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CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2004 VAC Supplement includes final regulations published through *Virginia Register* Volume 20, Issue 11, dated February 9, 2004). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 1. Administration			
1 VAC 55-20-10	Repealed	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-20	Amended	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-30	Amended	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-40	Amended	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-50	Repealed	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-60 through 1 VAC 55-20-90	Amended	20:20 VA.R. 2159-2161	7/16/04
1 VAC 55-20-110	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-120	Repealed	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-130	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-160	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-210	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-230 through 1 VAC 55-20-260	Amended	20:20 VA.R. 2161-2162	7/16/04
1 VAC 55-20-280	Amended	20:20 VA.R. 2162	7/16/04
1 VAC 55-20-290	Amended	20:20 VA.R. 2162	7/16/04
1 VAC 55-20-300	Amended	20:20 VA.R. 2162	7/16/04
1 VAC 55-20-320 through 1 VAC 55-20-410	Amended	20:20 VA.R. 2162-2164	7/16/04
1 VAC 55-20-420	Repealed	20:20 VA.R. 2164	7/16/04
1 VAC 55-20-430	Amended	20:20 VA.R. 2164	7/16/04
1 VAC 55-20-450	Amended	20:20 VA.R. 2164	7/16/04
1 VAC 55-20-460	Amended	20:20 VA.R. 2164	7/16/04
1 VAC 55-20 (Forms)	Amended	20:20 VA.R. 2164	--
Title 2. Agriculture			
2 VAC 5-440-10 through 2 VAC 5-440-60	Amended	20:12 VA.R. 1471-1474	3/25/04
2 VAC 5-440-80	Repealed	20:12 VA.R. 1474	3/25/04
2 VAC 5-440-90	Repealed	20:12 VA.R. 1474	3/25/04
2 VAC 5-440 (Forms)	Amended	20:12 VA.R. 1474	--
Title 4. Conservation and Natural Resources			
4 VAC 5-36-20	Amended	20:13 VA.R. 1604	4/7/04
4 VAC 5-36-50 through 4 VAC 5-36-150	Amended	20:13 VA.R. 1604-1621	4/7/04
4 VAC 5-36-170 through 4 VAC 5-36-210	Amended	20:13 VA.R. 1621-1632	4/7/04
4 VAC 5-36-220	Added	20:13 VA.R. 1632	4/7/04
4 VAC 20-20-50	Amended	20:14 VA.R. 1709	3/1/04
4 VAC 20-270-20	Amended	20:19 VA.R. 2058	5/1/04
4 VAC 20-270-30	Amended	20:19 VA.R. 2058	5/1/04
4 VAC 20-490-10 emer	Amended	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-20 emer	Amended	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-35 emer	Repealed	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-35	Repealed	20:21 VA.R. 2230	6/1/04
4 VAC 20-490-40 emer	Amended	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-40	Amended	20:21 VA.R. 2230	6/1/04
4 VAC 20-490-45 emer	Repealed	20:18 VA.R. 2025	5/1/04-5/30/04
4 VAC 20-490-45	Repealed	20:21 VA.R. 2230	6/1/04
4 VAC 20-620-50	Amended	20:16 VA.R. 1863	3/26/04

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-620-60	Amended	20:16 VA.R. 1863	3/26/04
4 VAC 20-720-20	Amended	20:14 VA.R. 1710	3/1/04
4 VAC 20-720-40	Amended	20:14 VA.R. 1710	3/1/04
4 VAC 20-720-48 emer	Added	20:14 VA.R. 1714	3/1/04-3/31/04
4 VAC 20-720-50	Amended	20:14 VA.R. 1711	3/1/04
4 VAC 20-720-60	Amended	20:14 VA.R. 1711	3/1/04
4 VAC 20-720-80	Amended	20:14 VA.R. 1712	3/1/04
4 VAC 20-750-10	Amended	20:19 VA.R. 2058	5/1/04
4 VAC 20-750-20	Repealed	20:19 VA.R. 2059	5/1/04
4 VAC 20-750-30	Amended	20:19 VA.R. 2059	5/1/04
4 VAC 20-750-40	Amended	20:19 VA.R. 2059	5/1/04
4 VAC 20-910-45	Amended	20:16 VA.R. 1864	4/1/04
4 VAC 20-920-20	Amended	20:15 VA.R. 1778	3/5/04
4 VAC 20-920-40	Amended	20:15 VA.R. 1778	3/5/04
4 VAC 20-950-45	Amended	20:16 VA.R. 1864	4/1/04
4 VAC 20-1040-20	Amended	20:19 VA.R. 2060	5/1/04
4 VAC 25-31 (Forms)	Amended	20:15 VA.R. 1784-1792	--
4 VAC 25-130 (Forms)	Amended	20:19 VA.R. 2081-2083	--
Title 9. Environment			
9 VAC 5-20-21	Amended	20:12 VA.R. 1476	3/24/04
9 VAC 5-20-206 (Rev. G02)	Amended	20:12 VA.R. 1498	3/24/04
9 VAC 5-20-206 (Rev. C03)	Amended	20:12 VA.R. 1498	3/24/04
9 VAC 5-40-240	Amended	20:12 VA.R. 1499	3/24/04
9 VAC 5-40-310	Erratum	20:15 VA.R. 1809	--
9 VAC 5-40-310	Amended	20:12 VA.R. 1499	3/24/04
9 VAC 5-40-3260	Amended	20:12 VA.R. 1479	3/24/04
9 VAC 5-40-5200	Amended	20:12 VA.R. 1500	3/24/04
9 VAC 5-40-5220	Amended	20:12 VA.R. 1501	3/24/04
9 VAC 5-40-5700 through 9 VAC 5-40-5770	Added	20:12 VA.R. 1480	3/24/04
9 VAC 5-40-6820 through 9 VAC 5-40-7230	Added	20:12 VA.R. 1480-1497	3/24/04
9 VAC 5-40-6840	Erratum	20:18 VA.R. 2027	--
9 VAC 5-50-400	Amended	20:16 VA.R. 1865	6/1/04
9 VAC 5-50-405	Added	20:16 VA.R. 1865	6/1/04
9 VAC 5-50-410	Amended	20:16 VA.R. 1865	6/1/04
9 VAC 5-60-60	Amended	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-65	Added	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-90	Amended	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-95	Added	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-100	Amended	20:16 VA.R. 1872	6/1/04
9 VAC 5-60-120 through 9 VAC 5-60-180	Amended	20:16 VA.R. 1877-1889	7/1/04
9 VAC 5-91-20 emer	Amended	20:12 VA.R. 1507	1/28/04-1/27/05
9 VAC 5-91-160 emer	Amended	20:12 VA.R. 1513	1/28/04-1/27/05
9 VAC 5-91-180 emer	Amended	20:12 VA.R. 1513	1/28/04-1/27/05
9 VAC 5-91-750 emer	Amended	20:12 VA.R. 1515	1/28/04-1/27/05
9 VAC 5-91-760 emer	Amended	20:12 VA.R. 1515	1/28/04-1/27/05
9 VAC 5-140-550	Amended	20:12 VA.R. 1504	3/24/04
9 VAC 25-151-10	Amended	20:16 VA.R. 1889	7/1/04
9 VAC 25-151-40 through 9 VAC 25-151-370	Amended	20:16 VA.R. 1889-1890	7/1/04
9 VAC 25-151-65	Added	20:16 VA.R. 1889	7/1/04
9 VAC 25-180-10	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-20	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-40	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-50	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-55	Amended	20:16 VA.R. 1892	7/1/04
9 VAC 25-180-60	Amended	20:16 VA.R. 1892	7/1/04
9 VAC 25-180-65	Added	20:16 VA.R. 1893	7/1/04

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-180-70	Amended	20:16 VA.R. 1894	7/1/04
9 VAC 25-180 (Forms)	Amended	20:16 VA.R. 1906	--
9 VAC 25-190-10	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-20	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-50	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-60	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-70	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-580-10	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-50	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-130	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-270	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-290	Repealed	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-320	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-590-60	Erratum	20:17 VA.R. 1984	--
9 VAC 25-790	Erratum	20:12 VA.R. 1526	--
Title 10. Finance and Financial Institutions			
10 VAC 5-40-40	Added	20:14 VA.R. 1713	3/1/04
10 VAC 5-200-100	Added	20:22 VA.R. 2403	6/15/04
Title 11. Gaming			
11 VAC 10-45-10 through 11 VAC 10-45-70	Added	20:22 VA.R. 2413-2417	9/27/04
Title 12. Health			
12 VAC 5-90-10	Amended	20:21 VA.R. 2231	7/28/04
12 VAC 5-90-40	Amended	20:21 VA.R. 2231	7/28/04
12 VAC 5-90-80	Amended	20:21 VA.R. 2231	7/28/04
12 VAC 5-90-90	Amended	20:21 VA.R. 2234	7/28/04
12 VAC 5-90-100	Amended	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-110	Amended	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-160	Amended	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-180	Amended	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-225	Added	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-280 through 12 VAC 5-90-360	Added	20:21 VA.R. 2238	7/28/04
12 VAC 5-125-10 through 12 VAC 5-125-120 emer	Added	20:21 VA.R. 2252-2264	6/1/04-5/31/05
12 VAC 5-200-10 through 12 VAC 5-200-50	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-70	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-80 through 12 VAC 5-200-190	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-105	Added	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-210	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-220	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-230	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-270	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-280	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-290	Added	20:22 VA.R. 2403	8/11/04
12 VAC 5-210-10	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 5-210-20	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 30-40-235	Added	20:19 VA.R. 2060	8/1/04
12 VAC 30-40-280	Amended	20:22 VA.R. 2420	9/25/04
12 VAC 30-40-290	Amended	20:22 VA.R. 2420	9/25/04
12 VAC 30-40-345	Amended	20:22 VA.R. 2422	9/25/04
12 VAC 30-50-140	Amended	20:19 VA.R. 2062	7/1/04
12 VAC 30-50-150	Amended	20:19 VA.R. 2063	7/1/04
12 VAC 30-50-180	Amended	20:19 VA.R. 2064	7/1/04
12 VAC 30-50-210 emer	Amended	20:19 VA.R. 2075	5/11/04-1/3/05
12 VAC 30-60-40	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-60-320	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-70-271	Amended	20:19 VA.R. 2068	7/1/04

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-70-291	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 30-70-301	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 30-70-331	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 30-80-20	Amended	20:19 VA.R. 2068	7/1/04
12 VAC 30-80-30	Amended	20:19 VA.R. 2064	7/1/04
12 VAC 30-80-200	Added	20:19 VA.R. 2071	7/1/04
12 VAC 30-90-264	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-90-271	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-130-620	Amended	20:19 VA.R. 2061	8/1/04
12 VAC 30-130-1000 emer	Amended	20:19 VA.R. 2077	5/11/04-1/3/05
12 VAC 30-141-500 emer	Amended	20:17 VA.R. 1974	6/1/04-5/31/05
Title 14. Insurance			
14 VAC 5-90-30	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-60	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-70	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-130	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-170	Erratum	20:17 VA.R. 1984	--
14 VAC 5-321-10 through 14 VAC 5-321-60	Added	20:16 VA.R. 1906-1909	7/1/04
14 VAC 5-335-10 through 14 VAC 5-335-60	Added	20:21 VA.R. 2240-2242	1/1/05
Title 16. Labor and Employment			
16 VAC 25-85-1910.139	Repealed	20:19 VA.R. 2071	7/1/04
16 VAC 25-90-1910.401	Amended	20:19 VA.R. 2073	7/1/04
16 VAC 25-90-1910.402	Amended	20:19 VA.R. 2073	7/1/04
16 VAC 25-145-10 through 16 VAC 25-145-50	Added	20:12 VA.R. 1505-1506	4/1/04
16 VAC 25-90-1910, Appendix C of Subpart T of Part 1910	Added	20:19 VA.R. 2073	7/1/04
Title 18. Professional and Occupational Licensing			
18 VAC 41-40-10 through 18 VAC 41-40-260	Added	20:19 VA.R. 2074	7/1/04
18 VAC 62-20-10 through 18 VAC 62-20-180	Added	20:12 VA.R. 1515-1518	2/2/04-2/1/05
18 VAC 65-30-50	Amended	20:21 VA.R. 2242	7/28/04
18 VAC 76-40-10	Added	20:21 VA.R. 2243	7/28/04
18 VAC 76-40-20	Added	20:21 VA.R. 2243	7/28/04
18 VAC 76-40-30	Added	20:21 VA.R. 2243	7/28/04
18 VAC 76-40 (Forms)	Amended	20:21 VA.R. 2243	7/28/04
18 VAC 85-20-22	Amended	20:20 VA.R. 2165	7/14/04
18 VAC 85-20 (Forms)	Amended	20:20 VA.R. 2165	--
18 VAC 90-20-10 emer	Amended	20:22 VA.R. 2424	6/24/04-6/23/05
18 VAC 90-20-30	Amended	20:20 VA.R. 2166	7/14/04
18 VAC 90-20-181 emer	Added	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 90-20-182 emer	Added	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 90-20-183 emer	Added	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 90-20-300 emer	Amended	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 110-20-720	Amended	20:18 VA.R. 2021	7/1/04
18 VAC 120-10-100	Erratum	20:13 VA.R. 1644	--
18 VAC 145-30-10 through 18 VAC 145-30-160	Added	20:20 VA.R. 2167-2170	7/14/04
18 VAC 145-30 (Forms)	Amended	20:20 VA.R. 2170	--
Title 20. Public Utilities and Telecommunications			
20 VAC 5-309-15	Amended	20:15 VA.R. 1781	3/12/04
20 VAC 5-309-20	Amended	20:15 VA.R. 1781	3/12/04
20 VAC 5-309-40	Amended	20:15 VA.R. 1781	3/12/04
20 VAC 5-309-70	Amended	20:15 VA.R. 1782	3/12/04
20 VAC 5-309-110	Amended	20:15 VA.R. 1782	3/12/04
20 VAC 5-309-140	Amended	20:15 VA.R. 1783	3/12/04
Title 22. Social Services			
22 VAC 30-50-30	Amended	20:18 VA.R. 2022	6/18/04
22 VAC 40-180 (Forms)	Amended	20:21 VA.R. 2265-2268	--

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-190	Erratum	20:12 VA.R. 1526	--
22 VAC 40-191	Erratum	20:12 VA.R. 1526	--
22 VAC 40-191-40	Amended	20:22 VA.R. 2404	9/1/04
22 VAC 40-191-50	Amended	20:22 VA.R. 2407	9/1/04
22 VAC 40-293-10	Added	20:21 VA.R. 2245	7/28/04
22 VAC 40-293-20	Added	20:21 VA.R. 2245	7/28/04
22 VAC 40-740-10 through 22 VAC 40-740-60	Amended	20:20 VA.R. 2175-2178	8/1/04
22 VAC 40-740 (Forms)	Amended	20:20 VA.R. 2178	--
Title 24. Transportation and Motor Vehicles			
24 VAC 20-100-10	Amended	20:21 VA.R. 2246	7/1/04
24 VAC 20-100-130	Amended	20:21 VA.R. 2247	7/1/04
24 VAC 20-100-160	Amended	20:21 VA.R. 2247	7/1/04
24 VAC 20-100-190 through 24 VAC 20-100-220	Amended	20:21 VA.R. 2247-2248	7/1/04
24 VAC 20-100-290 through 24 VAC 20-100-330	Amended	20:21 VA.R. 2248-2249	7/1/04
24 VAC 20-100-350	Amended	20:21 VA.R. 2249	7/1/04
24 VAC 20-100-370 through 24 VAC 20-100-460	Amended	20:21 VA.R. 2249-2250	7/1/04
24 VAC 20-100-490 through 24 VAC 20-100-540	Amended	20:21 VA.R. 2250-2251	7/1/04
24 VAC 20-100-550	Added	20:21 VA.R. 2251	7/1/04
24 VAC 20-100 (Forms)	Amended	20:21 VA.R. 2251	7/1/04
24 VAC 30-380-10	Amended	20:13 VA.R. 1633	2/12/04

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Agency Decision

Title of Regulation: **9 VAC 25-260. Water Quality Standards.**

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

Name of Petitioner: Cowpasture River Preservation Association.

Nature of Petitioner's Request: Designate the Cowpasture River between its confluence in Bath County with the Bullpasture River and its confluence with the Jackson River in Botetourt County and Simpson Creek, including all named and unnamed tributaries, from its headwaters downstream to its confluence with the Cowpasture River in Alleghany County as an exceptional state surface water.

Agency Decision: Request granted.

Statement of Reasons for Decision: The decision made by the State Water Control Board at their meeting on June 17, 2004, to initiate rulemakings to amend the Water Quality Standards regulation to designate as exceptional state waters the mainstem of the Cowpasture River from the Bath County - Alleghany County line downsteam to its confluence with the Jackson River in Botetourt County and Simpson Creek and its tributaries and to include in the Notice of Intended Regulatory Action a request for comment on what would be the appropriate boundary designations for the Cowpasture River and Simpson Creek was based on a DEQ staff presentation on March 23, 2004, of (i) a summary of comments received from potentially impacted localities and riparian landowners and the general public and (ii) a summary of the findings from site visits to determine if the waterbodies met the eligibility criteria and a follow-up staff presentation on June 17, 2004, to advise the board that staff had worked, as directed by the board at their March 23 meeting, with the petitioner and the community to redefine the scope of the nomination.

Agency Contact: Jean W. Gregory, Environmental Manager II, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4116, or e-mail jwgregory@deq.virginia.gov.

VA.R. Doc. No. R04-70; Filed June 24, 2004, 11:06 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Agency Decision

Title of Regulation: **18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners.**

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

Name of Petitioner: Deborah W. Johnson.

Nature of Petitioner's Request: To amend 18 VAC 85-40-66 relating to continuing education to include courses approved for Category 1 CME by the American Medical Association.

Agency Decision: Request granted.

Statement of Reasons for Decision: The board voted to issue a Notice of Intended Regulatory Action to begin the process of amending regulations in order to accept continuing education courses that are appointed for Category 1 CME by the American Medical Association.

Agency Contact: William L. Harp, M.D., Executive Director, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712, telephone (804) 662-7423, FAX (804) 662-9943, or e-mail william.harp@dhp.virginia.gov.

VA.R. Doc. No. R04-70; Filed June 24, 2004, 11:06 a.m.

NOTICES OF INTENDED REGULATORY ACTION

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

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 5-80, Permits for Stationary Sources.** The purpose of the proposed action is to amend the regulations that govern permitting for new major stationary sources and major modifications in order to meet the new source reform requirements of 40 CFR Part 51.

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

Statutory Authority: § 10.1-1308 of the Code of Virginia, federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) and 40 CFR Parts 51, 61, 63, 70 and 72.

Public comments may be submitted until 5 p.m. on September 8, 2004.

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.virginia.gov.

VA.R. Doc. No. R04-189; Filed June 23, 2004, 7:59 a.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to consider promulgating regulations entitled **12 VAC 5-125, Regulations for Bedding and Upholstered Furniture Inspection Program.** The purpose of the proposed action is to carry out the provisions of Chapter 1003 of the 2003 Acts of Assembly (HB 2810) by implementing policies and procedures for the inspection of bedding and upholstered furniture.

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

Statutory Authority: § 32.1-12 of the Code of Virginia and Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Richard Niedermayer, Administrator, Office of Epidemiology, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 786-6029, FAX (804) 786-1076 or e-mail richard.niedermayer@vdh.virginia.gov.

VA.R. Doc. No. R04-166; Filed June 1, 2004, 2:08 p.m.

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 30-50, Amount, Duration and Scope of Medical and Remedial Care Services.
12 VAC 30-60, Standards Established and Methods Used to Assure High Quality Care.
12 VAC 30-130, Amount, Duration and Scope of Selected Services.

The purpose of the proposed action is to separate community-based residential care services into three levels based upon the intensity of the service. This provides more objective criteria to define each service level because a single level of service complicates decisions about which licensing agency has authority over a given program. Separating the services into three defined levels facilitates the placement of children into the most appropriate setting and provides for more efficient and accurate provider reimbursement.

The agency does not intend to hold a public hearing on the proposed regulation 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 August 26, 2004, to Catherine Hancock, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Brian McCormick, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680 or e-mail Brian.McCormick@dmas.virginia.gov.

VA.R. Doc. No. R04-194; Filed June 28, 2004, 4:11 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 30-90, Methods and Standards for Establishing Payment Rates for Long-Term Care.** The purpose of the proposed action is to modify the method of payment for specialized care ancillary services.

The agency does not intend to hold a public hearing on the proposed regulation 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 August 25, 2004, to Paula Margolis, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Brian McCormick, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680 or e-mail Brian.McCormick@dmas.virginia.gov.

VA.R. Doc. No. R04-210; Filed June 30, 2004, 3:15 p.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled **13 VAC 5-21, Virginia Certification Standards.** The purpose of the proposed action is to update the regulation to correlate with the department's building and fire regulations, which are being updated to reference the latest editions of nationally recognized codes and standards. Since the national codes are so comprehensive in their scope, the agency will accept comment on all provisions of the regulation to ensure its compatibility with the national codes.

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

Statutory Authority: § 36-137 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R04-167; Filed June 2, 2004, 11:49 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 Housing and Community Development intends to consider amending regulations entitled **13 VAC 5-31, Virginia Amusement Device Regulations.** The purpose of the proposed action is to update the regulation to incorporate the latest editions of nationally recognized amusement device standards. Since the national standards are so comprehensive in their scope, the agency will accept comment on all provisions of the regulation to ensure its compatibility with the national standards.

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

Statutory Authority: § 36-98.3 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R04-168; Filed June 2, 2004, 11:49 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 Housing and Community Development intends to consider amending regulations entitled **13 VAC 5-51, Virginia Statewide Fire Prevention Code.** The purpose of the proposed action is to update the regulation to incorporate the latest edition of the nationally recognized model fire code. Since the national standards are so comprehensive in their scope, the agency will accept comment on all provisions of the regulation to ensure its compatibility with the model code.

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

Statutory Authority: § 27-97 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R04-169; Filed June 2, 2004, 11:49 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 Housing and Community Development intends to consider repealing regulations entitled **13 VAC 5-62, Virginia Uniform Statewide Building Code,** and promulgating regulations entitled **13 VAC 5-63, Virginia Uniform Statewide Building Code.** The purpose of the proposed action is to update the regulation to incorporate the latest editions of nationally recognized model building codes and standards produced by the International Code Council (ICC). As the ICC has now produced a rehabilitation code, it is necessary to reformat the existing regulation (13 VAC 5-62) extensively to incorporate the new rehabilitation code format. Therefore, the existing regulation is being repealed and the reformatted regulation is a newly promulgated regulation. However, the only purpose of the proposed action is to incorporate the latest editions of the ICC codes.

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

Statutory Authority: § 36-98 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R04-170 and R04-171; Filed June 2, 2004, 11:49 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 Housing and Community Development intends to consider amending regulations entitled **13 VAC 5-91, Virginia Industrialized Building Safety Regulations.** The purpose of the proposed action is to update the regulation to incorporate the latest editions of nationally recognized model building codes and standards. Since the national standards are so comprehensive in their scope, the agency will accept comment on all provisions of the regulation to ensure its compatibility with the latest model codes.

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

Statutory Authority: § 36-73 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R04-172; Filed June 2, 2004, 11:49 a.m.

VIRGINIA MANUFACTURED HOUSING BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2-2-4007 of the Code of Virginia that the Virginia Manufactured Housing Board intends to consider amending regulations entitled **13 VAC 6-20, Manufactured Housing Licensing and Transaction Recovery Fund Regulations.** The purpose of the proposed action is to review issues related to licensing requirements for the manufactured housing industry members that will provide better protection to consumers without imposing unnecessary regulatory burdens on the licensees. The amended regulations will better define the parameters for warranties on the homes, provide when and what disclosures must be given to buyers, and define and implement a substantial identity of interest to restrict repeated violations and company name changes. The regulations currently restrict ownership of a retail location by a manufacturer. This carryover from the days the industry was regulated as a part of the motor vehicle industry will be proposed to be removed as an unnecessary restriction of business. The board will receive suggestions and review other requirements and restrictions in the regulations to address any perceived problems and improve the regulations for consumers and regulants.

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

Statutory Authority: § 36-85.18 of the Code of Virginia.

Public comments may be submitted until August 25, 2004.

Contact: Curtis McIver, Associate Director, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7161, FAX (804) 371-7092 or e-mail curtis.mciver@dhcd.virginia.gov.

VA.R. Doc. No. R04-227; Filed July 7, 2004, 2:06 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to consider amending regulations entitled **18 VAC 30-20, Regulations of the Board of Audiology and Speech-Language Pathology.** The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9943 or e-mail elizabeth.young@dhp.virginia.gov.

VA.R. Doc. No. R04-198; Filed June 30, 2004, 11:37 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 Board of Dentistry 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 set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943 or e-mail sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R04-200; Filed June 30, 2004, 11:36 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 Governing the Practice of Nursing.** The purpose of the proposed action is to set out regulations for implementation of the Nurse Licensure Compact including rules for issuance of a multistate licensure privilege, moving from one party state to another, notification of licensure denial to a former party state, limitations by disciplinary order on practice under a multistate privilege, a licensee's access to information in the licensure information system, and inclusion of the multistate privilege in the disciplinary provisions.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9943 or e-mail jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R04-193; Filed June 24, 2004, 3:25 p.m.

BOARD OF PHYSICAL THERAPY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Physical Therapy intends to consider amending regulations entitled **18 VAC 112-20, Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9941, FAX (804) 662-9943 or e-mail elizabeth.young@dhp.virginia.gov.

VA.R. Doc. No. R04-202; Filed June 30, 2004, 11:38 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 promulgating regulations entitled **18 VAC 115-15, Regulations Governing Delegation to an Agency Subordinate.** The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Ben Foster, Deputy Executive Director, Board of Counseling, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9575, FAX (804) 662-7250 or e-mail ben.foster@dhp.virginia.gov.

VA.R. Doc. No. R04-204; Filed June 30, 2004, 11:39 a.m.

BOARD OF SOCIAL WORK

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Social Work intends to consider amending regulations entitled **18 VAC 140-20, Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Ben Foster, Deputy Executive Director, Board of Social Work, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-9943 or e-mail ben.foster@dhp.virginia.gov.

VA.R. Doc. No. R04-206; Filed June 30, 2004, 11:38 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 set out

the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Board of Veterinary Medicine, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9915, FAX (804) 662-7098 or e-mail elizabeth.carter@dhp.virginia.gov.

VA.R. Doc. No. R04-208; Filed June 30, 2004, 11:36 a.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Commonwealth Transportation Board intends to consider promulgating regulations entitled **24 VAC 30-121, Roadside Management Program Regulations.** The purpose of the proposed action is to comply with the provisions of Chapter 679 of the 2004 Acts of Assembly (§ 33.1-223.2:9 of the Code of Virginia, effective July 1, 2004). The proposed regulation establishes a comprehensive roadside management program. This program will include, but not be limited to, opportunities for participation by individuals, communities, and local governments and shall address items to include safety, landscape materials, services, funding, recognition, and appropriate signing. During the development of the regulation, VDOT may also address new program initiatives, as well as current programs or items not currently addressed in law, such as program participation by businesses, civic groups, or others.

Following the conclusion of the NOIRA stage, VDOT plans to promulgate this regulation by using the fast-track rulemaking process pursuant to § 2.2-4012.1 of the Administrative Process Act. Using this method, a proposed regulation may become effective about 75 days after its publication in the Virginia Register, unless objected to by 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules. If objected to, VDOT intends to proceed with this rulemaking under the normal APA (Article 2) promulgation process.

Although not required by the fast-track process, VDOT will hold a public hearing on Monday, July 26, 2004, in the Old Highway Building auditorium at 1221 East Broad Street in Richmond from 1 p.m. to 4 p.m. to collect additional comment prior to completing the proposed regulation. VDOT will also collect input from stakeholders (including an advisory committee comprised of individuals knowledgeable about tourism, landscaping, as well as local government issues) during the preparation of the regulation and will evaluate any issues raised prior to adoption of the final regulation. These issues could be related to the technical points listed above, or other unanticipated issues could arise during the promulgation process.

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

Statutory Authority: §§ 33.1-12 and 33.1-223.2:9 (effective July 1, 2004) of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: James R. Barrett, Program Administrator Specialist, Department of Transportation, Asset Management Division, 1401 E. Broad St., 19th Floor, Richmond, VA 23219, telephone (804) 371-6801, FAX (804) 786-7987 or e-mail James.Barrett@VirginiaDOT.org.

VA.R. Doc. No. R04-174; Filed June 8, 2004, 2:57 p.m.

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TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulation: **3 VAC 5-40. Requirements for Product Approval (amending 3 VAC 5-40-20, 3 VAC 5-40-40 and 3 VAC 5-40-50).**

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

Public Hearing Date: September 27, 2004 - 11 a.m.
Public comments may be submitted until September 27, 2004.
(See Calendar of Events section for additional information)

Agency Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Post Office Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411, or e-mail wccolen@abc.state.va.us.

Basis: Sections 4.1-103 and 4.1-111 of the Code of Virginia authorize the board to promulgate regulations that it deems necessary to carry out the provisions of the Alcoholic Beverage Control Act. Subdivision 9 of § 4.1-103 specifically authorizes the Alcoholic Beverage Control Board to "determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon."

Purpose: The goals of this regulation are to (i) determine the nature, form and capacity of all containers used for holding alcoholic beverages, and prescribe the form and content of all labels and seals to be placed thereon and (ii) protect consumers of alcoholic beverages from misleading information concerning the identity or contents of alcoholic beverage products sold in the Commonwealth.

The regulation is effective in achieving the goals. It is essential to protect the health, safety or welfare of citizens in that it ensures that alcoholic beverage packaging accurately reflects the contents, does not contain misleading information, and does not include obscene matter or representations intended or tending to promote over-consumption of alcoholic beverages. This action will remove unnecessary requirements and streamline the process of product approval, as well as provide additional container options for on- and off-premises beer licensees and their customers.

Substance: In 3 VAC 5-40-20, the requirement for certification or analysis of wine products will be removed.

In 3 VAC 5-40-40, the use of growlers will be extended to all licensees with the privilege of selling beer for on- and off-premises consumption.

In 3 VAC 5-40-50, the requirement for certification or analysis of beer products will be removed, and the provision of subdivision D 8 referring to the depiction of any athlete, former athlete or athletic team on beer labels will be modified to allow such depictions to the extent they are permitted in point-of-sale advertising under 3 VAC 5-20-10.

Issues: The primary advantages of this action are to manufacturers, wholesalers, and retailers of wine and beer products. The removal of certification and analysis requirements will reduce the potential impediments to getting their new products to market. There are no disadvantages to the public or the Commonwealth, since federal registration requirements capture matters formerly obtained by the state analysis. Beer on- and off-premises retailers and their customers will also obtain the advantage of the option of using growlers, resealable containers, to sell beer not ordinarily available in bottles or cans.

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 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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. Section 4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate regulations that it deems necessary to carry out the provisions of Title 4.1 (Alcoholic Beverages and Industrial Alcohol). Specifically, § 4.1-103 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to determine the nature, form, and capacity of all containers used for holding alcoholic beverages kept or sold under Title 4.1 and prescribe the form and content of all labels and seals to be placed on these containers.

