002, and entitled "Virginia Drinking Water State Revolving Fund Program – Program Design Manual" is a part of the Intended Use Plan. This document was mailed in our February announcement and is available on our website at [www.vdh.state.va.us/ddw](http://www.vdh.state.va.us/ddw).

As previously announced in February, the VDH will hold a public meeting. The meeting will be on Thursday, October 3, 2002, from 2 - 3:30 p. m. at the Virginia War Memorial in Richmond, Virginia. In addition, comments from the public are welcome if postmarked by Tuesday, October 8, 2002.

Please direct your requests for information and forward written comments to Thomas B. Gray, P. E., Virginia Department of Health, Financial and Construction Assistance Programs, Division of Drinking Water, Main Street Station, Suite 109, 1500 East Main Street, Richmond, VA 23219, telephone (804) 786-1087 or FAX (804) 225-4539.

## STATE LOTTERY DEPARTMENT

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on August 16, 2002. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

### DIRECTOR'S ORDER NUMBER TWENTY-SIX (02)

Virginia's Ninth Online Game Lottery; "Mega Millions," Final Rules for Game Operation (effective 5/14/02).

### DIRECTOR'S ORDER NUMBER THIRTY-TWO (02)

"Retail Regatta" Virginia Lottery Retailer Incentive Program Rules (effective 6/28/02).

### DIRECTOR'S ORDER NUMBER THIRTY-THREE (02)

Virginia's Instant Game Lottery 538; "Blackjack Bonanza" (effective 7/17/02).

### DIRECTOR'S ORDER NUMBER THIRTY-FOUR (02)

Virginia's Instant Game Lottery 234; "Red Hot \$100's" (effective 7/23/02).

### DIRECTOR'S ORDER NUMBER THIRTY-FIVE (02)

Virginia's Instant Game Lottery 520; "Win for Life" (effective 8/01/02).

### DIRECTOR'S ORDER NUMBER THIRTY-SIX (02)

Virginia's Instant Game Lottery 521; "Double Luck" (effective 8/09/02).

### DIRECTOR'S ORDER NUMBER THIRTY-SEVEN (02)

Virginia's Instant Game Lottery 522; "75 Grand" (effective 8/01/02).

### DIRECTOR'S ORDER NUMBER THIRTY-EIGHT (02)

Virginia's Instant Game Lottery 523; "\$500,000 Table Stakes" (effective 7/23/02).

### DIRECTOR'S ORDER NUMBER THIRTY-NINE (02)

Virginia's Instant Game Lottery 533; "Monster Money" (effective 7/31/02).

### DIRECTOR'S ORDER NUMBER FORTY (02)

Virginia's Instant Game Lottery 237; "Rock Paper Scissors" (effective 8/01/02).

### DIRECTOR'S ORDER NUMBER FORTY-ONE (02)

Virginia's Instant Game Lottery 526; "Triple Roll" (effective 8/01/02).

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## General Notices/Errata

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### DIRECTOR'S ORDER NUMBER FORTY-TWO (02)

Virginia's Instant Game Lottery 236; "Card Shark" (effective 8/09/02).

### DIRECTOR'S ORDER NUMBER FORTY-THREE (02)

Virginia's Instant Game Lottery 510; "Money Bags" (effective 8/09/02).

### DIRECTOR'S ORDER NUMBER FORTY-FOUR (02)

Virginia's Instant Game Lottery 541; "Gold Rush" (effective 8/09/02).

## STATE WATER CONTROL BOARD

### **Proposed Consent Special Order Amendment Boonsboro Country Club**

The State Water Control Board ("SWCB") proposes to issue a Consent Special Order ("CSOA") to Boonsboro Country Club regarding settlement of a civil enforcement action related to compliance with the Permit Regulation, 9 VAC 25-31. On behalf of the SWCB, the department will consider written comments relating to this settlement for 30 days after the date of publication of this notice. Requests for copies and comments should be addressed to Robert Steele, DEQ - West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019, telephone (540) 562-6777. The final CSOA may be examined at the department during regular business hours.

## 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  
PETITION FOR RULEMAKING - RR13

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# CALENDAR OF EVENTS

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## Symbol Key

- † Indicates entries since last publication of the *Virginia Register*  
♿ Location accessible to persons with disabilities  
☎ Teletype (TTY)/Voice Designation

## NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at [www.vipnet.org](http://www.vipnet.org) or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD OF ACCOUNTANCY

**September 24, 2002 - 11 a.m.** -- Open Meeting  
**September 25, 2002 - 9 a.m.** -- Open Meeting  
Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A two-day general business meeting to discuss matters requiring board action including regulatory review. A public comment period will be held at the beginning of the meeting. All meetings are subject to change and cancellation. Persons desiring to attend the meeting and requiring special accommodations or interpretative services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 696, Richmond, VA 23230-4916, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY☎, e-mail [boa@boa.state.va.us](mailto:boa@boa.state.va.us).

### COMMONWEALTH COUNCIL ON AGING

**September 12, 2002 - 9 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 of the Public Relations Committee. Public comments welcome.

**Contact:** Robin Brannon, Communications Director, Virginia Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9323.

**September 12, 2002 - 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 welcome.

**Contact:** Marsha Mucha, Virginia Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9312.

† **September 12, 2002 - 2 p.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 of the Legislative Committee. Public comments welcome.

**Contact:** Marsha Mucha, Virginia Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9312.

### STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

† **March 13, 2003 - 10 a.m.** -- Public Hearing  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

**December 9, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-320. Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including the following: amending the regulation to (i) remove the currently named plants that are no longer considered globally rare and (ii) add those threatened or endangered plant and insect species that are considered rare both globally and in Virginia.

Statutory Authority: § 3.1-1025 of the Code of Virginia.

**Contact:** Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room

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# Calendar of Events

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703, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793 or e-mail [ffulgham@vdacs.state.va.us](mailto:ffulgham@vdacs.state.va.us).

\* \* \* \* \*

† **March 13, 2003 - 10 a.m.** -- Public Hearing  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

**December 9, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-360. Regulations for the Enforcement of the Virginia Commercial Feed Act.** The purpose of the proposed action is to amend the current regulation to incorporate the changes made to the commercial feed industry standards by the Association of American Feed Control Officials in the last decade and statutory changes made to Virginia's Commercial Feed Law in 1994.

Statutory Authority: § 3.1-828.4 of the Code of Virginia.

**Contact:** J. Alan Rogers, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 402, Richmond, VA 23219, telephone (804) 786-2476, FAX (804) 371-1571 or e-mail [jrogers@vdacs.state.va.us](mailto:jrogers@vdacs.state.va.us).

\* \* \* \* \*

† **March 13, 2003 - 10 a.m.** -- Public Hearing  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

**December 9, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-440. Rules and Regulations for Enforcement of the Virginia Pest Law - Cotton Boll Weevil Quarantine.** The purpose of the proposed regulatory action is to amend the regulation to (i) establish the fixed date of July 1 as the official reporting and payment date for acreage assessment, (ii) reduce penalties assessed on farm operators for the late payment or nonpayment of fees from \$10 to \$5.00 per acre, and (iii) eliminate the mandate for destruction of the cotton crop for nonpayment of fees and assessments by farm operators.

Statutory Authority: § 3.1-188.23 of the Code of Virginia.

**Contact:** Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 703, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793 or e-mail [ffulgham@vdacs.state.va.us](mailto:ffulgham@vdacs.state.va.us).

\* \* \* \* \*

† **March 13, 2003 - 10 a.m.** -- Public Hearing  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

**December 9, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Agriculture and Consumer Services intends to **repeal** regulations entitled: **2 VAC 5-500. Rules and Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory** and **adopt** regulations entitled: **2 VAC 5-501. Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk.** The purpose of the proposed action is to (i) make the regulations applicable to the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption and (ii) require permits for milk pickup trucks, milk transport tanks, laboratories, persons testing milk samples for pay purposes, persons collecting official milk samples in dairy plants, and milk tank truck cleaning facilities.

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

**Contact:** John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, 1100 Bank St., Room 505, Richmond, VA 23219, telephone (804) 786-1453, FAX (804) 371-7792 or e-mail [jbeers@vdacs.state.va.us](mailto:jbeers@vdacs.state.va.us).

\* \* \* \* \*

† **March 13, 2003 - 10 a.m.** -- Public Hearing  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

**December 9, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Agriculture and Consumer Services intends to **repeal** regulations entitled: **2 VAC 5-530. Rules and Regulations Governing the Production, Handling and Processing of Milk for Manufacturing Purposes and Establishing Minimum Standards for Certain Dairy Products to be Used for Human Food** and **adopt** regulations entitled: **2 VAC 5-531. Regulations Governing Milk for Manufacturing Purposes.** The purpose of the proposed action is to adopt regulations consistent with the most recent USDA recommendations on milk for manufacturing purposes and regulate manufactured milk and milk products from goats, sheep, water buffalo and other noncow sources in the interest of public health and safety.

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

**Contact:** John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, 1100 Bank St., Room 505, Richmond, VA 23219, telephone (804) 786-1453, FAX (804) 371-7792 or e-mail [jbeers@vdacs.state.va.us](mailto:jbeers@vdacs.state.va.us).



## STATE AIR POLLUTION CONTROL BOARD

**September 11, 2002 - 9 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
Richmond, Virginia. ♿

A public hearing to receive comments on the notice of intended regulatory action to adopt a regulation establishing testing and certification procedures for manufacturers of on-road heavy-duty diesel engines sold in Virginia.

**Contact:** Kathleen R. Sands, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, e-mail krsands@deq.state.va.us.

**September 11, 2002 - 9 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
Richmond, Virginia. ♿

A public hearing to receive comments on proposed amendments to the Control and Abatement of Air Pollution Regulations concerning municipal solid waste landfills (Rev B02).

**Contact:** Karen G. Sabasteanski, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, e-mail kgsabastea@deq.state.va.us.

**September 11, 2002 - 9 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
Richmond, Virginia. ♿

A public hearing to receive comments on the notice of intended regulatory action to amend the Regulations for the Control and Abatement of Air Pollution concerning VOC emission standards (Rev. C02).

**Contact:** Kathleen R. Sands, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, e-mail krsands@deq.state.va.us.

† **September 19, 2002 - 7 p.m.** -- Open Meeting  
Charles City County Government and School Board Administration Building, 10900 Courthouse Road, Auditorium,  
Charles City, Virginia. ♿

A public briefing by the department on an air pollution control permit application to construct and operate an electrical power generation facility to be located in Charles City County approximately 0.25 miles east of the intersection of Chamber Landfill Road and Route 106 by Chickahominy Power LLC.

**Contact:** Dick Stone, State Air Pollution Control Board, 2929-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5088, e-mail rostone@deq.state.va.us.

† **September 24, 2002 - 7 p.m.** -- Public Hearing  
Clearview Elementary School, 800 Ainsley Street, Martinsville,  
Virginia. ♿

A public hearing to receive comments on an air permit application from Cinergy Capital and Trading to construct and operate an electrical power generation facility at 600 Commerce Court in Martinsville. The comment period on the proposed permit closes on October 9, 2002.

**Contact:** Gale Taber Steele, State Air Pollution Control Board, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6761, e-mail gtsteele@deq.state.va.us.

\* \* \* \* \*

† **October 10, 2002 - 9 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
First Floor Conference Room, Richmond, Virginia. ♿

**November 8, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-40. Existing Stationary Sources (Rev. J00)**. The purpose of the proposed action is to establish emission standards that will require the owners of commercial/industrial solid waste incinerators (CISWIs) to limit emissions of organics (such as dioxins/furans), metals (such as particulate matter), and acid gases (such as sulfur dioxide and hydrogen chloride) to a specified level necessary to protect public health and welfare. The regulation is being proposed to meet the requirements of §§ 111(d) and 129 of the federal Clean Air Act and 40 CFR Part 60, Subpart DDDD, of federal regulations.

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

Public comments may be submitted until 4:30 p.m. on November 8, 2002, to Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

**Contact:** Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482, (804) 698-4021/TTY ♿, or e-mail kgsabastea@deq.state.va.us.

\* \* \* \* \*

**October 10, 2002 - 9 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
First Floor Conference Room, Richmond, Virginia. ♿

**November 8, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-40. Existing Stationary Sources (Rev. K00)**. The purpose of the proposed action is to control emissions from small municipal waste combustors as required by §§ 111(d) and 129 of the Clean Air Act.

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

Public comments may be submitted until 4:30 p.m. on November 8, 2002, to Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

**Contact:** Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, State Air Pollution Control Board,

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# Calendar of Events

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P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482, (804) 698-4021/TTY ☎, or e-mail kgsabastea@deq.state.va.us.

## ALCOHOLIC BEVERAGE CONTROL BOARD

**September 9, 2002 - 9 a.m.** -- Open Meeting

**September 23, 2002 - 9 a.m.** -- Open Meeting

Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ♿

An executive staff meeting to receive and discuss reports and activities. Other matters are not yet determined.

**Contact:** W. Curtis Coleburn, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4442.

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

**September 10, 2002 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the board to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

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**September 10, 2002 - 9 a.m.** -- Public Hearing

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

**October 11, 2002** - Public comments may be submitted until this date.

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

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

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

## ART AND ARCHITECTURAL REVIEW BOARD

NOTE: CHANGE IN MEETING TIME

**October 4, 2002 - 10:30 a.m.** -- Open Meeting

**November 1, 2002 - 10 a.m.** -- Open Meeting

† **December 6, 2002 - 10 a.m.** -- Open Meeting

Virginia War Memorial, 601 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies. AARB submittal forms and submittal instructions can be downloaded by visiting the DGS forms center at [www.dgs.state.va.us](http://www.dgs.state.va.us). Request submittal form DGS-30-905 or submittal instructions form DGS-30-906.

**Contact:** Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 1011 E. Main St., Room 221, Richmond, VA 23219, telephone (804) 643-1977, FAX (804) 643-1981, (804) 786-6152/TTY ☎

## VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

**October 8, 2002 - 10 a.m.** -- Public Hearing

Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

**October 11, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to adopt regulations entitled: **18 VAC 15-40. Virginia Certified Home Inspectors Regulations.** The purpose of the proposed regulation is to establish entry, renewal, and reinstatement requirements for certification by the board for a voluntary certification program for home inspectors established by House Bill 2174 of the 2001 Session of the General Assembly. The proposed regulations also establish minimum standards for conducting certified home inspections as well as standards for conduct and practice.

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

**Contact:** Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128 or (804) 367-9753/TTY ☎

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**October 8, 2002 - 2 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 5th Floor, Richmond, Virginia.

**October 11, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to adopt regulations entitled: **18 VAC 15-30. Virginia Lead-Based Paint Activities Regulations.** The purpose of the proposed amendments is to deregulate lead-based paint activities in public building, commercial buildings, and superstructures, and begin regulating these activities in child-occupied facilities. The deregulation is a direct result of the EPA not finalizing certain portions of its proposed regulations, and Virginia's statutory mandate to be no more stringent than the federal regulations. Extensions of interim licenses have been eliminated. The Supervisor and Project Designer training courses have been redefined as two separate and distinct courses. Individuals applying for a second interim license will be required to retake the initial training instead of an eight-hour refresher. Licensure through "grandfathering" has been eliminated. The Inspector Technician discipline has been replaced with Lead Inspector, and the Inspector/Risk Assessor discipline has been replaced with Lead Risk Assessor. Specific degree fields have been added to the option for Risk Assessors to substitute one year of experience with a bachelor's degree. Interim approval will no longer be granted to lead training courses. An on-site audit must be conducted prior to approval.