The proposed regulation (1) removes the certification and chemical analysis requirements for new beer and wine products sold in Virginia, (2) allows individuals and establishments licensed to sell beer on- and off-premises to use growlers, and (3) permits references to athletes and athletic teams on beer labels to the extent that it is permitted in point-of-sale advertising under 3 VAC 5-20 (the regulation

setting forth limitations on advertising of alcoholic beverages by manufacturers, distributors, and retailers).

Estimated economic impact. (1) The proposed regulation removes the certification and chemical analysis requirements for new beer and wine products sold in Virginia. The existing regulation requires the submission of a certification or a sample of wine or beer for analysis prior to the wine or beer being sold in Virginia. The cost of certification or chemical analysis is to be covered by fees charged by the Department of Alcoholic Beverage Control (ABC) from all applicants seeking approval as to the content, container, and label of the wine or beer in question. Under the proposed regulation, rather than requiring a separate certification or chemical analysis, the Alcoholic Beverage Control Board will rely on the label approval provided by the federal Bureau of Alcohol, Tobacco, and Firearms.

The Bureau of Alcohol, Tobacco, and Firearms is required to approve the formulation of all alcoholic beverages sold in the United States. By removing the state certification and chemical analysis requirement, the proposed change will avoid wasting resources on duplicating federal label approval procedures and activities. However, the net economic impact of the proposed change is not likely to be significant. According to ABC, certification and chemical analysis has not been required for several years now and the proposed change simply makes the regulation consistent with current practice.

(2) The proposed regulation relaxes the provision in the existing regulation dealing with the use of growlers[1]. Rather than limiting the use of growlers to brewpubs, the proposed regulation allows all individuals and establishments licensed to sell beer on- and off-premises to use growlers. According to ABC, the use of growlers applies to certain types of specialty beers not ordinarily available in bottles and cans. In such cases, the draft beer is put into growlers and sold for off-premises consumption.

The proposed change is likely to affect alcoholic beverage manufacturers, wholesalers, and retailers licensed to sell beer on- and off-premises. According to ABC, there are approximately 14,000 manufacturers, wholesalers, and retailers currently operating in Virginia. Of the approximately 13,000 retail licensees, facilities with licenses allowing the consumption of beer on- and off-premises, such as restaurants (5,421 licensees) and hotels and resorts (308 licensees), will be affected by the proposed change.

The proposed change is likely to have a small net positive economic impact. It is likely to increase the number of individuals and establishments selling specialty beers not usually available in bottles or cans. Under the existing regulation, only brewpubs are allowed to use growlers, limiting the number of establishments selling these types of beers for off-premises consumption. By relaxing the provision to include other licensees allowed to sell beer for on- and off-premise consumption, the proposed change is likely to increase competition and exert downward pressure on the price of these specialty beers.

(3) The proposed regulation permits references to athletes and athletic teams on beer labels to the extent that it is permitted in point-of-sale advertising under 3 VAC 5-20 (the regulation setting forth limitations on advertising of alcoholic beverages by manufacturers, distributors, and retailers). The existing regulation allows the Alcoholic Beverage Control Board to withhold approval for a label when the label makes references to any athlete, former athlete, or athletic team as these references might be construed to imply that the product enhances athletic prowess. This provision is modified to allow such references under certain circumstances.

The proposed change is not likely to have a significant economic impact. A change to this effect was made in the Code of Virginia a few years ago and references to athletes and athletic teams on beer labels have been permitted since that time. Thus, the proposed change is not likely to have any impact on current practice.

Businesses and entities affected. The proposed regulation is likely to affect alcoholic beverage manufacturers, wholesalers, and retailers. According to ABC, there are approximately 14,000 manufacturers, wholesalers, and retailers operating in Virginia. Of the 14,000, approximately 13,000 hold retail licenses (including restaurants, grocery stores, and convenience stores).

Licensees will be able to sell wine and beer in Virginia without first obtaining a certification or doing a chemical analysis. All establishments licensed to sell beer for on- and off-premise consumption, not just brewpubs, will be allowed to use growlers to sell draft beer for off-premise consumption. Licensees will be allowed to make references to athletes and athletic teams on beer labels as long as they meet the advertising requirements under 3 VAC 5-20.

Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth.

Projected impact on employment. The proposed regulation is not likely to have a significant impact on employment.

Effects on the use and value of private property. The proposed regulation is not likely to have a significant impact on the use and value of private property. Removing the certification and chemical analysis requirement and allowing references to athletes and athletic teams is not likely to have a significant effect as these provisions have been implemented for several years. The relaxing of the provision dealing with the use of growlers is likely to have a negative impact on brewpubs currently selling beer in growlers. However, the proposed change is likely to have a positive impact on all other categories of retailers who were previously not allowed to use growlers.

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

Summary:

The proposed amendments (i) remove certification and chemical analysis requirements for new beer and wine products proposed for sale in Virginia and (ii) allow the use

[1] Recloseable containers, usually jars with re-closeable lids.

of resealable "growlers" for the sale of beer in all on- and off-premises beer retail establishments. The current regulation requires the submission to the board of a certification or a sample for analysis for all wine and beer products prior to their sale in Virginia. Since the formulation of all products approved for sale in the United States is approved by the federal Bureau of Alcohol, Tobacco and Firearms, the board considered and chose to adopt the alternative of relying on the federal approval rather than requiring a separate analysis for the purposes of the Commonwealth. Growlers are currently only allowed for use by brewpubs.

3 VAC 5-40-20. Wines; qualifying procedures; disqualifying factors; samples; exceptions.

A. All wines sold in the Commonwealth shall be first approved by the board as to content, container and label.

1. ~~A certification~~ *An application* acceptable to the board or on a form prescribed by the board describing the merchandise ~~may accompany~~ *shall be submitted for* each new brand and type of wine offered for sale in the Commonwealth. A ~~certification fee and a~~ registration fee in such amounts as may be established by the board shall be included with each ~~new certification~~ *application*.

~~2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; provided, however, that wine already offered for sale by another state with which this Commonwealth has an analysis and certification exchange agreement and wine sold through government stores shall be subject only to a registration fee in such amount as may be established by the board.~~

~~3.~~ *2.* All wine sold in this Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

~~4. Subsequent sales under an approved label shall conform to the certification and analysis of the wine originally approved by the board.~~

~~5. The board may approve a wine without benefit of a certification or analysis for good cause shown. Good cause includes, but is not limited to, wine which is rare.~~

B. While not limited thereto, the board shall withhold approval of any wine:

1. Which is an imitation or substandard wine as defined under regulations of the appropriate federal agency;

2. If the alcoholic content exceeds 21% by volume;

3. Which is a wine cocktail containing any ingredient other than wine.

C. While not limited thereto, the board may withhold approval of any label:

1. Which implies or indicates that the product contains spirits;

2. Where the name of a state is used as a designation of the type of wine, but the contents do not conform to the wine standards of that state;

3. Which contains the word "cocktail" without being used in immediate conjunction with the word "wine" in letters of the same dimensions and characteristics, except labels for sherry wine;

4. Which contains the word "fortified" or implies that the contents contain spirits, except that the composition and alcoholic content may be shown if required by regulations of an appropriate federal agency;

5. Which contains any subject matter or illustration of a lewd, obscene or indecent nature;

6. Which contains subject matter designed to induce minors to drink, or is suggestive of the intoxicating effect of wine;

7. Which contains any reference to a game of chance;

8. Which contains any design or statement which is likely to mislead the consumer.

D. A person holding a license as a winery, farm winery or a wine wholesaler shall upon request furnish the board without compensation a reasonable quantity of such brand sold by him for chemical analysis~~; provided, however, that the board may require recertification of the merchandise involved in lieu of analysis of such a sample. A fee in such amount as may be established by the board shall be included with each recertification~~.

E. Any wine whose content, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such wine was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container.

3 VAC 5-40-40. Beer containers; sizes; off- and on-premises limitations; novel containers; opening devices.

A. Beer may be sold at retail only in or from the original containers of the sizes which have been approved by the appropriate federal agency.

B. No beer shall be sold by licensees for off-premises consumption in any container upon which the original closure has been broken, except for a growler or reusable container that is federally approved to hold a malt beverage, has a resealable closure and is properly labeled. Growlers may only be used by ~~brewpubs~~ *persons licensed to sell beer for both on- and off-premises consumption*. Further, licensees shall not allow beer dispensed for on-premises consumption to be removed from authorized areas upon the premises.

C. Novel or unusual containers are prohibited except upon special permit issued by the board. In determining whether a container is novel or unusual the board may consider, but is not limited to, the factors set forth in 3 VAC 5-40-30.

D. No retail beer licensee shall sell at retail any beer packaged in a metal container designed and constructed with an opening device that detaches from the container when the

container is opened in a manner normally used to empty the contents of the container.

3 VAC 5-40-50. Beer; qualifying procedures; samples; exceptions; disqualifying label factors.

A. Beer sold in the Commonwealth shall be first approved by the board as to content, container and label.

1. ~~A certification~~ *An application* acceptable to the board or on a form prescribed by the board describing the merchandise ~~may accompany~~ *shall be submitted for* each new brand and type of beer offered for sale in the Commonwealth. A ~~certification fee and a~~ registration fee in such amounts as may be established by the board shall be included with each ~~new certification~~ *application*.

~~2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; however, beer offered for sale in another state with which the Commonwealth has an analysis and certification exchange agreement shall be subject only to a registration fee in such amounts as may be established by the board.~~

~~3.~~ *2.* All beer sold in the Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

~~4. Subsequent sales under an approved label shall conform to the certification or analysis of the beer originally approved by the board.~~

B. A brewery licensee or a wholesale beer licensee shall upon request furnish the board without compensation a reasonable quantity of each brand of beer sold by him for chemical analysis~~; provided, however, that the board may require recertification of the merchandise involved in lieu of analysis of such a sample. A fee in such amount as may be established by the board shall be included with each recertification~~.

C. Any beer whose contents, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such beer was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container.

D. While not limited thereto, the board may withhold approval of any label which contains any statement, depiction or reference that:

1. Implies or indicates that the product contains wine or spirits;

2. Implies the product contains above average alcohol for beer;

3. Is suggestive of intoxicating effects;

4. Would tend to induce minors to drink;

5. Would tend to induce persons to consume to excess;

6. Is obscene, lewd or indecent;

7. Implies or indicates that the product is government (federal, state or local) endorsed;

8. Implies the product enhances athletic prowess or implies such by any reference to any athlete, former athlete or athletic team *except that references to athletes or athletic teams shall be allowed to the extent such references are permitted in point-of-sale advertising pursuant to 3 VAC 5-20-10*;

9. Implies endorsement of the product by any prominent living person;

10. Makes any humorous or frivolous reference to any intoxicating drink.

VA.R. Doc. No. R03-115; Filed July 7, 2004, 10:39 a.m.

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The department is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Title of Regulation: **4 VAC 15-40. Game: In General (amending 4 VAC 15-40-280).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Public Hearing Date: August 19, 2004 - 9 a.m.
Public comments may be submitted until August 19, 2004.

Notice to the Public: The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amendments to board regulations. A public comment period on the proposed regulations opened June 25, 2004, and remains open until August 19, 2004. Comments submitted must be in writing; must be accompanied by the name, address and telephone number of the party offering the comments; should state the regulatory action desired; and should state the justification for the desired action. Comments should be sent to Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, Virginia 23230, and need to be received no later than August 12, 2004, in order to ensure that the board will have opportunity to review them before taking final action.

A public hearing on the advisability of adopting or amending and adopting the proposed regulation, or any parts thereof, will be held during a meeting of the board to take place at the

Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia, beginning at 9 a.m. on Thursday, August 19, 2004, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulation, or any parts thereof, is advisable in the form in which published or as amended after receipt of the public's comments, the board may adopt regulation amendments as final at the August 19 meeting. The regulation or regulation amendments adopted may be either more liberal or more restrictive than that proposed and being advertised under this notice.

Agency Contact: Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

Summary:

The proposed amendments establish the requirement for an annual hunting stamp, with the cost to correspond to that of an annual state resident hunting license, to hunt on private lands managed by the department through a lease agreement or similar memorandum of understanding. This annual hunting stamp is in addition to all required licenses to hunt.

4 VAC 15-40-280. Department-owned ~~or~~*,* controlled*, or managed* lands*; annual stamp for hunting on private lands managed by the department*.

A. The open seasons for hunting and trapping, as well as hours, methods of taking, and bag limits for department-owned or controlled lands, or lands managed by the department under cooperative agreement, shall conform to the regulations of the board unless excepted by posted rules established by the director or his designee. Such posted rules shall be displayed at each recognized entrance to the land where the posted rules are in effect.

B. Department-owned lands shall be open to the public for wildlife observation and for hunting, fishing, trapping, and boating (as prescribed by 4 VAC 15-320-100) under the regulations of the board. Other activities deemed appropriate by the director or his designee may be allowed by posted rules, by written authorization from the director or his designee, or by special permit.

C. *No person shall hunt on private lands managed by the department through a lease agreement or other similar memorandum of agreement where the department issues an annual hunting stamp without having purchased a valid annual hunting stamp. The annual hunting stamp shall be in addition to the required licenses to hunt, and the cost of such stamp shall be the same as the cost of the annual state resident hunting license in § 29.1-303 of the Code of Virginia.*

D. Activities that are not generally or specifically authorized in accordance with ~~subsection A or B~~ *subsections A through C* of this section are prohibited and shall constitute a violation of this regulation.

VA.R. Doc. No. R04-224; Filed July 7, 2004, 11:12 a.m.

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Title of Regulation: **4 VAC 15-260. Game: Waterfowl and Waterfowl Blinds (amending 4 VAC 15-260-10).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until July 25, 2004.

Notice to the Public: The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amendments to board regulations. A public comment period on the proposed regulations opened June 25, 2004, and remains open until July 25, 2004. Comments submitted must be in writing; must be accompanied by the name, address and telephone number of the party offering the comments; should state the regulatory action desired; and should state the justification for the desired action. Comments should be sent to Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, Virginia 23230.

If the director is satisfied that the proposed regulation, or any parts thereof, is advisable in the form in which published or as amended after receipt of the public's comments, under the authority delegated by the board the director may adopt regulation amendments as final on or after July 26, 2004. The regulation or regulation amendment adopted may be either more liberal or more restrictive than that proposed and being advertised under this notice.

Agency Contact: Phil Smith, Policy Analyst and Regulatory Coordinator, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

Summary:

The proposed amendments repeal the existing definition of "blind," define "stationary blind" to reflect the term's definition in § 29.1-341 of the Code of Virginia as amended by the 2004 Session of the General Assembly, and define "floating blind" using the stationary blind definition as a basis.

4 VAC 15-260-10. ~~"Blind"~~ *"Floating blind" and "stationary blind"* defined.

~~The term "blind" as used in the waterfowl blind laws and in the regulations of the board shall mean and include camouflaged rowboats, whether in motion or anchored, and other lawful floating devices or things constructed or erected and used on land or in the water for the purpose of shooting waterfowl therefrom in, on or over the public waters and from the shores thereof and which are so constructed or erected as to be deceptive or which provide a place of concealment or obscure the hunter from view and all such devices or things shall come within the provisions of the laws for hunting waterfowl, which require that blinds be licensed.~~

"Floating blind" means a floating device, whether in motion or anchored, that can be occupied by and conceal one or more hunters, uses a means of concealment other than the device's

paint or coloration, and is used in the public waters for the purpose of hunting and shooting waterfowl.

"Stationary blind" means a structure erected at a fixed location either on the shores of the public waters or in the public waters for the purpose of hunting and shooting waterfowl. A stationary blind shall be (i) of such size and strength that it can be occupied by and conceal one or more hunters or (ii) large enough to accommodate and conceal a boat or skiff from which one or more hunters intend to hunt or shoot waterfowl.

All such devices and structures shall come within the provisions of the laws for hunting waterfowl, which require that blinds be licensed.

VA.R. Doc. No. R04-225; Filed July 7, 2004, 11:12 a.m.

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Title of Regulation: **4 VAC 15-320. Fish: Fishing Generally (amending 4 VAC 15-320-100).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Public Hearing Date: August 19, 2004 - 9 a.m.
Public comments may be submitted until August 19, 2004.

Notice to the Public: The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amendments to board regulations. A public comment period on the proposed regulations opened June 25, 2004, and remains open until August 19, 2004. Comments submitted must be in writing; must be accompanied by the name, address and telephone number of the party offering the comments; should state the regulatory action desired; and should state the justification for the desired action. Comments should be sent to Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, Virginia 23230, and need to be received no later than August 12, 2004, in order to ensure that the board will have opportunity to review them before taking final action.

A public hearing on the advisability of adopting or amending and adopting the proposed regulation, or any parts thereof, will be held during a meeting of the board to take place at the Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia, beginning at 9 a.m. on Thursday, August 19, 2004, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulation, or any parts thereof, is advisable in the form in which published or as amended after receipt of the public's comments, the board may adopt regulation amendments as final at the August 19 meeting. The regulation or regulation amendments adopted may be either more liberal or more restrictive than that proposed and being advertised under this notice.

Agency Contact: Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

Summary:

As authorized by the General Assembly in the 2004 Appropriation Act, the proposed amendment establishes a $1.00 fee per visitor to Department of Game and Inland Fisheries-owned fish hatcheries to provide for visitor access to, and offset the cost of supervising visitors at, the fish hatcheries.

4 VAC 15-320-100. Department-owned or controlled lakes, ponds, streams ~~or~~*,* boat access sites*, or hatcheries; hatchery visitor fee*.

A. Motors and boats. Unless otherwise posted at each recognized entrance to any department-owned or controlled lake, pond or stream, the use of boats propelled by gasoline motors, sail or mechanically operated recreational paddle wheel is prohibited. Department employees and other government agency officials may use gasoline motors in the performance of official duties.

B. Method of fishing. Taking any fish at any department-owned or controlled lake, pond or stream by any means other than by use of one or more attended poles with hook and line attached is prohibited unless otherwise posted in which case cast nets (subject to 4 VAC 15-360-10 B) may be used for collecting nongame fish for use as bait.

C. Hours for fishing. Fishing is permitted 24 hours a day unless otherwise posted at each recognized entrance to any department-owned or controlled lake, pond, stream, or boat access site.

D. Seasons; hours and methods of fishing; size and creel limits; hunting and trapping. The open seasons for fishing, as well as fishing hours, methods of taking fish and the size, possession and creel limits, and hunting and trapping for department-owned or department-controlled lakes, ponds, streams or boat access sites shall conform to the regulations of the board unless otherwise excepted by posted rules by the director or his designee. Such posted rules shall be displayed at each lake, pond, stream or boat access site, in which case the posted rules shall be in effect. Failure to comply with posted rules concerning seasons, hours, methods of taking, bag limits, and size, possession and creel limits shall constitute a violation of this regulation.

E. Other uses. Camping overnight or building fires (except in developed and designated areas), swimming, or wading in department-owned or department-controlled lakes, ponds or streams (except by anglers, hunters and trappers actively engaged in fishing, hunting or trapping), is prohibited. All other uses shall conform to the regulations of the board unless excepted by posted rules.

F. Fishing tournaments, etc. It shall be unlawful to organize, conduct, supervise or solicit entries for fishing tournaments, rodeos or other fishing events on lakes, ponds, or streams owned by the department, for which prizes are offered, awarded or accepted based on size or numbers of fish caught, either in money or other valuable considerations. This chapter will not prohibit events approved by the department that are intended to promote youth fishing or provide instruction, provided no prizes, as defined above, are awarded and no participation fees are charged.

G. The department maintains operation of and visitor access to state-owned fish hatcheries. To offset the cost of supervising visitors at the fish hatcheries, a fee of $1.00 will be charged per visitor.

VA.R. Doc. No. R04-226; Filed July 7, 2004, 11:11 a.m.

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TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Title of Regulation: **8 VAC 20-690. Regulations for Scoliosis Screening Program (adding 8 VAC 20-690-10 through 8 VAC 20-690-50).**

Statutory Authority: § 22.1-273.1 of the Code of Virginia.

Public Hearing Date: September 22, 2004 - 11 a.m.
Public comments may be submitted until 5 p.m. on September 25, 2004.
(See Calendar of Events section for additional information)

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, PO Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or e-mail mroberts@mail.vak12ed.edu.

Basis: Section 22.1-273.1 of the Code of Virginia mandates that local school boards implement a scoliosis screening program. School boards are required to implement a program consisting of the provision of parent educational information on scoliosis or the provision of regular scoliosis screenings for students in grades five through ten. The Code of Virginia requires the Board of Education to promulgate regulations for the implementation of such screenings, which shall address, but shall not be limited to, requirements and training for school personnel and volunteers who may conduct such screenings; procedures for the notification of parents when evidence of scoliosis is detected; and such other provisions as the board deems necessary. Compliance is mandatory.

Purpose: This regulatory action is essential to protect the health, safety, and welfare of public school students in the Commonwealth. Educators and health care professionals recognize that the health of students impacts their ability to learn and achieve in the academic setting. The purpose of a scoliosis screening program is to identify students with spinal deformities that may cause impairment of the body's range of motion and endurance, and, in advanced stages, may cause back pain and impair functions of other parts of the body. With early identification and intervention, scoliosis may be prevented from progressing so that it does not interfere with mobility, activity, or comfort. The goal of the proposal is to ensure that parents are provided educational information on scoliosis or that regular screenings of students for scoliosis occur to assist with early identification of students with abnormal spinal curvatures, and to provide interventions to prevent further structural deformity and resulting secondary problems.

Substance: The proposed regulations' substantive provisions include a definitions section, a provision requiring a scoliosis program, sections addressing the provision of parent educational information and the provision of regular scoliosis screenings, and a provision requiring training of school division personnel and volunteers necessary for implementation of screening program.

Issues: The advantages of implementing the new regulations include:

1. Protecting the health and welfare of public school students by identifying students with spinal deformities that may cause impairment of the body's range of motion and endurance, cause back pain, or impair functions of other parts of the body;

2. Providing parents with educational information on scoliosis that emphasizes and makes them aware of the importance of early identification and the need for treatment, and that helps to allay fears of the screening procedure;

3. Providing parents with educational information on scoliosis that may assist them in the observation and screening of their children;

4. Identifying students that may not normally be screened due to lack of health care insurance; and

5. Ensuring a healthier school age population, which can enhance academic success.

A disadvantage associated with the scoliosis program may be the minimal fiscal impact it may have on local school divisions.

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 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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. House Bill 1834 enacted by the 2003 Session of the General Assembly, and codified in § 22.1-273.1 of the Code of Virginia, requires all local school boards to "provide parent educational information or implement a program of regular screening for scoliosis for pupils in grades five through ten …" Pursuant to a legislative mandate, the board proposes to promulgate these regulations in order to implement these requirements.

Estimated economic impact. Prior to House Bill 1834, Virginia law did not address scoliosis screening. As a matter of policy the Virginia Department of Education (department) has encouraged, but not required, screening. Recently, the department surveyed the 132 Virginia school divisions

concerning whether they screen for scoliosis, and if they screen, whether a scoliometer is used. Out of the 82 responding school divisions, 60 report that students are screened for scoliosis.

Under the new law, all school divisions must either screen for scoliosis or provide parents with educational information on scoliosis. If school divisions choose to comply by providing parents with educational information, the costs will be relatively small. The department has stated that it will provide school divisions with three pages of information on scoliosis that may be copied and distributed to parents.

Screening for scoliosis has been controversial and not universally accepted or required. The U.S. Public Health Service (part of the U.S. Department of Health and Human Services) convened a panel of experts, called the U.S. Preventive Services Task Force[1] (USPSTF), to rigorously evaluate clinical research in order to assess the merits of preventive measures, including screening tests. The 1996 USPSTF report questioned the value and cost-effectiveness of school screening for scoliosis. The USPSTF and the Canadian Task Force on the Periodic Health Examination both state that insufficient evidence exists to support universal school-based screening.[2] Essentially all researchers have observed that school-based screening results in a large number of false positives. When a child tests positive in the screening, his or her parents or guardians are recommended to take the child to a physician to be examined and have x-rays taken. Most students who receive a positive evaluation in their screening are found to not need any treatment once x-rays are taken.[3] Also, as Morissy (1999) mentions, some of those found to need treatment would have been (and may already have been) diagnosed by their pediatrician without the screening. According to Greiner (2002), "Patients with severe curves are not difficult to diagnose (without screening). Although some advocates still recommend school-based screening of adolescents, there is no evidence to support these programs."

The time and monetary costs associated with screening and follow-up doctor's office visits are substantial. Monetary costs include salaries for paid personnel and seminars to train screeners, and the fees paid by parents and medical insurers for visits to the doctor's office. The parent's time away from work and the child's time away from school are also costly. In addition, the child likely endures some stress due to visiting the doctor and concern about his or health. Also, Cote et al (1998) point out that "Exposure to diagnostic radiation in patients with adolescent idiopathic scoliosis may result in a small but significant increase in cancer rates." For those children who do not have scoliosis or only scoliosis that does not necessitate or improve with early treatment, the false positive from screening will create the aforementioned costs without producing benefit. For those children that do have scoliosis that may be successfully treated through early diagnosis, the aforementioned costs are likely exceeded by the benefit of reduced probability of future surgery, pain, and other problems associated with undiagnosed severe scoliosis.

The number of children who can benefit from early treatment and would not otherwise have been diagnosed is small. For example, Yawn et al (1999) collected data on school screening for scoliosis in Rochester, Minnesota. Out of 2,242 children screened, 92 (4.1%) were referred for further evaluation. Of these, 68 (74%) already had a documented medical or chiropractic evaluation of scoliosis. Of the 92 referred for further evaluation, nine were deemed to need treatment. Four of those nine children had already been identified prior to the school screening. Thus, 0.2% (5 out of 2,242) of the screened students likely benefited from the screening. Since as Greiner (2002) notes, "the long-term health outcomes for treated versus untreated patients with scoliosis have not been well studied," we do not have a good estimate of how much, if at all, these children who receive early treatment due to screening actually benefit.

In practice there are essentially two methods used in screening for scoliosis: a visual judgment method called the Adams forward bend test, and measurement with an instrument called a scoliometer.[4] Out of the 57 school divisions that report how their students are screened, 35 report the use of a scoliometer.[5] There is no consensus in the peer-reviewed literature concerning the accuracy and usefulness of the scoliometer versus the Adams forward bend test. Bunnell (1984) developed the scoliometer with the intent of producing a low-cost method of screening for scoliosis that was more accurate than the Adams forward bend test. Grossman et al (1995) recommended that a scoliometer be used for screening since the Adams forward bend test failed to find significant "truncal rotation abnormalities" that are detected with the scoliometer. On the other hand, Cote et al (1998) determined that "the Scoliometer has a high level of inter-examiner measurement error that limits its use as an outcome instrument. Because (the) Adam's forward bend test is more sensitive than the Scoliometer, the authors believe that it remains the best noninvasive clinical test to evaluate scoliosis." Since research is inconclusive as to which method of screening is more accurate, there appears to be no clear benefit to requiring that one method be exclusively used over the other when schools do screen for scoliosis.

References

Bunnell WP. "An objective criterion for scoliosis screening." *The Journal of Bone and Joint Surgery* 1984;66:1381-7.

Bunnell WP. "Outcome of spinal screening." *Spine* 1993;18:1572-80.

[1] The U.S. Preventive Services Task Force (USPSTF) was convened by the U.S. Public Health Service to rigorously evaluate clinical research in order to assess the merits of preventive measures, including screening tests, counseling, immunizations, and chemoprevention. The Task Force's pioneering efforts culminated in the 1989 *Guide to Clinical Preventive Services*. A second edition of the *Guide* was published in 1996. (source: http://www.ahrq.gov/clinic/uspstfab.htm).

[2] Source: Greiner (2002).

[3] Sources: Greiner (2002); Morissy (1999); and Yawn et al (1999)

[4] As Grossman et al (1995) point out, both the scoliometer and the Adams forward bend test actually reflect truncal rotation, not scoliosis directly. Truncal rotation is used as an indicator for scoliosis. A radiographic examination is necessary to more definitively determine whether scoliosis is present.

[5] This data is from the aforementioned survey conducted by the Department of Education.

Cote P, Kreitz BG, Cassidy JD, Dzus AK, Martell J. "A study of the diagnostic accuracy and reliability of the scoliometer and Adam's forward bend test." *Spine* 1998;23:796-802.

Greiner KA. "Adolescent Idiopathic Scoliosis: Radiologic Decision-Making." *American Family Physician* 2002;65:1817-22.

Grossman TW, Mazur JM, Cummings RJ. "An evaluation of the Adams forward bend test and the scoliometer in a scoliosis school screening setting." *Journal of Pediatric Orthopaedics* 1995;15:535-8.

Higginson G. "Political Considerations for Changing Medical Screening Programs." *JAMA* 1999;282:1472-4.

Huang SC. "Cut-off point of the scoliometer in school scoliosis screening." *Spine* 1997;22:1985-9.

Morrissy RT. "School screening for scoliosis." *Spine* 1999;24:2584-91.

Reamy BV, Slakey JB. "Adolescent idiopathic scoliosis: review and current concepts." *American Family Physician* July 1, 2001.

Skaggs DL. "Referrals from scoliosis screenings." *American Family Physician* July 1, 2001.

U.S. Preventive Services Task Force. AHRQ Publication No. 00-P046, January 2003. Agency for Healthcare Research and Quality, Rockville, MD. http://www.ahrq.gov/clinic/uspstfab.htm.

Yawn BP, Yawn RA, Hodge D, Kurland M, Shaugnessy WJ, Ilstrup D, Jacobsen SJ. "A population-based study of school scoliosis screening." JAMA 1999;282:1427-32.

Businesses and entities affected. The proposed regulations affect the 132 school divisions, their staff, and students.

Localities particularly affected. The proposed regulations particularly affect those school divisions that are not currently screening for scoliosis.

Projected impact on employment. The proposed regulations are unlikely to significantly affect employment since schools that do not screen for scoliosis will only be required to distribute information to parents on scoliosis. As mentioned, the department will supply school divisions with three pages of information on scoliosis that can be copied and distributed to meet this requirement.

Effects on the use and value of private property. The proposed regulations will result in a moderate increase in the use of copy machines by school divisions.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the economic impact analysis done by DPB on May 18, 2004. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

Summary:

The proposed regulations are being promulgated to implement the requirements of House Bill 1834 enacted by the 2003 Session of the General Assembly, and codified in § 22.1-273.1 of the Code of Virginia, which requires all local school boards to implement a scoliosis screening program that requires either the provision of parent educational information on scoliosis or the provision of regular scoliosis screenings for students in grades 5 through 10.

The proposed regulations provide school boards with the requirements that they must adhere to in order to fulfill the statutory mandate. The regulations (i) require local school divisions to either provide parent educational information on scoliosis for students in grades 5 through 10 or implement a program of regular screening for scoliosis for students in grades 5 through 10; (ii) provide that parents may opt their child out of any screening program; (iii) mandate that parents receive education information describing the purpose and need for scoliosis screening; (iv) require school boards conducting scoliosis screenings to adhere to certain procedures and requirements; and (v) mandate training of school personnel and volunteers in acceptable screening procedures.

CHAPTER 690.
REGULATIONS FOR SCOLIOSIS SCREENING PROGRAM.

8 VAC 20-690-10. Definitions.

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

"Forward bend test" means a procedure to assess the possible presence of abnormal spinal curvature.

"Scoliometer" means a device for measuring the amount of abnormal curvature in the spine.

"Scoliosis" means a lateral or sideways curvature of the spine, generally associated with the rotation of the spine and rib cage.

"Scoliosis screening" means a postural screening process of assessment and evaluation used to identify students with spinal deviations at an early stage of development and to refer students for a medical evaluation. Early detection and intervention may prevent further structural deformity and resulting secondary problems.

8 VAC 20-690-20. Scoliosis program.

A. Each school board shall implement a scoliosis program that shall consist of the provision of parent educational information on scoliosis for students in grades 5 through 10 or the implementation of a program of regular screening for scoliosis for students in grades 5 through 10. School boards shall not impose a fee for any scoliosis program implemented.

B. School boards shall not be required to screen students in grades 5 through 10 who have been admitted for the first time to a public school and who have been tested for scoliosis as part of the comprehensive physical examination required by § 22.1-270 of the Code of Virginia or those students whose

parents have indicated their preference that their children not participate in scoliosis screening.

C. Each school board shall review and adhere to the federal Family Educational Rights and Privacy Act (20 USC § 1232g; 34 CFR Part 99) and the Protection of Pupil Rights Act (20 USC § 1232h; 34 CFR Part 98) in the development and implementation of a regular scoliosis screening program.

8 VAC 20-690-30. Parent educational information.

A. School boards implementing a scoliosis program consisting of the provision of parent educational information on scoliosis shall provide such information to the parents of students in grades 5 through 10 within 60 business days after the opening of school each year.

B. Parent educational information on scoliosis shall include but not be limited to (i) a definition of scoliosis, (ii) a description of how scoliosis is identified, (iii) a statement describing why it is important to screen for the condition, (iv) a description of the types of screening procedures, (v) a description of potential treatments for the condition, and (vi) information on where screening may be obtained.

8 VAC 20-690-40. Regular scoliosis screening.

A. School boards implementing a scoliosis program of regularly screening students in grades 5 through 10 shall provide written notice to parents a minimum of 10 business days prior to screening.

B. The written notice shall contain (i) information indicating when the screening will occur, (ii) the purpose of screening that shall include the parent educational information described in 8 VAC 20-690-30, (iii) a procedure for notifying parents of students who are identified as having a possible spinal curvature, and (iv) a procedure for parents to opt out of the screening.

C. School boards implementing a scoliosis program of regular screening shall screen each student in selected grades 5 through 10 a minimum of two times during the six-year period except for those students entering the school division for the first time during the 10th grade year who shall be screened once.

D. Parent educational information as required by 8 VAC 20-690-20 shall be provided to parents of students in selected grades 5 through 10 who are not screened.

8 VAC 20-690-50. Training required for personnel and volunteers.

A. School boards implementing a scoliosis program of regular screening shall provide training for school personnel and volunteers who may conduct the screening. School boards may seek volunteers from among professional health care providers to provide training, to perform screenings, or both. School boards using volunteers shall comply with all requirements of the Family Educational Rights and Privacy Act (20 USC § 1232g; 34 CFR Part 99) and the Protection of Pupil Rights Act (20 USC § 1232h; 34 CFR Part 98) in maintaining the confidentiality of student records.

B. Training of school personnel and volunteers shall be conducted by qualified licensed medical practitioners. Practitioners may use various training methods including, but not limited to, in-person training, video instruction, or review of a training manual.

C. Practitioners shall provide training in medically accepted scoliosis screening procedures including the use of the forward bend test, or use of a scoliometer, or both, to school personnel and volunteers.

VA.R. Doc. No. R04-5; Filed July 7, 2004, 9:10 a.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Title of Regulation: **12 VAC 5-585. Biosolids Use Regulations (amending 12 VAC 5-585-310, 12 VAC 5-585-460, 12 VAC 5-585-480 and 12 VAC 5-585-490).**

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

Public Hearing Dates:
August 17, 2004 - 7 p.m. (Warrenton)
August 18, 2004 - 7 p.m. (Richmond)
August 19, 2004 - 7 p.m. (Farmville)
Public comments may be submitted until September 24, 2004.
(See Calendar of Events section for additional information)

Agency Contact: C.M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, 109 Governor Street, 5th Floor, Richmond, VA 23219, telephone (804) 864-7463, FAX (804) 864-7475, or e-mail cal.sawyer@vdh.virginia.gov.

Basis: Section 32.1-164.5 of the Code of Virginia provides the authority for the Board of Health to promulgate regulations to ensure that (i) sewage sludge permitted for land application, marketing or distribution is properly treated or stabilized, (ii) land application, marketing and distribution of sewage sludge is performed in a manner that will protect public health and the environment, and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3, will be prevented.

Purpose: These amendments are designed to provide a consistent and uniform set of state requirements that will address a number of issues that local governments must routinely deal with. It is anticipated that the development of state requirements will eliminate the need to develop nonuniform local requirements in these areas of concern and prevent extended litigation, brought by permitted entities, concerning restrictive local government ordinances.

The purpose of the amendments is to address the following requirements:

1. Posting of informational signs at permitted sites prior to and during land application of biosolids, including specifying sign dimensions, informational content and location.

2. Evidence of financial responsibility (such as liability insurance or other financial resources) in a determined amount, provided by permit applicants and maintained by permitted entities and established for the purpose of compensating third parties for personal injury or property damage and removing or remediating any established environmental contamination resulting from the land application of biosolids.

3. Notification of local governments prior to the land application of biosolids at specific sites. The contents and timing of such notices are to be specified.

4. Development and implementation of spill prevention and response plans by permitted entities. Such plans are to also address the tracking of residues on state roads by biosolids transport vehicles.

5. Methods for communicating information on complaints and reported incidents related to or arising from the land application of biosolids.

These state requirements will protect public health by providing additional means to communicate health-related concerns of the neighbors of land application sites. Those concerns can serve as a basis for additional operational restrictions placed on land appliers by the Virginia Department of Health to further protect those neighbors from any adverse impacts of land application operations.

Substance: 12 VAC 5-585-310 - The permitted contractor would be required to furnish evidence of current liability insurance or other methods of assuring financial responsibility (established by regulation) in an amount not less than $1 million. The larger size companies would be required to have at least $2 million in financial resources for insurance purposes. Such insurance would be necessary to obtain and hold a state permit.

12 VAC 5-585-460 - The permitted contractor would be required to notify local governments, at least 15 days in advance of commencing land application operations, by submitting written notification that includes information identifying the land application sites, estimated dates of operations and telephone numbers of contact personnel with the contractor, the biosolids producer and the Virginia Department of Health. In addition, the permitted contractor would be required to notify local governments and the Virginia Department of Health within 24 hours of the receipt of a complaint of the actions taken to resolve the complaint. Also, the contractors would be required to document their responses to complaints.

12 VAC 5-585-480 - The permitted contractor would be required to post signs at land application sites at least 48 hours in advance of commencing land application operations. The signs must be visible and readable from a public right of way and contain specific information. Also, the signs must remain in place both during and for 48 hours following the land application operations. The Virginia Department of Health can revise this requirement when site-specific circumstances justify the changes.

12 VAC 5-585-490 - The permitted contractor would be required to prevent the drag-out and tracking of dirt, debris and biosolids on public roads from their land application operations. The proposed amendments will include specific requirements for reporting of any off-site spills of biosolids. The permitted contractor is made responsible for assuring and reporting on the prompt cleanup of spills and any tracking of solids onto roads.

Issues: The Petition for Rulemaking was submitted by Synagro WWT, Inc., Recyc Systems, Inc., and Nutri-Blend Inc., corporations that have been issued permits for land application of biosolids in various Virginia counties, through the Biosolids Use Regulations (12 VAC 5-585). The petition was brought before the State Board of Health at their April 26, 2002, meeting for consideration of initiating the rulemaking process. The State Board of Health approved the development of amendments to the Biosolids Use Regulations followed by publication of a Notice of Intended Regulatory Action (NOIRA) at that meeting. Proposed amendments were subsequently developed through the Biosolids Use Regulations Advisory Committee (BURAC) and brought to the State Board of Health at their October 25, 2002, meeting. The State Board of Health approved the proposed revisions at that meeting with the provision that any public comments received following publication of the NOIRA be considered for any justified changes to the proposed amendments prior to publication in the Virginia Register. The NOIRA public comment period closed on December 6, 2002. The public comments received up to that date did not raise any new issues that had not been discussed at prior BURAC meetings.

The majority of the BURAC members were in favor of the draft amendment language. However, several members of the committee requested that more stringent requirements be included in the draft revisions and filed a minority report to the State Board of Health together with the Virginia Department of Health staff report. A few of the BURAC minority report recommendations were incorporated into the proposed amendments. In addition, a majority of committee members requested that the requirements for submittal of notifications to local government and requirements for posting of signs at land application sites be discretionary on the desires of local government. Thus, these requirements would only take effect if required by an adopted local ordinance. However, the state has not authorized the localities to establish such discretionary requirements in relation to the Biosolids Use Regulations.

The advantage of adopting the requested amendments is that the credibility of this controversial state permit program will be enhanced. The availability of financial resources to support cleanup costs due to any pollution resulting from the land application of biosolids, was deemed by the public and local government, to be a key issue in assuring the safety of those operations. However, the lines of authority, to require that specific insurance provisions be provided for issuance of land application permits, are not entirely clear.

By establishing reasonable requirements for land application operations, the most economical and most beneficial means of sludge management will continue to be available to the owners of sewage treatment works, who are primarily metropolitan governments.

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 H of the Administrative Process Act and Executive Order Number 21 (02). Section § 2.2-4007 H 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 general assembly mandates in § 32.1-164.5 of the Code of Virginia that the State Board of Health, with the assistance of the Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR), promulgate regulations to ensure that (i) sewage sludge permitted for land application, marketing, or distribution is properly treated or stabilized, (ii) land application, marketing, and distribution of sewage sludge is performed in a manner that protects public health and the environment, and (iii) the escape, flow, or discharge of sewage sludge is not performed in a manner that would cause pollution of state waters. The biosolids use regulations are being amended in response to a petition for rulemaking from entities that have been issued permits for land application of biosolids in various counties across the Commonwealth. Section 2.2-4007 of the Code of Virginia provides that any person may petition an agency to request the development of a new regulation or an amendment to an existing regulation.

In response to the petition for rulemaking, the State Board of Health has proposed the following amendments to the biosolids use regulations: (1) Entities issued permits for land application of biosolids will be required to provide written evidence of financial responsibility to the Virginia Department of Health (VDH) and to each locality in which it is permitted to land apply biosolids. (2) The permit holder will be required to inform VDH, the affected local governments, and the treatment facility from which the biosolids originated of complaints and begin an investigation within 24 hours of receiving the complaint. All complaints and actions taken in response to the complaints are to be documented by the permit holder and submitted to VDH with the monthly land application report. Copies are also to be submitted to the relevant local governments and the owner of the treatment facility from which the biosolids originated. (3) Permitted entities will be required to provide notification in writing to local governments in whose jurisdiction biosolids are being applied at least 15 days prior to commencing the land application process. The proposed regulation specifies the information to be included in the notification letter. (4) Permitted entities will be required to post signs at all land application sites at least 48 hours prior to the application of biosolids. The signs are to remain in place at least 48 hours after the land application process has been completed. The proposed regulation specifies the type, size, contents, and location of the signs. (5) Permit holders will be responsible for the cleanup and removal of biosolids spilled during transport to the land application site or to and from a storage facility. The operations manual will be required to include a plan for the prevention of spills during transport and for the cleanup and removal of spills when they do occur. All personnel are to be trained in the procedures for spill cleanup and removal. All off-site spills are to be reported to VDH and the affected local governments within 24 hours and a written report including actions taken in response to the spill are to be submitted to VDH and the relevant local governments within five working days.

Estimated economic impact. The proposed regulation makes amendments to the existing biosolids use regulations. Sewage sludge is the solid, semisolid, or liquid by-product generated during the treatment of wastewater at sewage treatment plants. Biosolids refer to sewage sludge that has been treated for pathogens, disease vector attraction, and pollutants such that it can be used for land application, marketing, and distribution. The biosolids use regulations establish management practices, concentration limits and loading rates for chemicals, and treatment and use requirements designed to control and reduce pathogens and the attraction of disease vectors.

Virginia's biosolids use regulations require the same chemical and pathogen standards required under federal regulations. However, VDH believes that the management practices established for land application of biosolids in Virginia are more stringent than those required by federal regulations. Several other states such as Florida, Wisconsin, and New Jersey allow for the land application of biosolids. However, according to VDH, Virginia is the only state that, in effect, limits land application at the agronomic rate to once in three years (classified as infrequent) by requiring extensive soil and groundwater monitoring for all land applications taking place more than once every three years.

According to a study by the National Academy of Sciences[1], approximately 5.6 million dry tons of sewage sludge are used or disposed of annually in the United States. Of this, approximately 60% or 3.36 million dry tons are used for land application. In Virginia, 200,000 dry tons of biosolids were land applied on 42,000 acres of land in 2002.

Regulations governing the use of biosolids have been in place in Virginia since 1979. The proposed regulation amends the existing biosolids use regulations to include financial responsibility requirements, additional sign-posting and notification requirements, procedures for handling complaints, and the development and implementation of a spill prevention and response plan during the transportation of biosolids by permitted entities. The proposed amendments were developed by the biosolids use regulations advisory committee (BURAC) that included state and local government representatives, representatives of biosolids land applicators,

[1] "Biosolids Applied to Land: Advancing Standards and Practices", National Academy of Sciences, 2002.

representatives of farm and agriculture interests in Virginia, and other interested parties. While a majority of BURAC members were in favor of the draft amendment language, two members requested more stringent requirements be included in the regulation and filed a minority report to the State Board of Health. According to VDH, some of the minority report recommendations have been incorporated into the proposed regulation.

(1) Entities issued permits for land application of biosolids will be required to provide evidence of financial responsibility, including both current liability insurance and pollution insurance, to VDH and to each locality in which they are permitted to land apply biosolids. The regulation requires all permitted entities to provide financial assurance of at least $1,000,000 per occurrence. In addition to the per occurrence amount, permitted entities will also be required to provide a minimum aggregate amount of financial assurance: $1,000,000 for entities with less than $5,000,000 in annual gross revenue and $2,000,000 for entities with over $5,000,000 in annual gross revenue. The coverage is to be maintained during the entire time the entity is permitted to transport, store, or land apply biosolids in Virginia. The funds are to be available to pay for cleanup costs, personal injury claims, and property damage resulting from the transport, storage, and land application of biosolids.

Under the existing regulation, permit holders are not required to provide any form of financial assurance. The proposed change is in response to amendments to the Code of Virginia during the 2003 Session of the General Assembly (Senate Bill 1088) that now requires all permit-holders to provide written evidence of financial responsibility to VDH, to be used to pay for claims for cleanup costs, personal injury, and property damage resulting from the land application of biosolids. VDH is not aware of any instances of contractors being unable to pay for the cost of cleanup and the cost of third party claims arising out of the land application of biosolids in Virginia. However, according to VDH, there have been lawsuits filed against contractors in states such as California, Pennsylvania, and Florida in order to recoup damages arising out of the land application of biosolids.

VDH does not believe that the proposed regulation will impose significant additional costs on permit holders. According to VDH, most contractors land-applying biosolids currently have sufficient insurance to meet the minimum financial responsibility requirements. For these contractors, there is no additional cost associated with the proposed change. However, for contractors not currently meeting the financial responsibility requirements being proposed, the proposed change is likely to impose additional costs.

The cost of getting the required coverage will depend on the market's assessment of the risk posed by the permitted entity to public health and the environment from the transportation, storage, and land application of biosolids. While the precise cost associated with getting the required financial assurance is not known, conversations with existing land applicators provided a range of costs. According to a large biosolids land applicator currently meeting the proposed requirements, the cost of purchasing the required insurance coverage is approximately $55,000 a year. Based on conversations with a small biosolids land applicator, smaller operations can expect to pay around $30,000 to purchase the required insurance coverage.

Contractors not currently meeting the proposed financial responsibility requirements are likely to have chosen not to carry the required coverage because the costs associated with getting the coverage outweigh the benefits of insuring against the risk of injury and damage resulting from transporting, storing, and land applying biosolids. There are two possible reasons for this: (i) the market's perception of the risks associated with transporting, storing, and land-applying biosolids is less than the actual risk or (ii) the minimum insurance requirement being proposed is too high. In the former case, the proposed change is likely to produce a net positive economic impact by correcting a market imperfection and requiring biosolids land applicators to have coverage commensurate with the risk posed to public health and the environment from their activities. In the latter case, the proposed change is likely to produce a net negative economic impact by requiring biosolids land applicators to obtain coverage higher than what would be required based on the risk they pose.

The net economic impact of the proposed change will depend on whether public health and environmental risks are not being set at the optimal level through market forces or whether the insurance requirement being proposed is excessive. There is no data available at this time to make a precise determination. While VDH and the land applicators represented on the BURAC believe that most, if not all, contractors are currently carrying insurance that meets the proposed requirements, there was no survey done on the current insurance coverage of all permitted entities. However, conversations with two of the nine contractors currently permitted to land apply biosolids indicated that they carried insurance that met most of the requirements being proposed. Thus, the net economic impact of the proposed change is not likely to be very large.

(2) The permit holder will be required to inform VDH, the affected local governments, and the treatment facility from which the biosolids originated of all complaints and begin an investigation into the complaints within 24 hours of receiving them. All complaints and actions taken in response to the complaints are to be documented by the permit holder and submitted to VDH with the monthly land application report. Copies are also to be submitted to the relevant local governments and the owner of the treatment facility from which the biosolids originated.

The existing biosolids use regulations do not specify how complaints are to be handled and, according to VDH, the practice varies across localities. The proposed change is based on typical VDH policy on handling complaints. It is being made in response to amendments to the Code of Virginia during the 2003 Session of the General Assembly (senate bill 1088) that now requires that VDH develop procedures for the prompt investigation and disposition of complaints concerning the land application of biosolids. It is also intended to standardize the manner in which complaints are recorded and handled.

The proposed change is likely to impose some additional costs. Permit holder will be required to follow a standard procedure when handling complaints. They will be required to report the complaint in a timely manner and provide written documentation of the complaint and any actions taken in response to VDH, the local government, and the treatment facility where the biosolids originated.

However, the proposed change is also likely to produce economic benefits. It will allow for better enforcement of the biosolids use regulations by ensuring that complaints are documented and handled in a consistent and reliable manner. Moreover, it will help reduce some of the health-related uncertainty associated with the land application of biosolids. There has been some public uncertainty regarding potential health impact of exposure to land-applied biosolids. The National Academy of Sciences study found that there was no documented scientific evidence that the federal regulations governing the land application of biosolids had failed to protect public health[2]. However, the study went on to state that additional scientific work was needed to reduce persistent uncertainty about the potential for adverse human health effects from exposure to biosolids. Based on anecdotal reports of adverse health effects, public concerns, and the lack epidemiological investigation, the study recommended that the Environmental Protection Agency (EPA) conduct studies or promote and support studies that examine exposure and potential health risks to worker and residential populations. The study recommended that a procedural framework be established to implement human health investigations. A report issued by EPA[3] concurred and stated that a system of tracking odor and health complaints at the state or local level would be of tremendous help to regional and state enforcement personnel. By requiring all complaints, including health-related complaints, to be handled in a well-documented and consistent manner, the proposed change will allow for further investigation into and help reduce uncertainty regarding potential health implications of land application of biosolids.

The net economic impact of the proposed change will depend on whether the additional cost of notifying authorities of complaints, promptly investigating the complaints, and submitting written documentation of the complaints and actions taken in response to the required authorities and entities are outweighed by the benefits of better enforcement of the existing regulation and a possible reduction in the uncertainty regarding the impact of biosolids exposure on public health.

(3) Permitted entities will be required to provide the notification in writing to the local governments in whose jurisdiction biosolids are being applied at least 15 days prior to commencing the land application process. The proposed regulation specifies what the contents of the notification are to be. The notification is to include the name, address, and phone number of the permit holder, the treatment facility from which the biosolids originated, and the VDH contact person. It is also to include the identification of parcels of land on which biosolids are to be applied and the dates on which the land application is to take place. No notification is required under the existing biosolids use regulations. Some local government ordinances currently require notification prior to land application. However, these requirements vary across localities, with some localities requiring notification up to 30 days prior to land application. The proposed change is intended to establish minimum notification requirements that provide the required degree of protection to public health and to standardize these requirements across localities.

Permit holders operating in localities not currently requiring notification will incur the additional cost of complying with the notification requirements contained in the proposed regulation. Permit holders operating in localities that already require some form of notification will now have to meet the notification requirements specified in the regulation. Thus, while the proposed change is likely to impose more stringent requirements on some permit holders, it is also likely to ease these requirements for others. VDH does not have information regarding the notification requirements of all the various localities that allow land application of biosolids. The proposed change is also likely to produce some economic benefits by establishing a standard notification requirement across localities. Local officials and residents will be provided with relevant information about the land application 15 days prior to the application and be in a better position to deal with any threats to public health that might arise from the land application. Some localities currently requiring notification more than 15 days prior to land application will now have less time between notification and application. However, the advantages of requiring notification 30 days prior to application versus 15 days prior to application are not clear and are not likely to be very significant. Moreover, according to VDH, local notification requirements have been a source of friction and litigation between biosolids land applicators and localities where biosolids are being applied. By standardizing these requirements, the proposed change removes a potentially expensive source of conflict.

The net economic impact will depend on whether the additional costs imposed on some permit holders of meeting these notification requirements are greater than or less than the benefits of requiring notification and standardizing the requirements across all localities. There are not data or studies currently available that would allow us to estimate the precise economic impact of the proposed change.

(4) Permitted entities will be required to meet the signposting requirements being proposed in this regulation. The regulation requires that signs be posted at all land application sites at least 48 hours prior to the application of biosolids and that the signs remain in place at least 48 hours after the land application process has been completed. The regulation specifies that the location of the sign be such that it is visible and legible from the nearest public right-of-way. The regulation also specifies that the sign is to be at least four square feet in size, made of weather resistant material, and mounted such that it remains in place for the required length of time. Any signs that have been removed or damaged are to be promptly replaced by the permit holder. The contents of the

[2] Virginia's regulations are based on 40 CFR 503, federal standards for the use and disposal of sewage sludge.

[3] "Land Application of Biosolids", Status Report, Office of Inspector General, Environmental Protection Agency, March 28, 2002.

signs are also specified in the regulation. All signs are to include the permit holder's and VDH's contact information and a statement that biosolids are being applied at the site. The proposed regulation allows VDH to provide waivers or alternative sign-posting options in extenuating circumstances.

While some local government ordinances currently require signposting, it is not required under the existing biosolids use regulations. The sign-posting requirements vary across localities, with some localities requiring sign-posting 30 days prior to and 30 days following the land application of biosolids. The proposed change is intended to establish signposting requirements that provide the required degree of protection to public health and standardize these requirements across localities.

Permit holders operating in localities that do not currently require signposting will have to incur the additional cost of complying with the notification requirements contained in the proposed regulation. Permit holders operating in localities that already require some form of signposting will now have to meet the signposting requirements specified in the regulation. Thus, while the proposed change is likely to impose more stringent requirements on some permit holders, it is also likely to ease these requirements for others. VDH does not have information regarding the sign-posting requirements of all the various localities that allow land application of biosolids.

While some contractors may have to purchase additional signs, others will be able to use their existing signs to meet the proposed requirement. According to VDH, signs meeting the requirements of the regulation cost between $30 and $50 each and biosolids land applicators may need three to five signs per county (up to a maximum of 60). Comments from the applicators indicate that some already have the number and type of signs required by the proposed regulation. The proposed change is also likely to produce some economic benefits by establishing standard sign-posting requirements across localities. Requiring sign-posting will allow local officials and residents to better protect themselves against any inadvertent exposure to the biosolids. Some localities currently requiring sign-posting more than 48 hours prior and following a land application will see these requirements being made less stringent. However, the advantages of requiring sign-posting 30 days prior and following an application compared to 48 hours prior to and following an application are not clear. Moreover, according to VDH, local notification requirements have been a source of friction and litigation between biosolids land applicators and localities where biosolids are being applied. By standardizing these requirements, the proposed change removes a potentially expensive source of conflict.

The net economic impact of the proposed change will depend on whether the additional cost on some permit holders of meeting these sign-posting requirements is greater than or less than the benefits of requiring sign-posting and standardizing these requirements across localities. There are not data or studies currently available that would allow us to estimate the precise economic impact of the proposed change.

(5) Permit holders will be responsible for the cleanup and removal of biosolids spilled during transport to the land application site or transport to and from a storage facility. The operations manual will be required to include a plan for the prevention of spills during transport and for the cleanup and removal of spills when they do occur. The regulation requires that biosolids land applicators train their employees in spill cleanup and removal procedures. If material has been tracked onto a paved or public road surface, the permit holder is required to clean the road surface no later than the end of each day. All off-site spills are to be reported to VDH and a written report, including actions taken in response to the spill, are to be submitted to VDH, local governments, and the owner of the treatment facility from which the biosolids originated within five working days.

The existing regulation does not specifically state that permit holders are responsible for the cleanup of any spills that occur during the transportation of biosolids and does not establish any requirements for spill prevention and cleanup. The proposed change is intended to address the issue of mud and biosolids being tracked onto roadways by trucks leaving a biosolids land application site. According to VDH, the lack of clarity in the existing regulations has led to a few instances when spills have not been cleaned up promptly.

While VDH does not believe that the proposed change will impose any significant additional costs on biosolids land appliers, permitted entities were not surveyed regarding whether they had the required equipment to meet the requirements of the regulation. The two biosolids land applicators who commented on the proposed change concurred with VDH, indicating that most contractors already had the equipment to respond to spills and cleanups. Equipment such as front-end loaders, tractors, hand shovels, and brooms are typically used for cleaning spills. One biosolids land applicator estimated that if a contractor did not have the necessary equipment it would cost that contractor between $23,000 and $25,000 to purchase a tractor, broom, and trailer (to move the tractor from site to site).

However, the proposed change is likely to produce some economic benefits by limiting the transfer of biosolids out of land application sites. By requiring permit holders to have a spill prevention and spill response plan, to train their employees to deal with spills when they do occur, to clean up spills (especially on paved and public roads) promptly, and to report all spills in a timely manner, the proposed change is likely to allow for better enforcement of the biosolids use regulations and minimize the likelihood of public exposure to biosolids. Moreover, by clearly stating that the permit holder is responsible for the clean up of spills during transport to the application site or the storage facility and clarifying existing policy, the proposed change is likely to produce some additional economic benefits.

The net economic impact of the proposed change will depend on whether the costs associated with implementing the proposed change are outweighed by the benefits of doing so. While some permit holders may incur additional costs in purchasing the required equipment, developing a spill prevention and response plan, and training their personnel,

the proposed change clarifies existing policy and reduces the risk of exposure to biosolids.

BURAC Minority Report:

The BURAC minority opinion report submitted to the State Board of Health suggests that stricter requirements need to be implemented in order to minimize the likelihood of public exposure to biosolids. It suggests more stringent financial responsibility requirements, more extensive notification and signposting requirements, and additional requirements relating to the documentation and investigation of complaints. The report also suggests that nutrient management plans for nitrogen and phosphorous be required for all sites where biosolids are applied and that, in addition to VDH certification, DEQ and DCR certification that the application is not expected to harm surface or ground water be required prior to the land application of biosolids at pollution sensitive sites.

Conversation with the primary author of the minority report indicated that the author was concerned about possible health risks to individuals, especially immune compromised individuals, from being exposed to land applied biosolids. According to the author, a majority of BURAC members were representatives of the industry (generators, appliers, and users of biosolids) and did not include enough representatives from rural counties where a majority of the land application takes place[4]. The author believes that having stricter requirements are essential in order to reduce the public health risk arising from exposure to land-applied biosolids.

Most of the recommendations of the minority report arose out of concerns regarding the lack of information and studies on possible health risks arising out of exposure to land applied biosolids and the lack of adequate enforcement of existing biosolids use regulations.

The lack of any comprehensive epidemiology studies on workers and residential populations exposed to these biosolids was a major cause for concern. The author was particularly concerned about potential health risks posed by bioaerosols (pathogens stirred into the air by wind). However, according to studies done to date, biosolids when applied in accordance with state and federal regulations have not been known to increase the risk to public health. Specifically, researchers at Texas A&M University studied the extent to which applied biosolids are moved off-site by wind erosion. The study found that the overall amounts of mineral and organic material being moved onto and off the application areas is almost too small to measure and that the population in Sierra Blanca, Texas (a town four miles from the land application site) was not being affected by the application of biosolids.

Some of the author's concerns regarding the public health risks from the land application of biosolids are likely to have been addressed through amendments to the Code of Virginia made during the 2003 Session of the General Assembly. According to these amendments, VDH is now required to establish procedures for the prompt investigation and disposition of complaints concerning the land application of sewage sludge. As mentioned above, some of the changes being proposed are intended to establish a standardized procedure for documenting and dealing with complaints, including health-related complaints. VDH is also required by law to maintain a searchable electronic database of complaints received during the current and preceding calendar year, including information detailing each complaint and how it was resolved. Collecting data on complaints will provide VDH and other researchers the opportunity to conduct further studies on the potential health risks from working with and living in proximity to land applied biosolids and reduce the health-related uncertainty associated the land application of biosolids.

Lack of adequate enforcement was cited by the author of the minority report as another reason for concern and another reason for having more stringent requirements. The author believes that existing biosolids use regulations are not being enforced properly. According to the author, the chemical and pathogen content in biosolids are not appropriately tested for and reported. Moreover, the loading rate of biosolids during land application is not adequately monitored and reported. Consequently, the author believes that the health and environmental risks from the land application of biosolids are greatly increased. However, VDH believes that existing measures are being enforced adequately and that all relevant information regarding pathogen and chemical content of biosolids and loading rates are available in the monthly land application reports submitted by the permit-holder to VDH.

Some of the author's concerns regarding the public health and environmental risks from the land application of biosolids arising from the lack of adequate enforcement are likely to be addressed through amendments to the Code of Virginia made during the 2003 Session of the General Assembly. These amendments require the preparation of nutrient management plans (although they do not specify nutrient management of phosphorous, one of the issues of concern to the members preparing the BURAC minority report) by individuals certified by DCR for all land application sites regardless of the frequency of application. Under existing regulations, nutrient management plans are required only for sites where biosolids were applied more than once every three years. Moreover, the Code of Virginia now requires that nutrient management plans get DCR approval for sites where land application occurs more than once every three years at more than 50% of the agronomic rate.

As regards the chemical and pathogen content in biosolids being land applied, there is no evidence currently that biosolids being land applied are not meeting EPA-established limits. Studies done to date do not indicate that chemicals and pathogens are present in biosolids in quantities that would pose a risk to public health. For example, in response to concerns that Staphylococcus Aureus (a human disease pathogen found in raw sewage) remains in treated biosolids, researchers at the University of Arizona collected biosolids and bioaerosol samples from 15 sites across the United States. They did not find the pathogen in the biosolids after it had been treated using aerobic or anaerobic digestion, lime stabilization, heat-dry pelleting, or composting (conventional

[4] The local monitor representative (a code enforcement officer from Louisa County) was second author on the minority report.

methods that treatment plants use to remove disease-causing organisms from raw sewage).