Statutory Authority: § 54.1-501 of the Code of Virginia.

**Contact:** Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128 or (804) 367-9753/TTY ☎

**October 29, 2002 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Conference Room 5 West,  
Richmond, Virginia.

A meeting to conduct routine business and review and respond to comments received on the proposed regulations for certified home inspectors during the 60-day public comment period and public hearing, and adopt final regulations. A public comment period will be held at the beginning of the meeting.

**Contact:** David 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](mailto:asbestos@dpor.state.va.us).

## OFFICE OF THE ATTORNEY GENERAL

† **September 24, 2002 - 7 p.m.** -- Open Meeting  
Roanoke Higher Education Center, Room 212, 108 North  
Jefferson Street, Roanoke, Virginia.

A meeting of the Identity Theft Task Force.

**Contact:** Nicole Riley, Legislative Policy Analyst, Office of the Attorney General, 900 E. Main St., Richmond, VA 23219, telephone (804) 371-2417.

## AUCTIONEERS BOARD

**October 17, 2002 - 10 a.m.** -- Public Hearing  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 5th Floor, Richmond, Virginia.

**October 18, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Auctioneers Board intends to amend regulations entitled: **18 VAC 25-10. Public Participation Guidelines.** The purpose of the proposed action is to allow the board to accept requests to be placed on a notification list, and to notify PPG list members, via electronic means and to update references to recodified provisions of the Administrative Process Act.

Statutory Authority: §§ 2.2-4007 and 54.1-602 of the Code of Virginia.

**Contact:** Marian H. Brooks, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail [Auctioneers@dpor.state.va.us](mailto:Auctioneers@dpor.state.va.us).

## BOARD FOR BARBERS AND COSMETOLOGY

**September 9, 2002 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☎

A regular board meeting that will include working on proposed wax technician regulations.

**Contact:** William H. Ferguson, II, Assistant Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, e-mail [barbercosmo@dpor.state.va.us](mailto:barbercosmo@dpor.state.va.us).

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**September 10, 2002 - 9:30 a.m.** -- Public Hearing  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

**September 27, 2002** - Public comments may be submitted through this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Barbers and Cosmetology intends to adopt regulations entitled: **18 VAC 41-10. Public Participation Guidelines.** The purpose of the proposed action is to promulgate guidelines governing public participation.

Statutory Authority: §§ 2.2-4007 and 54.1-201 of the Code of Virginia.

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# Calendar of Events

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**Contact:** William H. Ferguson, II, Assistant Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295 or e-mail barbercosmo@dpor.state.va.us.

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**September 10, 2002 - 9:30 a.m.** -- Public Hearing  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

**September 27, 2002** - Public comments may be submitted through this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Barbers and Cosmetology intends to adopt regulations entitled: **18 VAC 41-20. Barbering and Cosmetology Regulations.** The proposed regulatory changes will promulgate regulations for the newly combined Board for Barbers and Cosmetology as directed by Acts of Assembly 2000, c. 726, cl.3.; clarify and standardize requirements for licensure; provide for and ensure that health, sanitation standards, and safety are adequate in facilities where barbering and cosmetology are practiced; extend the temporary work permit from 30 to 45 days to allow sufficient time for posting examination scores and avoid interruption of employment, and adjust licensing fees for regulants of the Board for Barbers and Cosmetology.

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

**Contact:** William H. Ferguson, II, Assistant Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295 or e-mail barbercosmo@dpor.state.va.us.

## BOARD FOR THE BLIND AND VISION IMPAIRED

**October 15, 2002 - 1 p.m.** -- Open Meeting  
Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review information regarding activities and operations, review expenditures from board 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.

## Statewide Rehabilitation Council for the Blind

**September 14, 2002 - 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 council meets quarterly to advise the Department for the Blind and Vision Impaired on matters related to

vocational rehabilitation services for the blind and visually impaired citizens of the commonwealth.

**Contact:** James G. Taylor, VR Program Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3111, FAX (804) 371-3390, toll-free (800) 622-2155, (804) 371-3140/TTY, e-mail taylorjg@dbvi.state.va.us.

## CHILD DAY-CARE COUNCIL

**September 12, 2002 - 9 a.m.** -- Open Meeting  
Theater Row Building, 730 East Broad Street, LL1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss issues and concerns that impact child day centers, camps, school age programs and preschools/nursery schools. Public comment period will be at noon. Please call ahead for possible changes in meeting time.

**Contact:** Arlene Kasper, Program Development Consultant, Child Day-Care Council, Division of Licensing, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1791, FAX (804) 692-2370, (800) 828-1120/TTY

## STATE CHILD FATALITY REVIEW TEAM

**September 13, 2002 - 10 a.m.** -- Open Meeting  
Office of the Chief Medical Examiner, 400 East Jackson Street, Richmond, Virginia.

The business portion of the State Child Fatality Review Team meeting, from 10 a.m. to 10:30 a.m., is open to the public. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

**Contact:** Virginia Powell, Coordinator, State Child Fatality Review Team, 400 E. Jackson St., Richmond, VA 23219, telephone (804) 786-6047, FAX (804) 371-8595, toll-free (800) 447-1708.


## STATE BOARD FOR COMMUNITY COLLEGES

**September 11, 2002 - 2:30 p.m.** -- Open Meeting  
Virginia Community College System, 101 North 14th Street, 15th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)


Committees will meet as follows:

- Academic and Student Affairs Committee - 2:30 p.m.
- Audit Committee - 2:30 p.m.
- Budget and Finance Committee - 2:30 p.m.
- Facilities Committee - 3:30 p.m.
- Personnel Committee - 3:30 p.m.


**Contact:** D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, VCCS, Public Affairs, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY

† **September 12, 2002 - 9 a.m.** -- Open Meeting  
Godwin-Hamel Board Room, Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Public comment will be received at the beginning of the meeting.

**Contact:** D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, VCCS, Public Affairs, 15th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

## COMPENSATION BOARD


† **September 24, 2002 - 11 a.m.** -- Open Meeting  
Ninth Street Office Building, 202 North 9th Street, 10th Floor, Richmond, Virginia. 

A monthly board meeting.

**Contact:** Cindy P. 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


### Virginia Cave Board

**September 14, 2002 - 11:30 a.m.** -- Open Meeting  
Department of Conservation and Recreation, Staunton Soil and Water Office, Staunton, Virginia.  (Interpreter for the deaf provided upon request)


Committees will meet at 11:30 a.m. A regular board meeting will be held at 1 p.m. Request for interpreter for the deaf should be filed two weeks prior to the meeting.

**Contact:** Larry Smith, Protection Manager, Department of Conservation and Recreation, 217 Governor St., Richmond, VA 23219, telephone (804) 371-6205, FAX (804) 371-2674, e-mail lsmith@dcr.state.va.us.


## BOARD FOR CONTRACTORS

† **September 11, 2002 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the Tradesman Committee to consider items of interest relating to the tradesman/backflow workers and other appropriate matters pertaining to the tradesman section of the Board for Contractors.


**Contact:** Karen Feagin, Regulatory Boards Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2962, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail feagin@dpor.state.va.us.

## BOARD OF CORRECTIONS

**September 17, 2002 - 10 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 


A meeting of the Correctional Services/Policy and Regulations Committee to discuss matters that may be presented to the full board.

**Contact:** Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3605, e-mail woodhousebl@vadoc.state.va.us.

**September 18, 2002 - 8:30 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Room 3065, Richmond, Virginia. 

A meeting of the Administration Committee to discuss matters that may be presented to the board.

**Contact:** Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3605, e-mail woodhousebl@vadoc.state.va.us.

**September 18, 2002 - 10 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting of the full board.

**Contact:** Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr. Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3605, e-mail woodhousebl@vadoc.state.va.us.

## CRIMINAL JUSTICE SERVICES BOARD

**September 12, 2002 - 10 a.m.** -- Open Meeting  
Virginia State Police Training Academy, 7700 Midlothian Turnpike, Room 335, Richmond, Virginia.

A meeting of the Harold L. McCann Memorial Award Committee to conduct general business. For VSP Academy information, please call 804-674-2248.

**Contact:** Judith Kirkendall, Reg. Coordinator, Department of Criminal Justice Services, Eighth St. 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.

† **September 26, 2002 - 11 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

This meeting was originally scheduled for September 12, but the date was changed to accommodate more time for the localities that wish to submit Byrne grants. The agenda will include a Director's Report, a report from the Committee on Training, an ICJIS Update Report, a discussion on one vacancy for the Private Security Services Advisory Board (PSSAB), a discussion on the regulations for the implementation of the new arrestee law and how it impacts

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# Calendar of Events

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on the DCJS Division of Forensic Science, and grant reviews/recommendations (including Byrne grants).

**Contact:** Christine Wiedemer, Administrative Staff Assistant to the Director, Criminal Justice Services Board, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8718, FAX (804) 371-8981, e-mail cwiedemer@dcjs.state.va.us.

## BOARD OF DENTISTRY

**September 13, 2002** - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.** The purpose of the proposed action is to increase certain fees charged to applicants and licensed dentists and dental hygienists.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until September 13, 2002, to Sandra K. Reen, Executive Director, Board of Dentistry, 6606 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

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**September 19, 2002 - 9 a.m.** -- Public Hearing  
Norfolk Waterside Marriott, 235 East Main Street, Norfolk, Virginia. 


**November 8, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled: **18 VAC 60-20. Virginia Board of Dentistry Regulations.** The purpose of the proposed action is to replace emergency regulations in compliance with Chapter 662 of the 2001 Acts of Assembly requiring the board to promulgate regulations establishing rules for the registration and profiling of oral and maxillofacial surgeons and for the certification of such persons to perform certain cosmetic procedures.


Statutory Authority: §§ 54.1-2400, 54.1-2709.1, and 54.1-2709.2 of the Code of Virginia.

Public comments may be submitted until November 8, 2002, to Sandra K. Reen, Executive Director, Board of Dentistry, 6606 W. Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

**September 19, 2002 - 1 p.m.** -- Open Meeting  
Norfolk Waterside Marriott, 235 East Main Street, Norfolk, Virginia. 

A panel of the board will convene a formal hearing to inquire into allegations that a certain practitioner may have violated laws governing the practice of dentistry. The panel will meet in open and closed sessions pursuant to the Code of Virginia. Public comments will not be received.

**Contact:** Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail denbd@dhp.state.va.us.

## DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

**September 19, 2002 - 11 a.m.** -- Open Meeting

**October 17, 2002 - 11 a.m.** -- Open Meeting


**November 21, 2002 - 11 a.m.** -- Open Meeting

Virginia War Memorial, 601 South Belvidere Street, Auditorium, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review requests submitted by localities to use design-build or construction management-type contracts. Contact the Division of Engineering and Buildings to confirm the meeting. Board rules and regulations can be obtained online at [www.dgs.state.va.us](http://www.dgs.state.va.us) under the DGS Forms, Form DGS-30-904.


**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

† **September 9, 2002 - 9 a.m.** -- Open Meeting  
Westmoreland State Park, Montross, Virginia.  (Interpreter for the deaf provided upon request)

A joint work session with the House and Senate Education Committees. Public comment will not be received. Persons requesting the services of an interpreter for the deaf are asked to do so in advance.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Board 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.

**September 11, 2002 - 9 a.m.** -- Open Meeting  
Hilton Garden Hotel at Innsbrook, 4050 Cox Road, Glen Allen, Virginia.  (Interpreter for the deaf provided upon request)


A work session of the Committee to Enhance the K-12 Teaching Professions; public comment will not be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

**September 26, 2002 - 9 a.m.** -- Open Meeting

**October 16, 2002 - 9 a.m.** -- Open Meeting

**November 20, 2002 - 9 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency in advance. Public comment will be received.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

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**September 26, 2002 - 1 p.m.** -- Public Hearing

General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. 


**October 2, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to adopt regulations entitled: **8 VAC 20-650. Regulations Governing the Determination of Critical Teacher Shortage Areas for Awarding the Virginia Teaching Scholarship Loan Program.** The purpose of the proposed action is to collect the supply and demand information from school divisions and provide a reasonable and scientific procedure to identify critical teacher shortage areas in Virginia.

Statutory Authority: § 22.1-290.01 of the Code of Virginia.

**Contact:** Dr. Thomas Elliott, Assistant Superintendent, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2924, FAX (804) 225-2524 or e-mail telliott@mail.vak.12ed.edu.

**† September 26, 2002 - 1 p.m.** -- Public Hearing


General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

During the 2002 Session of the Virginia General Assembly, Senate Bill 606 (Marye) regarding the regulation of vending machines in public schools was continued to the 2003 Session with the recommendation that the use and regulation of vending machines in schools be referred to the Board of Education for examination. This hearing is open to the public, and all interested persons are invited to attend. Persons wishing to speak are asked to register, beginning at 12:45 p.m. Sign-up sheets will be available at that time. Speakers are asked to limit their remarks to three minutes


each and to provide a written copy of their remarks, if possible. Persons requesting the services of an interpreter for the deaf are asked to do so in advance.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Board 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.


**† October 4, 2002 - 10 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

**† November 6, 2002 - 10 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

**† December 4, 2002 - 10 a.m.** -- Open Meeting


State Capitol, House Room 2, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A working session of the Committee to Implement NCLB. Public comment will not be received. Persons requesting services of an interpreter for the deaf are asked to do so in advance.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Board 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.

**October 17, 2002 - 8:30 a.m.** -- Open Meeting

**October 18, 2002 - 8:30 a.m.** -- Open Meeting


Radisson Hotel Historic Richmond, 301 West Franklin Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A working session of the State Special Education Advisory Committee. Public comment will not be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

**September 9, 2002 - 9 a.m.** -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the Ground Water Protection Steering Committee, an interagency advisory committee formed to stimulate, strengthen and coordinate groundwater protection activities in the Commonwealth.

**Contact:** Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, e-mail mamassie@deq.state.va.us.


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## Calendar of Events

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**September 9, 2002 - 10 a.m.** -- Open Meeting


**October 9, 2002 - 10 a.m.** -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the air impact study group.

**Contact:** James E. Sydnor, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4424, e-mail [jesydnor@deq.state.va.us](mailto:jesydnor@deq.state.va.us).


**September 10, 2002 - 7 p.m.** -- Public Hearing

Lorton Community Library, 9529 Richmond Highway, Meeting Room, Lorton, Virginia. 

A public hearing to receive comments on the draft permit amendment to incorporate a groundwater monitoring plan into the permit for the Rainwater Debris Landfill located in Fairfax County approximately one mile south of Lorton.