Thus, while some of the concerns underlying the recommendations of the minority report may have been addressed by the proposed regulation and by amendments made to the Code of Virginia, uncertainty remains regarding the potential health effects of being exposed to land-applied biosolids. All scientific evidence and studies conducted to-date do not indicate any serious health risks from exposure to biosolids. Pending more information and further research on the subject, there is no evidence to suggest that more stringent requirements than those being proposed would provide any significant additional benefits, while imposing additional costs on the generators, appliers, and users of biosolids.

Businesses and entities affected. The proposed regulation affects all land appliers of biosolids operating in Virginia. According to VDH, there are nine contractors currently permitted to land apply biosolids in Virginia. By requiring that these contractors demonstrate a minimum level of financial assurance, meet minimum notification and signage requirements, follow required procedure when handling complaints, and be responsible for the cleanup of spills that occur during the transport of biosolids, the proposed regulation is likely to impose additional costs. However, by providing additional protection to public health and the environment, the proposed regulation is also likely to produce economic benefits. Standardizing and clarifying operating practices across localities are also likely to produce some additional economic benefits.

Localities particularly affected. The proposed regulation is likely to affect all localities in the Commonwealth.

Projected impact on employment. The proposed regulation is not likely to have a significant impact on employment.

Effects on the use and value of private property. To the extent that the additional requirements being proposed in this regulation increase the cost of operation for the producers, appliers, and users of biosolids, the proposed regulation will lower asset values for these businesses and have a negative impact on the use and value of private property. However, by clarifying and standardizing operating procedures the proposed regulation is likely to lower operating costs and raise the asset values for companies and entities involved in biosolids land application. Moreover, to the extent that the proposed changes increase the protection provided to public health, it is likely to have a positive impact on property values located in the vicinity of land application sites.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: VDH concurs substantially with the conclusions drawn and the analysis contained in DPB's assessment of these regulations.

Summary:

The proposed amendments (i) require entities issued permits for land application of biosolids to provide written evidence of financial responsibility to the Virginia Department of Health (VDH) and to each locality in which they are permitted to land apply biosolids; (ii) require permit holders to inform VDH, the affected local governments, and the treatment facility from which the biosolids originated of complaints and to begin an investigation within 24 hours of receiving a complaint; (iii) require permitted entities to provide notification in writing at least 15 days prior to commencing the land application process to local governments in whose jurisdiction biosolids are being applied; (iv) require permitted entities to post signs at all land application sites at least 48 hours prior to the application of biosolids; and (v) hold permit holders responsible for the cleanup and removal of biosolids spilled during transport to the land application site or to and from a storage facility.

12 VAC 5-585-310. Additional monitoring, reporting and recording requirements for land application.

A. Either the Operation and Maintenance Manual, sludge management plan, or operating plan, shall contain a schedule of the required minimum tests necessary to monitor land application operation. Such testing schedule information for land application of biosolids shall contain instructions for recording and reporting. Monitoring of any associated land treatment systems shall be in accordance with the biosolids use Operation and Maintenance Manual if provided.

B. The permit holder shall provide to the Department of Health, and to each locality in which it is permitted to land apply biosolids, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial responsibility as the board may establish by regulation in an amount not less than $1 million per occurrence, which shall be available to pay claims for cleanup costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of biosolids in Virginia. The aggregate amount of financial liability maintained by the permit holder shall be $1 million for companies with less than $5 million in annual gross revenue and shall be $2 million for companies with $5 million or more in annual gross revenue.

C. Evidence of financial responsibility, which may include liability insurance, meeting the requirements herein shall be maintained by the permit holder at all times that it is authorized to transport, store or land apply biosolids in Virginia. The permit holder shall immediately notify the Department of Health in the event of any lapse or cancellation of such financial resources, including insurance coverage, as required by this section.

12 VAC 5-585-460. General.

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

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

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

D. Conformance of biosolids use to local land use zoning and planning should be resolved between the local government and the permit applicant. The permit applicant shall attempt to notify land owners of property within 200 feet and 1,000 feet of the boundaries of sites proposed for frequent use and dedicated sites, respectively, and furnish the division *and the chief executive officer or designee for the local government where the site is located* with acceptable documentation of such notifications (i.e., intent to land-apply biosolids on the proposed locations). Relevant concerns of adjacent landowners will be considered in the evaluation of site suitability.

E. The requirements for processing approvals of sludge management plans and operational plans are included in 12 VAC 5-585-140 H as well as: (i) requirements for notification of applications, hearings and meetings, (ii) minimum information required for completion of a sludge management plan for land application (Part IV, 12 VAC 5-585-620 et seq.).

F. At least 15 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification that is substantially in compliance with this section to the chief executive officer or designee for the local government where the site is located. If the site is located in more than one county, the information shall be provided to all jurisdictions where the site is located. Sufficiency of such notices shall be determined by the division.

G. The notification required by this section shall include the following:

1. The name, address and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;

2. Identification by tax map number and farm service agency (FSA) farm tract number of parcels on which land application is to take place;

3. A map indicating haul routes to each site where land application is to take place;

4. The name or title, and telephone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project;

5. The approximate dates on which land application is to begin and end at the site;

6. The name and telephone number of the person or persons at the Virginia Department of Health to be contacted in connection with the permit;

7. The name, address, and telephone number of the wastewater treatment facility, or facilities, from which the biosolids will originate, including the name or title of a representative of the treatment facility that is knowledgeable about the land application operation.

H. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of said complaint. The permit holder shall confirm receipt of a complaint by phone, e-mail or facsimile to the division, the chief executive officer or designee for the local government, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint. Complaints and responses thereto shall be documented by the permit holder and submitted with monthly land application reports to VDH and copied to the chief executive officer or designee for the local government and the owner of the treatment facility from which the biosolids originated.

12 VAC 5-585-480. Land acquisition and management control.

A. When land application of sludge is proposed, the continued availability of the land and protection from improper concurrent use during the utilization period shall be assured. A written agreement shall be established between the landowner and owner, with the information specified in Table A-1. The responsibility for obtaining and maintaining the agreements lies with the party who is the holder of the permit. Site management controls shall include ~~for~~ access limitations relative to the level of pathogen control achieved during treatment. In addition, agricultural use of sludge in accordance with this chapter ~~will~~ *is* not *to* result in harm to threatened or endangered species of plant, fish, or wildlife, nor result in the destruction or adverse modification of the critical habitat of a threatened or endangered species. Site-specific information shall be provided as part of the management or operating plan.

B. At least 48 hours prior to delivery of biosolids for land application on any site permitted under this chapter, the permit holder shall post a sign at the site that substantially complies with this section, is visible and legible from the public right-of-way, and conforms to the specifications herein. If the site is not located adjacent to a public right-of-way, the sign shall be posted at or near the intersection of the public right-of-way

and the main site access road or driveway to the site. The department may grant a waiver to this or any other requirement, or require alternative posting options due to extenuating circumstances. The sign shall remain in place for at least 48 hours after land application has been completed at the site.

C. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, four square feet or more in area and shall only contain the following information:

1. A statement that biosolids are being land-applied at the site;

2. The name and telephone number of the permit holder as well as the name or title, and telephone number of an individual designated by the permit holder to respond to complaints and inquiries;

3. Contact information for the Virginia Department of Health, including a telephone number for complaints and inquiries.

D. The permit holder shall promptly replace or repair any sign that has been removed from a land application site prior to 48 hours after completion of land application or that has been damaged so as to render any of its required information illegible.

12 VAC 5-585-490. Transport.

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

B. The permit holder shall be responsible for the prompt cleanup and removal of biosolids spilled during transport to the land application site or to or from a storage facility. The operations manual shall include a plan for the prevention of spills during transport and for the cleanup and removal of spills. The permit holder shall ensure that its personnel, subcontractors or the drivers of vehicles transporting biosolids for land application shall be properly trained in procedures for spill removal and cleanup.

C. The permit holder shall take appropriate steps to prevent drag-out and track-out of dirt and debris or biosolids from land application sites onto public roads. Where material is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly as soon as practicable, but no later than the end of each day.

D. The permit holder shall promptly report offsite spills to the Virginia Department of Health, the chief executive officer or designee for the local government and the owner of the facility generating the biosolids. The report shall be made verbally as soon as possible, but no later than 24 hours after the discovery of the spill. After business hours notification may be provided by voicemail, facsimile or e-mail.

E. A written report, which shall include a description of measures taken in response to the spill, shall be submitted by the permit holder to the Virginia Department of Health, the chief executive officer or designee for the local government and the owner of the facility generating the biosolids within five working days of the spill. The report may be sent by first class mail, facsimile or e-mail, or it may be hand delivered.

VA.R. Doc. No. R03-57; Filed July 2, 2004, 1:54 p.m.

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TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Regulations: **12 VAC 30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12 VAC 30-10-650).**

12 VAC 30-130. Amount, Duration and Scope of Selected Services (amending 12 VAC 30-130-290, 12 VAC 30-130-310, 12 VAC 30-130-320, 12 VAC 30-130-330, 12 VAC 30-130-400; and adding 12 VAC 30-130-335).

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

Public Hearing Date: N/A -- Public comments may be submitted until September 24, 2004.
(See Calendar of Events section for additional information)

Agency Contact: Javier Menendez, R.Ph., Manager, Pharmacy Services, Department of Medical Assistance Services, Division of Health Care Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-2196, FAX (804) 786-1680, or e-mail javier.menendez@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements.

The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: The Medicaid Prospective Drug Utilization Review (ProDUR) system was designed to identify potential drug

conflicts or contraindications, at the time that drugs are dispensed to recipients, so that appropriate review and modification of the drug therapy could be performed before recipients' health and safety are endangered. This system functions in conjunction with the point-of-sale (POS) program (a computerized claims processing mechanism available to pharmacists) as a pharmacy claim is electronically reviewed for patient eligibility and claims adjudication. The purpose of this regulatory action is to modify the ProDUR system to enable DMAS to reject or deny claims for drugs that conflict with or are contraindicated by criteria established by the Drug Utilization Review Board until reviews of recipients' drug therapies are performed by the pharmacist and/or prescribing medical provider.

Substance: The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) tied a state's claiming of federal financial participation (FFP) to its implementation of a drug use review (DUR) program pursuant to § 1927 of the Social Security Act. DMAS complied with this federal mandate with the implementation of its prospective drug utilization review for noninstitutionalized recipients and retrospective drug utilization review for nursing facility residents. DMAS' DUR program met all federal requirements and therefore received federal approval in 1993.

At the outset of the DUR program, DMAS focused on the development of medical provider (prescriber) and pharmacist educational interventions and programs pursuant to federal law. Prospective DUR (ProDUR), that is review of utilization prior to the dispensing of the prescription medicine, recognizes and utilizes the dispensing pharmacist's ability to maximize therapeutic outcomes. The dispensing pharmacist is required to review each patient's drug therapy profile before each prescription is filled. During the review of drug therapy profiles, pharmacists are responsible for screening for potential drug therapy problems, using their knowledge as trained health care professionals and supported by computer-assisted databases of clinical manuals approved by the Commonwealth's DUR Board.

The 1990 federal law also required the states to create professional boards that would conduct that state Medicaid program's drug utilization review activities, such as developing therapeutic criteria and educational intervention programs. Educational interventions, primarily through the use of electronic reminder messages, were expected to result in a reduction of situations of drug-to-drug interactions, over- and under-utilization, incorrect drug dosages and duration of therapies, therapeutic duplication, adverse drug reactions, drug allergy interactions, and drug-disease contraindications, to name a few.

To date, the expected reductions envisioned by the 1990 DUR mandates have not been observed in DMAS' covered pharmacy services. Two of the areas of concern are situations when recipients obtain multiple prescriptions that are therapeutically duplicative of each other and prescriptions that are refilled within less than 30 days. The first example is referred to as "therapeutic duplication" while the second is referred to as "early refill." DMAS has observed in these two instances, that dispensing pharmacists appear to be frequently using available override and intervention codes, with the limited clinical information available to them, in order to process their claims.

However, in order for this prospective drug utilization review process to be as effective as envisioned by Congress in 1990, the dispensing pharmacist should have access to the recipient's complete drug profile. For this to occur without further programmatic changes, the Medicaid recipient would have to secure all pharmacy services from only one pharmacy. This is not typically the case, however, since recipients tend to use multiple pharmacies depending on various factors, such as their immediate medical needs, their transportation capabilities, and other life circumstances. In this situation, DMAS (in its claims history and processing systems) is the sole location for recipients' complete drug profiles.

Issues: There are no disadvantages to the public for the approval of these proposed regulations. The advantages to the public are that some Medicaid dollars will not be spent on inappropriate, perhaps fraudulent, pharmacy services. Advantages to Medicaid recipients are that these changes will better protect their health and safety when fully implemented. Pharmacy providers may find these new requirements to be frustrating because they will have additional processes to follow in order to secure payment of their claims, but they may also find this system helpful in alerting them to situations that require their intervention. This is an advantage to prescribers and pharmacists, since the system will alert them to other drugs the recipient may be taking that do not otherwise appear in the medical records of each separate medical professional in the prescription drug regimen of the recipient. Finally, by more readily identifying harmful drug contraindications, Medicaid recipients who try to fraudulently use their Medicaid pharmacy benefits will likely be detected quicker and stopped from further pursuing these activities.

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 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 provide authority to the Department of Medical Assistance Services to reject or deny Medicaid claims for drugs that conflict with the criteria established by the Drug Utilization Review Board until the problem is resolved. The proposed changes have been effective since January 2004 under emergency regulations.

Estimated economic impact. These regulations contain rules for prospective drug utilization review (ProDUR). ProDUR

was established in 1993 to review the prescription medicine order and the patient's drug therapy history prior to filling the prescription order. One of the main purposes of the review is to prevent potential drug conflicts prospectively and consequently to protect the health and safety of the patient. The types of drug therapy conflicts include drug-drug interactions, drug-disease contraindications, drug-pregnancy interactions, therapeutic duplication, drug reactions, drug-allergy interactions, incorrect dosage or duration of drug treatment, early refill, clinical abuse/misuse, etc.

The Virginia Medicaid program maintains a profile of each patient's medication history, inclusive of all claims submitted by any pharmacy provider. The claims processing system screens for potential problems against pharmacy and medical information and returns an edit (alert) on the pharmacist's computer screen when there is a drug therapy conflict. In the past, the program focused on educational and advisory interventions. However, the educational and advisory intervention approach has not been as effective as expected because of several shortcomings. These shortcomings include (1) displaying a message for the pharmacist, but not requiring a specific intervention, (2) denying a claim, but allowing provider override without intervention, and (3) displaying a message, but not explaining the exact nature of the problem. In federal fiscal year 2002, of the 462,050 early refill denials, 197,274 (43%) were overridden by dispensing pharmacists, and of the 361,252 therapeutic duplication denials, 146,814 (41%) were overridden by dispensing pharmacists. The providers overrode these conflict messages without knowing the exact nature of the problem because the system did not provide any conflict specific information.

The proposed rules will allow the Department of Medical Assistance Services (DMAS) to require an intervention by the dispensing pharmacist appropriate to the type of conflict and to deny the claim until the conflict is resolved according to the criteria established and updated by the Drug Utilization Review Board on an ongoing basis. Types of interventions include patient assessment, coordination of care, dosing evaluation/determination, consulting the prescriber, consulting the patient, and medication review. Following the appropriate intervention, the pharmacist may fill the prescription as is, with a different dose, with different directions, with a different drug, different quantity, with prescriber approval, change brand name drug to generic, etc., or not fill the prescription.

The Drug Utilization Review Board has already revised the claims system for the four most common types of conflicts (i.e., drug-drug interactions, drug-disease contraindications, therapeutic duplication, and drug-pregnancy interactions) in February 2004 under the emergency regulations and plans to implement early refill edits in June 2004. The board is in the process of adopting criteria for the remaining types of drug conflicts. The claims processing system will be revised to address the majority (82%) of the conflicts by June 2004 according to the criteria developed by the board. When one of these conflicts arises, a message describes the potential problem or creates a denial and requires the pharmacist to enter an intervention and outcome code to override the denial. For example, upon seeing an alert, the pharmacist may consult the prescriber and fill the prescription with a different drug. The key change is that the system modifications now require an intervention by the pharmacist to address the problem related to the four types of the most common conflicts. The following table describes the changes in system edits and provides the number of edits the system produced in federal fiscal year 2002.

Summary of ProDUR Edits:

Type of Conflict	Previous Disposition	New Disposition	Total Messages (Percent of Total)
Drug-Drug Interactions	Message Only	Provider Override	395,106 (24%)
Drug-Disease Contraindications	Message Only	Provider Override	105,670 (7%)
Therapeutic Duplication	Deny, but allow provider override for 11 drug classes	Provider override for 11 classes to include narcotics	361,252 (22%)
Drug-Pregnancy Interactions	Message Only	Provider Override	3,208 (1%)
Early-Refill 2*	Deny-provider override allowed	Call in	462,050 (29%)
Subtotal			1,327,286 (82%)
All other**	Mostly Message Only	Mostly Message Only	290,923 (18%)
Total			1,618,209

*Will be implemented by June 2004.
**Will be implemented after June 2004.

The main additional cost of the proposed changes on DMAS is related to early refill calls to the call center. DMAS' contractor for early refill calls will be paid additional compensation to answer these calls. Currently, this contract is being negotiated. Assuming that the call center will answer 197,274 calls, which is the number of calls overridden in 2002, and that the call center will receive $7 per call on average, the total cost to DMAS will be in the neighborhood of $1.4 million. The other additional cost of the proposed changes on DMAS is minimal because the required modifications to the claims processing system are accomplished with minor programming changes. Also, these changes will utilize the services of the DUR Board that does not receive any monetary compensation for the review that is being conducted.

The other significant costs of the proposed changes fall on the dispensing pharmacists and the prescribers. Now pharmacy providers must intervene for their claims to be processed when they encounter a conflict message. For example, the system may identify a drug-drug interaction conflict, which may require the pharmacist to contact the prescriber to

dispense another drug. The required interventions will introduce nonnegligible time costs for pharmacists and prescribers to resolve the problem. Under certain assumptions[1], the wages for the time spent by the pharmacists and prescribers would be about $1.2 million. There may also be additional communication costs for the pharmacists and prescribers. Additionally, pharmacists may not be able to dispense some prescriptions if the problem cannot be resolved which would reduce their revenues. Moreover, the Medicaid recipients may face some delays in getting their prescription filled or may have to make more than one trip to the pharmacy.

However, these costs and the number of delays would probably decrease overtime as prescribers learn about and gain experience with the Medicaid ProDUR edits. According to DMAS, all private insurance companies have in place a drug review procedure at least as sophisticated as the one developed by Medicaid and hence it is the standard practice for the pharmacy dispensing industry to absorb these costs.

The benefits of the enhanced drug review include a potential reduction in the number of prescriptions that would otherwise conflict with the patient's therapeutic characteristics and history. DMAS anticipates saving approximately $296,255 annually in costs of drugs that will not be dispensed due to a therapeutic conflict. In addition, there are the benefits in terms of avoided costs of medical remedies to treat complications that would have arisen from drug conflicts. Moreover, the enhanced drug review is likely to help identify drug abuse/fraud cases and save some additional monies for the Medicaid program. Finally, pharmacists may also experience some benefits as the system helps them reduce mistakes and avoid fines, disciplinary actions, or cancellation of a license. However, due to lack of data, an estimated value for the potential total benefits is not available.

The proposed changes also include some minor changes such as updating the compendia used to identify potential drug conflicts or contraindications, adding telephonic interventions as a possibility in solving a problem, and adding that the pharmacists provide the prescriber information in the patient's profile.

Businesses and entities affected. These regulations may affect up to about 100,000 recipients per month, 1,600 pharmacy providers, and 27,000 medical providers.

Localities particularly affected. The proposed regulations are not expected to affect any locality more than others.

Projected impact on employment. The primary effect of proposed regulations on employment is the increased staffing needed at the pharmacies, the prescribers, and the call center to address the conflicts the claims system will identify. Under certain assumptions[2], pharmacists, prescribers, and the call center will need to devote about 55,744 hours to resolve expected ProDUR conflicts every year, which translates into approximately 27 full-time positions. However, increased staffing may reduce the profitability of some pharmacies and prescribers and may cause some reduction in the number of positions. To the extent this effect is realized, the number of expected new positions should be revised downward.

Effects on the use and value of private property. The proposed regulations will increase the compliance costs for the pharmacy providers and medical providers writing prescriptions for Medicaid recipients. To the extent their future profit stream is reduced, there should be a reduction in the value of their businesses. Whether the expected reduction in value would be significant at the provider level is not known.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Medical Assistance Services (DMAS) has reviewed the Economic Impact Analysis prepared by the Virginia Department of Planning and Budget and is in general agreement with the overall conclusions of the report. The proposed regulatory action concerned Prospective Drug Utilization Review (12 VAC 30-10 and 12 VAC 30-130).

However, DMAS does not concur that the monetary and expenditure of professed time is as significant as stated in the Economic Impact Analysis. The DPB statement that derives approximately $1.4 million for the call center is not correct. The call center costs were negotiated with First Health Services Corporation, the contractor for this program, to be included in the existing contract. Therefore, DMAS will not incur any additional costs.

Moreover, the long-term care pharmacy providers have been excluded from the application of this change. This resulted in a significant reduction in call volume, bringing the number from 197,274 to 27,780. In addition, DPB reported the cost of these additional requirements to practicing pharmacists in terms of the time it will require to make these additional phone calls.

DMAS' estimates result in an increase of less than three calls per pharmacy provider per month. This does not warrant any increase in pharmacy provider staffing levels. The agency maintains that DPB's estimates are too high, as the number of phone calls to the call center will significantly decrease as the provider community learns more about the changes to this specific edit. Pharmacists will more accurately evaluate the correct override circumstances, thus significantly reducing the number of phone calls to the call center. This will prevent the over-utilization and inappropriate use of prescription drugs, resulting in higher quality of care and reduced costs.

Summary:

The proposed amendments modify the drug utilization review program's claims process and provider requirements. The proposed amendments update the

[1] This estimate assumes that pharmacists will need to contact the prescriber or the call center for 557,460 messages (42% of the total messages for the first five conflicts in the table), prescribers will receive 369,399 calls (42% of the total messages excluding early refill calls which will be received by the call center) from pharmacists, each call will last three minutes, one half of the calls will be placed by pharmacists who make $36.08 per hour and the other half will be placed by pharmacist aides who make $9.66 per hour; physician assistants who make $31.16 per hour answer all calls from pharmacies. The wage data is from the Bureau of Labor Statistics.

[2] Ibid.

referenced documents used to obtain data and allow DMAS to reject or deny claims that conflict with criteria established by the Drug Utilization Review Board.

12 VAC 30-10-650. Drug Utilization Review Program.

A. 1. The Medicaid agency meets the requirements of ~~Section~~ § 1927(g) of the Act for a drug use review (DUR) program for outpatient drug claims.

2. The DUR program assures that prescriptions for outpatient drugs are:

- Appropriate

- Medically necessary

- Are not likely to result in adverse medical results

B. The DUR program is designed to educate physicians and pharmacists to identify and to reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and patients or associated with specific drugs as well as:

- Potential and actual adverse drug reactions

- Therapeutic appropriateness

- Overutilization and underutilization

- Appropriate use of generic products

- Therapeutic duplication

- Drug disease contraindications

- Drug-drug interactions

- Incorrect drug dosage or duration of drug treatment

- Drug allergy interactions

- Clinical abuse/misuse

C. The DUR program shall assess data use against predetermined standards whose source materials for their development are consistent with peer-reviewed medical literature which has been critically reviewed by unbiased independent experts and the following compendia:

American Hospital Formulary Service Drug Information (~~1995~~ *2003*, as amended)

United States Pharmacopeia-Drug Information (~~1995~~ *2003*, as amended)

~~American Medical Association Drug Evaluations (1993, as amended)~~

MICROMEDEX (as updated monthly)

Drug Facts and Comparisons (as updated monthly)

Drug Information Handbook (2003, as amended in 2004)

D. DUR is not required for drugs dispensed to residents of nursing facilities that are in compliance with drug regimen review procedures set forth in 42 CFR 483.60. The state has nevertheless chosen to include nursing home drugs in retrospective DUR.

E. 1. The DUR program includes prospective review of drug therapy at the point of sale or point of distribution before each prescription is filled or delivered to the Medicaid recipient.

2. Prospective DUR includes screening each prescription filled or delivered to an individual receiving benefits for potential drug therapy problems due to:

- Therapeutic duplication

- Drug disease contraindications

- Drug-drug interactions

- Drug-interactions with nonprescription or over-the-counter drugs

- Incorrect dosage or duration of drug treatment

- Drug allergy interactions

- Clinical abuse/misuse

3. Prospective DUR includes counseling for Medicaid recipients based on standards established by State law and maintenance of patient profiles.

4. Prospective DUR may also include electronic messages as well as rejection of claims at point-of-sale pending appropriate designated interventions by the dispensing pharmacist or prescribing physician.

5. Designated interventions may include provider override, obtaining prior authorization via communication to a call center staffed with appropriate clinicians, or written communication to prescribers.

F. 1. The DUR program includes retrospective DUR through its mechanized drug claims processing and information retrieval system or otherwise which undertakes ongoing periodic examination of claims data and other records to identify:

- Patterns of fraud and abuse

- Gross overuse

- Inappropriate or medically unnecessary care among physicians, pharmacists, Medicaid recipients, or associated with specific drugs or groups of drugs.

2. The DUR program assesses data on drug use against explicit predetermined standards including but not limited to monitoring for:

- Therapeutic appropriateness

- Overutilization and underutilization

- Appropriate use of generic products

- Therapeutic duplication

- Drug disease contraindications

- Drug-drug interactions

- Incorrect dosage/duration of drug treatment

- Clinical abuse/misuse

3. The DUR program through its state DUR Board, using data provided by the board, provides for active and ongoing educational outreach programs to educate practitioners *and pharmacists* on common drug therapy problems to improve prescribing and dispensing practices.

4. In situations of conflict with these criteria, DMAS, pursuant to the DUR Board's criteria and requirements, shall reject or deny presented claims and require the dispensing pharmacist to intervene as specified through electronic messages in the point-of-sale system before the claim will be approved for payment.

5. Designated interventions may include provider override, obtaining prior authorization via communication to a call center staffed with appropriate clinicians, or written communication to prescribers.

G. 1. The DUR program has established a state DUR Board directly.

2. The DUR Board membership includes health professionals (one-third licensed actively practicing pharmacists and one-third but no more than 51 percent licensed and actively practicing physicians) with knowledge and experience in one or more of the following:

- Clinically appropriate prescribing of covered outpatient drugs.

- Clinically appropriate dispensing and monitoring of covered outpatient drugs.

- Drug use review, evaluation and intervention.

- Medical quality assurance.

3. The activities of the DUR Board include:

- *Prospective DUR*

- Retrospective DUR

- Application of Standards as defined in § 1927(g)(2)(C), and

- Ongoing interventions for physicians and pharmacists targeted toward therapy problems or individuals identified in the course of retrospective DUR

4. The interventions include in appropriate instances:

- Information dissemination

- Written, oral, and electronic reminders

- Face-to-Face *and telephonic* discussions

- Intensified monitoring/review of prescribers/ dispensers

- Rejected or denied claims, as appropriate, to prevent the violation of the DUR Board's predetermined criteria.

- Provider override, obtaining prior authorization via communication to a call center staffed with appropriate clinicians, or written communication to prescribers.

H. The state assures that it will prepare and submit an annual report to the secretary, which incorporates a report from the state DUR Board, and that the state will adhere to the plans, steps, procedures as described in the report.

The Medicaid agency ensures that predetermined criteria and standards have been recommended by the DUR Board and approved by ~~the~~ *either* BMAS *or the director, acting on behalf of the BMAS, pursuant to § 32.1-324 of the Code of Virginia* and that they are based upon documentary evidence of the DUR Board. The activities of the DUR Board and the Medicaid fraud control programs are and shall be maintained as separate. The DUR Board shall refer suspected cases of fraud or abuse to the appropriate fraud and abuse control unit with the Medicaid agency.

I. 1. The state establishes, as its principal means of processing claims for covered outpatient drugs under this title, a point-of-sale electronic claims management system to perform on-line:

a. Real time eligibility verification.

b. Claims data capture.

c. Adjudication of claims. *Such adjudication may include the rejection or denial of claims found to be in conflict with DUR criteria. Should such rejection or denial occur during the adjudication process, the dispensing pharmacist shall have the opportunity to resolve the conflict and resubmit the claim for readjudication.*

d. Assistance to pharmacists, etc., applying for and receiving payment.

2. Prospective DUR is performed using an electronic point of sale drug claims processing system.

J. Hospitals which dispense covered outpatient drugs are exempted *pursuant to federal law* from the drug utilization review requirements of this section when facilities use drug formulary systems and bill the Medicaid program no more than the hospital's purchasing cost for such covered outpatient drugs.

12 VAC 30-130-290. Scope and purpose.

A. DMAS shall implement and conduct a drug ~~use~~ *utilization* review program (DUR program) for covered drugs prescribed for eligible recipients. The program shall help to ensure that prescriptions are appropriate, medically necessary, and are not likely to cause medically adverse events. The program shall provide for ongoing retrospective DUR, prospective DUR and an educational outreach program to educate practitioners on common drug therapy problems with the aim of improving prescribing practices. *As needed, the program shall also provide for electronic messages as well as rejected or denied services when such claims are not consistent with DUR criteria and requirements.* The primary objectives shall be:

1. Improving in the quality of care;

2. Maintaining program integrity (i.e., controlling problems of fraud and benefit abuse); and

3. Conserving program funds and individual expenditures.

B. Certain organized health care settings shall be exempt from the further requirements of retrospective and prospective DUR process as provided for in § 4401 of OBRA 90.

C. The purpose of retrospective drug utilization review shall be to screen for:

1. Monitoring for therapeutic appropriateness;

2. Overutilization and underutilization;

3. Appropriate use of generic products;

4. Therapeutic duplication;

5. Drug-disease*/health* contraindications;

6. Drug-drug interactions;

7. Incorrect drug dosage or duration of treatment;

8. Clinical abuse/misuse and fraud, and as necessary

9. Introduce to physicians and pharmacists remedial strategies to improve the quality of care rendered to their patients.

D. The purpose of prospective drug utilization review shall be to screen for:

1. Potential drug therapy problems due to therapeutic duplication;

2. Drug-disease*/health* contraindications;

3. Drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs);

4. Incorrect drug dosage or duration of drug treatment;

5. Drug-allergy interactions; and

6. Clinical abuse and misuse.

E. In instances where initial claims for reimbursement of covered services are determined to be in conflict with DUR criteria and requirements, such claims shall receive electronic messages or be rejected or denied, as appropriate, back to the dispensing pharmacist with notification as to the substance of the conflict. The dispensing pharmacist will be afforded the opportunity to provide an intervention, based on his professional expertise and knowledge, to modify the service to be claimed for reimbursement. If the modification no longer conflicts with the DUR criteria, the claim for the modified service shall be adjudicated for payment. If the modification requires additional information from the prescriber, the pharmacist shall advise the prescribing physician of the continuing conflict and advise the physician to seek prior authorization approval from either DMAS or the pharmacy benefits contractor for his treatment plans.

F. Designated interventions may include provider override, obtaining prior authorization via communication to a call center staffed with appropriate clinicians, or written communication to prescribers.