**Contact:** James Bernard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4222, e-mail [jfbernard@deq.state.va.us](mailto:jfbernard@deq.state.va.us).

**September 11, 2002 - 7 p.m.** -- Public Hearing


Cape Charles Town Hall Building, 2 Plum Street, Cape Charles, Virginia. 

A public hearing to receive comments on a draft permit amendment to incorporate a groundwater monitoring plan to the Northampton County Sanitary Landfill permit. The comment period on the draft permit amendment closes on September 26, 2002.

**Contact:** James Bernard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4222, e-mail [jfbernard@deq.state.va.us](mailto:jfbernard@deq.state.va.us).

**September 12, 2002 - 10 a.m.** -- Open Meeting

**October 10, 2002 - 10 a.m.** -- Open Meeting

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

A meeting of the water impact study group.

**Contact:** Allan Brockenbrough, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4147, e-mail [abrockenb@deq.state.va.us](mailto:abrockenb@deq.state.va.us).


**September 12, 2002 - 7 p.m.** -- Public Hearing

Accomack County Administration Building, 23296 Courthouse Avenue, Accomack, Virginia. 

A public hearing to receive comments on the tentative draft permit amendment to incorporate the groundwater monitoring plan into the Accomack County Sanitary Landfill permit. The comment period on the tentative draft permit amendment closes on September 27, 2002.

**Contact:** James Bernard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4222, e-mail [jfbernard@deq.state.va.us](mailto:jfbernard@deq.state.va.us).

**September 12, 2002 - 7 p.m.** -- Public Hearing

King George High School, Dahlgren Road, Auditorium, King George, Virginia. 

A public hearing to receive comments on a draft permit amendment for an experimental program for operating a bioreactor landfill under a Project XL agreement to the King George County Landfill and Recycling Facility. The comment period on the draft permit amendment closes on September 27, 2002.

**Contact:** Paul Farrell, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4214, e-mail [epfarrell@deq.state.va.us](mailto:epfarrell@deq.state.va.us).


**September 12, 2002 - 7 p.m.** -- Public Hearing

Workforce Development Center, 100 North College Drive, Room 204, Franklin, Virginia. 

A public hearing to receive comments on the draft post-closure permit for hazardous waste for International Paper located in Franklin, Virginia. The comment period on the draft permit closes on September 27, 2002.

**Contact:** Richard Doucette, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4337, e-mail [rcdoucette@deq.state.va.us](mailto:rcdoucette@deq.state.va.us).


**† September 17, 2002 - 7 p.m.** -- Public Hearing

Victoria Public Library, 1417 7th Street, Victoria, Virginia. 

A public hearing to receive comments on a draft permit amendment to incorporate a groundwater monitoring plan into the Lunenburg County Landfill permit. The comment period on the draft permit amendment closes on October 2, 2002.

**Contact:** James Bernard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4222, e-mail [jfbernard@deq.state.va.us](mailto:jfbernard@deq.state.va.us).


**† September 26, 2002 - 3:30 p.m.** -- Open Meeting

Linville-Edom Elementary School, 3653 Linville Edom Road, Library, Linville, Virginia. 

The first public meeting on the development of TMDLs for fecal coliform and benthics for Linville Creek located in Rockingham County.

**Contact:** Sandra Mueller, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, e-mail [stmueller@deq.state.va.us](mailto:stmueller@deq.state.va.us).


**† September 26, 2002 - 7 p.m.** -- Open Meeting

New River Valley Competitiveness Center, 6580 Valley Center Drive, Radford, Virginia. 

The third public meeting of the New River PCB Source Study Citizen's Committee to discuss efforts to locate current or historical sources of PCBs and the status of PCBs in the New River.

**Contact:** Jay Roberts, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6785, FAX (804) 698-4032, e-mail [jaroberts@deq.state.va.us](mailto:jaroberts@deq.state.va.us).


**† October 10, 2002 - 7 p.m.** -- Public Hearing

Stafford County Board of Supervisors Room, 1300 Courthouse Road, Stafford, Virginia. 



A public hearing to receive comments on a draft permit amendment for the Rappahannock Regional Solid Waste Management Board sanitary landfill located in Stafford County. The permit amendment would incorporate modifications to the facility's groundwater monitoring plan and incorporate an old closed disposal unit into the current permit. The comment period on the draft permit amendment closes on October 25, 2002.


**Contact:** Donald H. Brunson, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4239, e-mail dhbrunson@deq.state.va.us.

† **October 21, 2002 - 10 a.m.** -- Open Meeting  
Clarion Hotel and Conference Center, 500 Merrimac Trail, Williamsburg, Virginia. 

A meeting of the Virginia Recycling Markets Development Council in conjunction with the first day of the annual Virginia Recycling Association Conference and Tradeshow.

**Contact:** William K. Norris, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4022, e-mail wknorris@deq.state.va.us.

## VIRGINIA FIRE SERVICES BOARD

† **October 3, 2002 - 9 a.m.** -- Open Meeting  
Loudoun County Department of Fire and Rescue, 16600 Courage Court, Leesburg, Virginia.  (Interpreter for the deaf provided upon request)

Committees will meet as follows:

Fire Education and Training Committee (FEandT) at 9 a.m.


Administration and Policy (AandP) - 10 minutes after conclusion of FEandT.

Fire Prevention and Control (FPandC) at 9 a.m.

Finance - 10 minutes after the conclusion of BOTH AandP and FPandC.

Fire Prevention and Control will be holding a work session to determine VFIRS awards.

**Contact:** Christy L. King, Clerk to the Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail cking@vdfp.state.va.us.

† **October 4, 2002 - 9 a.m.** -- Open Meeting  
Loudoun County Department of Fire and Rescue, 16600 Courage Court, Leesburg, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting.


**Contact:** Christy King, Clerk to the Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail cking@vdfp.state.va.us.

## BOARD OF FORESTRY

**September 16, 2002 - 7 p.m.** -- Public Hearing

**September 17, 2002 - 7 p.m.** -- Public Hearing

**September 23, 2002 - 1 p.m.** -- Public Hearing


Department of Forestry, 210 Riverland Drive, Salem, Virginia.  (Interpreter for the deaf provided upon request)

The department will receive comments on its draft Forest Land Enhancement, State Priority Plan. Please see Department of Forestry website for draft of the plan ([www.dof.state.va.us](http://www.dof.state.va.us)).


**Contact:** James Starr, Forest Management, Board of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 296-2369, e-mail starrj@dof.state.va.us.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**September 10, 2002 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A general business meeting including consideration of legislative, regulatory and disciplinary matters as may be on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.state.va.us.

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**September 10, 2002 - 9 a.m.** -- Public Hearing

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

**October 11, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to amend regulations entitled: **18 VAC 65-30. Regulations for Preneed Funeral Planning.** The purpose of the proposed action is to clarify and eliminate an unnecessary requirement for a contract number.

Statutory Authority: §§ 54.1-2400 and 54.1-2480 of the Code of Virginia.

Public comments may be submitted until October 11, 2002, to Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6606 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

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# Calendar of Events

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**September 10, 2002 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 1, Richmond, Virginia.

**October 11, 2002** - Public comments may be submitted until  
this date.

Notice is hereby given in accordance with § 2.2-4007 of the  
Code of Virginia that the Board of Funeral Directors and  
Embalmers intends to amend regulations entitled: **18 VAC  
65-40. Regulations for the Resident Trainee Program in  
Funeral Service.** The purpose of the proposed action is to  
ensure that the trainee receives training in preneed funeral  
arrangements.

Statutory Authority: Chapter 38 of the Code of Virginia.

Public comments may be submitted until October 11, 2002, to  
Elizabeth Young, Executive Director, Board of Funeral  
Directors and Embalmers, 6606 West Broad Street,  
Richmond, VA 23230.


**Contact:** Elaine J. Yeatts, Regulatory Coordinator,  
Department of Health Professions, 6606 W. Broad St.,  
Richmond, VA 23230, telephone (804) 662-9918, FAX (804)  
662-9114 or e-mail [elaine.yeatts@dhp.state.va.us](mailto:elaine.yeatts@dhp.state.va.us).

† **September 10, 2002 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
4th Floor, Richmond, Virginia. 

† **September 11, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
4th Floor, Richmond, Virginia. 


† **November 19, 2002 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Richmond, Virginia. 

The board will hear possible violations of the laws and  
regulations governing the practice of funeral service.


**Contact:** Elizabeth Young, Executive Director, Board of  
Funeral Directors and Embalmers, 6603 W. Broad St., 5th  
Floor, telephone (804) 662-9907, FAX (804) 662-9523, (804)  
662-7197/TTY , e-mail [elizabeth.young@dhp.state.va.us](mailto:elizabeth.young@dhp.state.va.us).


† **September 24, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
4th Floor, Richmond, Virginia. 


The Special Conference Committee of the Board of Funeral  
Directors and Embalmers will convene to hear possible  
violations of the laws and regulations governing the practice  
of funeral directors and embalmers.


**Contact:** Elizabeth Young, Executive Director, Board of  
Funeral Directors and Embalmers, 6606 W. Broad St., 4th  
Floor, Richmond, VA 23230-1717, telephone (804) 662-9907,  
FAX (804) 662-9523, (804) 662-7197/TTY , e-mail  
[elizabeth.young@dhp.state.va.us](mailto:elizabeth.young@dhp.state.va.us).


## BOARD OF GAME AND INLAND FISHERIES


**September 9, 2002 - 7 p.m.** -- Open Meeting  
Mountain Empire Community College, Highway 23 South,  
Dalton Cantrell Auditorium, Big Stone Gap, Virginia.   
(Interpreter for the deaf provided upon request)

**September 9, 2002 - 7 p.m.** -- Open Meeting  
Department of Game and Inland Fisheries, 4725 Lee  
Highway, Verona, Virginia.   
(Interpreter for the deaf provided upon request)

**September 10, 2002 - 7 p.m.** -- Open Meeting  
Wytheville Community College, 1000 East Main Street,  
Grayson Hall, The Commons, Wytheville, Virginia.   
(Interpreter for the deaf provided upon request)

**September 10, 2002 - 7 p.m.** -- Open Meeting  
Northern Virginia Regional Park Authority, 5400 Ox Road,  
Fairfax Station, Virginia.   
(Interpreter for the deaf provided upon request)


**September 12, 2002 - 7 p.m.** -- Open Meeting  
Forest Public Library, 15583 Forest Road, Forest, Virginia.   
(Interpreter for the deaf provided upon request)


**September 12, 2002 - 7 p.m.** -- Open Meeting  
Toano Middle School, 7817 Richmond Road, Toano (James  
City County), Virginia.   
(Interpreter for the deaf provided upon request)


The department is holding a series of 10 open meetings for  
the purpose of receiving public comments regarding  
proposed changes to regulations governing fishing, wildlife  
diversity (i.e., wildlife other than in the context of hunting,  
trapping, or fishing), and boating. The proposals addressed  
at the meeting series will be those regulations or regulation  
amendments that the board proposed at its August 22,  
2002, meeting. A public comment period opened on the  
regulation amendments the board proposed will open  
August 22 and will close October 24, 2002. The proposals  
will be available on the department's web site,  
[www.dgif.state.va.us](http://www.dgif.state.va.us), at the department's central and  
regional offices, published in the Virginia Register of  
Regulations, and will be available at the public meetings.  
The public input meeting series is being held prior to the  
board meeting of October 24, 2002, at which the board  
intends to adopt final regulations or regulation amendments.  
The 10 public input meetings are supplemental public  
hearings to the two hearings that will occur at the August 22  
and October 24 board meetings. Comments received on the  
proposals at the public input meetings will be summarized  
and reported to the board for their consideration at the  
October 24, 2002, meeting prior to adopting final  
regulations. The Department of Game and Inland Fisheries  
is exempt from the Administrative Process Act in  
promulgating regulations regarding the management of  
wildlife, pursuant to subdivision A 3 of § 2.2-4002 of the  
Code of Virginia. The department publishes all proposed  
and final wildlife management regulations as required under  
§ 2.2-4031 of the Code of Virginia.

**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 regcomments@dgif.state.va.us.

**September 23, 2002 - 7 p.m.** -- Open Meeting  
Department of Game and Inland Fisheries, Verona (Staunton) Regional Office, 127 Lee Highway, Verona, Virginia   
(Interpreter for the deaf provided upon request)

**September 24, 2002 - 7 p.m.** -- Open Meeting  
Bedford Public Library, Forest Branch, 15583 Forest Road (Route 221), Forest, Virginia.  (Interpreter for the deaf provided upon request)

**September 24, 2002 - 7 p.m.** -- Open Meeting  
Orange High School, 201 Selma Road, Orange, Virginia.   
(Interpreter for the deaf provided upon request)

**September 25, 2002 - 7 p.m.** -- Open Meeting  
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


**September 25, 2002 - 7 p.m.** -- Open Meeting  
James City County Government Complex, 101-C Mounts Bay Road, Building C, Williamsburg, Virginia.  (Interpreter for the deaf provided upon request)

**September 25, 2002 - 7 p.m.** -- Open Meeting  
Smyth-Bland Regional Library, 118 South Sheffey Street, Copenhaver Meeting Room, Marion, Virginia.  (Interpreter for the deaf provided upon request)

Public input meetings on hunting and trapping programs and regulations. The Virginia Department of Game and Inland Fisheries is hosting open meetings to receive comments from the public on agency programs, regulations, and management of Virginia's game species, hunting and trapping. All interested citizens are invited to attend. The comments and suggestions received will be considered by staff as they refine current programs and develop staff recommendations for amendments to regulations. Agency staff will present such recommendations to the Virginia Board of Game and Inland Fisheries at its March 2003 meeting as part of the regular biennial review of applicable Virginia Administrative Code regulations.

**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 RegComments@dgif.state.va.us.


## OFFICE OF THE GOVERNOR


† **October 2, 2002 - 2 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Conference 3 East, Richmond, Virginia. 


A meeting to consider a study being chaired by Secretary Jane Woods regarding: An Examination of the Role and Responsibility of the Office of the Inspector General for the Department of Mental Health, Mental Retardation and Substance Abuse Services. This study is being conducted pursuant to Item 298C of the Appropriations Act.


**Contact:** Heather Glissman, Operations Manager, Office of Governor, PO Box 1475, Richmond, VA 23218, telephone (804) 692-0276, FAX (804) 786-3400, e-mail hglissman@gov.state.va.us.


## "One Virginia-One Future"


† **September 9, 2002 - 9:30 a.m.** -- Open Meeting  
Northern Virginia Community College, Manassas, Virginia. 


† **September 10, 2002 - 9:30 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 

† **September 17, 2002 - 9:30 a.m.** -- Open Meeting  
The Tides Inn, 480 King Carter Drive, Irvington, Virginia. 

† **September 19, 2002 - 9:30 a.m.** -- Open Meeting  
Southwest Virginia Community College Center, US Route 15, Richlands, Virginia. 

† **September 20, 2002 - 9:30 a.m.** -- Open Meeting  
Southern Virginia Continuing Education Center, South Boston, Virginia. 