12 VAC 30-130-310. Prospective DUR.

A. Patient medication profile. On and after January 1, 1993, pharmacists shall make a reasonable effort to maintain a patient medication record system for persons covered under Title XIX of the Social Security Act for whom prescriptions are dispensed. For purposes of this regulation, a reasonable effort shall have been made if the information set forth in subdivision 1 of this subsection is requested by the pharmacist or the pharmacist's designee from the patient or the patient's agent.

1. A reasonable effort shall be made by the participating pharmacist to obtain, record, and maintain at least the following information on each patient's profile:

a. *Patient's* name, address, telephone number;

b. Date of birth (or current age) and gender;

c. Medical history

(1) Significant patient health problems known to the pharmacist,

(2) Prescription drug reactions or known allergies,

(3) A comprehensive list of prescription and nonprescription medications and legend drug administration devices known by the pharmacist to have been used by the patient; and

d. Prescriber information to include, but not necessarily be limited to, name, address, and Medicaid and Drug Enforcement Agency (DEA) provider numbers.

~~d.~~ *e.* Pharmacist's comments relevant to the patient's drug use, including any failure to accept the pharmacist's offer to counsel.

2. Such information may be recorded in any system of records and may be considered by the pharmacist in the exercise of his professional judgment concerning both the offer to counsel and content of counseling. DMAS *or its designated agent* is authorized to survey pharmacists' patients in order to determine compliance with and report on the mandates of federal and state law and regulations.

3. The information for patient profiles may be obtained from a patient's prescribing physician, hospital medical records, interviews with the patient, patient's family or agent, or a combination of the above.

4. Patient medication profiles shall be maintained for a period of not less than two years from the date of last entry or as necessary to comply with state or federal law.

B. Pharmacist's responsibilities. Upon receipt of each prescription and before dispensing the medication, a pharmacist shall perform prospective DUR based on his professional knowledge and the criteria and standards approved by the DUR Board, using the information contained in the patient's profile.

~~Each pharmacy is required to have DMAS' DUR Board approved criteria readily available for pharmacists to use in performing prospective DUR.~~ *If an exception to one or more prospective DUR criteria is identified, a message will be transmitted to the pharmacist. Claims may be rejected due to the exceptions to one or more criteria. Pharmacists may be required to obtain prior authorization, defined as the process of reviewing drugs to determine if medically justified prior to*

the submission of a claim for payment by Medicaid, in order to dispense the medications.

Designated interventions may include provider override, obtaining prior authorization via communication to a call center staffed with appropriate clinicians, or written communication to prescribers.

C. Patient counseling. Consistent with federal law and regulation a pharmacist must offer to discuss in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls with each individual receiving benefits or the caregiver of such individual who presents a prescription, matters which in the exercise of the pharmacist's professional judgment are deemed to be significant. The offer to counsel shall be made consistent with the requirements in § 54.1-3319 B of the Code of Virginia.

The specific areas of counseling shall include those matters listed below that, in the exercise of his professional judgment, the pharmacist considers significant:

1. Name and description of the medication;

2. Dosage form and amount, route of administration, and duration of therapy;

3. Special directions for preparation, administration and use by the patient as deemed necessary by the pharmacist;

4. Common or severe side or adverse effects or interactions that may be encountered which may interfere with the proper use of the medication as was intended by the prescriber, and the action required if they occur;

5. Techniques for self-monitoring drug therapy;

6. Proper storage;

7. Prescription refill information;

8. Action to be taken in the event of a missed dose.

9. Any other matters the pharmacist considers significant.

Alternative forms of patient information may be used to supplement, but not replace, oral patient counseling.

A pharmacist shall not be required to provide oral consultation when a patient or a patient's agent refuses the pharmacist's attempt to consult.

When prescriptions are delivered to the patient or patient's agent who resides outside of the local telephone calling area of the pharmacy, the pharmacist shall either provide a toll free telephone number or accept collect calls from such patient or patient's agent.

Patient counseling as described in this part shall not be required for inpatients of a hospital or institution where a nurse or other person authorized by the Commonwealth is administering the medication.

D. Compliance monitoring. An ongoing program shall be developed for the purpose of monitoring pharmacists' compliance with the prospective DUR requirements of this part.

The director may establish the compliance monitoring program through agreements with other state agencies, the DUR Board or other organizations.

As determined to be appropriate by DMAS, the methods used to monitor compliance shall include but shall not be limited to:

1. On-site inspections,

2. Patient surveys,

3. Desk audits, or

4. Retrospective pharmacy profile reviews.

5. Electronic messages as well as rejection or denial of claims until there is resolution of the conflict with DUR criteria.

12 VAC 30-130-320. Criteria and standards for DUR.

The DUR Board shall establish and revise as necessary a list of approved criteria and standards which shall be consistent with the following:

1. Compendia which shall consist of at least the ~~(i) American Hospital Formulary Service Drug Information, (ii) United States Pharmacopeia Drug Information, (iii) American Medical Association Drug Evaluations;~~ *publications, as may be amended from time to time, that are referenced at 12 VAC 30-10-650 C.*

2. The peer-reviewed medical literature; and

3. Commonly accepted standards of medical practice as used by practitioners across the Commonwealth.

12 VAC 30-130-330. Educational program.

A. DMAS shall develop an educational program designed to further educate physicians and pharmacists to ensure that prescriptions are appropriate, medically necessary, and are not likely to cause adverse actions. The purpose of such program shall be to:

1. Identify and reduce the frequency of patterns of fraud, abuse, overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs;

2. Identify and reduce the potential and actual severe adverse reactions to drugs; and

3. Improve prescribing and dispensing practices.

Such program shall include education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions and clinical abuse/misuse.

B. The educational program shall be accomplished through the use of interventions. The interventions shall be directed to physicians and pharmacists and shall address therapy problems or individuals identified in the course of *prospective and* retrospective drug use reviews as having exceptional drug utilization patterns. The educational program shall have

at least four types of interventions which shall be used as appropriate. These interventions shall include:

1. Information dissemination sufficient to ensure the ready availability to participating physicians and pharmacists of information concerning the DUR Board's duties, powers, and basis for its standards;

2. Written, oral, ~~or~~ electronic*, and telephonic* reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, which is communicated in a manner designed to ensure the privacy of patient-related information;

3. Face-to-face discussions between health care professionals who are experts in appropriate and medically necessary drug therapy and selected prescribers and pharmacists who have been targeted for intervention, including discussion of optimal prescribing, dispensing, or pharmacy care practices, and follow-up face-to-face discussions; and

4. Intensified review or monitoring of selected prescribers or dispensers.

C. DMAS may establish the educational program through contracts with accredited health care educational institutions, state medical societies or state pharmacists associations/societies or other organizations*, which may include, but shall not necessarily be limited to, a pharmacy benefits manager*. The educational program will use, but not be limited to, as a basis for its educational activities the compendia and literature referenced in these regulations and data obtained primarily from the *prospective and* retrospective DUR process, and provided by the DUR Board, on common drug therapy problems and other utilization and drug therapy issues listed in these regulations. The educational program shall be based on recommendations submitted by the DUR Board.

D. A report shall be prepared by the DUR Board and submitted to the director at least semi-annually evaluating the success of the interventions, determining if the interventions improved the quality of drug therapy, and making recommendations for modifications in the program, if appropriate.

12 VAC 30-130-335. Other interventions.

As permitted by all applicable federal and state laws and regulations, DMAS or its designee may intervene in the process of the adjudication of claims for payment of prescription drugs. Such interventions may entail, but shall not be limited to, electronic messages, rejecting claims pending further resolution, or requiring prior authorization for selected prospective DUR criteria.

Designated interventions may include provider override, obtaining prior authorization via communication to a call center staffed with appropriate clinicians, or written communication to prescribers.

12 VAC 30-130-400. Utilization review process.

A. The program shall provide, through its drug claims processing and information retrieval systems, for the ongoing periodic *retrospective* examination of claims data and other records for targeted facilities to identify patterns of inappropriate or medically unnecessary care for individuals receiving benefits under Title XIX of the Social Security Act.

B. The program shall, on an ongoing basis, assess data on drug use against predetermined standards (as described in this section) including, but not limited to, monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug/drug interactions, incorrect drug dosage or duration of treatment, clinical abuse/misuse, fraud, and, as necessary, introduce to physicians and pharmacists remedial strategies in order to improve the quality of care.

C. The Department of Medical Assistance Services may assess data on drug use against such standards as *contained in* the ~~American Hospital Formulary Service Drug Information, United States Pharmacopeia-Drug Information, American Medical Association Drug Evaluations,~~ *publications, as may be amended from time to time, that are referenced at 12 VAC 30-10-650 C* and *any other appropriate* peer-reviewed medical literature.

VA.R. Doc. No. R04-73; Filed June 30, 2004, 3:10 p.m.

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Title of Regulation: **12 VAC 30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-130, 12 VAC 30-50-229.1, 12 VAC 30-50-530).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Items 325 XX and EEE of Chapter 1042 of the 2003 Acts of Assembly.

Public Hearing Date: N/A -- Public comments may be submitted until September 24, 2004.
(See Calendar of Events section for additional information)

Agency Contact: Jeff Nelson, Analyst, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8857, FAX (804) 786-1680, or e-mail jeff.nelson@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance.

Purpose: The purpose of this proposed action is to expand coverage of school health services. Since school divisions are already under a federal mandate to provide the services covered by this regulation, it is in the interests of the Commonwealth and its citizens to secure whatever additional funding may be available for those services. Expanding Medicaid-covered school health services will give greater opportunity to Virginia students to have healthier lives. Offering these services through the Medicaid program eases

the burden on the Commonwealth's citizens to address the medical and educational needs of Virginia students. Therefore, this proposed action is expected to have a significant and positive impact on the health, safety, and welfare of the citizens of the Commonwealth.

Substance: The federal Individuals with Disabilities Education Act (IDEA) requires school divisions to offer all special education and related services to children with one or more of 13 specified disabilities. Federal funds are authorized under IDEA for the services, but the majority of the funds have historically been from state and local revenues. Section 32.1-326.3 of the Code of Virginia requires that DMAS maximize access to health care for poor special education students. The expanded services set forth in this proposed regulation will help school divisions meet the requirements of IDEA and meet the requirements of the Virginia Code. The health services offered include audiology services, medical evaluation services, school health assistant services, psychiatric/psychological services, and transportation to and from the school campus where necessary to obtain services listed in the student's Individualized Education Program (IEP). In addition, EPSDT screenings are being eliminated, and medical evaluation services will now be reimbursed only for children who are not in managed care. Coverage for psychiatric and psychological evaluation and therapy services is being extended to include services rendered by providers endorsed by the Board of Education as school social workers.

The services set forth in this proposed regulation are currently provided by Virginia school divisions to children in special education and represent an expansion of DMAS school health services coverage. Consistent with other DMAS covered school-based services for children in special education, the DMAS reimbursement will be the federal share of the payment only with the school division documenting the nonfederal matching share. These changes also reduce constraints cited by the school divisions in billing DMAS for services. In particular, service limits and prior authorization for services are removed and school health professionals, other than physicians, may authorize services.

Issues: The primary advantages to the public are a significant savings to the Commonwealth and school divisions and enhanced access to health services for Virginia students. 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 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 the 2003 Appropriations Act, Items 325 XX and EEE, the proposed regulations will expand the Medicaid coverage of school health services for special education children to include audiology, medical evaluation, school health assistance, and transportation services. The proposed changes will allow qualified school social workers and other health professionals, through the student's Individualized Education Program plan, to prescribe school health services. The proposed changes will remove service limitations and prior authorization requirements. These changes have been effective since July 2003 under emergency regulations. However, federal approval of the proposed changes is currently pending.

Estimated economic impact. School divisions have mandatory responsibility under the federal Individuals with Disabilities Education Act to offer all special education and related services to children with certain disabilities. These proposed regulations contain rules for reimbursement of these school health services through the Department of Medical Assistance Services (DMAS) to children in special education. All of the Virginia school divisions have the option to receive reimbursement for these services through Medicaid, which could result in approximately half of such costs being borne by federal funding. However, partly because of the limited scope of the services currently provided through Medicaid and partly because of the administrative restrictions with respect to referral and prior authorization, approximately half of the school divisions do not provide these services through Medicaid, but rather pay for them directly. As a result, the Commonwealth pays 100% of the cost of much of these services while approximately half of the costs could be saved if they were provided through Medicaid.

As a cost containment measure, the 2003 Appropriations Act, Items 325 XX and EEE, direct DMAS to expand the Medicaid coverage of these services and to revise referral and prior authorization requirements for services provided to special education students. The proposed changes will (1) expand the school health services for special education children to include audiology, medical evaluation, school health assistance, and transportation services and (2) allow school social workers and other health professionals through the student's Individualized Education Program plan to prescribe school health services, and remove service limitations and prior authorization requirements.

The economic effects of these changes will be mainly realized through the federal matching funds available from Medicaid. These expanded services are currently provided by school divisions and not reimbursed by Medicaid. Thus, the proposed regulations are not expected to directly increase the quantity of services received by special education students even though there may be an indirect increase as discussed below. In fiscal year 2003, DMAS processed approximately $5.37 million worth of school health services for 3,872 students from 68 school divisions, which did not include the newly expanded services.

The proposed expanded coverage will introduce new incentives to school divisions to finance these services through Medicaid. Schools divisions already participating in this Medicaid program can now realize greater savings

because of the expanded scope of services. As more of the bills are paid through Medicaid, more federal matching dollars are drawn, providing greater savings for the Commonwealth. Estimated total payment for the newly expanded services is approximately $1.54 million for those schools already processing claims through DMAS. Half of this amount will be paid by federal matching dollars, saving the Commonwealth approximately $770,000 annually.

Additionally, schools divisions currently not participating in this Medicaid program will face greater incentives to join in this program as they can now realize greater savings because of the expanded scope of services. Potentially, the savings that can be achieved through currently nonparticipating school divisions is greater than the additional savings that can be achieved through already participating providers. For example, if all of the remaining school divisions participate in this program, the total school health payments could be expected to double, representing an increase by $6.91 million. One half of this amount, $3.45 million, would be funded through federal funds, which would increase total savings to the Commonwealth by $4.22 million from all school divisions as a result of the proposed changes. However, the actual impact probably will be less as it is highly unrealistic to expect the full potential impact to materialize.

In addition, the incentives to all school divisions will be further enhanced because of less stringent referral, service limitations, and prior authorization rules. In the past, only physicians were allowed to prescribe school health services and there were prior authorization requirements for services beyond certain thresholds. The proposed rules will allow school social workers as well as other health professionals through the student's Individualized Education Program plan to prescribe school health services and remove service limitations and prior authorization requirements. These changes will reduce the administrative costs of providing school health services through Medicaid and strengthen the incentives to pay for these services through Medicaid. Thus, in addition to the savings expected from expanded coverage, less stringent referral and prior authorization rules are expected to cause an additional increase in the federal match dollars drawn for financing of these services, contributing to overall savings for the Commonwealth.

The actual amount of total savings will depend on many different factors including behavioral responses of school divisions, the size of the reduction in administrative costs, and the success of planned administrative efforts to increase awareness among the school divisions. The potential effects of these factors are inherently difficult to assess. Keeping in mind that there is a great deal of uncertainty involved, DMAS expects school divisions to process approximately $8 million for additional school health services through Medicaid, providing about $4 million in total savings from federal match to the Commonwealth.

As mentioned earlier, the proposed changes are not expected to directly increase the quantity of services received by special education students, as school divisions must provide these services regardless of the financing source. However, the savings that will be realized may make it possible for school divisions to address previously unmet needs of the special education children and increase the quantity of services provided indirectly.

One of the proposed changes will also remove the language related to early and periodic screening, diagnosis, and treatment services from these regulations due to double payment concerns raised by the Centers for Medicare and Medicaid Services. These services are covered under managed care plans on a capitated basis. Provision of the same services through these regulations would represent a double payment for the same service. DMAS plans to modify its rules for the managed care part of the Medicaid program to eliminate this problem. In the interim however, this language is removed from the regulation to secure federal approval. No change in the provision of these services will occur.

Businesses and entities affected. The proposed regulations apply to approximately 130 school divisions. In fiscal year 2003, 68 school divisions participated in provision of school health services to 3,872 special education children through Medicaid. More school divisions are expected to provide school health services through Medicaid as a result of the proposed changes.

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

Projected impact on employment. No significant effect on employment should result unless the projected savings are spent on new state services involving new employment.

Effects on the use and value of private property. The proposed regulations are not expected to produce any significant effect on the use and value of private property unless the projected savings are spent in a way to cause otherwise.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget regarding the regulations concerning School Health Services and Fee-for-Service Providers: School Divisions (12 VAC 30-50-130, 30-50-229.1 and 30-50-530).

Summary:

The proposed amendments expand Medicaid coverage of school health services to include audiology services, medical evaluation services, school health assistant services, and transportation services. All health services will be strictly tied to the student's Individualized Educational Program. This proposal modifies program requirements for prior authorization and the ordering of services.

12 VAC 30-50-130. Skilled nursing facility services, EPSDT, and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

5. Community mental health services.

a. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication; education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12 VAC 30-50-100, 12 VAC 30-50-105, and 12 VAC 30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12 VAC 30-130-850 et seq.) of this chapter.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR 441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

C. School health assistant services.

1. School health assistant services are defined as those services that assist the child with disabilities in self-sufficiency, communications, and mobility skills. Services provided by the assistant are related to the child's physical and behavioral health requirements, including assistance with eating, dressing, hygiene, activities of daily living, bladder and bowel needs, use of adaptive equipment, ambulation and exercise, minor behavioral issues and other remedial services to promote reduction of a child's disabilities. The registered nurse or other DMAS-recognized school health professional supervising the assistant shall provide a written plan describing the assistance needed for the child.

2. School health assistant services are available only to students who are qualified to receive special education services under, and consistent with, Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.).

3. No additional prior authorization is required if the school health assistant services are authorized by the current Individualized Education Program (IEP). The IEP team that authorizes these services must include a physician or other licensed practitioner of the healing arts acting within the scope of his practice under state law, to include a speech-language pathologist, occupational therapist, physical therapist, registered nurse, psychiatrist, clinical psychologist, school psychologist-limited, school social worker, or audiologist. The child shall have a current order

from a physician, physician assistant or nurse practitioner for specialized nursing procedures such as tube feedings, where the assistant may be involved in attending to the child.

4. The school health assistant shall perform services consistent with the training received. The school health assistant shall not perform services restricted to, or that cannot be delegated by, a licensed registered nurse or other health professional authorized by DMAS to provide school health services. The school health assistant shall not perform any service for which training was not received.

5. The assistant shall have met standards for school health assistant services as required by the Department of Education and received training for assisting with meeting the health needs of the child. The assistant is to be supervised by a Virginia-licensed physician, physician assistant, nurse practitioner, registered nurse, or other DMAS-recognized school health professional acting within the scope of his license under state law.

6. School health assistant services shall only be billed by school divisions enrolled with DMAS. Services shall be rendered by employees of school divisions or persons under contract to school divisions. Services billed by the school division shall not be duplicative of services the child receives at the school otherwise covered by DMAS.

7. School health assistant services shall be billed in units, with one unit equaling 15 minutes. The number of units billed is not to exceed the number of units in a day that the child is in the care of the school. While more than one assistant may attend to a child over the course of a school day, the unit for a particular period of the day for the child shall not be billed for the services of more than one assistant.

8. The school health assistant shall document on a weekly basis the assistance provided to the child, with the dates and times noted, with initials of the assistant and date of entry. Out-of-the-ordinary needs of the child or assistance provided shall be noted. The documentation shall be reviewed by the supervising registered nurse, or other school health professional recognized in these school services regulations, at least every 30 school days, in addition to any other requirements under state law, with the supervising professional noting approval of the services in the documentation with initials and date.

9. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.

~~C.~~ *D.* Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

12 VAC 30-50-229.1. School health services.

A. School health services shall require parental consent and shall be defined as ~~those therapy~~ *: Special education* services, *occupational therapy, physical therapy and speech-language pathology services;* nursing services~~,~~*;* psychiatric~~/~~ *and* psychological ~~screenings, and well-child screenings rendered by employees of school divisions that are enrolled with DMAS to serve children who:~~ *services; audiology services; and medical evaluation services.*

~~1. Qualify to receive special education services as described under and consistent with all of the requirements of Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.). Children qualifying~~

1. Only children who qualify for special education services pursuant to Part B of the federal Individuals with Disabilities Education Act, as amended, *are eligible to receive school health services; such children* shall not be restricted in their choice of enrolled providers of medical care services as described in the State Plan for Medical Assistance~~; or~~ *. Services billed to DMAS must be stated in the child's Individualized Education Program.*

~~2. Qualify to receive routine screening services under the State Plan. Diagnostic and treatment services, that are otherwise covered under early and periodic screening, diagnosis and treatment services, shall not be covered for participating school divisions. Participating school divisions must receive parental consent before conducting screening services.~~

2. School health services shall only be billed by school divisions enrolled with DMAS. Services shall be rendered by employees of school divisions or persons under contract to school divisions. Services billed by the school division shall not be duplicative of services the child receives at the school otherwise covered by DMAS.

B. *Occupational therapy,* physical therapy and ~~related~~ *speech-language pathology* services.

1. The services covered under this subsection shall include *occupational therapy,* physical therapy, ~~occupational therapy,~~ and speech-language pathology services. All of the requirements, with the exception of the ~~24-visit limit,~~ *prior authorization and physician order requirements* of 12 VAC 30-50-200*, 12 VAC 30-130-10 through 12 VAC 30-130-40,* and 42 CFR 440.110 *are* applicable ~~to these services shall continue to apply with regard to, but not necessarily limited to, necessary authorizations, documentation requirements, and provider qualifications. Consistent with the child's Individualized Education Program (IEP), 35 therapy visits will be covered per year~~

~~per discipline without DMAS prior authorization~~. *The service provider shall be either employed by the school division or under contract to the school division. No additional prior authorization is required if the services are authorized by the current Individualized Education Program (IEP). The IEP team that authorizes these services must include a physician or other licensed practitioner of the healing arts acting within the scope of his license under state law. Other licensed practitioners may include an occupational therapist, physical therapist, or speech-language pathologist.*

2. Consistent with § 32.1-326.3 of the Code of Virginia, speech-language *pathology* services ~~must~~ *shall* be rendered ~~either~~ by:

a. A speech-language pathologist who meets the qualifications under 42 CFR 440.110(c): (i) has a certificate of clinical competence from the American Speech ~~and~~ -*Language*-Hearing Association; (ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or (iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

b. A speech-language pathologist with a current license in speech-*language* pathology issued by the Board of Audiology and Speech-Language Pathology;

c. A speech-language pathologist licensed by the Board of Education with an endorsement in speech-language disorders preK-12 and a master's degree in speech-language pathology. These persons also have a license without examination from the Board of Audiology and Speech-Language Pathology; or

d. A speech-language pathologist who does not meet the criteria for subdivisions a, b, or c above and is directly supervised by a speech-language pathologist who meets the criteria of clause a (i) or a (ii) or subdivision b or c above. The speech-language pathologist must be licensed by the Board of Education with an endorsement in speech-language disorders preK-12 but does not hold a master's degree in speech-language pathology. Direct supervision must take place on site at least every 30 calendar days for a minimum of two hours and must be documented accordingly. The speech-language pathologist who meets the criteria for clause a (i) or a (ii) or subdivision b or c above is readily available to offer needed supervision when speech-language services are provided.

3. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.

C. Skilled nursing services.

1. These services must be medically necessary skilled nursing services that are required by a child in order to benefit from an educational program, as described under Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.)~~. These services shall be limited to a maximum of 26 units a day of medically necessary services~~ *and pursuant to 42 CFR 440.60*. Services not deemed to be medically necessary, upon utilization review, shall not be covered. A unit, for the purposes of this school-based health service, shall be defined as 15 minutes of skilled nursing care.

2. No additional prior authorization is required if the services are authorized by the current Individualized Education Program (IEP). The IEP team that authorizes these services must include a physician or other licensed practitioner of the healing arts acting within the scope of his license under state law, including a registered nurse. The child shall have a current order from a physician, physician assistant, or nurse practitioner for specialized nursing procedures such as tube feedings.

~~2.~~ *3.* These services must be performed by a Virginia-licensed registered nurse (RN), or licensed practical nurse (LPN) under the supervision of a licensed RN. The service provider shall be either employed by the school division or under contract to the school division. The skilled nursing services shall be rendered in accordance with the licensing standards and criteria of the Virginia Board of Nursing. Supervision of LPNs shall be provided consistent with the regulatory standards of the Board of Nursing at 18 VAC 90-20-270.

~~3.~~ *4.* The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation) that is consistent with skilled nursing services when performed by a registered nurse or a licensed practical nurse. These skilled nursing services shall include, but not necessarily be limited to, dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations. Skilled nursing services shall be consistent with the medical necessity criteria in the school services manual.

~~4.~~ *5.* Skilled nursing services shall be directly and specifically related to an active, written plan of care ~~that is~~. *The plan shall be* based on a physician's*, physician assistant's* or nurse practitioner's written order ~~for skilled nursing services~~ *when specialized nursing procedures are involved*. The registered nurse shall establish, sign, and date the plan of care. ~~The plan of care shall be periodically reviewed by a physician or nurse practitioner after any needed consultation with skilled nursing staff.~~ The services shall be specific and provide effective treatment for the child's condition in accordance with accepted standards of skilled nursing practice. ~~The plan of care is further described in subdivision 5 of this subsection.~~ Skilled nursing services rendered that exceed the ~~physician's or nurse practitioner's~~ written order for skilled nursing services *or plan of care* shall not be reimbursed by DMAS. A copy of

the plan of care shall be given to the child's Medicaid primary care provider.

~~5.~~ *6.* Documentation of services shall include a written plan of care that identifies the medical condition or conditions to be addressed by skilled nursing services, goals for skilled nursing services, time tables for accomplishing such stated goals, actual skilled nursing services to be delivered and whether the services will be delivered by an RN or LPN. Services that have been delivered and for which reimbursement from Medicaid is to be claimed must be supported with like documentation. Documentation of school-based skilled nursing services shall include the dates and times of services entered by the responsible licensed nurse; the actual nursing services rendered; the identification of the child on each page of the medical record; the current diagnosis and elements of the history and exam that form the basis of the diagnosis; any prescribed drugs that are part of the treatment including the quantities, dosage, and frequency; and notes to indicate progress made by the child, changes to the diagnosis, or treatment and response to treatment. The plan of care is to be part of the child's medical record. Actions related to the skilled nursing services such as notifying parents, calling the physician, or notifying emergency medical services shall also be documented. All documentation shall be signed and dated by the person performing the service. Lengthier skilled nursing services shall have more extensive documentation. The documentation shall be written immediately, or as soon thereafter as possible, after the procedure or treatment was implemented with the date and time specified, unless otherwise instructed in writing by Medicaid. Documentation is further described in the Medicaid school services manual. Skilled nursing services documentation shall otherwise be in accordance with the Virginia Board of Nursing, ~~Department~~ *Board of Medicine, Board* of Health, and ~~Department~~ *Board* of Education statutes, regulations, and standards relating to school health. Documentation shall also be in accordance with school division standards.

~~6.~~ *7.* Service limitations. The following general conditions shall apply to reimbursable skilled nursing services in school divisions:

a. Patient must be under the care of a physician*, physician assistant,* or nurse practitioner who is legally authorized to practice and who is acting within the scope of his license.

b. A recertification by a physician*, physician assistant,* or nurse practitioner *acting within the scope of his license* of the ~~skilled~~ *specialized* nursing ~~services~~ *procedures* shall be conducted at least once each school year. The recertification statement must be signed and dated by the physician*, physician assistant,* or nurse practitioner ~~who reviews the plan of care,~~ and may be obtained when the plan of care is reviewed. The ~~physician or nurse practitioner~~ recertification statement must indicate the continuing need for services and should estimate how long ~~rehabilitative~~ *skilled or specialized nursing* services will be needed.

c. ~~Physician or nurse practitioner orders for nursing services shall be required~~ *The plan of care is to be reviewed by a registered nurse at least annually and modified as necessary, with the RN's initials and date of review entered*.

~~d. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided.~~

~~e.~~ *d.* Skilled nursing services are to be terminated when further progress toward the treatment goals are unlikely or when they are not benefiting the child or when the services can be provided by someone other than the skilled nursing professional.

8. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.

D. Psychiatric and psychological services.

1. Evaluations and therapy services shall be covered when rendered by individuals who are licensed by the Board of Medicine and practice as psychiatrists or by psychologists licensed by the Board of Psychology as clinical psychologists or by school psychologists-limited licensed by the Board of Psychology. *Evaluation and therapy services shall also be covered when rendered by individuals who are endorsed by the Board of Education as school social workers.* Services by these practitioners shall be subject to coverage at 12 VAC 30-50-140 D *and 42 CFR 440.60, with the exception of the service limits and provider qualifications. The service provider shall be either employed by the school division or under contract to the school division. No additional prior authorization is required if the services are authorized by the current Individualized Education Program (IEP). The IEP team that authorizes these services must include a physician or other licensed practitioner of the healing arts acting within the scope of his license under state law, to include a psychiatrist, clinical psychologist, school psychologist-limited, or school social worker.*

2. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall

not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.

E. Audiology services.

1. Audiology services shall be rendered by an audiologist with a current license in audiology issued by the Board of Audiology and Speech-Language Pathology and who meets the requirements of 42 CFR 440.110(c).

2. The service provider shall be either employed by the school division or under contract to the school division. Audiology services shall be authorized by the current Individualized Education Program (IEP). No additional prior authorization is necessary. The IEP team that authorizes these services must include a physician or other licensed practitioner of the healing arts acting within the scope of his license under state law to include a licensed audiologist.

3. The audiological assessment shall include testing and/or observation as appropriate for chronological or mental age for one or more of the following areas of functioning:

a. Auditory, acuity (including pure tone air and bone conduction), speech detection, and speech reception threshold;

b. Auditory discrimination in quiet and noise;

c. Impedience audiometry including tympanometry and acoustic reflex;

d. Hearing amplification evaluation; and

e. Central auditory function.

4. Audiological treatment shall include one or more of the following as appropriate:

a. Auditory training;

b. Speech reading; and

c. Aural rehabilitation, including for cochlear implants.

5. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.

F. Medical evaluation services.

1. These evaluation services shall be rendered by a physician, physician assistant or nurse practitioner as part of the development and/or review of a child's Individualized Education Program, to identify or determine the nature and extent of a child's medical or other health-related condition.

2. Physicians and physician assistants shall be licensed by the Virginia Board of Medicine and nurse practitioners shall be licensed by the Virginia Board of Medicine and the Virginia Board of Nursing. The service provider shall be either employed by the school division or under contract to the school division.

3. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.

~~E. Early and periodic screening, diagnosis, and treatment (EPSDT) services. Routine screening services shall be covered for school divisions when rendered by either physicians or nurse practitioners. Diagnostic and treatment services also covered under EPSDT shall not be covered for school divisions. School divisions shall be required to refer children who are identified through health assessment screenings as having potential abnormalities to their primary care physician for further diagnostic and treatment procedures.~~

~~F.~~ *G.* Specific exclusions from school health services. All services encompassing and related to family planning, pregnancy, and abortion services shall be specifically excluded from Medicaid reimbursement if rendered in the school district setting.