† **September 26, 2002 - 9:30 a.m.** -- Open Meeting  
Criminal Justice Training Center, Weyers Cave, Virginia. 

† **September 27, 2002 - 9:30 a.m.** -- Open Meeting  
Central Virginia Community College, Lynchburg, Virginia. 

A regional meeting of Governor Warner's Economic Development Strategic Plan to gather input from the business community and those interested and/or involved in the economic development process. Each meeting will be held from 9:30 a.m. to 12:30 p.m. Please RSVP at least one week in advance to register to attend.

**Contact:** Mara Hilliar, Secretary of Commerce and Trade, P.O. Box 798, Richmond, VA 23218, telephone (804) 371-8106, e-mail strategicplansvp@yesvirginia.org.

## STATE BOARD OF HEALTH

**October 1, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health intends to amend regulations entitled: **12 VAC 5-610. Sewage Handling and Disposal Regulations.** The purpose of the proposed action is to regulate mass sewage disposal systems (systems larger than 1,200 gallons per day per acre) that have a greater potential for failure than domestic and small commercial onsite systems. These large systems also pose a higher risk of ground water contamination than smaller systems. The amendments include standards for proper siting, design, construction, operation, and monitoring of mass sewage disposal systems. A second amendment is to regulate the amount of rock fragments surrounding a subsurface soil absorption system.

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.


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# Calendar of Events


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**Contact:** Donald J. Alexander, Director, Division of Onsite Sewage and Water Services, Department of Health, 1500 E. Main St., Room 115, Richmond, VA 23219, telephone (804) 225-4030, FAX (804) 225-4003 or e-mail dalexander@vdh.state.va.us.

## DEPARTMENT OF HEALTH

**September 10, 2002 - 3 p.m.** -- Public Hearing  
Roanoke Higher Education Center, 108 North Jefferson Street, Roanoke, Virginia. 

**September 16, 2002 - 7 p.m.** -- Public Hearing  
Disability Resource Center, 409 Progress Street, Fredericksburg, Virginia. 

**September 17, 2002 - Noon** -- Public Hearing  
Cape Charles Sustainable Technology Park, 301 Patrick Henry Avenue, Cape Charles, Virginia. 

**September 18, 2002 - 1 p.m.** -- Public Hearing  
Fan Free Clinic, 1010 North Thompson Street, Richmond, Virginia. 


A public hearing to solicit public comment on the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act and its implementation in Virginia.

**Contact:** Michelle Baker, Public Health Nurse Senior, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23218, telephone (804) 371-2492, FAX (804) 786-3223, e-mail mbaker@vdh.state.va.us.


## BOARD OF HEALTH PROFESSIONS

**† September 17, 2002 - 11 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Conference Room 2, Fifth Floor, Richmond, Virginia. 


A meeting of the Executive Committee to review the proposed budget of the department and conduct other business as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, Southern States Bldg., 6606 W. Broad St., 4th Floor Richmond, VA 23230-1717, telephone (804) 662-7691, FAX (804) 662-9504, (804) 662-7197/TTY , e-mail elizabeth.carter@dhp.state.va.us.


## BOARD FOR HEARING AID SPECIALISTS

**† October 7, 2002 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

General business meeting.

**Contact:** William H. Ferguson, II, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St. Richmond, VA 23230, telephone (804) 367-8575, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail hearingaidspec@dpor.state.va.us

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**† October 7, 2002 - 9 a.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

**October 25, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Hearing Aid Specialists intends to amend regulations entitled: **18 VAC 80-20. Board for Hearing Aid Specialists Regulations.** The purpose of the proposed action is to clarify entry requirements for licensure, modify the procedures and provisions regarding renewal and reinstatement, and ensure that the standards of practice and conduct meet statutory requirements.

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

**Contact:** William H. Ferguson, II, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8575, FAX (804) 367-2474, or e-mail hearingaidspec@dpor.state.va.us.


## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

**September 18, 2002 - 11 a.m.** -- Open Meeting  
UVA's College at Wise, Chapel of All Faiths, Wise, Virginia.

Agenda materials will be available on the website approximately one week prior to the meeting at [www.schev.edu](http://www.schev.edu). A public comment period will be allocated on the meeting agenda. To be scheduled, those interested in making public comment should contact the person listed below no later than 5 p.m. three business days prior to the meeting date. At the time of the request, the speaker's name, address and topic must be provided. Each speaker will be given up to three minutes to address SCHEV. Speakers are asked to submit a written copy of their remarks at the time of comment.

**Contact:** Lee Ann Rung, State Council of Higher Education for Virginia, 101 N. 14th St., Richmond, VA, telephone (804) 225-2637, FAX (804) 371-7911, e-mail lrung@schev.edu.

## DEPARTMENT OF HISTORIC RESOURCES

**October 1, 2002 - 6 p.m.** -- Public Hearing  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 

**November 8, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Historic Resources intends to adopt regulations entitled: **17 VAC 10-30. Historic Rehabilitation Tax Credits Regulations.** The purpose of the proposed action is to promulgate regulations for state historic rehabilitation tax credits.

Statutory Authority: §§ 10.1-2202 and 58.1-339.2 of the Code of Virginia.

**Contact:** Virginia E. McConnell, Manager, Office of Preservation Incentives, Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221, telephone (804) 367-2323, FAX (804) 367-2391, (804) 367-2386/TTY ☎, e-mail gmconnell@dhr.state.va.us.

## State Review Board and Historic Resources Board

**September 11, 2002 - 9 a.m.** -- Open Meeting  
U.S. Naval Weapons Station, Building 1959, Yorktown, Virginia. ♿ (Interpreter for the deaf provided upon request)

Both boards will consider and recommend register nominations to be placed on the Virginia Landmarks Register and the National Register of Historic Places. The Historic Resources Board will approve highway marker texts and easements. In the afternoon session of the State Review Board, the board will consider and recommend the submitted Preliminary Information Applications.

**Contact:** Marc Wagner, Manager, National Register Section, Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221, telephone (804) 367-2323, FAX (804) 367-2391, (804) 367-2386/TTY ☎, e-mail mwagner@dhr.state.va.us.

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

**September 11, 2002 - 1 p.m.** -- Open Meeting  
Hotel Roanoke, 110 Shenandoah Avenue, Roanoke, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting. This meeting will be held at the site of the 2002 Virginia Housing Conference. A board luncheon will be provided at 12:30 p.m. The full board meeting will begin at 1 p.m. No committee meetings are scheduled.

**Contact:** Steve 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, e-mail scalhoun@dhcd.state.va.us.

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

### State Building Code Technical Review Board

† **October 18, 2002 - 10 a.m.** -- Open Meeting  
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia.

A general meeting to hear administrative appeals concerning building and fire codes and other regulations of the department.

**Contact:** Vernon W. Hodge, Secretary, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7150.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

**September 11, 2002 - 9 a.m.** -- Open Meeting  
Hotel Roanoke, 110 Shenandoah Avenue, Roanoke, Virginia. ♿

A regular meeting of the Board of Commissioners to review and, if appropriate, approve the minutes from the prior monthly meeting; consider for approval and ratification mortgage loan commitments under its various programs; 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, Rules and Regulations for Multi-Family Housing Developments, and Rules and Regulations for Home Rehabilitation Loans; review the authority's operations for the prior month; and consider such other matters and take such other actions as they may deem appropriate. Various committees of the Board of Commissioners may also meet during the day preceding the regular meeting and before and after the regular meeting and may consider matters within their purview.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY ☎, e-mail judson.mckellar@vhda.com.

## INNOVATIVE TECHNOLOGY AUTHORITY

† **October 9, 2002 - 10 a.m.** -- Open Meeting  
Virginia Center for Innovative Technology, 2214 Rock Hill Road, CIT Tower, Suite 600, Herndon, Virginia. ♿

A meeting of the Board of Directors to elect officers.

**Contact:** June Portch, Operations Manager, Innovative Technology Authority, 2214 Rock Hill Rd., Herndon, VA 20170, telephone (804) 689-3049, FAX (804) 464-1708, e-mail jportch@cit.org.

## VIRGINIA ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

**October 21, 2002 - 1:30 p.m.** -- Open Meeting  
Waterside Convention Center, Norfolk, Virginia. ♿

Agenda will be provided after the August 20 meeting.

**Contact:** Alda Wilkinson, Secretary, Virginia Advisory Commission on Intergovernmental Relations, 900 E. Main St., Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (804) 828-1120/TTY ☎, e-mail awilkinson@clg.state.va.us

**November 11, 2002 - 3:30 p.m.** -- Open Meeting  
The Homestead, Hot Springs (Bath County), Virginia. ♿

An agenda will be provided after the October 21 meeting.

**Contact:** Alda Wilkinson, Secretary, Virginia Advisory Commission on Intergovernmental Relations, 900 E. Main St., Suite 103, Richmond, VA 23219-3513, telephone (804) 786-

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# Calendar of Events

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6508, FAX (804) 371-7999, (804) 828-1120/TTY ☎, e-mail awilkinson@clg.state.va.us.

## JAMESTOWN-YORKTOWN FOUNDATION

† **October 10, 2002 - 12 p.m.** -- Open Meeting  
McGuire Woods, One James Center, 901 East Cary Street, Room 7A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **November 7, 2002 - 12 p.m.** -- Open Meeting  
McGuire Woods, One James Center, 901 East Cary Street, Room 7B, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Executive Committee of the Jamestown 2007 Steering Committee. Public comment will not be heard.

**Contact:** Laura W. Bailey, Executive Assistant to the Boards, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4840, FAX (757) 253-5299, toll-free (888) 593-4682, (757) 253-7236/TTY ☎, e-mail lwbailey@jyf.state.va.us.

**November 18, 2002 - Noon** -- Open Meeting  
**November 19, 2002 - 8 a.m.** -- Open Meeting  
Radisson Fort Magruder Inn, 6945 Pocahontas Trail, Williamsburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

Semiannual board meeting. Agenda to be determined. No public comment will be heard.

**Contact:** Laura W. Bailey, Executive Assistant to the Board, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (804) 253-4840, FAX (804) 253-5299, (804) 253-7236/TTY ☎, e-mail lwbailey@jyf.state.va.us.

## STATE BOARD OF JUVENILE JUSTICE

**September 11, 2002 - 10 a.m.** -- Open Meeting  
Culpeper Juvenile Correctional Center, 12240 Coffeewood Drive, Mitchells, Virginia. ♿

Committees of the board will meet at 9 a.m. to receive certification audit reports. The full board convenes at 10 a.m. to take certification actions based on the audit reports and to receive comments from the public concerning the board's proposed regulations governing the certification process.

**Contact:** Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773, e-mail carigndr@djj.state.va.us.

## DEPARTMENT OF LABOR AND INDUSTRY

**October 25, 2002** - Public comments may be submitted until this date.

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

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

**Contact:** Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524 or e-mail brh@doli.state.va.us.

## Apprenticeship Council

**October 11, 2002** - Public comments may be submitted until this date.

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

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

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

NOTE: DATE AND LOCATION CHANGE.

† **October 17, 2002 - 10 a.m.** -- Open Meeting  
Confederate Hills Recreation Bldg., 302 Lee Avenue, Highland Springs, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting of the council. Note: Date changed from September 19 to October 17 and location changed.

**Contact:** Beverley Donati, Assistant Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St. Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY ☎, e-mail bgd@doli.state.va.us.

## Safety and Health Codes Board

† **September 24, 2002 - 1 p.m.** -- Public Hearing  
State Corporation Commission, Tyler Building, 1300 East Main Street, Court Room B, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

**November 8, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Safety and Health Codes Board intends to amend regulations entitled: **16 VAC 25-50. Boiler and Pressure Vessel Rules and Regulations.** The purpose of the proposed action is to eliminate possible conflicts with the Code of Virginia, allow fees to be paid by credit card, adopt current Part CW provisions for burner controls and safety devices, and update references in the Documents Incorporated by Reference.

Statutory Authority: §§ 40.1-51.6 through 40.1-51.10 of the Code of Virginia.

**Contact:** Fred P. Barton, Boiler Safety Compliance Director/Chief Boiler Inspector, Department of Labor and Industry, Powers-Taylor Building, 13 S. Thirteenth St., Richmond, VA 23219, telephone (804) 786-3262, FAX (804) 371-2324, or e-mail [fpb@doli.state.va.us](mailto:fpb@doli.state.va.us).

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**October 25, 2002** - Public comments may be submitted until this date.

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


Statutory Authority: §§ 2.2-4007 and 40.1-22(5) of the Code of Virginia.

**Contact:** Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524 or e-mail [brh@doli.state.va.us](mailto:brh@doli.state.va.us).

## STATE LIBRARY BOARD

**September 23, 2002 - 8:15 a.m.** -- Open Meeting

**November 18, 2002 - 8:15 a.m.** -- Open Meeting

The Library of Virginia, 800 East Broad Street, Richmond, Virginia. 


Meetings of the board to discuss matters pertaining to the Library of Virginia and the board. Committees of the board will meet as follows:

8:15 a.m. - Public Library Development Committee, Orientation Room;  
Publications and Educational Services Committee, Conference Room B;  
Records Management Committee, Conference Room C.

9:30 a.m. - Archival and Information Services Committee, Orientation Room;  
Collection Management Services Committee, Conference Room B;


Legislative and Finance Committee, Conference Room C.

10:30 a.m. - Library Board, Conference Room 2M.


**Contact:** Jean H. Taylor, Executive Secretary to the Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-2000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY , e-mail [jtaylor@lva.lib.va.us](mailto:jtaylor@lva.lib.va.us).

## COMMISSION ON LOCAL GOVERNMENT

† **September 9, 2002 - 10 a.m.** -- Open Meeting

Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the commission.


**Contact:** Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main St., Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY , e-mail [bbingham@clg.state.va.us](mailto:bbingham@clg.state.va.us).

## VIRGINIA MANUFACTURED HOUSING BOARD

**September 19, 2002 - 10 a.m.** -- Open Meeting


The Jackson Center, 501 North 2nd Street, 1st Floor Board Room, Richmond, Virginia. 

A regular business meeting.

**Contact:** Curtis L. McIver, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY , e-mail [cmciver@dhcd.state.va.us](mailto:cmciver@dhcd.state.va.us).

## MARINE RESOURCES COMMISSION

**September 24, 2002 - 9:30 a.m.** -- Open Meeting

Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. 


A monthly commission meeting.

**Contact:** Stephanie Montgomery, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., Suite 107, Newport News, VA 23607, telephone (757) 247-8088, FAX (757) 247-2020, toll-free (800) 541-4646, (757) 247-2292/TTY , e-mail [smont@mrc.state.va.us](mailto:smont@mrc.state.va.us).

## BOARD OF MEDICAL ASSISTANCE SERVICES

NOTE: CHANGE IN MEETING DATE

**October 1, 2002 - 10 a.m.** -- Open Meeting

Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. 

A routine business meeting. An agenda will be posted closer to the meeting date.

**Contact:** Nancy Malczewski, Communications Office, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-4626,

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# Calendar of Events

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FAX (804) 371-4981, (800) 343-0634/TTY ☎, e-mail nmalczewski@dmas.state.va.us.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**October 25, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120. Waivered Services.** The current regulations for the Elderly and Disabled Waiver program describe the criteria that must be met in order for providers to be reimbursed for the services rendered. The current services offered in this waiver include personal emergency response systems (PERS) to the waiver. The changes to the regulation include the following: (i) the addition of PERS as a permanent covered service; (ii) the addition of language regarding waiver desk reviews, which the Centers for Medicare and Medicaid Services require DMAS to perform; (iii) the addition of language referencing the Code of Virginia regarding criminal records checks for all compensated employees of personal care, respite care and adult day health care agencies; (iv) the addition of language that states that personal care recipients may continue to work and attend post-secondary school while receiving services under this waiver; (v) a change in the requirement of supervisory visits from every 30 days in general to every 30 days for recipients with a cognitive impairment, and up to every 90 days for recipients who do not have a cognitive impairment; (vi) the addition of "some family members" to the definition of who is qualified to perform personal care services; (vii) the addition of the required qualifications for LPNs for respite care; and (viii) clarifications and corrections to the existing language.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

**Contact:** Vivian Horn, Policy Analyst, Division of LTC, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527 or vhorn@dmas.state.va.us.

**November 7, 2002 - 2 p.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad St., Suite 1300, Board Room, Richmond, Virginia. ♿

A meeting to conduct routine business of the Medicaid Drug Utilization Review Board.

**Contact:** Marianne Rollings, Pharmacist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268, FAX (804) 786-1680, (800) 343-0634/TTY ☎, e-mail mrollings@dmas.state.va.us.

## BOARD OF MEDICINE

NOTE: CHANGE IN MEETING DATE.

† **September 10, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia ♿

A meeting of the Advisory Board on Athletic Training to consider regulations and other items as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

**September 11, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Advisory Board on Acupuncture to consider regulatory issues as presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

**September 11, 2002 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Advisory Board on Radiologic Technology to consider regulatory issues as presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

**September 12, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Advisory Board on Occupational Therapy to consider regulatory issues as presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

**September 12, 2002 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿



A meeting of the Advisory Board on Respiratory Care to consider regulatory issues as presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

**September 13, 2002 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Advisory Board on Physicians Assistants to consider regulatory issues as presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

† **September 13, 2002 - 7:30 p.m.** -- Open Meeting  
† **September 14, 2002 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A meeting for computer training on Friday, September 13. A meeting on Saturday, September 14 on how to conduct hearings and a session devoted to ways to make the disciplinary process more efficient.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

**September 27, 2002 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A meeting of the Legislative Committee to receive reports from the advisory boards and consider regulatory and legislative items as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

† **September 27, 2002 - 1 p.m.** -- Open Meeting  
**October 2, 2002 - 8:45 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, 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 meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

**Contact:** Peggy Sadler/Renee Dixon, Staff, Board of Medicine, 6606 W. Broad St., Richmond, VA, 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail peggy.sadler@dhp.state.va.us.

**October 10, 2002 - 8 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A general business meeting including the adoption of amendments to regulations and other items as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

## Informal Conference Committee

**September 17, 2002 - 9 a.m.** -- Open Meeting  
† **October 24, 2002 - 8:45 a.m.** -- Open Meeting  
† **November 14, 2002 - 9 a.m.** -- Open Meeting  
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia. ♿

**September 18, 2002 - 8:45 a.m.** -- Open Meeting  
† **October 30, 2002 - 9:30 a.m.** -- Open Meeting  
Williamsburg Marriott Hotel, 50 Kingsmill Road, Williamsburg, Virginia.

† **September 25, 2002 - 9:30 a.m.** -- Open Meeting  
Clarion Hotel, 3315 Ordway Drive, Roanoke, Virginia.

† **November 13, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

**Contact:** Peggy Sadler or Renee Dixon, Staff, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail Peggy.Sadler@dhp.state.va.us.

## STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **October 3, 2002 - 1 p.m.** -- Open Meeting  
† **October 4, 2002 - 1 p.m.** -- Open Meeting  
Hanover Community Services Board, 12300 Washington Highway, Ashland, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting of the board. A public comment period will be scheduled.


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# Calendar of Events


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**Contact:** Marlene Butler, Executive Secretary to the State Board, State Mental Health, Mental Retardation and Substance Abuse Services Board, Jefferson Bldg., 1220 Bank St., 13th Floor, Richmond, VA 23219, telephone (804) 786-7945, FAX (804) 371-2308, e-mail mbutler@dmhmrsas.state.va.us.

## DEPARTMENT OF MINES, MINERALS AND ENERGY

† **September 11, 2002 - 10 a.m.** -- Open Meeting  
Forestry Building, 900 Natural Resources Drive, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)

The Board of Surface Mining Review will hear the appeal of Figgatt Sand and Gravel on the revocation of their surface mining permit 13622AA.

**Contact:** William Lassetter, Environmental Engineer Consultant, Department of Mines, Minerals and Energy, 900 Natural Resources Dr., Charlottesville, VA 22903, telephone (434) 951-6310, FAX (434) 951-6325, (800) 828-1120/TTY , e-mail wll@mme.state.va.us.

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**September 26, 2002 - 9 a.m.** -- Public Hearing  
Department of Mines, Minerals and Energy, 900 Natural Resources Drive, Training Room 1224, Charlottesville, Virginia.


**October 26, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to repeal regulations entitled: **4 VAC 25-30. Minerals Other than Coal Surface Mining Regulations**, and adopt regulations entitled: **4 VAC 25-31. Reclamation Regulations for Mineral Mining**. The purpose of the proposed regulation is to provide for the beneficial development of mineral resources and to minimize the effects of mining on the environment. The regulation will replace the present reclamation regulations, 4 VAC 25-30, Minerals Other Than Coal Surface Mining Regulations.

Statutory Authority: §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

**Contact:** William Lassetter, Environmental Engineer Consultant, Department of Mines, Minerals and Energy, Fontaine Research Park, 900 Natural Resources Dr., P.O. Box 3727, Charlottesville, VA 22903, telephone (804) 951-6310, FAX (804) 951-6325, or e-mail cts@mme.state.va.us.

## MOTOR VEHICLE DEALER BOARD

**September 9, 2002 - 8:30 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


Committees will meet as follows:


Dealer Practices Committee - 8:30 a.m.  
Franchise Law Committee - Five minutes after Dealer Practices Committee  
Licensing Committee - 9:30 a.m. or five minutes after Franchise Law  
Advertising Committee - 10 a.m. or five minutes after Licensing Committee  
Finance Committee - 10:30 a.m. or five to 45 minutes after Personnel Committee  
Personnel Committee - Five minutes after Advertising Committee  
Transaction Recovery Fund Committee - 11 a.m. or five to 45 minutes after Finance


The full board will meet at 1 p.m. Meetings may begin later, but not earlier than scheduled. Meeting end times are approximate. Any person who needs any accommodation in order to participate in the meeting should contact the board at least 10 days before the meeting so that suitable arrangements can be made.


**Contact:** Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, toll-free (877) 270-0203, e-mail dboard@mvb.state.va.us.

## DEPARTMENT OF MOTOR VEHICLES

† **September 18, 2002 - 4:30 p.m.** -- Public Hearing  
Tidewater Community College, Portsmouth Campus, 7000 College Drive, Portsmouth, Virginia. 

† **September 19, 2002 - 4:30 p.m.** -- Public Hearing  
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Richmond, Virginia. 

† **September 20, 2002 - 5:30 p.m.** -- Public Hearing  
Fairfax Government Center, 12000 Government Center Parkway, Fairfax, Virginia. 

† **September 24, 2002 - 5:30 p.m.** -- Public Hearing  
Northside Middle School Auditorium, 6810 Northside High School Road, Roanoke, Virginia. 

**November 9, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Motor Vehicles intends to repeal regulations entitled: **24 VAC 20-70. Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card**. The purpose of the proposed action is to repeal the residency regulations governing requirements for proof of residency to obtain a Virginia driver's license or photo identification card.

The hearing will also address issues surrounding incorporation of a biometric identifier(s) as part of the driver's license/identification card issuance process.

Statutory Authority: §§ 46.2-203, 46.2-323, and 46.2-345 of the Code of Virginia.

**Contact:** Maxine Carter, Special Assistant for Outreach, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1417, FAX (804) 367-6631, toll-free 1-800-435-5137, (800) 272-9268/TTY ☎, e-mail dmvmwc@dmv.state.va.us.

**October 10, 2002 - 9 a.m.** -- Open Meeting

† **December 12, 2002 - 9 a.m.** -- Open Meeting

Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿

A meeting of the Digital Signature Implementation Workgroup. Meetings will be held on the second Thursday of every other month from 9 a.m. until noon at the location noted above unless otherwise noted. The room will be open for coffee and pre-session business at 8:30 a.m.; the business session will begin at 9 a.m.

**Contact:** Vivian Cheatham, Executive Staff Assistant, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-6870, FAX (804) 367-6631 or e-mail dmvmvrc@dmv.state.va.us.

## Medical Advisory Board

† **October 9, 2002 - 8 a.m.** -- Open Meeting

Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting.

**Contact:** J.C. Branche, R.N., Assistant Division Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond VA 23220, telephone (804) 367-0531, FAX (804) 367-1604, toll-free (800) 435-5137, (800) 272-9268/TTY ☎, e-mail dmvmj3b@dmv.state.va.us.

## VIRGINIA MUSEUM OF FINE ARTS

**October 1, 2002 - 8 a.m.** -- Open Meeting

Virginia Museum of Fine Arts, Main Lobby Conference Room, 2800 Grove Avenue, Richmond, Virginia. ♿

A monthly meeting for staff to update the Executive Committee. 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.

**September 18, 2002 - 9 a.m.** -- Open Meeting

Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ♿

Committees will meet as follows:

- 9 a.m. - Program Review Committee (Main Lobby Conference Room)
- 10 a.m. - Expansion Committee (CEO Building, 2nd Floor Conference Room)
- 12:30 p.m. - Exhibitions Committee (Auditorium)
- 2 p.m. - Education and Programs Committee (CEO Building, 2nd Floor Conference Room)

3:15 p.m. - Communications and Marketing Committee (CEO Building, 2nd Floor Conference Room)

**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.

**September 19, 2002 - 8:30 a.m.** -- Open Meeting

Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ♿

Committees will meet as follows:

8:30 a.m. - Buildings and Grounds Committee (CEO Building, 2nd Floor Conference Room)

9:30 a.m. - Collections Committee (Auditorium)

11 a.m. - Finance and Legislative Committees (CEO Building, 2nd Floor Conference Room)

The full board will meet at 12:30 p.m.

**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.

† **October 23, 2002 - 10 a.m.** -- Open Meeting

Virginia Museum of Fine Arts, CEO Building, 2800 Grove Avenue, 2nd Floor Conference Room, Richmond, Virginia. ♿

A meeting to update the Museum Expansion Committee on the expansion planning. Most of the meeting will be held in closed session. 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.

## VIRGINIA MUSEUM OF NATURAL HISTORY

† **September 16, 2002 - 10 a.m.** -- Open Meeting

LeClair Ryan Consulting, 1010 First Union Building, 213 S. Jefferson Street, Roanoke, Virginia. ♿

A meeting of the Board of Trustees Executive Committee to discuss management and direction of the museum.

**Contact:** Cindy Rorrer, Administrative Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (276) 666-8616, FAX (276) 632-6487, (276) 666-8638/TTY ☎, e-mail crorrer@vmnh.org.

## COMMONWEALTH NEUROTRAUMA INITIATIVE ADVISORY BOARD

**September 23, 2002 - 9:30 a.m.** -- Open Meeting

Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly business meeting.

**Contact:** Sandra Prince, Program Specialist, Brain Injury/Spinal Cord Injury Services, Department of

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# Calendar of Events

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Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 662-7021, FAX (804) 662-7122, toll-free (800) 552-5019, (804) 662-9040/TTY ☎, e-mail [princesw@drs.state.va.us](mailto:princesw@drs.state.va.us).

## BOARD OF NURSING

**September 23, 2002 - 9 a.m.** -- Open Meeting

**September 25, 2002 - 9 a.m.** -- Open Meeting

**November 18, 2002 - 9 a.m.** -- Open Meeting

**November 21, 2002 - 9 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 or certificate holders. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail [nursebd@dhp.state.va.us](mailto:nursebd@dhp.state.va.us).

**September 24, 2002 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A general business meeting including regulatory and disciplinary actions as may be presented on the agenda. Public comment will be received at 11 a.m.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail [ndurrett@dhp.state.va.us](mailto:ndurrett@dhp.state.va.us).

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**September 24, 2002 - 1:30 p.m.** -- Public Hearing

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

**October 11, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **18 VAC 90-20. Regulations Governing the Practice of Nursing.** The purpose of the proposed action is to establish qualifications and renewal requirements for advanced certification for certified nurse aides and the criteria for an approved education and training program.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until October 11, 2002, to Nancy K. Durrett, R.N., Executive Director, Board of Nursing, Southern States Bldg., 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St.,

Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail [elaine.yeatts@dhp.state.va.us](mailto:elaine.yeatts@dhp.state.va.us).

## Special Conference Committee

**October 8, 2002 - 9 a.m.** -- Open Meeting

**October 10, 2002 - 9 a.m.** -- Open Meeting

† **October 16, 2002 - 9 a.m.** -- Open Meeting

† **October 17, 2002 - 9 a.m.** -- Open Meeting

**October 21, 2002 - 9 a.m.** -- Open Meeting

**October 22, 2002 - 9 a.m.** -- Open Meeting

**October 29, 2002 - 9 a.m.** -- Open Meeting

† **December 4, 2002 - 9 a.m.** -- Open Meeting

† **December 9, 2002 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, will conduct informal conferences with licensees or certificate holders. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail [nursebd@dhp.state.va.us](mailto:nursebd@dhp.state.va.us).

## BOARD OF NURSING HOME ADMINISTRATORS

**October 9, 2002 - 10 a.m.** -- Public Hearing

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

**October 11, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing Home Administrators intends to amend regulations entitled: **18 VAC 95-20. Regulations Governing the Practice of Nursing Home Administrators.** The purpose of the proposed action is to increase certain fees charged to nursing home administrators.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until October 11, 2002, to Sandra Reen, Executive Director, Board of Nursing Home Administrators, 6606 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail [elaine.yeatts@dhp.state.va.us](mailto:elaine.yeatts@dhp.state.va.us).

## OLD DOMINION UNIVERSITY


**September 13, 2002 - 1:15 p.m.** -- Open Meeting

Webb University Center, Old Dominion University, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting of the governing board to discuss business of the board and the institution as determined by the rector and the president.

**Contact:** Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.


**October 21, 2002 - 3 p.m.** -- Open Meeting

**November 18, 2002 - 3 p.m.** -- Open Meeting  
Webb University Center, Old Dominion University, Norfolk, Virginia.  (Interpreter for the deaf provided upon request)


A regular meeting of the executive committee of the governing board of the institution to discuss business of the board and the institution as determined by the rector and the president.