12 VAC 30-50-530. Methods of providing transportation.

DMAS will ensure necessary transportation for recipients to and from providers of covered medical services. DMAS shall cover transportation to covered medical services under the following circumstances:

1. Emergency air and ground ambulance transportation shall be covered as a medical service under applicable federal Medicaid regulations.

2. *Except for transportation services provided by school divisions,* all other modes of transportation shall be covered as administrative expenses under 42 CFR 431.53 and any other applicable federal Medicaid regulations. These modes include, but shall not *be* limited to, nonemergency air travel, nonemergency ground ambulance, stretcher vans, wheelchair vans, common user bus (intra-city and inter-city), volunteer/registered drivers, and taxicabs. DMAS may contract directly with providers of transportation or with brokers of transportation services, or both. DMAS may require that brokers not have a financial interest in transportation providers with whom they contract.

3. Medicaid provided transportation shall only be available when recipients have no other means of transportation available.

4. Recipients shall be furnished transportation services that are the most economical to adequately meet the recipients' medical needs.

5. Ambulances, wheelchair vans, taxicabs, and other modes of transportation must be licensed to provide services in the Commonwealth by the appropriate state or local licensing agency, or both. Volunteer/registered drivers must be licensed to operate a motor vehicle in the Commonwealth and must maintain automobile insurance.

6. Transportation services provided by school divisions.

a. School transportation services are available only to students who are qualified to receive special education health services under Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.).

b. No additional prior authorization is required if the school transportation services are authorized by the current Individualized Education Program (IEP). The IEP team that authorizes these services must meet all the requirements for IEP team composition set forth in 12 VAC 30-50-229.1.

c. School division provided transportation shall be covered for children in special education on days when the child receives a medical service billed to DMAS, such as physical therapy. The transportation is to enable the child to receive the covered medical service. Transportation shall involve a trip from home to school and the return trip, or from school (or home) to a DMAS medical provider in the community for a service, such as physical therapy, and the return trip.

d. Transportation on a "regular" school bus is not billable to DMAS, unless an aide is necessary for the child to ride the bus. If a child requires transportation on a vehicle adapted to serve the needs of the disabled, such as a specially adapted school bus, that transportation may be billed to DMAS. A school division car or other type of vehicle also qualifies which meets the needs of the child when the child cannot ride a school bus. If an aide is necessary for the child to ride the vehicle and this is noted in the child's IEP, then reimbursement shall include the services of the aide assigned to a child. An aide assigned to ride in a vehicle which transports children, where transportation and an aide are noted in the IEP, can also be billed. The services of a single aide can be billed for up to six children.

e. Vehicles and drivers providing the transportation shall be in compliance with applicable laws and regulations.

VA.R. Doc. No. R03-251; Filed June 30, 2004, 3:08 p.m.

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Titles of Regulations: **12 VAC 30-50. Amount, Duration and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-210).**

12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-40).

12 VAC 30-130. Amount, Duration and Scope of Selected Services (adding 12 VAC 30-130-1000).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Item 325 ZZ of Chapter 1042 of the 2003 Acts of Assembly.

Public Hearing Date: N/A -- Public comments may be submitted until September 24, 2004.
(See Calendar of Events section for additional information)

Agency Contact: Adrienne Fegans, Program Operations Administrator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-4112, FAX (804) 786-1680, or e-mail adrienne.fegans@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements.

The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: The purpose of this action is to implement two significant changes: (i) a preferred drug list (PDL) and prior authorization program for pharmacy services, including the coverage of newly approved legend drugs, provided to Medicaid fee-for-service clients, including state supplemental rebates for manufacturer's covered product(s) for which the manufacturer has agreed to pay supplemental rebates and a specified methodology for reimbursing for generic drugs and (ii) utilization review of high drug thresholds for noninstitutionalized and institutionalized (e.g., nursing facility) recipients who are prescribed large numbers of different prescription (legend) drugs within specific time periods. The preferred drug list, prior authorization and utilization review changes will protect the health and welfare of Medicaid recipients as they make use of their pharmacy services benefits under Medicaid. The state supplemental rebates, one of many considerations reviewed in a product's potential inclusion on the PDL, will not affect the health, safety, and welfare of Medicaid recipients. The addition of the Virginia Maximum Allowable Cost (VMAC) methodology language does not establish a new policy or cause new expenditures as this policy has long been in effect. This VMAC change will have no impact on the health, safety, or welfare of Medicaid recipients or the citizens of the Commonwealth.

Preferred Drug List, Pharmacy and Therapeutics Committee, State Supplemental Rebates, and VMAC: For those therapeutic classes of drugs subject to the PDL program, a preferred drug is one meeting the safety, clinical efficacy, and pricing standards employed by the Pharmacy & Therapeutics (P&T) Committee. Nonpreferred drugs are those that were reviewed by the P&T Committee and not included on the preferred drug list. The nonpreferred drugs will require prior authorization prior to dispensing. The P&T Committee may also recommend prior authorization requirements or clinical guidance regarding preferred drugs or other drugs, including legend drugs newly approved by the Food and Drug

Administration (FDA). This action also establishes the parameters for action by the P&T Committee as well as the department's contractor for pharmacy services benefits management. The goals of the program are to improve the quality of pharmaceutical services and to reduce the significant increases in the cost of prescription drugs in the Medicaid fee-for-service program without reducing the quality of rendered services.

Pharmaceutical manufacturers already calculate and provide the department a federal rebate for their covered product or products, as appropriate. The department has the authority to seek state supplemental rebates from pharmaceutical manufacturers. The contract regarding supplemental rebates shall exist between the pharmaceutical manufacturers and the Commonwealth. Rebate agreements between the Commonwealth and a pharmaceutical manufacturer shall be separate from the federal rebates and in compliance with federal law, §§ 1927(a)(1) and 1927(a)(4) of the Social Security Act (Act). All rebates collected on behalf of the Commonwealth shall be collected for the sole benefit of the state share of costs. One hundred percent (100%) of the supplemental rebates collected on behalf of the state shall be remitted to the state and are not permitted by federal law to be shared with contractors. Supplemental drug rebates received by the Commonwealth in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

The addition of the VMAC methodology was required by the Centers for Medicare and Medicaid Services. The requirement was made in the context of a federal review of an unrelated State Plan Amendment. The new language for the VAC does not represent any new reimbursement policies or methodologies but merely states in the VAC the existing policy.

Utilization Review of High Drug Thresholds: The purpose of this action is to implement a program of prospective and retrospective utilization review and prior authorization of pharmacy services for noninstitutionalized and institutionalized (e.g., nursing facility) recipients who are prescribed large numbers of different legend drugs within specific time periods. Such utilization review of covered pharmacy services is permitted by 42 CFR 440.230(d) "[t]he agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures." These changes are necessary to protect the health and safety of Medicaid recipients who are prescribed very high numbers of legend drugs by having trained professionals evaluate their drug profiles for safety and necessity.

Substance: Preferred Drug List, Pharmacy and Therapeutics Committee, State Supplemental Rebates, and VMAC: This action proposes to implement a PDL and prior authorization program for pharmacy services provided to Medicaid fee-for-service clients. For those therapeutic classes of drugs subject to the PDL program, a preferred drug is one that meets the safety, clinical efficacy, and pricing standards employed by the Pharmacy and Therapeutics (P&T) Committee. Nonpreferred drugs are those that were reviewed by the P&T Committee and not included on the PDL. The nonpreferred drugs require prior authorization prior to dispensing. The P&T Committee may also recommend prior authorization requirements for preferred drugs or other drugs, including new drugs, due to clinical considerations. New drugs are those legend drugs that are newly approved for use by the FDA. This action also establishes the parameters for action by the P&T Committee as well as the department's contractor for pharmacy services benefits management.

Pharmaceutical manufacturers will calculate and provide the department a federal rebate for the covered product or products as appropriate. The department has the authority to seek state supplemental rebates from pharmaceutical manufacturers. The contract regarding state supplemental rebates shall exist between the pharmaceutical manufacturer and the Commonwealth. Rebate agreements between the Commonwealth and a pharmaceutical manufacturer shall be separate from the federal rebates and in compliance with federal law, §§ 1927(a)(1) and 1927(a)(4) of the Social Security Act (Act). All rebates collected on behalf of the Commonwealth shall be collected for the sole benefit of the state share of Medicaid costs and is not permitted, by federal law, to be shared with contractors. One hundred percent (100%) of the supplemental rebates collected on behalf of the state shall be remitted to the state. Supplemental drug rebates received by the Commonwealth in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

Text corrections have been made concerning the VMAC methodology pursuant, for generic drug reimbursement, to requirements from the Centers for Medicare and Medicaid Services (CMS). During federal review of another unrelated State Plan Amendment that affects 12 VAC 30-80-40, CMS required DMAS to add text to this regulation detailing the methodology for arriving at the VMAC. The changes indicated here as new text merely conform this Virginia Administrative Code section to the parallel section in the State Plan for Medical Assistance. This new text does not represent a change in methodology, policy, or expenditures.

Utilization Review of High Drug Thresholds: Other than the existing emergency regulation concerning this issue, the State Plan for Medical Assistance does not presently contain any limitations or utilization review requirements for either institutionalized or noninstitutionalized persons who receive high numbers of prescriptions for legend drugs. This modification to the State Plan's coverage of Medicaid pharmacy services was proposed to the 2003 Session of the General Assembly by the pharmacy industry. The General Assembly approved the industry's recommendation and directed DMAS to implement this modification.

For noninstitutionalized recipients, DMAS intends to implement utilization review requirements when such recipients require more than nine prescriptions for legend drugs within 180 day time period. For institutionalized recipients, DMAS intends to implement utilization review requirements when such recipients require more than nine prescriptions for legend drugs within 30-day time period. Due to the ever-increasing complexity of prescription medications, it will benefit recipients to have additional pharmaceutical and

medical professionals reviewing their drug profiles to prevent drug-to-drug interactions, overdoses, and inappropriate dosages.

Issues: Preferred Drug List, Pharmacy and Therapeutics Committee, State Supplemental Rebates, and VMAC: There are no disadvantages to the public for the approval of these proposed regulations. The advantages to the public and the Commonwealth are that reductions in Medicaid expenditures may be realized for pharmacy services. Medicaid recipients will still have ready access to less costly, but no less therapeutically beneficial, drugs. The disadvantage to the agency is the difficulty in implementing such a prior authorization program. The pharmaceutical manufacturers whose drugs are not selected for inclusion in the PDL may experience a market shift and therefore a loss of revenues previously experienced from Virginia Medicaid.

The department has the authority to seek supplemental rebates from pharmaceutical manufacturers in addition to the rebates received under Manufacturer's CMS Agreement, pursuant to § 1927 of the Social Security Act (42 USC § 1396r-8), for the Manufacturer's Supplemental Covered Product(s). The advantages are a cost savings to the Commonwealth and a reduction in Medicaid prescription expenditures. Such rebates to the Commonwealth will not affect the reimbursement to pharmacy providers for rendered services.

There are no issues associated with the inclusion of the VMAC language since this is effecting no policy or methodology changes. These text corrections were required by the CMS in the context of approving an unrelated State Plan Amendment. The changes indicated here as new text merely conforms this VAC section to the parallel section of the Title XIX State Plan. This new text does not represent a change in methodology, policy, or expenditures.

UR of High Drug Thresholds: There are no disadvantages to the public in this change. An advantage to the public is that small Medicaid expenditure savings might be obtained. Medicaid recipients can be expected to benefit the most from this change because the higher level of scrutiny of their drug profiles will better ensure their health and safety. The program is a process of reviewing drug usage by Medicaid fee for service recipients to determine the appropriateness of all existing prescriptions and newly prescribed medications to ensure appropriate, quality, and cost-effective prescription drug treatments. The process also is designed to improve the health and safety of the patient and to prevent waste and abuse of the pharmacy program by assisting providers and the Department in identifying clients who may be accessing multiple physicians and pharmacies.

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 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 Item 325 ZZ of the 2003 Appropriations Act, the proposed regulations will permanently authorize DMAS to implement a preferred drug list and prior authorization requirements for prescription drugs as determined by the Pharmacy and Therapeutics Committee. Additionally, pursuant to Items 325 UU and VV of the 2003 Appropriations Act, the proposed changes will permanently implement utilization review for the use of high numbers of prescription drugs by institutionalized and noninstitutionalized recipients. Finally, a few of the proposed changes improve the clarity of the Virginia Maximum Allowable Cost methodology. The proposed permanent rules have been implemented in practice in January 2004 under emergency regulations.

Estimated economic impact. The proposed regulations contain rules for Medicaid pharmacy fee-for-service coverage. Prescription drug coverage is an optional benefit that all states currently choose to provide. This benefit is provided to all recipients under the managed care and fee-for-service delivery models. While approximately 300,0000, or 58% of the total Medicaid recipients receive pharmacy benefits through managed care organizations, about 220,000 recipients, or 42%, receive pharmacy benefits through the fee-for-service model. These regulations apply to the fee-for-service component of the Medicaid pharmacy benefits.[1]

The cost of providing Medicaid pharmacy benefits has been rising rapidly throughout the nation. The expenditures have shown double-digit annual growth over the last decade. Virginia Medicaid's experience has been no different. The fee-for-service pharmacy expenditures have grown from $194 million in fiscal year 1997 to $356 million in fiscal year 2002, showing an average annual growth of 11% during this period. And, this growth has occurred despite the decreases in recipient enrollment in the Medicaid fee-for-service population that resulted from managed care expansions and cost saving initiatives already implemented.[2] According to DMAS, based on national studies, the main factors contributing to the growth in pharmacy costs are the discovery of new drug treatments, the increased use of drugs in treatment of various health conditions, the increased advertising by drug manufacturers, and the growth in the elderly and disabled populations. These factors increase expenditures either by increasing the average cost per unit, or by increasing utilization, or both. Thus, it seems worthwhile to identify the relative contribution of utilization and cost per unit to the growth in pharmacy expenditures.

The Medicaid claims database contains data on pharmacy expenditures, utilization, and federal rebates. The following table identifies the relative contributions of utilization and cost

[1] Source: Status Report, Development of a Preferred Drug List Program by the Virginia Department of Medical Assistance Services, April 2003.

[2] One reason that expansions did not dampen the growth significantly is the fact that recipients with highest drug costs are not included in these expansions.

per unit to the growth in expenditures net of federal rebates.[3] The table shows that the pharmacy expenditures net of federal rebates increased from $194 million in FY 1997 to $219 million in FY 1998, exhibiting a growth rate of 8%. Increased utilization accounted for 16% of this growth and increased cost per unit accounted for 84%. The contribution of costs to expenditure growth has been consistently higher than the contribution of utilization between 1997 and 2002. The data indicate that the increasing cost of drugs is mainly responsible for the growth in Virginia Medicaid pharmacy expenditures while increasing utilization contributes a relatively smaller amount to the same growth.

Contributions of utilization and cost per unit to growth in pharmacy expenditures:

Year	Rx Expenditures	% Growth	Contribution of Utilization	Contribution of Cost Per Unit
FY97	$194,711,928	8%	16%	84%
FY98	$219,063,798	12%	21%	79%
FY99	$247,940,200	12%	27%	73%
FY00	$299,566,835	19%	4%	96%
FY01	$336,551,486	12%	10%	90%
FY02	$356,989,293	6%	32%	68%
Average		**11%**	**16%**	**84%**

There have been significant concerns about the rapidly increasing pharmacy expenditures. It appears that, unless increasing pharmacy costs create significant savings in other areas of the Medicaid program and revenues grow at comparable rates, the historical growth path of pharmacy expenditures will eventually force reductions in other programs in Medicaid as well as other government services. Data indicate that the portion of pharmacy expenditures within the total Virginia Medicaid budget has been increasing (e.g., from 8.9% in 1997 to 11.9% in 2002). The portion of Medicaid as a fraction of the total state budget has been increasing not only in Virginia, but also throughout the United States.

Preferred Drug List. Increasing pharmacy expenditures triggered initiatives to contain costs. One of the new initiatives is the implementation of a preferred drug list (PDL). A preferred drug list allows a state to negotiate and obtain supplemental rebates from pharmaceutical manufacturers. This approach to contain costs could be justified on several economic grounds.

In a third party payer system such as Medicaid, the principal-agent relationships among the doctor, patient, and the payor may be imperfect. A principal agent relationship occurs when one person, an agent, acts on behalf of another person, the principal. In this context, a doctor acts on behalf of the Medicaid agency when he prescribes a medicine. Since Medicaid pays for the prescriptions, the doctors may not fully consider the cost of prescription drugs, which may lead to higher pharmaceutical costs for the Medicaid agency.

A doctor also acts on behalf of the patient, which would require him to be aware of the best treatment available as well as the substitutability among alternative treatments. However, not all doctors may be fully aware of substitutability among the therapeutically equivalent drugs. These therapeutically equivalent drugs may be sold at different prices. This may result in prescribing higher price drugs for the same therapeutic benefits.

Whether it is the imperfect principal agent relationship between the prescriber and the payor, or between the prescriber and the patient, insofar as the manufacturers can charge a higher price for a product while there is no therapeutic advantage, the demand for that product does not reflect the social benefits that could be expected from it.

Additionally, a manufacturer may induce the demand for a particular drug through nonprice competition strategies such as advertising, distinctive packaging, styling, coloring, and similar techniques, rather than reducing price. The main goal of nonprice competition strategies is to differentiate a product from other close substitutes as much as possible and develop consumer loyalty, which gives market power to charge higher prices. In this sense, advertising, for instance, can alter the prescription patterns of doctors or the preferences of Medicaid recipients for a particular drug thereby allowing the manufacturer to charge higher prices than would be possible in the absence of advertising. The presence of nonprice competition further exacerbates the imbalance between the social costs and the social benefits of a Medicaid prescription drug. This imbalance calls for government intervention. The proposed PDL program aims to alleviate this imbalance by introducing a demand side pressure on the manufacturers.

A PDL discourages the prescription of expensive nonpreferred drugs while encouraging prescription of cost effective preferred drugs. It does so by employing two instruments: prior authorization and state supplemental rebates.

A preferred drug list establishes two groups of drugs: one group that does not require prior authorization before reimbursement will be authorized and one group that does require prior authorization before the Medicaid agency will authorize payment. The drugs on the list may be dispensed without a required prior authorization. The drugs not on the list require prior authorization. Thus, a PDL relies on the incentives provided to prescribing physicians who determine the demand for individual pharmaceutical products.

Prescription of a drug that is not on the PDL requires the physician to obtain prior authorization from a central office. Thus, physicians may be unwilling to prescribe drugs that are not on the PDL, depending on the physician's evaluation of his patient's medical needs. In other words, a PDL increases the costs of prescribing a drug that is not preferred and provides incentives to physicians to prescribe drugs that are on the list. The costlier is the prescribing of a non-PDL drug, the stronger are the incentives. Thus, establishing prior authorization requirements is an essential component of the implementation of a PDL.

The second essential component of a PDL is the system of state supplemental rebates offered by pharmaceutical manufacturers that are considered when selecting the

[3] The rebates are assumed to be received by a three-quarter lag. The percentage growth is calculated as the difference in logs.

preferred drugs for the PDL. Unless there are rebates associated with using drugs on the PDL, no savings would materialize. State supplemental rebates reduce the cost per unit for a given drug and help contain growing pharmaceutical expenditures. Given that the cost per unit is the main contributor to growth in Virginia's pharmacy expenditures, this initiative appears to be well targeted.

Based on the federal Centers for Medicare and Medicaid Services' agreements with the pharmaceutical manufacturers, the Commonwealth has already been receiving federal rebates from pharmaceutical manufacturers. The proposed PDL program allows the Commonwealth to negotiate for state supplemental rebates from the manufacturers above and beyond the rebates obtained through federal agreements. According to DMAS, more than 30 states either have implemented or are planning to implement a preferred drug list in their Medicaid programs. PDL programs have been common among the private managed care organizations. Furthermore, some states participate in a pooled preferred drug list.

Demanding supplemental rebates for all drugs may not be feasible because of clinical differences that relate to health and safety concerns. For example, there may be no therapeutically equivalent alternative to a drug, thereby preventing it from a "nonpreferred" status on the PDL. Also, in some cases, prior authorization may interfere with established complex drug regimens. Thus, not all drugs could be included in the PDL solely based on the supplemental rebates. The Pharmacy and Therapeutics Committee (the committee) addresses these issues.

Item 325 ZZ of the 2003 Appropriation Act outlines the make up and duties of this committee. The statutory language requires that the committee be composed of 8 to 12 members including the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, or his designee, with a ratio of two physicians for every pharmacist. One of the physicians must be specialized in psychiatry and one in care for the aging. Similarly, one of the pharmacists must have clinical expertise in mental health drugs and one in community-based mental health treatment. The members do not receive any compensation other than travel and lodging expenses.

Duties of the committee include (i) establishing therapeutic classes of drugs for inclusion on the PDL; (ii) identifying the specific drugs in each class that will be included in the PDL; (iii) establishing appropriate exclusions for certain medications used for the treatment of serious mental illnesses such as bi-polar disorders, schizophrenia, and depression; (iv) establishing appropriate exclusions for certain medications used for the treatment of brain disorders, cancer, and HIV-related conditions; (v) establishing exclusions for therapeutic classes in which there is only one drug in the class, or there is very low utilization, or for which it is not cost-effective to include the drug in the PDL; and (vi) establishing appropriate grandfather clauses when prior authorization would interfere with established complex drug regimens that have proven to be clinically effective.

The statute, pursuant to the federal regulations, also requires that the prior authorization decisions should be made within 24 hours and a 72-hour emergency supply of a drug may be provided when requested by a provider.

The Appropriation Act sets the fiscal goal of the PDL program. The statue requires at least $18 million total funds savings including general fund and federal matching funds in fiscal year 2004 and at least $36 million total funds annually thereafter.

The development of the Virginia PDL program has been in progress. For its design, DMAS has collected input from 28 stakeholder groups including physicians, pharmacists, pharmaceutical manufacturers, consumer advocates, service providers, and other interested parties. Academic health centers, several medical societies, the Virginia Pharmacy Congress, and other provider associations have been asked to provide nominees for the committee membership. Out of the approximately 100 possible classes of drugs comprising about 182,000 different drugs, the committee has already reviewed 35 classes covering approximately 300 drugs that account for a high proportion of Medicaid pharmacy expenditures. The following describes the steps taken in the development of Virginia Medicaid PDL:

1. The committee recommends which therapeutic classes should be subject to the PDL;

2. For each therapeutic class, drugs are recommended based on clinical efficacy;

3. Of the recommended drugs, the committee reviews manufacturer bids for supplemental rebates to determine cost effectiveness;

4. Final PDL includes clinically effective drugs with or without supplemental rebates;

5. Nonpreferred drugs are available through prior authorization.

The Appropriation Act requires the Pharmacy and Therapeutics Committee to make all critical decisions. One of these critical decisions is inclusion of a drug in a therapeutic class of drugs. The proposed regulations and conversations with DMAS indicate that the therapeutic classes are defined broadly to include drugs that may be neither chemically identical nor pharmacologically equivalent, but have comparable therapeutic effects. This also means that the therapeutic classes may include on-patent drugs as well as generics.

The inclusion in a therapeutic class of drugs affects the market for each of the manufacturers of drugs included in the cluster. The inclusion in a therapeutic class has the implication that the drugs included in a cluster are in fact good substitutes for each other without any significantly different therapeutic outcomes. In other words, the *de facto* degree of substitutability among the drugs is high. Thus, a PDL may educate some doctors about the substitutability of different drugs to achieve the same therapeutic outcome. This new knowledge to some doctors about the availability of other good alternatives may affect their prescribing patterns and increase the level of competition in the therapeutic cluster.

In addition to the informational aspect of a PDL and probably more importantly, no prior authorization for drugs on the PDL provides incentives to Medicaid recipients and physicians to discount the actual or perceived differences among drugs in the same cluster. As the effect of product differentiation is dampened among the drugs in the same cluster, firms lose their significant market power and consequently these manufacturers may start becoming more aggressive competitors to maintain or bolster their current market share.

In this more competitive environment, manufacturers must make some strategic decisions as the committee requests a bid from the manufacturers that represent their best price or "net cost" for the supplemental rebate. According to DMAS, the committee considers many factors when determining selection of a drug on the PDL; the offer of the rebates from manufacturers is only one consideration. There is no uniform methodology, but a general "cost effectiveness" guideline to determine the "net cost" price in the supplemental rebates. For example, the committee may consider a lower rebate from a manufacturer with large market share when weighing the risks associated with moving patients from one drug to another therapeutically equivalent drug in the same cluster. Also, the committee may consider a drug in the PDL even if the manufacturer does not provide a supplemental rebate provided there is a clinical, therapeutic reason.

On one hand, manufacturers have incentives to offer the lowest possible supplemental rebate and on the other hand they have incentives to be on the PDL. However, the size of the supplemental rebates and the probability they will be on the PDL may be inversely related. The best strategic response for a manufacturer is then to offer the minimum amount of supplemental rebates while maintaining an acceptable chance to be included in the PDL. Other possible factors may allow a manufacturer to be on the list with a smaller rebate offer. For example, if the manufacturer knows that there are risks associated with moving many patients from its product to an alternative, it would be less willing to offer a large rebate because it knows that the committee may face some risk and probably is willing to accept a lower rebate to avoid that risk. Conversely, if the other manufacturers in the same cluster offer high rebates, then a particular manufacturer may be forced to offer high rebates as well. The presence of such factors would affect the manufacturers' bargaining power and the size of potential rebates they may offer.

One of the major challenges for the manufacturers is correctly assessing the threshold rebate level at which the committee will accept the bid for inclusion in the PDL. For example, if a firm were allowed to bid different rebate levels sequentially, it would be able to find out exactly what that level is. Because the committee will update the PDL annually, it is difficult for a firm to assess the preferences of the committee in the short run.[4] The uncertainty about the acceptable threshold rebate level would likely cause some firms to bid high and some others to bid low. Thus, some firms may end up offering more rebates than acceptable to the committee and some others may offer less and lose their market share.

It is worth noting that the decision of a manufacturer may be further complicated if there are cross-market effects. A manufacturer may be subject to cross-country or private insurance company reference pricing. Some countries or insurance companies set the reference price at the lowest price accepted by the manufacturer from other customers or from a number of other countries. For example, the reference price in Canada may be affected by the prices in the United States. Thus, a manufacturer may maintain a high price despite the loss of Medicaid market share if it faces greater losses from reducing prices elsewhere. In short, the strategic response of manufacturers would also take into account spillover price effects to other markets if there are any.

Moreover, implementation of the PDL may lead to reduced costs. As mentioned, the PDL strips off some of the benefits that would be expected from product differentiation. This means that if the Medicaid pharmaceutical market is a large enough market for a manufacturer, every dollar invested in nonprice competition techniques has a lower rate of return. Thus, firms relying heavily on nonprice competition would be expected to cut advertising costs or other costs associated with creating a differentiated product.[5]

The committee also will have to make some strategic decisions to maximize rebate collections. Once they receive a bid for supplemental rebates, they must decide whether to accept or reject the offer. If they do not accept an offer, they will forego the proposed supplemental rebates, but perhaps other drugs in the same cluster that are already on the PDL would increase their market share. Thus, if the drugs in the same cluster are perfect therapeutic substitutes, the committee would expect at least as large savings as those offered by other manufacturers in the cluster. If the drugs in the cluster are not perfect substitutes, or have some superior characteristics, then the committee would probably be willing to accept a lower offer for consideration in the PDL.

The committee should consider some distinctive characteristics of the pharmaceutical market. For example, the committee should recognize the differences between on-patent and generic drugs when considering rebate levels. Contrary to the common belief, the pricing principles for firms with some market power, or with a distinctive product has little to do with the cost of production. These firms look at the demand and set the price to maximize profits whether it is a generic product or an on-patent product. In general, we would expect on-patent drugs to have the market power to charge higher prices than generics.[6]

The decision to participate in the state supplemental rebates, however, is a complex one but includes the average cost of production. If the average cost is less than or equal to the after supplemental rebate price, firms would participate. In general, we would expect an on-patent drug to have a higher average cost than the generic version because of the research and development (R&D) expenditures. In short,

[4] However, some learning will likely take place if the bids are made publicly available. Also, manufacturers with many drugs may have a better assessment of the committee's preferences.

[5] For some firms, reduced advertising spending may actually increase costs if the average cost of producing lower output levels is much higher than the average cost of operating at higher output levels.

[6] It is possible that a generic drug may be more distinctive than an on-patent drug in the eyes of the consumers, enjoy stronger consumer loyalty, and consequently may be sold at a higher price than the patented close substitute.

because the average costs of on-patent drugs are greater than the average costs of generics by the amount of R&D expenditures among other factors, we would not expect on-patent drugs to be able to reduce their after rebate prices to the level that may be offered by the generic drugs. However, because on-patent drugs may be selling at much higher prices in the market, the size of the rebate offered by an on-patent drug may exceed that offered by a generic equivalent.

The committee should also recognize the potential effects of their decisions on R&D activity and new drug developments. The main motivation behind investing in pharmaceutical R&D is the anticipated economic profits for the duration of a patent. The greater the supplemental rebates expected from on-patent drugs, the lower the net present value of an R&D investment project. The lower the net present value of a project is, the less likely it is to be undertaken. The potential adverse incentives would be greatest if the committee expects on-patent drugs to reduce their after rebate prices to the level that may be offered by generics.

The proposed PDL may affect various types of on-patent drugs differently. Some drugs are issued patents for incremental improvements in already existing pharmaceutical products while some others are issued for truly original products. The former could be classified into an already existing therapeutic cluster while the latter could not be. Because there are no other close substitutes for original products they are relatively immune from competition. This feature of the PDL would give firms incentives to manage research and development in a way that places them outside of PDL competition. So, we may see the firms redirecting available R&D resources to original products rather than incremental innovations in existing drugs. The net benefit from such original projects may be higher than it might otherwise be for other projects.

The committee should also consider the effects of nonprice competition costs on the ability of a manufacturer to offer rebates. As discussed before, the main purpose of the investment into nonprice competition is to increase the perceptions of the consumers and doctors, so that a higher price can be charged in the marketplace. Also, we know that the decision to offer supplemental rebates depends on the average cost of production. So, even if a manufacturer offers an after rebate price that is equal to the average cost, the Medicaid program may still be financing some of the costs associated with nonprice competition. In these cases, it would be informative to know not only the average cost, but also the components making up the average cost to understand whether the after rebate price is consistent with public benefits.

A PDL will encourage the pharmaceutical manufacturers to differentiate their prices. While the manufacturer would be in a position to charge lower prices for Medicaid recipients than perhaps for some private payers, this is commonplace among the firms operating in markets with some market power. A firm with some market power can and will discriminate prices if it can separate consumers according to their willingness to pay and prevent resale of the product in the secondary market. This is why airlines have a first class, a business class, and an economy class. Airlines also charge more for tickets on short notice and charge less for seniors or students. This is also why retailers offer the same product at different prices with or without coupons or a membership card. Charging different prices for different consumers with different willingness to pay is not only a well-known and accepted economic phenomenon that enables firms to maximize profits, but also cause the output level to exceed the level that would result if only a uniform price can be charged.