**Contact:** Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5678, e-mail dmeeks@odu.edu.

## BOARD OF OPTOMETRY

† **September 27, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)


Informal conference hearings. 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 carol.stamey@dhp.state.va.us.

## VIRGINIA OUTDOORS FOUNDATION

† **October 1, 2002 - 9 a.m.** -- Open Meeting

† **October 2, 2002 - 9 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, House Room 2, Richmond, Virginia. 

A regularly scheduled meeting of the Board of Trustees to discuss business of the foundation and accept conservation easements. Public input session will begin at 1 p.m.

**Contact:** Tamara Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Richmond VA 23219, telephone (804) 225-2147, e-mail tvance@aol.com.

## Open Space Lands Preservation Trust Fund - Region 4

† **September 12, 2002 - 2 p.m.** -- Open Meeting  
Wytheville Community College, Bland Hall, President's Conference Room, Wytheville, Virginia.


A meeting to review applications for Open Space Lands Preservation Trust Funding.

**Contact:** Leslie D Trew, Conservation Easement Specialist, Virginia Outdoors Foundation, 203 Governor St., Richmond, VA 23219, telephone (804) 225-2147.

## BOARD OF PHARMACY

**September 12, 2002 - 9 a.m.** -- Open Meeting

† **September 19, 2002 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 

A meeting of the Special Conference Committee to discuss disciplinary matters.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313, e-mail pharmbd@dhp.state.va.us.

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**September 13, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to increase certain fees charged to applicants and licensed pharmacists, permitted pharmacies and other entities.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until September 13, 2002, to Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9914 or e-mail elaine.yeatts@dhp.state.va.us.

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**September 13, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **18 VAC 110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.** The purpose of the proposed action is to increase certain fees charged to applicants and regulated physicians licensed to sell controlled substances.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until September 13, 2002, to Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St.,


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# Calendar of Events

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Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9914 or e-mail elaine.yeatts@dhp.state.va.us.

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**September 30, 2002 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 3, Richmond, Virginia. 


**November 8, 2002** -- Public comments may be submitted until  
9 a.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **18 VAC 110-20, Virginia Board of Pharmacy Regulations**. The purpose of the proposed action is to comply with Chapter 317 of the 2001 Acts of Assembly requiring the board to promulgate regulations for the registration of pharmacy technicians. The statute requires regulations to specify criteria for the training program, examination, and evidence of continued competency. It further specifies that current certification from the Pharmacy Technician Certification Board qualifies a person for registration.


Statutory Authority: §§ 54.1-2400, 54.1-3321, and 54.1-3322 of the Code of Virginia.


Public comments may be submitted until 9 a.m. on November 8, 2002, to Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

**† September 30, 2002 - 9:15 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 2, Richmond, Virginia. 

The board will conduct a general business meeting including consideration of regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.


**Contact:** Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY , e-mail erussell@dhp.state.va.us.

**November 4, 2002 - 2 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 4, Richmond, Virginia. 


A meeting of the Informal Conference Committee to discuss disciplinary matters.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313, e-mail pharmdb@dhp.state.va.us.


## BOARD OF PHYSICAL THERAPY

**† September 23, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 4, Richmond, Virginia. 


A meeting of the Legislative/Regulatory Committee to begin a review of its regulations to identify issues that may need to be addressed in a regulatory action. Public comment will be received at the beginning of the meeting.

**Contact:** Elizabeth Young, Executive Director, Board of Physical Therapy, Southern States Bldg., 4th Floor, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.state.va.us.

## POLYGRAPH EXAMINERS ADVISORY BOARD

**September 18, 2002 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail polygraph@dpor.state.va.us.

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**September 18, 2002 - 10 a.m.** -- Public Hearing  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia.

**October 11, 2002** - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Polygraph Examiners Board intends to amend regulations entitled: **18 VAC 120-30. Regulations Governing Polygraph Examiners**. The purpose of the proposed action is to clarify current policy in several areas, make grammatical improvements, and expand requirements regarding polygraphy schools and the procedures for renewing or withdrawing department approval.

Statutory Authority: §§ 54.1-201 and 54.1-1802 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 e-mail APELSLA@dpor.state.va.us.

## BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION


**September 20, 2002 - 10 a.m.** -- Public Hearing  
Newport News City Council Chamber, City Hall Building, 2400 Washington Avenue, Newport News, Virginia.

**September 23, 2002 - 11 a.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

**October 4, 2002 - 1:30 p.m.** -- Public Hearing  
Roanoke City Council Chamber, Noel C. Taylor Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

A public hearing to examine the feasibility and appropriateness of regulating roller skating rinks in Virginia. The public hearing is being held pursuant to Senate Bill 436 of the 2002 General Assembly Session.

**Contact:** Karen O'Neal, Deputy Director for Regulatory Programs, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, e-mail [BPOR@dpor.state.va.us](mailto:BPOR@dpor.state.va.us).

**September 23, 2002 - 9:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A general board meeting.

**Contact:** Karen O'Neal, Deputy Director for Regulatory Programs, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, e-mail [BPOR@dpor.state.va.us](mailto:BPOR@dpor.state.va.us).

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† **September 20, 2002 - 1:30 p.m.** -- Public Hearing  
Newport News City Council Chamber, City Hall Building, 2400 Washington Avenue, Newport News, Virginia.

NOTE: CHANGE IN MEETING TIME

**September 23, 2002 - 1:30 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

**September 26, 2002 - 9 a.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

**October 12, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Professional and Occupational Regulations intends to amend regulations entitled: **18 VAC 120-40. Virginia Professional Boxing and Wrestling Events Regulations.** The purpose of the proposed action is to achieve consistency with the federal Muhammad Ali Boxing Reform Act, to ensure consistency with state law and to amend the wrestling event license fee.

Statutory Authority: § 54.1-831 of the Code of Virginia and 15 USC 6301 et seq.


**Contact:** Karen W. O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or e-mail [oneal@dpor.state.va.us](mailto:oneal@dpor.state.va.us).

**October 4, 2002 - 10 a.m.** -- Public Hearing  
Roanoke City Council Chamber, Noel C. Taylor Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.


A public hearing to examine the feasibility and appropriateness of regulating estheticians and electrologists in Virginia.

**Contact:** Karen O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, e-mail [BPOR@dpor.state.va.us](mailto:BPOR@dpor.state.va.us).

## BOARD OF PSYCHOLOGY


**September 10, 2002 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

The Regulatory Committee will consider a petition for rulemaking for the issuance of a clinical psychologist license following completion of the doctoral degree, clinical internship and examination. The committee will consider other regulatory issues as may be presented on the agenda. Public comment will be received at the beginning of the meeting.


**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail [ebrown@dhp.state.va.us](mailto:ebrown@dhp.state.va.us).

† **September 10, 2002 - 2 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. 

An informal Administrative Hearing to hear possible violations of Board of Psychology Regulations and Statutes. No public comment will be heard.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, Board of Psychology, 6606 W. Broad St., Fourth Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-7250, (804) 662-7197/TTY , e-mail [psy@dhp.state.va.us](mailto:psy@dhp.state.va.us).

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**October 8, 2002 - 9:45 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

**November 8, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Psychology intends to

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# Calendar of Events

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amend regulations entitled: **18 VAC 125-20. Regulations Governing the Practice of Psychology.** The purpose of the proposed action is increase renewal and other fees charged to licensees and change the renewal cycle from biennial to annual.

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

Public comments may be submitted until November 8, 2002, to Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

## REAL ESTATE BOARD

**September 11, 2002 - 1 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

**September 30, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **18 VAC 135-20. Real Estate Board Rules and Regulations.** The purpose of the proposed action is to make general clarifying changes; impose less burdensome requirements for reciprocal applicants; clarify language regarding applicants with criminal convictions; revise language regarding the supervision of branch offices to focus on the actual supervision provided rather than the physical location of the office; add clarifying language to the escrow provisions; revise the advertising provisions to incorporate Internet advertising; and combine Parts V and VI, Standards of Practice and Conduct.

Statutory Authority: § 54.1-2105 of the Code of Virginia.

**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, (804) 367-9753/TTY, e-mail reboard@dpor.state.va.us.

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**September 11, 2002 - 1 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

**September 30, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **18 VAC 135-40. Real Estate Board Time-Share Regulations.** The purpose of the proposed action is to ensure that the regulations remain

consistent with the Time-Share Act and to create a regulatory framework to protect the public when purchasing or utilizing a time-share project.

Statutory Authority: §§ 54.1-2105 and 55-396 of the Code of Virginia.

**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, (804) 367-9753/TTY, e-mail reboard@dpor.state.va.us.

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**September 11, 2002 - 1 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

**September 30, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **18 VAC 135-50. Real Estate Board Fair Housing Regulations.** The purpose of the proposed action is to amend existing fair housing regulations to reflect changes in the Code of Virginia and federal law.

Statutory Authority: §§ 36-96.20 and 54.1-2105 of the Code of Virginia.

**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, (804) 367-9753/TTY, e-mail reboard@dpor.state.va.us.

† **September 12, 2002 - 9 a.m.** -- Open Meeting

† **October 24, 2002 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

A regular meeting.

**Contact:** Karen W. O'Neal, Deputy Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY, e-mail oneal@dpor.state.va.us.

**September 13, 2002 - 9 a.m.** -- Open Meeting

**September 16, 2002 - 9 a.m.** -- Open Meeting

**September 17, 2002 - 9 a.m.** -- Open Meeting

**November 13, 2002 - 9 a.m.** -- Open Meeting

**November 14, 2002 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct informal fact-finding conferences. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The



department fully complies with the Americans with Disabilities Act.

**Contact:** Debbie Amaker, Legal Assistant, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8582, FAX (804) 367-0194, (804) 367-9753/TTY ☎, e-mail amaker@dpor.state.va.us.

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† **October 23, 2002 - 3 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

**November 9, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **18 VAC 135-60. Common Interest Community Management Information Fund Regulations.** The purpose of the proposed action is to implement the provisions of § 55-529 of the Code of Virginia relating to the Common Interest Community Management Information Fund.

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

**Contact:** Karen W. O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or e-mail oneal@dpor.state.va.us.

## REAL ESTATE APPRAISER BOARD

**September 11, 2002 - 1 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

**September 30, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Appraiser Board intends to amend regulations entitled: **18 VAC 130-20. Real Estate Board Regulations.** The purpose of the proposed action is to incorporate changes to criteria set forth by the Appraiser Qualifications Board and standards set by the Appraisal Standards Board of the Appraisal Foundation, permit renewal on inactive status, and make clarifying changes.

Statutory Authority: § 54.1-2013 of the Code of Virginia.

**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, (804) 367-9753/TTY ☎, e-mail reboard@dpor.state.va.us.

## VIRGINIA RESOURCES AUTHORITY

**September 10, 2002 - 9 a.m.** -- Open Meeting

**October 15, 2002 - 9 a.m.** -- Open Meeting

Virginia Resources Authority, 707 East Main Street, 2nd Floor Conference Room, Richmond, Virginia. ♿

A regular meeting of the Board of Directors to (i) review and, if appropriate, approve the minutes from the most recent monthly meeting; (ii) review the authority's operations for the prior month; (iii) review applications for loans submitted to the authority for approval; (iv) consider loan commitments for approval and ratification under its various programs; (v) approve the issuance of any bonds; (vi) review the results of any bond sales; and (vii) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Directors may also meet immediately before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting and any committee meetings will be available at the offices of the authority one week prior to the date of the meeting. Any person who needs any accommodation in order to participate in the meeting should contact the authority at least 10 days before the meeting so that suitable arrangements can be made.

**Contact:** Bonnie R.C. McRae, Executive Assistant, Virginia Resources Authority, 707 E. Main St., Suite 1350, Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bmcrae@vra.state.va.us.

## SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

**September 18, 2002 - 10 a.m.** -- Open Meeting

† **October 23, 2002 - 10 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.

A meeting to hear appeals of Department of Health denials of septic tank permits.

**Contact:** Susan C. Sherertz, Business Manager, Department of Health, 1500 E. Main St., Room 115, Richmond, VA 23219, telephone (804) 371-4236, FAX (804) 225-4003, e-mail ssherertz@vdh.state.va.us.

## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **September 24, 2002 - 10 a.m.** -- Open Meeting

Department of Business Assistance, 707 East Main Street, 3rd Floor, Richmond, Virginia. ♿

A meeting to review applications for loans submitted to the authority for approval and to address 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) 371-8256, FAX (804) 225-3384, e-mail sparsons@dba.state.va.us.

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# Calendar of Events

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## STATE BOARD OF SOCIAL SERVICES

**September 13, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **22 VAC 40-675. Personnel Policies for Local Departments of Social Services**. The purpose of the proposed action is to provide a uniform set of personnel policies to guide operations in local departments of social services in Virginia. Many of the policies are already in use.

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

**Contact:** Lori A. Kam, Human Resources Manager II, Department of Social Services, Division of Human Resources Management, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1520, FAX (804) 692-1560 or e-mail lak900@dss.state.va.us.

**September 20, 2002 - 9 a.m.** -- Open Meeting  
Department of Social Services, 730 East Broad Street, 8th Floor, Conference Room, Richmond, Virginia. 

A subcommittee of the Family and Children's Trust Fund will meet at 9 a.m. A regular business meeting of the Family and Children's Trust Fund Board of Trustees will begin at 10 a.m.

**Contact:** Nan McKenney, Executive Director, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1823, FAX (804) 692-1869.


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**October 11, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **22 VAC 40-680. Virginia Energy Assistance Program - Low Income Home Energy Assistance Program (LIHEAP)**. The purpose of the proposed action is to provide flexibility to adjust the maximum eligibility income limit in response to federal funding fluctuations, and to assist households with summer energy needs by establishing a cooling assistance component and requiring participation by localities.

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


**Contact:** Margaret Friedenbergh, Energy Assistance Program Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1728, FAX (804) 692-1469 or e-mail mjf900@dcse.dss.state.va.us.

**† December 6, 2002 - 10 a.m.** -- Open Meeting  
Department of Social Services, 730 East Broad Street, 8th Floor, Conference Room, Richmond, Virginia. 


A regular business meeting of the Family and Children's Trust Fund Board of Trustees.

**Contact:** Nan McKenney, Executive Director, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1823, FAX (804) 692-1869.

## BOARD OF SOCIAL WORK


**† September 20, 2002 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A general business meeting to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Evelyn B. Brown, Executive Director, Board of Social Work, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9914, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail ebrown@dhp.state.va.us.

## DEPARTMENT OF TECHNOLOGY PLANNING


### Wireless E-911 Services Board

**November 13, 2002 - 9 a.m.** -- Open Meeting  
Department of Information Technology, 110 South 7th Street, 3rd Floor Conference Room, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

The CMRS subcommittee will meet in closed session at 9 a.m. A regular meeting of the board will begin at 10 a.m.


**Contact:** Steven Marzolf, Public Safety Communications Coordinator, Department of Technology Planning, 110 S. 7th St., Richmond, VA 23219, telephone (804) 371-0015, e-mail smarzolf@ntp.state.va.us.

## COUNCIL ON TECHNOLOGY SERVICES

**September 9, 2002 - 2 p.m.** -- Open Meeting  
Department of Information Technology, 110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia. 

A regular monthly meeting of the Executive Committee. For more information, visit the COTS website at [www.cots.state.va.us](http://www.cots.state.va.us).


**Contact:** Jenny Hunter, COTS Executive Director, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-9579, FAX (804) 786-9584, e-mail jhunter@gov.state.va.us.

**September 11, 2002 - 10 a.m.** -- Open Meeting  
Department of Information Technology, 110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia. 

A regular bimonthly meeting of the Council on Technology Services Telecommunications Workgroup. Please visit the COTS website at [www.cots.state.va.us](http://www.cots.state.va.us) for more information.

**Contact:** Leslie Carter, Deputy Director, Department of Information Technology, 110 S. 7th St., 3rd Floor, Richmond,

VA 23219, telephone (804) 371-5577, e-mail [lcarter@dit.state.va.us](mailto:lcarter@dit.state.va.us).

**September 12, 2002 - 10 a.m.** -- Open Meeting  
Department of Information Technology, 110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia. 

A regular monthly meeting of the Council on Technology Services Enterprise Architecture Workgroup. For more information, visit [www.cots.state.va.us](http://www.cots.state.va.us).


**Contact:** Paul Lubic, IT Manager, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 371-0004, e-mail [plubic@ntp.state.va.us](mailto:plubic@ntp.state.va.us).

**September 24, 2002 - 12:30 p.m.** -- Open Meeting  
Virginia Military Institute, Lexington, Virginia.

A bimonthly meeting in conjunction with the Commonwealth of Virginia Information Technology Symposium (COVITS) 2002. For more information about the conference, visit [www.covits.org](http://www.covits.org). For more information about the COTS meeting, visit [www.cots.state.va.us](http://www.cots.state.va.us).

**Contact:** Jenny Hunter, COTS Executive Director, Department of Technology Planning, 110 S. 7th St., Suite 13S Richmond, VA 23219, telephone (804) 786-9579, FAX (804) 786-9584, e-mail [jhunter@gov.state.va.us](mailto:jhunter@gov.state.va.us).


## VIRGINIA TOBACCO SETTLEMENT FOUNDATION

**September 10, 2002 - 1:30 p.m.** -- Open Meeting  
The Siegel Center, 1200 W. Broad Street, Founder Room, Richmond, Virginia. 

A meeting of the Board of Trustees to discuss the budget.

**Contact:** Eloise Burke, Administrative Specialist, Virginia Tobacco Settlement Foundation, 701 E. Franklin St., Suite 501, Richmond, VA 23219, telephone (804) 786-2523, FAX (804) 225-2272, e-mail [eburke@tsf.state.va.us](mailto:eburke@tsf.state.va.us).

## COMMONWEALTH TRANSPORTATION BOARD

**September 18, 2002 - 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:** Sandra M. Mills, Assistant Legislative Coordinator, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 225-4701, FAX (804) 225-4700, e-mail [sandee.mills@VirginiaDOT.org](mailto:sandee.mills@VirginiaDOT.org).


**September 19, 2002 - 10 a.m.** -- Open Meeting  
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A monthly meeting of the Commonwealth Transportation Board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public

comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.


**Contact:** Sandra M. Mills, Assistant Legislative Coordinator, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 225-4701, FAX (804) 225-4700, e-mail [sandee.mills@VirginiaDOT.org](mailto:sandee.mills@VirginiaDOT.org).

## DEPARTMENT OF THE TREASURY

† **September 13, 2002 - 9:30 p.m.** -- Open Meeting  
Department of the Treasury, James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia. 

A meeting of the Virginia Public School Authority to consider Series 2002B Pooled Bond Sale including interest rate subsidy program.


**Contact:** Richard Davis, Public Finance Manager, Department of the Treasury, James Monroe Building, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 225-4928, FAX (804) 225-3187.

† **September 19, 2002 - 10:30 a.m.** -- Open Meeting  
Department of the Treasury, James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia. 

A meeting of the Virginia College Building Authority to review educational facilities revenue bonds.


**Contact:** Janet Aylor, Public Finance Manager, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 786-2082, FAX (804) 225-3187, e-mail [janet.aylor@trs.state.va.edu](mailto:janet.aylor@trs.state.va.edu).

## UNIVERSITY OF VIRGINIA

**September 17, 2002 - 2 p.m.** -- Open Meeting  
University of Virginia, The Rotunda, East Oval Room, Charlottesville, Virginia. 

The Buildings and Grounds Committee will meet.

**Contact:** Penney Catlett, Assistant to the Assistant Vice President for University Relations, University of Virginia, P.O. Box 400229, Charlottesville, VA 22904-4229, telephone (434) 924-7620, FAX (434) 924-0938, e-mail [pdv@virginia.edu](mailto:pdv@virginia.edu).

**September 19, 2002 - 2 p.m.** -- Open Meeting  
University of Virginia, The Rotunda, Board Room, Charlottesville, Virginia. 

A meeting of the Medical Center Operating Board.

**Contact:** Penney Catlett, Assistant to the Assistant Vice President for University Relations, University of Virginia, P.O. Box 400229, Charlottesville, VA 22904-4229, telephone (434) 924-7620, FAX (434) 924-0938, e-mail [pdv@virginia.edu](mailto:pdv@virginia.edu).

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# Calendar of Events

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## GOVERNOR'S ADVISORY COMMISSION FOR VETERANS' AFFAIRS

**September 12, 2002 - 10 a.m.** -- Public Hearing  
Northern Virginia Community College, 8333 Little River Turnpike, Annandale, Virginia. (Interpreter for the deaf provided upon request)

A public hearing and open meeting.

**Contact:** Sheryl Bailey, Deputy Secretary of Administration, Office of Governor, 202 N. Ninth St., Richmond, VA 23219, telephone (804) 786-1201, FAX (804) 371-0038, e-mail sbailey@gov.state.va.us.

## BOARD OF VETERINARY MEDICINE

**October 11, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Veterinary Medicine intends to amend regulations entitled: **18 VAC 150-20. Regulations Governing the Practice of Veterinary Medicine.** The purpose of the proposed action is to revise requirements in order to update facility requirements and to clarify certain provisions that have been confusing or problematic to licensees, especially related to the appropriate delegation of veterinary tasks to licensed technicians or unlicensed assistants.

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

Public comments may be submitted until October 11, 2002, to Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 6606 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

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**October 11, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Veterinary Medicine intends to amend regulations entitled: **18 VAC 150-20. Regulations Governing the Practice of Veterinary Medicine.** The purpose of the proposed action is to increase renewal and other fees charged to applicants and licensees.

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

Public comments may be submitted until October 11, 2002, to Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 6606 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St.,

Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

## VIRGINIA WAR MEMORIAL FOUNDATION

**September 20, 2002 - Noon** -- Open Meeting  
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The annual meeting of Virginia War Memorial Foundation Board of Trustees to elect officers. The meeting is open to the public and public comments will be heard.

**Contact:** Sandra H. Williams, Associate Director, Virginia War Memorial Foundation, 621 S. Belvidere St., Richmond, VA 23219, telephone (804) 786-2060, FAX (804) 786-6652, (804) 786-6152/TTY, e-mail swilliams@vawarmemorial.org.

## VIRGINIA WASTE MANAGEMENT BOARD

**October 24, 2002 - 2 p.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia.

**November 8, 2002** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-110. Regulations Governing the Transportation of Hazardous Materials.** The purpose of the proposed action is to revise definitions as necessary for consistency with federal regulations, update references to cite current federal regulations, remove obsolete sections and revise, as necessary, requirements for registration of shippers.

Statutory Authority: § 10.1-1450 of the Code of Virginia.

**Contact:** Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238, e-mail msporterfi@deq.state.va.us.

## VIRGINIA BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

**October 3, 2002 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

**Contact:** David 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 wastemgt@dpor.state.va.us.

## STATE WATER CONTROL BOARD

**September 26, 2002 - 10 a.m.** -- Open Meeting  
Department of Environmental Quality Piedmont Regional  
Office, 4949-A Cox Road, Glen Allen, Virginia. ☎

A public meeting to receive comments on the State Water Control Board's notice of intent to consider amending the Aboveground Storage Tank Regulation (9 VAC 25-91) and the Underground Storage Tank Financial and Technical Regulations (9 VAC 25-580 and 9 VAC 25-590).

**Contact:** Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail [cmberndt@deq.state.va.us](mailto:cmberndt@deq.state.va.us).

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**September 27, 2002 - 10 a.m.** -- Public Hearing  
Department of Environmental Quality, Piedmont Regional  
Office, 4949-A Cox Road, Glen Allen, Virginia.

**November 12, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to repeal regulations entitled: **9 VAC 25-70. Regulation No. 5 - Control of Pollution from Boats** and **9 VAC 25-730. Smith Mountain Lake No-Discharge Zone** and adopt regulations entitled: **9 VAC 25-71. Regulations Governing the Discharge of Sewage and Other Wastes from Boats**. The purpose of the proposed action is to repeal 9 VAC 25-70 and 9 VAC 25-730 and concurrently adopt 9 VAC 25-71 in order to provide a state regulation to address discharges of sewage and other wastes (decayed wood, sawdust, oil, etc.) from boats, especially with regard to implementation of no discharge zones.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.33 of the Code of Virginia.

**Contact:** Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail [mbgregory@deq.state.va.us](mailto:mbgregory@deq.state.va.us).

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**September 27, 2002 - 10 a.m.** -- Public Hearing  
Department of Environmental Quality, Piedmont Regional  
Office, 4949-A Cox Road, Glen Allen, Virginia.

**October 31, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-120. General Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites and Hydrostatic Tests**. The purpose of the proposed action is to receive public comment on the draft General VPDES Regulation for Discharges from Petroleum Contaminated Sites and Hydrostatic Tests and

the proposed reissuance of the General VPDES Permit (VAG83) to discharge to state waters.

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

**Contact:** Jon van Soestbergen, P.E., Environmental Manager II, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail [jvansoest@deq.state.va.us](mailto:jvansoest@deq.state.va.us).

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**September 27, 2002 - 10 a.m.** -- Public Hearing  
Department of Environmental Quality, Piedmont Regional  
Office, 4949-A Cox Road, Glen Allen, Virginia.

**October 31, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-196. General Pollutant Discharge Elimination System (VPDES) Permit Regulation for Cooling Water Discharges**. The purpose of the proposed action is to receive public comment on the draft General VPDES Regulation for Cooling Water Discharges and the proposed reissuance of the General VPDES Permit (VAG25) to discharge to state waters.

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

**Contact:** Jon van Soestbergen, P.E., Environmental Manager II, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail [jvansoest@deq.state.va.us](mailto:jvansoest@deq.state.va.us).

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**October 1, 2002 - 2 p.m.** -- Public Hearing  
Department of Environmental Quality, West Central Regional  
Office, 3019 Peters Creek Road, Roanoke, Virginia.

**October 2, 2002 - 2 p.m.** -- Public Hearing  
Department of Environmental Quality, Piedmont Regional  
Office, 4949-A Cox Road, Glen Allen, Virginia.

**October 3, 2002 - 7 p.m.** -- Public Hearing  
Department of Environmental Quality, Tidewater Regional  
Office, 5636 Southern Boulevard, Virginia Beach, Virginia.

**November 1, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-260. Water Quality Standards** and adopt regulations entitled: **9 VAC 25-280. Groundwater Quality Standards**. The purpose of the proposed action is to include updates and revisions to water quality criteria, use designations, mixing zones and the antidegradation policy. Substantive changes include the addition of secondary contact bacteria criteria, the revision of approximately 30 existing numerical criteria and the addition of approximately 33 new numerical criteria and the placement of several waters in the Class VII "swamp waters" classification along with a new pH criteria for those

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# Calendar of Events

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streams. The changes are based on EPA requirements and recommendations, the Department of Environmental Quality staff requests, and public comments. The amendments also move the groundwater standards into a separate regulation (9 VAC 25-280). This regulation contains the existing groundwater standards, criteria and antidegradation policy as well as pertinent definitions, general requirements, requirements for modification, amendment, and cancellation of standards and designations of authority.

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

**Contact:** Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111 or e-mail: emdaub@deq.state.va.us.

## VIRGINIA BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**September 19, 2002 - 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 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.

## INDEPENDENT

### STATE LOTTERY BOARD

**September 11, 2002 - 9 a.m.** -- Open Meeting  
Lottery Headquarters, Pocahontas Building, 900 East Main Street, Richmond, Virginia. ☎

A regular board meeting.

**Contact:** Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Board, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, e-mail brobertson@valottery.state.va.us.

### VIRGINIA RETIREMENT SYSTEM

**October 16, 2002 - Noon** -- Open Meeting  
**November 19, 2002 - Noon** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ☎

A regular meeting of the Optional Retirement Plan Advisory Committee.

**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dglazier@vrs.state.va.us.

**October 17, 2002 - 9 a.m.** -- Open Meeting  
**November 21, 2002 - 9 a.m.** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ☎

A regular meeting of the Board of Trustees.

**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dkestner@vrs.state.va.us.

**November 20, 2002 - Noon** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ☎

Committees will meet as follows:

Noon - Audit and Compliance Committee  
1 p.m. - Benefits and Actuarial Committee  
2:30 p.m. - Administrative and Personnel Committee  
3 p.m. - Investment Advisory Committee

**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dglazier@vrs.state.va.us.

## LEGISLATIVE

### VIRGINIA CODE COMMISSION

† **October 2, 2002 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Richmond, Virginia. ☎

A meeting to continue with the recodification of Title 25, Eminent Domain. Public comments will be received at the end of the meeting.

**Contact:** Jane D. Chaffin, Registrar of Regulations, Virginia Code Commission, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

### DISABILITY COMMISSION

† **September 17, 2002 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ☎

A regular meeting. Questions about the agenda should be addressed to Brian Parsons, Virginia Board for People with Disabilities, (804) 786-0016.

**Contact:** Hudaidah F. Bhimdi, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## DR. MARTIN LUTHER KING, JR. MEMORIAL COMMISSION

† **September 16, 2002 - 1:30 p.m.** -- Open Meeting  
† **October 24, 2002 - 10 a.m.** -- Open Meeting  
† **November 15, 2002 - 10 a.m.** -- Open Meeting  
† **December 17, 2002 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ☎

A regular meeting. Questions about the agenda should be addressed to Brenda Edwards or Norma Szakal, Division of Legislative Services, (804) 786-3591.

**Contact:** Anne R. Howard, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## CONSUMER ADVISORY BOARD OF THE VIRGINIA ELECTRICAL UTILITY RESTRUCTURING ACT

**September 11, 2002 - 10 a.m.** -- Open Meeting  
**October 10, 2002 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.

A general meeting. Individuals requiring interpreter services or other accommodations should contact Senate Committee Operations.

**Contact:** Thomas C. Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

## COMMISSION ON THE FUTURE OF VIRGINIA'S ENVIRONMENT

† **October 15, 2002 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.