Implementation of the PDL may encourage rent-seeking behavior at the individual manufacturer level. The rents are economic benefits in excess of those that would be possible under the supplemental rebates. Some manufacturers may find it in their best interest to devote some resources to obtain favorable decisions. The rent seeking may take many forms such as purposefully challenging the information used by the committee to establish therapeutic equivalence or to determine the size of rebates. Although it may be in the best interest of an individual company to seek rents, this represents an economic loss for the society.

The drug manufacturers may also be inclined to offer fringe benefits to doctors in an effort to encourage them to obtain prior authorization rather than participating in the PDL. It may be the case that the cost of these benefits may be much lower than the supplemental rebates that must be given up as supplemental rebates. Again, such behavior would undermine the economic benefits expected from the implementation of the proposed PDL program.

There is the possibility for collusive actions in a cluster of drugs. Even though many forms of collusive behavior to reduce competition are illegal, firms may still try to limit competition through some other ways. For example, they may practice tacit collusion, or some firms may start acting as a leader in the cluster and others may act as followers in an effort to affect after rebate prices. The main goal of such collusive behavior is to maximize the total industry profit rather than the individual firm profits. Thus, it would definitely undermine the cost containment goal of the PDL program. However, for a collusive behavior to exist certain prerequisites must be met depending on the type of collusion and usually there are great gains from deviating from the collusive strategy and cheating other members in the pact. Whether such collusive behavior is likely to surface following the implementation of the PDL is not known.

The PDL program seems to have a good potential to minimize efficiency losses resulting from over-use of free pharmaceuticals. Because of the third party payor system, manufacturers may charge a higher price, which causes welfare losses. The proposed PDL program would reduce such losses. Also, the PDL's ability to discourage nonprice competition and encourage price competition for most pharmaceutical manufacturers would likely produce some gains for the society. As the degree of competition increases, the market offers more output for a lower price. During this transition, firms lose much of their above normal profits and buyers start receiving these profits as lower prices for the goods. Consequently, a welfare transfer from firms to consumers, or the Commonwealth in this case, occurs. Interestingly, the consumer welfare gains exceed the pharmaceutical firms' losses. This is because the more

competitive the market is, the smaller is the misallocation of scarce resources or inefficiency costs (deadweight losses). In short, the total welfare gains exceed the total welfare losses, which benefit the society as a whole. If an analogy may be offered, this is similar to not only more equally redistributing the pie but also increasing the size of the pie for the society as whole.

The fiscal impact of the proposed PDL includes the expected savings from lower pharmaceutical prices. As mentioned before, the Appropriation Act requires $18 million total fund savings in state and federal funds in FY 2004 and $36 million total funds in the following years. These savings represent the transfer of resources from drug manufacturers to the Commonwealth on behalf of the Medicaid recipients being the consumers. With the PDL program in place, the pharmaceutical manufacturers would have to let go of some of the consumer surplus (a measure of consumer welfare).

However, these savings would require some investment in administrative resources. DMAS already has a qualified contractor. This contractor has established a call center to administer the prior authorization process. The ongoing review of clinical data would require staff support for the committee. The committee will focus on the clinical data for drugs that are claimed to be therapeutically different in addition to analyzing all the clinical data available for all drugs in the selected therapeutic classes. This approach would reduce what would otherwise be a daunting task to a manageable level. Furthermore, there will likely be some administrative costs associated with appeals. According to DMAS, since the implementation of the PDL in January 2004, there have been no denials of prior authorization requests received and DMAS believes that the number of appeals would be less than one percent of the total prescriptions. According to DMAS, the cost of the administration of this program is about $1.4 million.

Additionally, the PDL may be modified to generate more or less savings if desired. The size of the savings depends on the product coverage of the PDL, state supplemental rebates, market prices, and the prescribing behavior of doctors. The committee may exert some influence on these factors.

The PDL's impact on long-term savings is more difficult to assess. The difficulty arises because as time passes there is more uncertainty about the benchmark expenditures that would be used to calculate savings. This uncertainty arises from the behavioral changes that would have occurred in the absence of the PDL. For example, it is more accurate at the end of the first year to look at the actual expenditures and benchmark expenditures that would be realized without the PDL to calculate savings. In the following years, one does not have many options, but continues to assume that the same market conditions prior to PDL remain unchanged even though it may not be true.

Also, it is unrealistic to expect that the PDL would stop growth in pharmaceutical expenditures. As discussed, following the PDL, manufacturers could start deciding to offer state supplemental rebates based on their average production costs. As their average costs increase, we should expect to see an increase in pharmaceutical expenditures. However, the growth rate of the pharmaceutical expenditures with the PDL should be less than the growth rate without the PDL, as firms would be prevented from taking advantage of imperfect principal agent relationships and nonprice competition strategies.

There is likely to be some impact on the Medicaid recipients. They may end up with a shorter list of drugs (not subject to prior authorization) to achieve the desired therapeutic results, or their physicians may have to obtain prior authorization for the same drug they are already using. The drugs in a cluster that is established by the therapeutic equivalence approach are subject to heterogeneity in performance, effects, absorption, contra-indications, and undesired effects. Heterogeneity would be larger in a broader cluster. Patient diversity may further add to the degree of heterogeneity. It would not be surprising to see some manufacturers not participating in the PDL program whose products may then be subject to prior authorization requirements. In as much as the committee would strive to determine the therapeutic equivalency among the alternative drugs, the possibility of at least a few recipients using prescriptions that must be prior authorized in order to access their best therapeutic treatment cannot be ruled out. Thus, some recipients may have to make extra trips to their physicians' offices and their pharmacies.

Another less clear effect on recipients and their physicians is the lost value of actual or perceived benefits from product differentiation. For privately paying customers, it can be argued that the ability to choose from a wider range of close substitutes has a value as consumers show willingness to pay for perceived benefits of product differentiation. For example, many privately paying consumers may pay extra to buy a specific brand of aspirin. However, since Medicaid pharmacy benefits are publicly funded, we do not know how much value, if any, the recipients attach to the perceived differences in drugs.

The proposed PDL program may also introduce additional costs for physicians if they choose to prescribe drugs that are not preferred. These costs are related to obtaining prior authorization from a central office. Thus the physician must decide whether the value of prescribing a nonpreferred drug exceed the costs of obtaining prior authorization. If the *principal-agent relationship* is not perfect between the patient and the physician, potential for adverse health effects on recipients may be exacerbated. On the other hand, in some cases physicians might not have perfect information about the availability of a low cost drug that meets the quality of a more expensive drug and may be exerting some unnecessary costs on the Medicaid program. A PDL would reduce such costs based on the therapeutic decisions made by the committee.

The pharmacy providers may also be affected. The claims system checks whether a prescribed drug is on the preferred drug list or not prior to authorizing payment for the claim. When a prescribed drug is not on the list, the pharmacist may have to contact the prescribing doctor's office, in the event the physician hasn't obtained the prior authorization. Therefore there is likely to be some additional costs for the pharmacy providers. However, these costs would be incurred in cases when a doctor writes a nonpreferred drug unintentionally. If the doctor wishes to prescribe a nonpreferred drug, there is a proactive prior authorization process. The proactive prior

authorization process would minimize the potential costs on pharmacists when a nonpreferred drug is prescribed.

It is important to realize that the proposed PDL program differs from many standard regulations in the sense that it does not impose direct costs on manufacturers. The participation in the state supplemental rebates, while contingent upon giving up some profits, is voluntary. So, we would expect those firms that would continue to make profits when offering supplemental rebates, would continue to participate in the program. Those that do not wish to participate in the state supplemental rebate program, and have a "nonPreferred" status can still serve Medicaid clients through the prior authorization process. Similarly, the doctors can prescribe and recipients can access nonpreferred drugs by obtaining a prior authorization.

In conclusion, the proposed PDL program seems to have a good potential to create fiscal savings for the Commonwealth without introducing any gross economic inefficiencies relative to benefits expected from it. It does so by mitigating the inefficiencies arising from imperfect principal agent relationships and encouraging drug manufacturers to compete in prices rather than allocating their resources for nonprice competition. Incentives to compete in prices reduce inefficiencies resulting from market power, information imperfections, and agency imperfections. The main result is the recovery of some of the consumer surplus from manufacturers to the Commonwealth and the avoidance of deadweight losses. However, a PDL also creates small-scale inefficiencies particularly for manufacturers of innovative drugs for which a therapeutic cluster exists and for some recipients, physicians, and pharmacists. Such inefficiencies would be perhaps much greater under an alternative cost containment regulation as PDL maintains most market forces intact. For example, compared to price controls, the PDL leaves pharmaceutical companies free to set their prices for the rest of the market.

High Drug Thresholds. The proposed regulations also establish permanently utilization review requirements in cases where recipients use high numbers of prescription drugs. Item 325 UU of the 2003 Appropriation Act mandates DMAS to require prior authorization of prescription drugs for noninstitutionalized recipients when more than nine unique prescriptions have been prescribed within a 180-day period. Similarly, Item 325 VV of the 2003 Appropriation Act requires prior authorization of drugs for institutionalized recipients when more than nine unique prescriptions have been prescribed within a 30-day period.

Individual dispensing pharmacies do not have access to all the information on drugs that may be dispensed through other pharmacies. Also, utilization review of such cases requires case-by-case analysis of the recipients' drug profiles by a trained pharmacist, as it cannot be computerized. DMAS expects about 112,000 cases per year where the nine-prescription threshold may be exceeded. The reviews will be conducted through a contractor.

The estimated cost of the contract to implement review and prior authorization requirements for high drug thresholds is about $1.2 million. One of the main benefits of the proposed change is the reduced potential for drug fraud and abuse. Also, recipients with high utilization of drugs are often frail and elderly. A review of their complete drug profiles may prevent some drug-to-drug interactions, overdoses, and inappropriate dosages and consequently reduce the potential risks to health and safety of these recipients. DMAS expects to save about $4.2 million state and federal funds by the review of excess utilization cases.

Other. Pursuant to a request by the federal Centers for Medicare and Medicaid Services, the proposed regulations will also clarify that the Virginia Maximum Allowable Cost, the reimbursement methodology by which DMAS calculates payment for generic drugs, is the 60^{th} percentile cost level for the generic unit-dose drugs and 75^{th} percentile cost level for other non-unit-dose generic drugs. Also, it will be clarified that the unit-dose dispensing fee is $5 per recipient per month per pharmacy provider. None of these clarifications will result in a change in current methodology, policy, or expenditures. Thus, no significant economic effects are expected from these clarifications.

Businesses and entities affected. The proposed regulations may affect up to 100,000 Medicaid recipients per month, 27,000 medical providers and prescribers, 1600 pharmacy providers, and 43 pharmaceutical companies.

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

Projected impact on employment. The proposed regulations are expected to reduce the production of drug manufacturers who choose not to participate in the PDL, but at the same time increase the production of those who gain market share from participating in the PDL. This would result in a reduction in demand for labor by some manufacturers, but an increase in demand for labor by some other manufacturers. Also some drug producers may invest less in research and development (R&D) directed toward incremental improvements in existing drugs and reduce demand for labor while others may increase investment in R&D directed to development of original drugs and increase demand for labor. The anticipated changes in demand for labor would reduce or increase employment in the Commonwealth depending on which manufacturers are located in Virginia and how they are affected by the PDL. Also, physician offices that insist on prescribing nonpreferred drugs and some pharmacies may need additional staff to obtain prior authorizations. The significance of this effect on demand for labor is unknown.

Effects on the use and value of private property. Drug manufacturers participating and not participating in the PDL would probably experience a reduction in their profits. Similarly, manufacturers with R&D activities directed to incremental improvements in existing drugs may experience a reduction in their future stream of profits. The value of Virginia drug manufacturer businesses would decrease to the extent they are affected by these Medicaid rules. Furthermore, the profitability of some physician offices and pharmacies may be slightly hurt due to administrative costs associated with prior authorization for nonpreferred drugs. The value of the physician and pharmacy businesses would also decrease as their profitability declines.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Medical Assistance Services (DMAS) has reviewed the Economic Impact Analysis prepared by the Virginia Department of Planning and Budget, concerning its proposed regulations for Preferred Drug List (PDL), Pharmacy and Therapeutics Committee, state supplemental rebates, and high drug thresholds, and is in agreement with the overall conclusions of the report.

However, the agency provides the following comments about several of the concepts discussed in the analysis:

1. The analysis appears to draw an incorrect correlation between a drug manufacturer's rebate offer and the inclusion of that manufacturer's drug in the agency's Preferred Drug List. There is no such direct relationship. In fact, the P&T Committee has refused to include certain products, for example Oxycontin, as preferred on its PDL list in spite of the manufacturer's offer of a rebate due to other overriding clinical concerns. In other cases, there are drugs on the PDL for which no supplemental rebate has been offered (Strattera, for example) and the P&T Committee included these drugs as preferred in the PDL because of strong clinical considerations. The offer of or the amount of a manufacturer's supplemental rebate is not the primary consideration by the Pharmacy and Therapeutics Committee in evaluating drugs for inclusion on or exclusion from the Preferred Drug List. Clinical efficacy is always the primary consideration.

2. The analysis indicated that drug manufacturers could bid sequentially to determine the lowest acceptable rebate that would be acceptable to the P&T Committee. Drug manufacturers cannot bid sequentially to test the committee to determine the lowest rebate amount that would be acceptable, essentially bargaining their way on to the Preferred Drug List. It is irrelevant whether or not drugs in the same class are perfect substitutes for each other.

3. The analysis stated that the manufacturers would base their decisions on whether to offer supplemental rebates on production costs. References to drug manufacturers' decisions, regarding whether or not to offer rebates, being dependent on the average drug production costs being less than or equal to the after-supplemental-rebate-price alludes to the use of a reference pricing mechanism. Virginia does not use such a mechanism in its PDL program. Although this was part of the RFP for the PDL contract, this model was not implemented. Instead Virginia, after speaking with numerous interested parties and experts, created a new contracting model that is different from the reference-pricing concept.

4. The analysis stated that the use of such rebates by the state would affect research and development business decisions made by manufacturers. Whether the drug manufacturers choose to offer state supplemental rebates is solely their decision. The decisions of the P&T Committee have no relationship to the business decisions made by the drug manufacturers regarding research and development of new pharmaceuticals. The P&T Committee decision is based on clinical evidence, medical practice, and price.

5. The analysis suggestion that the P&T Committee should consider the effects of nonprice competition costs on the ability of a manufacturer to offer rebates is not relevant. This is outside of the committee's statutory mandate and therefore not possible to implement and irrelevant to the process. The P&T Committee is not responsible for negotiating with manufactures and price is a secondary consideration to clinical efficacy. This concept has no foundational basis. There is no state in the country that has its P&T Committee involve itself in price competition. This is inconsistent with the concept and charge of a P&T Committee.

6. The statements that the drug manufacturers may engage in activities to secure favorable decisions or may collude or may offer fringe benefits to encourage doctors to engage in prior authorization with each other to fix prices describe activities which violate the federal and state anti-kickback statutes, and therefore, are prohibited activities.

Summary:

The proposed amendments modify Medicaid's coverage of prescription pharmacy services in two ways: (i) implementation of the preferred drug list and prior authorization requirements for those prescription (legend) drugs that are not approved for the agency's preferred drug list or prior authorization requirements for preferred drugs or other drugs, including new drugs, due to clinical considerations as determined by the Pharmacy and Therapeutics Committee; and (ii) implementation of utilization review requirements in cases where recipients use high numbers of prescription drugs (high drug threshold). As part of the preferred drug list program, this action also proposes to institute state supplemental rebates between the Commonwealth and pharmaceutical manufacturers. Furthermore, language is being added, consistent with federal requirements, that sets out Virginia's methodology for its reimbursement of generic drugs, known as the Virginia Maximum Allowable Cost, in order to conform the state regulations with the federally approved State Plan.

12 VAC 30-50-210. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

A. Prescribed drugs.

1. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA 90 § 4401), shall not be covered.

2. Nonlegend drugs shall be covered by Medicaid in the following situations:

a. Insulin, syringes, and needles for diabetic patients;

b. Diabetic test strips for Medicaid recipients under 21 years of age;

c. Family planning supplies;

d. Designated categories of nonlegend drugs for Medicaid recipients in nursing homes; and

e. Designated drugs prescribed by a licensed prescriber to be used as less expensive therapeutic alternatives to covered legend drugs.

3. Legend drugs are covered for a maximum of a 34-day supply per prescription per patient with the exception of the drugs or classes of drugs identified in 12 VAC 30-50-520. FDA-approved drug therapies and agents for weight loss, when preauthorized, will be covered for recipients who meet the strict disability standards for obesity established by the Social Security Administration in effect on April 7, 1999, and whose condition is certified as life threatening, consistent with Department of Medical Assistance Services' medical necessity requirements, by the treating physician. For prescription orders for which quantity exceeds a 34-day supply, refills may be dispensed in sufficient quantity to fulfill the prescription order within the limits of federal and state laws and regulations.

4. ~~Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1 325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written~~ *Prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written or unless the drug class is subject to the Preferred Drug List*.

5. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

6. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

7. Drug prior authorization.

a. Definitions. The following words and terms used in these regulations shall have the following meaning unless the context clearly indicates otherwise:

~~"Board" means the Board for Medical Assistance Services.~~

"Clinical data" means drug monographs as well as any pertinent clinical studies, including peer review literature.

"Complex drug regimen" means treatment or course of therapy that typically includes multiple medications, co-morbidities and/or caregivers.

~~"Committee" means the Medicaid Prior Authorization Advisory Committee.~~

"Department" *or "DMAS"* means the Department of Medical Assistance Services.

~~"Director" means the Director of Medical Assistance Services.~~

"Drug" shall have the same meaning, unless the context otherwise dictates or the board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency supply" means 72-hour supplies of the prescribed medication that may be dispensed if the prescriber cannot readily obtain authorization, or if the physician is not available to consult with the pharmacist, including after hours, weekends, holidays and the pharmacist, in his professional judgment consistent with current standards of practice, feels that the patient's health would be compromised without the benefit of the drug, or other criteria defined by the Pharmacy and Therapeutics Committee and DMAS.

"Nonpreferred drugs" means those drugs that were reviewed by the Pharmacy and Therapeutics Committee and not included on the preferred drug list. Nonpreferred drugs may be prescribed but require authorization prior to dispensing to the patient.

"Pharmacy and Therapeutics Committee," "P&T Committee" or "committee" means the committee formulated to review therapeutic classes, conduct clinical reviews of specific drugs, recommend additions or deletions to the preferred drug list, and perform other functions as required by the department.

"Preferred drug list (PDL)" means the list of drugs that meet the safety, clinical efficacy, and pricing standards employed by the P&T Committee and adopted by the department for the Virginia Medicaid fee-for-service program. Most drugs on the PDL may be prescribed and dispensed in the Virginia Medicaid fee-for-service program without prior authorization; however, some drugs as recommended by the Pharmacy and Therapeutics Committee may require authorization prior to dispensing to the patient.

"Prior authorization," as it relates to the PDL, means the process of review by a clinical pharmacist of legend drugs that are not on the preferred drug list, or other drugs as recommended by the Pharmacy and Therapeutics Committee, to determine if medically justified.

"Prior authorization," as it relates to the threshold program, means the process of review by a clinical pharmacist of legend drugs with respect to established limits or criteria to determine the appropriateness of all existing prescriptions and newly prescribed medications to help ensure appropriate, quality, and cost-effective prescription drug treatments. The process is also designed to prevent waste and abuse of the pharmacy program by assisting providers and the department in identifying clients who may be accessing multiple physicians and pharmacies.

"State supplemental rebate" means any cash rebate that offsets Virginia Medicaid expenditure and that supplements the federal rebate. State supplemental rebate amounts shall be calculated in accordance with

the Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

"Therapeutic class" means a grouping of medications sharing the same Specific Therapeutic Class Code (GC3) within the Federal Drug Data File published by First Data Bank, Inc.

"Utilization review" means the prospective and retrospective processes employed by the agency to evaluate the medical necessity of reimbursing for certain covered services.

~~b. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 11 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; one member shall be a consumer of mental health services; and one shall be a Medicaid recipient.~~

~~(1) A quorum for action of the committee shall consist of six members.~~

~~(2) The members shall serve at the pleasure of the board; vacancies shall be filled in the same manner as the original appointment.~~

~~(3) The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion Medical Society, the Psychiatric Society of Virginia, the Virginia Pharmaceutical Association, the Virginia Alliance for the Mentally Ill, and the Virginia Mental Health Consumers Association when making appointments to the committee.~~

~~(4) The committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the board, the director, or any two members of the committee. The department shall provide appropriate staffing to the committee.~~

~~c. Duties of the committee.~~

~~(1) The committee shall make recommendations to the board regarding drugs or categories of drugs to be subject to prior authorization, prior authorization requirements for prescription drug coverage and any subsequent amendments to or revisions of the prior authorization requirements. The board may accept or reject the recommendations in whole or in part, and may amend or add to the recommendations, except that the board may not add to the recommendation of drugs and categories of drugs to be subject to prior authorization.~~

~~(2) In formulating its recommendations to the board, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The committee shall, however, conduct public hearings prior to making recommendations to the board. The committee shall give 30 days' written notice by mail of the time and place of its hearings and meetings to any manufacturer whose product is being reviewed by the committee and to those manufacturers who request of the committee in writing that they be informed of such hearings and meetings. These persons shall be afforded a reasonable opportunity to be heard and present information. The committee shall give 30 days' notice of such public hearings to the public by publishing its intention to conduct hearings and meetings in the Calendar of Events of The Virginia Register of Regulations and a newspaper of general circulation located in Richmond.~~

~~(3) In acting on the recommendations of the committee, the board shall conduct further proceedings under the Administrative Process Act.~~

~~d. Prior authorization of prescription drug products; coverage.~~

~~(1) The committee shall review prescription drug products to recommend prior authorization under the state plan. This review may be initiated by the director, the committee itself, or by written request of the board. The committee shall complete its recommendations to the board within no more than six months from receipt of any such request.~~

~~(2) Coverage for any drug requiring prior authorization shall not be approved unless a prescribing physician obtains prior approval of the use in accordance with regulations promulgated by the board and procedures established by the department.~~

~~(3) In formulating its recommendations to the board, the committee shall consider the potential impact on patient care and the potential fiscal impact of prior authorization on pharmacy, physician, hospitalization and outpatient costs. Any proposed regulation making a drug or category of drugs subject to prior authorization shall be accompanied by a statement of the estimated impact of this action on pharmacy, physician, hospitalization and outpatient costs.~~

~~(4) The committee shall not review any drug for which it has recommended or the board has required prior authorization within the previous 12 months, unless new or previously unavailable relevant and objective information is presented.~~

~~(5) Confidential proprietary information identified as such by a manufacturer or supplier in writing in advance and furnished to the committee or the board according to this subsection shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). The board shall establish by regulation the means by which such confidential proprietary information shall be protected.~~

~~e. Immunity. The members of the committee and the board and the staff of the department shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that~~

~~such act, decision, or omission is not done or made in bad faith or with malicious intent.~~

~~f. Annual report to joint commission. The committee shall report annually to the Joint Commission on Health Care regarding its recommendations for prior authorization of drug products.~~

b. Medicaid Pharmacy and Therapeutics Committee.

(1) The department shall utilize a Pharmacy and Therapeutics Committee to assist in the development and ongoing administration of the preferred drug list and other pharmacy program issues. The committee may adopt bylaws that set out its make-up and functioning. A quorum for action of the committee shall consist of seven members.

(2) Vacancies on the committee shall be filled in the same manner as original appointments. DMAS shall appoint individuals for the committee that assures a cross-section of the physician and pharmacy community and remains compliant with General Assembly membership guidelines.

(3) Duties of the committee. The committee shall receive and review clinical and pricing data related to the drug classes. The committee's medical and pharmacy experts shall make recommendations to DMAS regarding various aspects of the pharmacy program. For the preferred drug list program, the committee shall select those drugs to be deemed preferred that are safe, clinically effective, as supported by available clinical data, and meet pricing standards. Cost effectiveness or any pricing standard shall be considered only after a drug is determined to be safe and clinically effective.

(4) As the United States Food and Drug Administration (FDA) approves new drug products, the department shall ensure that the Pharmacy and Therapeutics Committee will evaluate the drug for clinical effectiveness and safety. Based on clinical information and pricing standards, the P&T Committee will determine if the drug will be included in the PDL or require prior authorization.

(a) If the new drug product falls within a drug class previously reviewed by the P&T Committee, until the review of the new drug is completed, it will be classified as nonpreferred, requiring prior authorization in order to be dispensed. The new drug will be evaluated for inclusion in the PDL no later than at the next review of the drug class.

(b) If the new drug product does not fall within a drug class previously reviewed by the P&T Committee, the new drug shall be treated in the same manner as the other drugs in its class.

(5) To the extent feasible, the Pharmacy and Therapeutics Committee shall review all drug classes included in the preferred drug list at least every 12 months and may recommend additions to and deletions from the PDL.

(6) In formulating its recommendations to the department, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

(7) Immunity. The members of the committee and the staff of the department and the contractor shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.

c. Pharmacy prior authorization program. Pursuant to § 1927 of the Act and 42 CFR 440.230, the department shall require the prior authorization of certain specified legend drugs. For those therapeutic classes of drugs subject to the PDL program, drugs with nonpreferred status included in the DMAS drug list shall be subject to prior authorization. The department also may require prior authorization of other drugs only if recommended by the P&T Committee. Providers who are licensed to prescribe legend drugs shall be required to obtain prior authorization for all nonpreferred drugs or other drugs as recommended by the P&T Committee.

(1) Prior authorization shall consist of prescription review by a licensed pharmacist or pharmacy technician to ensure that all predetermined clinically appropriate criteria, as established by the P&T Committee relative to each therapeutic class, have been met before the prescription may be dispensed. Prior authorization shall be obtained through a call center staffed with appropriate clinicians, or through written or electronic communications (e.g., faxes, mail). Responses by telephone or other telecommunications device within 24 hours of a request for prior authorization shall be provided. The dispensing of 72-hour emergency supplies of the prescribed drug may be permitted and dispensing fees shall be paid to the pharmacy for such emergency supply.

(2) The preferred drug list program shall include: (i) provisions for an expedited review process of denials of requested prior authorization by the department; (ii) consumer and provider education; (iii) training and information regarding the preferred drug list both prior to implementation as well as ongoing communications, to include computer and website access to information and multilingual material.

(3) Exclusion of protected groups from pharmacy preferred drug list prior authorization requirements. The following groups of Medicaid eligibles shall be excluded from pharmacy prior authorization requirements: individuals enrolled in hospice care, services through PACE or pre-PACE programs; persons having comprehensive third party insurance coverage; minor children who are the responsibility of the juvenile justice system; and refugees who are not otherwise eligible in a Medicaid covered group.

d. Other pharmacy prior authorization programs. Pursuant to § 1927 of the Act and 42 CFR 440.230, the department shall require the prior authorization of legend drugs when both institutionalized and noninstitutionalized recipients are prescribed high numbers of legend drugs. Over-the-counter drugs and legend drug refills shall not count as a unique prescription for the purposes of prior authorization as it relates to the threshold program.

(1) Prior authorization shall be required for noninstitutionalized Medicaid recipients whose current volume of prescriptions of legend drugs exceeds nine unique prescriptions within 180 days and as may be further defined by the agency's guidance documents for pharmacy utilization review, limitations, and the prior authorization program. This prior authorization shall be required regardless of whether the prescribed drug appears on the preferred drug list of legend drugs. All recipients subject to these prior authorization limits shall be advised of their rights to appeal. Such appeals shall be considered and responded to pursuant to 12 VAC 30-110.

(2) Prior authorization shall be required for institutionalized Medicaid recipients whose current volume of prescriptions of legend drugs exceeds nine unique prescriptions within 30 days and as may be further defined by the agency's guidance documents for pharmacy utilization review, limitations, and prior authorization program. The prior authorization shall be required regardless of whether the drug is listed on the PDL of legend drugs. All recipients subject to these prior authorization limits shall be advised of their rights to appeal. Such appeals shall be considered and responded to pursuant to 12 VAC 30-110.

(3) Prior authorization shall consist of prospective and retrospective drug therapy review by a licensed pharmacist to ensure that all predetermined clinically appropriate criteria, as established by the department, have been met before the prescription may be dispensed. Prior authorization shall be obtained through a call center staffed with appropriate clinicians, or through written or electronic communications (e.g., faxes, mail). Responses by telephone or other telecommunications device within 24 hours of a request for prior authorization shall be provided. The dispensing of 72-hour emergency supplies of the prescribed drug may be permitted and dispensing fees shall be paid to the pharmacy for such emergency supply.

(4) Exclusion of protected institutions from pharmacy threshold prior authorization. For the purposes of threshold prior authorization, nursing facility residents do not include residents of the Commonwealth's mental retardation training centers. For the purposes of threshold prior authorization, noninstitutionalized recipients do not include recipients of services at Hiram Davis Medical Center.

e. State supplemental rebates. The department has the authority to seek supplemental rebates from pharmaceutical manufacturers. The contract regarding supplemental rebates shall exist between the manufacturer and the Commonwealth. Rebate agreements between the Commonwealth and a pharmaceutical manufacturer shall be separate from the federal rebates and in compliance with federal law, §§ 1927(a)(1) and 1927(a)(4) of the Social Security Act. All rebates collected on behalf of the Commonwealth shall be collected for the sole benefit of the state share of costs. One hundred percent of the supplemental rebates collected on behalf of the state shall be remitted to the state. Supplemental drug rebates received by the Commonwealth in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

f. Pursuant to 42 USC § 1396r-8(b)(3)(D), information disclosed to the department or to the committee by a pharmaceutical manufacturer or wholesaler which discloses the identity of a specific manufacturer or wholesaler and the pricing information regarding the drugs by such manufacturer or wholesaler is confidential and shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

g. Appeals for denials of prior authorization shall be addressed pursuant to 12 VAC 30-110, Part I, Client Appeals.

8. Coverage of home infusion therapy. This service shall be covered consistent with the limits and requirements set out within home health services (12 VAC 30-50-160). Multiple applications of the same therapy (e.g., two antibiotics on the same day) shall be covered under one service day rate of reimbursement. Multiple applications of different therapies (e.g., chemotherapy, hydration, and pain management on the same day) shall be a full service day rate methodology as provided in pharmacy services reimbursement.

B. Dentures. Dentures are provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

C. Prosthetic devices.

1. Prosthetic services shall mean the replacement of missing arms, legs, eyes, and breasts and the provision of any internal (implant) body part. Nothing in this regulation shall be construed to refer to orthotic services or devices or organ transplantation services.

2. Artificial arms and legs, and their necessary supportive attachments, implants and breasts are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary and preauthorized for the minimum applicable component necessary for the activities of daily living.

3. Eye prostheses are provided when eyeballs are missing regardless of the age of the recipient or the cause of the loss of the eyeball. Eye prostheses are provided regardless of the function of the eye.