A general meeting. Individuals requiring interpreter services or other accommodations should contact Senate Committee Operations.

**Contact:** Patty Lung, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

## JOINT SUBCOMMITTEE STUDYING THE EFFECTIVENESS AND COSTS OF THE GUARDIAN AD LITEM PROGRAM

**September 25, 2002 - 1 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ☎

A regular meeting. Questions about the agenda should be addressed to Robie Ingram, Division of Legislative Services, (804) 786-3591.

**Contact:** Anne R. Howard, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## JOINT SUBCOMMITTEE STUDYING LEAD POISONING PREVENTION

**October 1, 2002 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.

A general meeting. Individuals requiring interpreter services or other accommodations should contact Senate Committee Operations.

**Contact:** Thomas C. Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

## JOINT SUBCOMMITTEE TO STUDY THE PROTECTION OF INFORMATION CONTAINED IN THE RECORDS, DOCUMENTS AND CASES FILED IN THE COURTS OF THE COMMONWEALTH

**September 18, 2002 - 2 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ☎

A regular meeting. Questions about the agenda should be addressed to Mary Felch, Division of Legislative Services, (804) 786-3591.

**Contact:** Anne R. Howard, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### September 9

Alcoholic Beverage Control Board  
Barbers and Cosmetology, Board of  
† Education, Board of  
Environmental Quality, Department of  
- Ground Water Protection Steering Committee  
Game and Inland Fisheries, Department of  
† Local Government, Commission on  
Motor Vehicle Dealer Board  
- Advertising Committee  
- Dealer Practices Committee  
- Finance Committee  
- Franchise Law Committee  
- Licensing Committee  
- Personnel Committee  
- Transaction Recovery Fund Committee  
† Governor, Office of the  
"One Virginia-One Future" Governor Warner's Economic Development Strategic Plan Regional Meeting  
Technology Services, Council on  
- Executive Committee

#### September 10

Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, Board for  
† Funeral Directors and Embalmers, Board of

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# Calendar of Events

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Game and Inland Fisheries, Department of  
† Medicine, Board of  
- Advisory Board on Athletic Training  
† Governor, Office of the  
- "One Virginia-One Future" Governor Warner's Economic  
Development Strategic Plan Regional Meeting  
Psychology, Board of  
- Regulatory Committee  
Resources Authority, Virginia  
Tobacco Settlement Foundation, Virginia  
- Board of Trustees

## September 11

† Community Colleges, State Board for  
- Academic and Student Affairs Committee  
- Audit Committee  
- Budget and Finance Committee  
- Facilities Committee  
- Personnel Committee  
† Contractors, Board for  
- Tradesman Committee  
Education, Board of  
- Committee to Enhance the K-12 Teaching Professions  
Electrical Utility Restructuring Act, Virginia  
- Consumer Advisory Board  
† Funeral Directors and Embalmers, Board of  
Historic Resources, Department of  
- State Review Board and Historic Resources Board  
Housing and Community Development, Board of  
Housing Development Authority, Virginia  
- Board of Commissioners  
Juvenile Justice, State Board of  
Lottery Board, State  
Medicine, Board of  
- Advisory Board on Acupuncture  
- Advisory Board on Radiologic Technology  
† Mines, Minerals and Energy, Department of  
Technology Services, Council on  
- Telecommunications Workshop

## September 12

Aging, Commonwealth Council on  
† - Legislative Committee  
- Public Relations Committee  
† Child Day-Care Council  
† Community Colleges, State Board for  
Criminal Justice Services Board  
- Harold L. McCann Memorial Award Committee  
Environmental Quality, Department of  
Game and Inland Fisheries, Department of  
Medicine, Board of  
- Advisory Board on Occupational Therapy  
- Advisory Board on Respiratory Care  
† Outdoors Foundation, Virginia  
- Open Space Lands Preservation Trust Fund - Region 4  
Pharmacy, Board of  
- Special Conference Committee  
† Real Estate Board  
Technology Services, Council on  
- Enterprise Architect Workshop  
Veterans' Affairs, Governor's Advisory Commission for

## September 13

Child Fatality Review Team, State  
Medicine, Board of

- Advisory Board on Athletic Training  
- Advisory Board on Physician Assistants  
Old Dominion University  
- Board of Visitors  
Real Estate Board  
† Treasury, Department of the  
- Virginia Public School Authority

## September 14

Blind and Vision Impaired, Department for the  
- Statewide Rehabilitation Council for the Blind  
Conservation and Recreation, Department of  
- Virginia Cave Board  
† Medicine, Board of

## September 16

† Dr. Martin Luther King, Jr. Memorial Commission  
† Museum of Natural History, Virginia  
Real Estate Board

## September 17

Corrections, Board of  
- Correctional Services/Policy and Regulations Committee  
† Disability Commission  
† Governor, Office of the  
- "One Virginia-One Future" Governor Warner's Economic  
Development Strategic Plan Regional Meeting  
† Health Professions, Board of  
Medicine, Board of  
- Informal Conference Committee  
Real Estate Board  
University of Virginia  
- Buildings and Grounds Committee

## September 18

Corrections, Board of  
- Administration Committee  
Higher Education for Virginia, State Council of  
Medicine, Board of  
- Informal Conference Committee  
Museum of Fine Arts, Virginia  
- Communications and Marketing Committee  
- Education and Programs Committee  
- Exhibitions Committee  
- Museum Expansion Committee  
- Program Review Committee  
Polygraph Examiners Advisory Board  
Protection of Information Contained in the Records,  
Documents and Cases Filed in the Courts of the  
Commonwealth, Joint Subcommittee to Study  
Sewage Handling and Disposal Appeal Review Board  
Transportation Board, Commonwealth

## September 19

† Air Pollution Control Board, State  
Dentistry, Board of  
Design-Build/Construction Management Review Board  
† Governor, Office of the  
- "One Virginia-One Future" Governor Warner's Economic  
Development Strategic Plan Regional Meeting  
Manufactured Housing Board, Virginia  
Museum of Fine Arts, Virginia  
- Board of Trustees  
- Buildings and Grounds Committee  
- Collections Committee  
- Finance and Legislative Committee  
† Pharmacy, Board of



Transportation Board, Commonwealth  
† Treasury, Department of  
- Virginia College Building Authority  
University of Virginia  
- Medical Center Operating Board  
Waterworks and Wastewater Works Operators, Board for

## September 20

† Governor, Office of the  
- "One Virginia-One Future" Governor Warner's Economic  
Development Strategic Plan Regional Meeting  
Social Services, State Board of  
- Family and Children's Trust Fund Board of Trustees  
† Social Work, Board of  
War Memorial Foundation, Virginia  
- Board of Trustees

## September 23

Alcoholic Beverage Control Board  
Game and Inland Fisheries, Department of  
Library Board, State  
- Archival and Information Systems  
- Collection Management Services Committee  
- Legislative and Finance Committee  
- Publications and Educational Services Committee  
- Public Library Development Committee  
- Records Management Committee  
† Neurotrauma Initiative Advisory Board, Commonwealth  
Nursing, Board of  
† Physical Therapy, Board of  
- Legislative/Regulatory Committee  
Professional and Occupational Regulation, Board for

## September 24

Accountancy, Board of  
† Attorney General, Office of the  
- Identity Theft Task Force  
† Compensation Board  
† Funeral Directors and Embalmers, Board of  
Game and Inland Fisheries, Department of  
Marine Resources Commission  
Nursing, Board of  
† Small Business Financing Authority, Virginia  
Technology Services, Council on

## September 25

Accountancy, Board of  
Game and Inland Fisheries, Department of  
Guardian Ad Litem Program, Joint Subcommittee to Study  
the Effectiveness and Costs of the  
† Medicine, Board of  
Nursing, Board of

## September 26

† Criminal Justice Services Board  
Education, Board of  
† Environmental Quality, Department of  
† Governor, Office of the  
- "One Virginia-One Future" Governor Warner's Economic  
Development Strategic Plan Regional Meeting  
Water Control Board, State

## September 27

† Governor, Office of the  
- "One Virginia-One Future" Governor Warner's Economic  
Development Strategic Plan Regional Meeting  
Medicine, Board of  
- Legislative Committee

† Optometry, Board of

## September 30

† Pharmacy, Board of

## October 1

Lead Poison Prevention, Joint Subcommittee Studying  
Medical Assistance, Board of  
Museum of Fine Arts, Virginia  
- Executive Committee  
† Outdoors Foundation, Virginia

## October 2

† Code Commission, Virginia  
† Governor, Office of the  
- GA Study Pursuant to Item 298C of the Appropriations  
Act  
Medicine, Board of  
† Outdoors Foundation, Virginia

## October 3

† Fire Services Board, Virginia  
- Administration and Policy Committee  
- Finance Committee  
- Fire Education and Training Committee  
- Fire Prevention and Control Committee  
† Mental Health, Mental Retardation, and Substance Abuse  
Services, State Board of  
Waste Management Facility Operators, Virginia Board for

## October 4

Art and Architectural Review Board  
† Education, Board of  
† Fire Services Board, Virginia  
† Mental Health, Mental Retardation, and Substance Abuse  
Services, State Board of

## October 7

† Hearing Aid Specialists, Board for

## October 8

Nursing, Board of  
- Special Conference Committee

## October 9

Environmental Quality, Department of  
† Innovative Technology Authority  
† Motor Vehicles, Department of  
- Medical Advisory Board

## October 10

Electrical Utility Restructuring Act, Virginia  
- Consumer Advisory Board  
Environmental Quality, Department of  
† Jamestown-Yorktown Foundation  
Medicine, Board of  
Motor Vehicles, Department of  
- Digital Signature Implementation Workgroup  
Nursing, Board of  
- Special Conference Committee

## October 15

Blind and Vision Impaired, Board for the  
† Future of Virginia's Environment, Commission on the  
Resources Authority, Virginia

## October 16

Education, Board of  
† Nursing, Board of  
Retirement System, Virginia  
- Optional Retirement Plan Advisory Committee

## October 17

Design-Build/Construction Management Review Board

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# Calendar of Events

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Education, Board of  
- State Special Education Advisory Committee  
† Labor and Industry, Department of  
- Virginia Apprenticeship Council  
† Nursing, Board of  
Retirement System, Virginia  
- Board of Trustees

**October 18**  
Education, Board of  
- State Special Education Advisory Committee  
† Housing and Community Development, Department of  
- State Building Code Technical Review Board

**October 21**  
† Environmental Quality, Department of  
Intergovernmental Relations, Virginia Advisory Commission  
on  
Nursing, Board of  
- Special Conference Committee  
Old Dominion University  
- Executive Committee

**October 22**  
Nursing, Board of  
- Special Conference Committee

**October 23**  
† Museum of Fine Arts, Virginia  
- Museum Expansion Committee  
† Sewage Handling and Disposal Appeal Review Board

**October 24**  
† Dr. Martin Luther King, Jr. Memorial Commission  
† Medicine, Board of  
† Real Estate Board

**October 29**  
Asbestos, Lead, and Home Inspectors, Virginia Board for  
Nursing, Board of  
- Special Conference Committee

**October 30**  
† Medicine, Board of

**November 1**  
Art and Architectural Review Board

**November 4**  
Pharmacy, Board of  
- Informal Conference Committee

**November 6**  
† Education, Board of  
- Committee to Implement NCLB

**November 7**  
† Jamestown-Yorktown Foundation  
Medical Assistance Services, Department of  
- Medicaid Drug Utilization Review Board

**November 11**  
Intergovernmental Relations, Virginia Advisory Commission  
on

**November 13**  
† Medicine, Board of  
Real Estate Board  
Technology Planning, Department of  
- Wireless E-911 Services Board

**November 14**  
† Medicine, Board of  
Real Estate Board

**November 15**  
† Dr. Martin Luther King, Jr. Memorial Commission

**November 18**  
Jamestown-Yorktown Foundation  
Old Dominion University  
- Executive Committee  
Library Board, State  
- Archival and Information Systems  
- Collection Management Services Committee  
- Legislative and Finance Committee  
- Publications and Educational Services Committee  
- Public Library Development Committee  
- Records Management Committee  
Nursing, Board of

**November 19**  
† Funeral Directors and Embalmers, Board of  
Jamestown-Yorktown Foundation  
Retirement System, Virginia  
- Optional Retirement Plan Advisory Committee

**November 20**  
Education, Board of  
Retirement System, Virginia  
- Administration and Personnel Committee  
- Audit and Compliance Committee  
- Benefits and Actuarial Committee  
- Investment Advisory Committee

**November 21**  
Design-Build/Construction Management Review Board  
Nursing, Board of  
Retirement System, Virginia  
- Board of Trustees

**December 4**  
† Education, Board of  
- Committee to Implement NCLB  
† Nursing, Board of  
- Special Conference Committee

**December 6**  
† Art and Architectural Review Board  
† Social Services, State Board of

**December 12**  
† Motor Vehicles, Department of

**December 9**  
† Nursing, Board of  
Special Conference Committee

**December 12**  
† Motor Vehicles, Department of

**December 17**  
† Dr. Martin Luther King, Jr. Memorial Commission

## PUBLIC HEARINGS

**September 10**  
Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers, and Landscape Architects,  
Board for  
Barbers and Cosmetology, Board for  
Environmental Quality, Department of  
Funeral Directors and Embalmers, Board of  
Health, Department of

**September 11**  
Air Pollution Control Board, State  
Environmental Quality, Department of  
Real Estate Board  
Real Estate Appraiser Board

**September 12**

Environmental Quality, Department of

**September 16**

Forestry, Board of  
Health, Department of

**September 17**

† Environmental Quality, Department of  
Forestry, Board of  
Health, Department of

**September 18**

Health, Department of  
† Motor Vehicles, Department of  
Polygraph Examiners Advisory Board

**September 19**

Dentistry, Board of  
† Motor Vehicles, Department of

**September 20**

† Motor Vehicles, Department of  
Professional and Occupational Regulation, Board for

**September 23**

Forestry, Board of  
Professional and Occupational Regulation, Board for

**September 24**

† Air Pollution Control Board, State  
† Labor and Industry, Department of  
- Safety and Health Codes Board  
† Motor Vehicles, Department of  
Nursing, Board of

**September 26**

† Education, Board of  
Mines, Minerals and Energy, Department of  
Professional and Occupational Regulation, Board for

**September 27**

Water Control Board, State

**September 30**

Pharmacy, Board of

**October 1**

Historic Resources, Department of  
Water Control Board, State

**October 2**

Water Control Board, State

**October 3**

Water Control Board, State

**October 4**

Professional and Occupational Regulation, Board for

**October 7**

† Hearing Aid Specialists, Board for

**October 8**

Asbestos, Lead, and Home Inspectors, Virginia Board for  
Psychology, Board of

**October 9**

Nursing Home Administrators, Board of

**October 10**

Air Pollution Control Board, State  
† Environmental Quality, Department of

**October 17**

Auctioneers Board

**October 23**

† Real Estate Board

**October 24**

Waste Management Board, Virginia

**March 13, 2003**

† Agriculture and Consumer Services, State Board of