D. Eyeglasses. Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

12 VAC 30-80-40. Fee-for-service providers: pharmacy.

Payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is greater than the Centers for Medicare and Medicaid Services (CMS) upper limit ~~or~~ *of* VMAC cost) subject to the conditions, where applicable, set forth in subdivisions 6 and 7 of this section:

1. The upper limit established by the CMS for multiple source drugs pursuant to 42 CFR 447.331 and 447.332, as determined by the CMS Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

2. The Virginia ~~Medicaid~~ Maximum Allowable Cost (VMAC) established by the Virginia Department of Medical Assistance Services to be inclusive of appropriate multiple source and specific high cost drugs plus a dispensing fee. *The VMAC methodology shall be defined as the 75th percentile cost level, or the 60th percentile cost level for unit dose drugs, of the aggregate for each generic manufacturer's drug for each Generic Code Number (GCN). Manufacturers' costs are supplied by the most current First Data Bank file.* Multiple source drugs may include but are not limited to Food and Drug Administration-rated products such as drugs established by a Virginia Voluntary Formulary (VVF) drugs, Federal Upper Limit Drugs and any other state or federally approved listing. "Multisource drugs" means covered outpatient drugs for which there are two or more drug products that:

a. Are included in the Centers for Medicare and Medicaid Services' state drug rebate program;

b. Have been approved by the Federal Food and Drug Administration (FDA);

c. Are included in the Approved Products with Therapeutic Equivalence Evaluations as generically equivalent; and

d. Are sold or marketed in Virginia.

3. The provider's usual and customary charge to the public, as identified by the claim charge.

~~3.~~ *4.* The Estimated Acquisition Cost (EAC), which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the General Assembly (as set forth in subdivision 8 of this section) or, in the absence thereof, by the following methodology set out in subdivisions a through c below.

a. Percentage discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

c. The agency will conduct surveys at intervals deemed necessary by DMAS.

~~4. (Reserved.)~~

~~5. The provider's usual and customary charge to the public, as identified by the claim charge.~~

~~6.~~ *5.* Payment for pharmacy services will be as described above; however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements. The dispensing fee of $3.75 (effective July 1, 2003) shall remain in effect.

~~7.~~ *6.* The Program pays additional reimbursement for unit dose dispensing ~~system~~ *systems* of dispensing drugs. DMAS defines its unit dose dispensing system coverage consistent with that of the Board of Pharmacy of the Department of Health Professions (18 VAC 110-20-420). This service is paid only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose per capita fee to be ~~submitted by the pharmacy for unit dose dispensing services to a nursing home resident~~ *calculated by DMAS' fiscal agent based on monthly per nursing home resident service per pharmacy provider*. Only one service fee per month may be ~~submitted by~~ *paid to* the pharmacy for each patient receiving unit dose dispensing services. The maximum allowed drug cost for specific multiple source drugs will be the lesser of~~: either the VMAC, based on the 60th percentile or maximum cost level, as identified by the state agency or CMS' upper limits~~ *subdivisions 1 through 4 of this section* as applicable. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency. The original per capita fee shall be determined by a DMAS analysis of costs related to such dispensing, and shall be reevaluated at periodic intervals for appropriate adjustment. *The unit dose dispensing fee is $5.00 per recipient per month per pharmacy provider.*

~~8.~~ *7.* Determination of EAC was the result of a report by the Office of the Inspector General that focused on appropriate Medicaid marketplace pricing of pharmaceuticals based on the documented costs to the pharmacy. An EAC of AWP minus 10.25% shall become effective July 1, 2002.

The dispensing fee of $3.75 (effective July 1, 2003) shall remain in effect, creating a payment methodology based on the previous algorithm (least of 1 through 5 of this subsection above) plus a dispensing fee where applicable.

~~9.~~ *8.* Home infusion therapy.

a. The following therapy categories shall have a pharmacy service day rate payment allowable: hydration therapy, chemotherapy, pain management therapy, drug therapy, total parenteral nutrition (TPN). The service day rate payment for the pharmacy component shall apply to

the basic components and services intrinsic to the therapy category. Submission of claims for the per diem rate shall be accomplished by use of the HCFA 1500 claim form.

b. The cost of the active ingredient or ingredients for chemotherapy, pain management and drug therapies shall be submitted as a separate claim through the pharmacy program, using standard pharmacy format. Payment for this component shall be consistent with the current reimbursement for pharmacy services. Multiple applications of the same therapy shall be reimbursed one service day rate for the pharmacy services. Multiple applications of different therapies shall be reimbursed at 100% of standard pharmacy reimbursement for each active ingredient.

9. Supplemental rebate agreement. Based on the requirements in § 1927 of the Social Security Act, the Commonwealth of Virginia has the following policies for the supplemental drug rebate program for Medicaid recipients:

a. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for legend drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract A and Amendment #2 to Contract A has been authorized by CMS.

b. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract B and Amendment #2 to Contract B has been authorized by CMS.

c. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract C, and Amendments #1 and #2 to Contract C has been authorized by CMS.

d. Supplemental drug rebates received by the state in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

e. Prior authorization requirements found in § 1927(d)(5) of the Social Security Act have been met.

f. Nonpreferred drugs are those that were reviewed by the Pharmacy and Therapeutics Committee and not included on the preferred drug list. Nonpreferred drugs will be made available to Medicaid beneficiaries through prior authorization.

g. Payment of supplemental rebates may result in a product's inclusion on the PDL.

PART XVI.
PHARMACY SERVICES PRIOR AUTHORIZATION.

12 VAC 30-130-1000. Pharmacy services prior authorization.

A. Definitions. The following words and terms used in this part shall have the following meanings unless the context clearly indicates otherwise:

"Contractor" means an independent contractor that implements and administers, pursuant to its contract, the department's pharmacy prior authorization programs as set out in the Title XIX State Plan.

"Grandfather clause" means procedure by which selected therapeutic classes or drugs as designated by the P&T Committee may be automatically approved if the patient is currently and appropriately receiving the drug.

"Pharmacy and Therapeutics Committee," "P&T Committee" or "committee" means the committee formulated to review therapeutic classes, conduct clinical reviews of specific drugs, recommend additions or deletions to the preferred drug list, and perform other functions as required by the department. The Pharmacy and Therapeutics Committee shall be composed of eight to 12 members, including the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, or his designee. Other members shall be selected or approved by the department. The membership shall include a ratio of physicians to pharmacists of 2:1. Physicians on the committee shall be licensed in Virginia, one of whom shall be a psychiatrist, and one of whom specializes in care for the aging. Pharmacists on the committee shall be licensed in Virginia, one of whom shall have clinical expertise in mental health drugs, and one of whom has clinical expertise in community-based mental health treatment.

B. DMAS shall operate, in conjunction with the Title XIX State Plan for Medical Assistance (12 VAC 30-50-210 et seq.), a program of prior authorization of pharmacy services. This program shall include, but not necessarily be limited to, the use of a preferred drug list.

C. Medicaid Pharmacy and Therapeutics Committee.

1. The department shall utilize a Pharmacy and Therapeutics Committee to assist in the development and ongoing administration of the preferred drug list and other pharmacy program issues. The committee may adopt bylaws that set out its make up and functioning. A quorum for action of the committee shall consist of seven members.

2. Vacancies on the committee shall be filled in the same manner as original appointments. The department shall appoint individuals for the committee that assures a cross-section of the physician and pharmacy community.

3. Duties of the committee.

a. The committee shall receive and review clinical and pricing data related to the drug classes. The committee's medical and pharmacy experts shall make recommendations to DMAS regarding various aspects of the pharmacy program. For the PDL program, the

committee shall select those drugs to be deemed preferred that are safe and clinically effective, as supported by available clinical data, and meet pricing standards.

b. Cost effectiveness or any pricing standard shall be considered only after a drug is determined to be safe and clinically effective. The committee shall recommend to the department:

(1) Which therapeutic classes of drugs should be subject to the preferred drug list program and prior authorization requirements;

(2) Specific drugs within each therapeutic class to be included on the preferred drug list;

(3) Appropriate exclusions for medications, including atypical anti-psychotics, used for the treatment of serious mental illnesses such as bi-polar disorders, schizophrenia, and depression;

(4) Appropriate exclusions for medications used for the treatment of certain brain disorders, cancer and HIV-related conditions;

(5) Appropriate exclusions for therapeutic classes in which there is only one drug in the therapeutic class or there is very low utilization, or for which it is not cost effective to include in the preferred drug list program;

(6) Appropriate grandfather clauses when prior authorization would interfere with established complex drug regimens that have proven to be clinically effective;

(7) Other clinical criteria that may be included in the pharmacy program; and

(8) Guidance and recommendations regarding the department's pharmacy programs.

c. As the United States Food and Drug Administration (FDA) approves new drug products, the department shall ensure that the Pharmacy and Therapeutics Committee will evaluate the drug for clinical effectiveness and safety. Based on clinical information and pricing standards, the P&T Committee will determine if the drug will be included in the PDL or require prior authorization.

(1) If the new drug product falls within a drug class previously reviewed by the P&T Committee, until the review of the new legend drug is completed, it will be classified as nonpreferred, requiring prior authorization in order to be dispensed. The new legend drug will be evaluated for inclusion in the PDL no later than at the next review of the drug class.

(2) If the new drug product does not fall within a drug class previously reviewed by the P&T Committee, the new drug shall be treated in the same manner as the other drugs in its class.

d. To the extent feasible, the P&T Committee shall review all drug classes included in the PDL at least every 12 months and may recommend additions to and deletions from the PDL.

D. Pharmacy contractor. The department may contract for pharmaceutical benefit management services to manage, implement and administer the Medicaid pharmacy benefits preferred drug list, as directed, authorized, and as may be amended from time to time, by DMAS.

1. The department, as the sole Title XIX authority for the Commonwealth, shall retain final administrative authority over all pharmacy services.

2. The department shall not offer or pay directly or indirectly any material inducement, bonus, or other financial incentive to a program contractor based on the denial or administrative delay of medically appropriate prescription drug therapy, or on the decreased use of a particular drug or class of drugs, or a reduction in the proportion of beneficiaries who receive prescription drug therapy under the Medicaid program. Bonuses shall not be based on the percentage of cost savings generated under the benefit management of services.

E. Supplemental rebates. The department shall have the authority to seek supplemental rebates from drug manufacturers. The contract regarding supplemental rebates shall exist between the manufacturer and the Commonwealth. Rebate agreements between the Commonwealth and a pharmaceutical manufacturer shall be separate from the federal rebates and in compliance with federal law, §§ 1927(a)(1) and 1927(a)(4) of the Social Security Act. All rebates collected on behalf of the Commonwealth shall be collected for the sole benefit of the state share of costs. One hundred percent (100%) of the supplemental rebates collected on behalf of the state shall be remitted to the state. Supplemental drug rebates received by the Commonwealth in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

F. Appeals. The department shall provide an expedient reconsideration process and initiate and fully participate in the DMAS' appeal process pursuant to 12 VAC 30-110, Part I, Client Appeals, for providers and recipients.

G. Annual report. The department shall report to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees on an annual basis.

DOCUMENTS INCORPORATED BY REFERENCE

Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R).

Length of Stay by Diagnosis and Operation, Southern Region, 1996, HCIA, Inc.

Guidelines for Perinatal Care, 4th Edition, August 1997, American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

VA.R. Doc. No. R04-54; Filed June 30, 2004, 3:18 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR OPTICIANS

Title of Regulation: **18 VAC 100-20. Board for Opticians Regulations (adding 18 VAC 100-20-53).**

Statutory Authority: § 54.1-201 of the Code of Virginia; Chapter 740 of the 2002 Acts of Assembly.

Public Hearing Date: September 24, 2004 - 10 a.m.
Public comments may be submitted until September 24, 2004
(See Calendar of Events section for additional information)

Agency Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, or e-mail opticians@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia provides the board the authority to promulgate regulations to administer the regulatory system.

The specific legal mandate to promulgate the regulation for the provision of voluntary health care services by out-of-state practitioners in clinics in underserved areas sponsored by nonprofit organizations is found in Chapter 740 of the 2002 Acts of Assembly.

Purpose: Chapter 740 of the 2002 Acts of Assembly mandates that the board promulgate regulations for an out-of-state practitioner to be registered to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. Regulations set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute. The enactment clause required the board to adopt emergency regulations, and it is the board's intent to replace those regulations with permanent regulations.

This regulatory action's purpose is to protect the health, safety, and welfare of citizens by ensuring that an out-of-state practitioner who is registered to provide voluntary services to underserved areas has provided adequate information to determine their eligibility and for the Board for Opticians to meet its responsibility to protect the health, safety, and welfare of citizens pertaining to individuals engaged in the practice of opticianry.

Substance: Chapter 740 of the 2002 Acts of Assembly provides specific conditions under which a health care practitioner who is licensed in another state can provide free care in underserved areas of Virginia. Statutory requirements include: (i) that they do not regularly practice in Virginia; (ii) that they hold a current valid license or certificate in another U.S. jurisdiction; (iii) that they volunteer to provide free care to an underserved area of this Commonwealth under the auspices of a publicly supported all-volunteer, nonprofit organization with no paid employees that sponsors the provisions of health care to populations of underserved people throughout the world; (iv) that they file copies of their licenses or certificates in advance with the board; (v) that they notify the board of the dates and location of services; and (vi) that they acknowledge in writing that they will only provide services within the parameters stated in the application. The statute also provides specific requirements for the nonprofit organization sponsoring provision of health care.

As provided in the law, the regulations will insert the following requirements:

A practitioner who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;

2. Provide a complete list of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of the applicable section of the Code of Virginia.

In order to protect the health, safety and welfare of the consuming public and to ensure that the care provided by out-of-state practitioners will be minimally competent, the board will use the information garnered from the application and verification from other states to determine whether the practitioner meets the criteria set forth in the law.

Issues: The primary advantages to the public and the Commonwealth of implementing the regulations are additional practitioners may be available to staff voluntary clinics, a requirement for licensure in another state to be verified will ensure that the practitioner holds a current, unrestricted license, and the requirement for a notarized statement from a representative of the nonprofit organization will ensure compliance with provisions of law for voluntary practice.

There are no disadvantages to the public or the Commonwealth.

There are no primary advantages or disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section § 2.2-4007 H 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 a legislative mandate, the Board of Opticians (board) proposes to establish registration for voluntary practice by out-of-state licensees.

Estimated Economic Impact. Chapter 740 of the 2002 Acts of Assembly mandates that the board promulgate regulations to permit individuals licensed as opticians in other states to volunteer their services in Virginia without needing to obtain a Virginia license. The legislation sets very narrow criteria for who may qualify. Only individuals who are licensed in other states, but not in Virginia, and who volunteer "to provide free health care in an underserved area of the Commonwealth under the auspices of a publicly supported, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world"[1] may register to perform volunteer optician work in the Commonwealth without a Virginia optician license.

The board's proposed regulatory language essentially describes the application process. There is no fee for registration.

The legislative requirement that not only must the volunteer not receive remuneration, but that the nonprofit organization have no paid employees is very restrictive. Many, if not most, charitable organizations would not meet this criterion. For example, the Red Cross has paid employees, and an out-of-state optician could not volunteer to provide services through the Red Cross in Virginia under this provision. The requirement that the nonprofit organization sponsors the provision of health care to populations of underserved people throughout the world is vague and potentially extremely restrictive. It seems to exclude all non-international organizations. Read literally, it also seems to exclude international organizations that do not provide health care to populations of underserved people in all areas of the world. Since this legislation was passed in 2002, no one has contacted or otherwise expressed interest to the Department of Professional and Occupational Regulation (DPOR) concerning registration. Given how highly restrictive the qualification criteria are, it is unlikely that more than a very small number of individuals will apply for voluntary optician registration in the future.

For the small population of individuals who could potentially meet the qualification criteria and wish to perform volunteer optician work in Virginia, the registration for voluntary practice could be beneficial. Otherwise such individuals would need to become licensed in Virginia. Obtaining registration would take considerably less time than licensure.[2] Also, while there are no fees for registration, there is a $55 fee for licensure, and an additional $75 fee for contact lens endorsement for individuals following the licensure route.[3]

When an out-of-state optician applies for and qualifies for registration and performs his volunteer work, citizens in Virginia will benefit by receiving services that they may not have otherwise received. Section 54.1-1701 of the Code of Virginia stipulates that the voluntary services must be for an underserved population and thus will most likely not provide competition for existing services. Since registration for volunteer services is expected to happen very infrequently, the proposed regulatory amendment will have little effect.

Businesses and entities affected. The proposed amendments will likely affect very few Virginians. Given the highly restrictive nature of the registration qualifications, very few out-of-state opticians are expected to register to provide volunteer services for underserved Virginians.

Localities particularly affected. The proposed regulations, if used at all, will mostly affect rural areas of the Commonwealth.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency/board concurs with the EIA.

Summary:

The proposed amendments establish registration for voluntary practice by out-of-state licensees pursuant to Chapter 740 of the 2002 Acts of Assembly.

18 VAC 100-20-53. Registration for voluntary practice by out-of-state licensees.

Any optician who does not hold a license to practice in Virginia and who seeks registration in accordance with subdivision 5 of § 54.1-1701 of the Code of Virginia shall:

1. File a complete application for registration on a form provided by the board within 15 days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete list of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide a name of the nonprofit organization, the dates and location of the voluntary provision of services; and

4. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with the provisions of subdivision 5 of § 54.1-1701 of the Code of Virginia.

NOTICE: The forms used in administering 18 VAC 100-20, Board for Opticians Regulations, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

[1] Source: Section § 54.1-1701 of the Code of Virginia.

[2] Source: Department of Professional and Occupational Regulation.

[3] The board is currently proposing to raise the licensure fee to $100 and the contact lens endorsement fee to $100.

FORMS

License Application, 11LIC (rev. 11/99).

Contact Lens Endorsement Application, 11CLEND (eff. 11/99).

Reinstatement Application, REINSTATE APP (eff. 9/99).

Voluntary Practice Registration Application, 11VOLREG (eff. 7/03).

Sponsor Certification for Voluntary Practice Registration, 11VRSPCERT (eff. 7/03).

Commonwealth of Virginia
Department of Professional and Occupational Regulation
3600 West Broad Street
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8509

Virginia DPOR
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Board for Opticians
VOLUNTARY PRACTICE REGISTRATION APPLICATION
No Fee Required

In accordance with § 54.1-1701(5) of the *Code of Virginia*, any optician who (i) does not regularly practice in Virginia, (ii) holds a current valid license or certificate to practice as an optician in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world may apply for a **Registration for Voluntary Practice.**

☞ **A completed application for registration must be received by the Virginia Board for Opticians at least 15 days prior to the voluntary provision of services.**

1. Name _____ (First / Middle / Last / Generation (SR, JR, III))
2. Social Security Number * ☐☐☐ - ☐☐ - ☐☐☐☐
3. Date of Birth _____
4. Street Address (PO Box not accepted) _____
   City, State, Zip Code _____
5. Mailing Address (PO Box accepted) _____
   City, State, Zip Code _____
6. E-mail Address _____
7. Telephone & Facsimile Numbers ( ) - _____ Telephone; ( ) - _____ Facsimile; ( ) - _____ Beeper/Cellular
8. Do you hold a current or expired optician license, certification or registration issued by another state?
   No ☐ If no, you are not eligible to register for voluntary practice in the Commonwealth of Virginia.
   Yes ☐ If yes, list **all** the licenses, certificates, and registrations in the following table. Please attach a copy of any current license(s) to this application.

State/Jurisdiction	License Number	Expiration Date

9. Name of Nonprofit Organization _____
10. Dates and Location of voluntary provision of services:
    _____
    _____
11. I, the undersigned, certify that the foregoing statements and answers are true and I have not suppressed any information that might affect the Board's decision to approve this application. I understand that the voluntary practice registration shall only be valid, in compliance under the provisions of Title 54.1, Chapter 17 of the *Code of Virginia* and the *Virginia Board for Opticians Regulations*, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and locations filed on this application.

    Signature _____ Date _____

* State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

OFFICE USE ONLY	DATE			REGISTRATION NUMBER	ISSUE DATE
				1102	

11VOLREG (7/16/03) Board for Opticians/VOL REG APP

Commonwealth of Virginia
Department of Professional and Occupational Regulation
3600 West Broad Street
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8509

Virginia DPOR
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Board for Opticians
SPONSOR CERTIFICATION FOR VOLUNTARY PRACTICE REGISTRATION

In accordance with § 54.1-1701(5) of the *Code of Virginia*, any optician who (i) does not regularly practice in Virginia, (ii) holds a current valid license or certificate to practice as an optician in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world may apply for a **Registration for Voluntary Practice**.

☞ **This Sponsor Certification must accompany the Voluntary Practice Registration Application when submitted to the Virginia Board for Opticians at least 15 days prior to the voluntary provision of services.**

TO BE COMPLETED BY A REPRESENTATIVE OF THE NONPROFIT ORGANIZATION SPONSORING THE VOLUNTEER PRACTICE.

Name of Nonprofit Organization _____

Sponsor/Representative of Nonprofit Organization _____

Title of Organization's Sponsor/Representative _____

Pursuant to 18 VAC 100-20-53 of the *Virginia Board for Opticians Regulations*, I hereby certify that the above-named organization is a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world. Furthermore, I attest to the organization's compliance with the provisions of § 54.1-1701(5) of the *Code of Virginia* and 18 VAC 100-20-53 of *Virginia Board for Opticians Regulations*.

Sponsor/Representative Signature _____ Date _____

Notarization

In the State of _____, City/County of _____, subscribed and sworn before me, the undersigned Notary Public in and for the City/County aforesaid this ___, day of _____, _____.

My commission expires the ___, day of _____, _____.

Affix official seal here.

_____
Signature of Notary Public

11VRSPCERT (7/16/03) Board for Opticians/VOL REG SPON CERT

VA.R. Doc. No. R03-269; Filed July 6, 2004, 2:22 p.m.

◆ ◆

TITLE 2. AGRICULTURE

PESTICIDE CONTROL BOARD

Title of Regulation: **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 (amending 2 VAC 20-30-20, 2 VAC 20-30-30 and 2 VAC 20-30-40).**

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

Effective Date: August 26, 2004.

Agency Contact: Marvin A. Lawson, Ph.D., Director, Pesticide Control Board, 1100 Bank Street, Room 401, Richmond, VA 23219, telephone (804) 786-3534, FAX (804) 786-5112, or e-mail mlawson@vdacs.state.va.us.

Summary:

The existing regulations establish fees, renewal dates, and late fees for the registration of pesticides, certification of commercial applicators and registered technicians and licensing of pesticide businesses. The amendments (i) delete obsolete references to pesticide product registration fees; (ii) establish certification periods and fees for commercial applicators and registered technicians; and (iii) establish fees for adding a category or subcategory to an existing commercial pesticide applicator's certificate.

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

2 VAC 20-30-20. Pesticide product registration fee; registration of new pesticide products; renewal of pesticide product registration.

A. Every pesticide product which is to be manufactured, distributed, sold, offered for sale, used or offered for use within the Commonwealth shall be registered with the commissioner. The fee for registering each brand shall be ~~$140 for the product registration period beginning January 1, 1995; $150 for the product registration period beginning January 1, 1997; and~~ $160 ~~for the product registration period beginning January 1, 1999~~. If a brand has more than one grade, each grade shall be registered, not the brand at the registration fee then in effect. The registration for a new pesticide product shall be effective upon receipt by the Department of Agriculture and Consumer Services of the application form accompanied by the required registration fee.

B. All pesticide product registrations shall expire on December 31 of each year unless canceled or otherwise terminated for cause. A registration not canceled or otherwise terminated for cause will be renewed upon receipt of the annual registration fee as set forth in subsection A of this section accompanied by the application renewal form. A registration that has been canceled or otherwise terminated for cause prior to December 31 may be resubmitted as a new registration when the conditions resulting in the cancellation or termination have been resolved. The registration of each brand or grade shall be renewed with the commissioner prior to December 31 of each year. If the registration is not renewed prior to December 31 of each year, the commissioner shall assess a late fee of 20% ~~which~~ *that* shall be added to the registration fee. The late fee shall apply to all renewal registrations submitted to the department any time during the 12-month period following the expiration of the registration. Registrants who permit a registration to lapse for more than one year shall thereafter register the product as a new product. The applicant shall pay the total fee prior to the issuance of the registration by the commissioner.

2 VAC 20-30-30. Commercial applicator certificate fee.

Any person applying for a certificate as a commercial applicator shall pay to the department an initial nonrefundable certificate fee of ~~$35~~ *$70* and ~~an annual~~ *a biennial* nonrefundable renewal fee of ~~$35~~ *$70* thereafter. All certificates shall expire at midnight on June 30 ~~of each~~ *in the second* year *after issuance* unless suspended or revoked for cause. All certificates not suspended or revoked for cause will be renewed upon receipt of the ~~annual~~ *biennial* renewal fee. If the applicator does not file an application for renewal of his certificate prior to COB June 30, the commissioner shall assess a late filing fee of 20% ~~which~~ *that* shall be added to the renewal fee. The applicant shall pay the total fee prior to the commissioner's issuance of the renewal. However, if the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination or for any commercial applicator reexamination pursuant to subsection C of § 3.1-249.52 of the Code of Virginia shall be ~~$35~~ *$70* and shall be nonrefundable. *Any person applying to add a category or subcategory to his certificate shall pay to the department a nonrefundable fee of $35.* Federal, state, and local government employees certified to use, or supervise the use of, pesticides in government programs shall be exempt from any certification fees.

2 VAC 20-30-40. Registered technician certificate fee.

Any person applying for a certificate as a registered technician shall pay to the department an initial nonrefundable certificate fee of ~~$15~~ *$30* and ~~an annual~~ *a biennial* nonrefundable renewal fee of ~~$15~~ *$30* thereafter. All certificates shall expire at midnight on June 30 ~~of each~~ *in the second* year *after issuance* unless suspended or revoked for cause. A certificate not suspended or revoked for cause will be renewed upon receipt of the ~~annual~~ *biennial* renewal fee. If the application for renewal of any certificate is not filed prior to COB June 30, a late filing fee of 20% shall be assessed and added to the renewal fee and shall be paid by the applicant before the

renewal shall be issued. If the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination [~~or for any commercial applicator reexamination~~] pursuant to subsection C of § 3.1-249.52 of the Code of Virginia shall be ~~$15~~ *$30* and shall be nonrefundable. Federal, state and local government employees certified to use pesticides in government programs shall be exempt from any certification fees.

NOTICE: The forms used in administering 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, 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 Virginia Department of Agriculture and Consumer Services, 1100 Bank Street, Room 401, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Virginia Pesticide Business License to sell, distribute, store, apply, or recommend pesticides for use, VDACS - 07209, eff. 2/02.

Commercial Pesticide Applicator Certification Application/Eligibility Requirements for Commercial Applicator Certification, VDACS - 07211, eff. 11/01.

Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination/Commercial Pesticide Applicator Categories, VDACS - 07218, eff. 11/01.

Application for New Pesticide Product Registration/Additional Information and Instructions, VDACS - 07208, eff. 8/02.

Application for Reciprocal Pesticide Applicator Certificate/Commercial Pesticide Applicator Categories, VDACS - 07210, eff. 07/00.

Pesticide Registered Technician Application/General Training Requirements for Registered Technicians, VDACS - 07212, eff. 11/01.

VA.R. Doc. No. R02-298; Filed June 28, 2004, 1:32 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The department is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Titles of Regulations: **4 VAC 15-50. Game: Bear (amending 4 VAC 15-50-81 [*and 4 VAC 15-50-91*]).**

4 VAC 15-90. Game: Deer (amending 4 VAC 15-90-231 and 4 VAC 15-90-241).

4 VAC 15-240. Game: Turkey (amending 4 VAC 15-240-81 and 4 VAC 15-240-91).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: August 25, 2004.

Agency Contact: Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad St., Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or e-mail RegComments@dgif.state.va.us.

Summary:

The amendments (i) provide for bear, deer or turkey tags to be located any place on the bear, deer or turkey hunting license by removing the requirement that the tags be located on the left margin of the license; (ii) clarify how a bear, deer or turkey tag is to be physically validated or "notched" when being used to check a bear, deer or turkey that has been legally killed; (iii) replace references to "Telecheck" with "automated harvest reporting system"; and (iv) provide for the forfeiture of a deer or turkey carcass to the Commonwealth when any deer or turkey that has not been checked is found in the possession of any person exempt from license requirements or from holding a license authorization number.

Changes made to the proposed delete language regarding the initial effective date of each section.

4 VAC 15-50-81. Validating tags and checking bear by licensee or permittee.

A. [~~This section is effective July 1, 2004.~~

~~B.~~] Any person killing a bear shall, before removing the carcass from the place of kill, validate an appropriate tag on their special license for hunting bear, deer, and turkey or special permit by ~~notching the designated area and~~ completely removing the *designated* notch ~~adjacent to the tag on the left margin of the license or permit~~ *area from the tag*. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a bear tag from any special license for hunting bear, deer, and turkey or special permit prior to the killing of a bear. A bear tag that is mistakenly validated (notched) prior to the killing of a bear must be immediately voided by the licensee *or permittee* by writing, in ink, the word "VOID" on the line provided ~~adjacent to the notched~~ *on the* license tag.

[~~C.~~ *B.*] Upon killing a bear and validating (notching) a license tag or special permit, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of

legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag or special permit to an authorized bear checking station or to an appropriate representative of the department in the county or adjoining county in which the bear was killed. Upon presentation of the carcass and validated (notched) license tag or special permit to the bear checking station, the licensee shall surrender or allow to be removed one premolar tooth from the carcass and have a seal, furnished by the department, permanently attached by the check station operator. At such time, the person checking the carcass will be given a game check card. The successful hunter shall then immediately record the game check card number, in ink, on the line provided adjacent to the license tag that was validated (notched) in the field. The game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass.

[~~D.~~ *C.*] It shall be unlawful for any person to destroy the identity (sex) of any bear killed unless and until the license tag or special permit is validated (notched) and checked as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required above, as long as the sex of the animal remains identifiable and all the parts of the carcass are present when the bear is checked at an authorized bear checking station. Any bear found in *the* possession of any person without a validated (notched) license tag or documentation that the bear has been checked at an authorized bear checking station as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

[**4 VAC 15-50-91. Checking bear by persons exempt from license requirements or holding a license authorization number.**

A. ~~This section is effective July 1, 2004.~~

~~B.~~ Upon killing a bear, any person exempt from license requirements as prescribed in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, or the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B of the Code of Virginia shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized bear checking station or to any appropriate representative of the department in the county or adjoining county in which the bear was killed. Upon presentation of the carcass to the bear checking station, the person checking the carcass shall surrender or allow to be removed one premolar tooth from the carcass and have a seal, furnished by the department, permanently attached by the check station operator. At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department. The game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass.

~~C.~~ *B.* It shall be unlawful for any person to destroy the identity of the sex of any bear killed until the bear is checked as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the bear is checked at a big game check station.]

4 VAC 15-90-231. Validating tags and checking deer by licensee or permittee.

A. [~~This section is effective July 1, 2004.~~

~~B.~~] Any person killing a deer shall, before removing the carcass from the place of kill, validate an appropriate tag on his special license for hunting bear, deer, and turkey, bonus deer permit, or special permit by ~~notching the designated area and~~ completely removing the *designated* notch ~~adjacent to the tag on the left margin of the license or permit~~ *area from the tag*. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a deer tag from any special license for hunting bear, deer, and turkey, bonus deer permit, or special permit prior to the killing of a deer. A deer tag that is mistakenly validated (notched) prior to the killing of a deer must be immediately voided by the licensee *or permittee* by writing, in ink, the word "VOID" on the line provided ~~adjacent to the notched~~ *on the* license tag.

[~~C.~~ *B.*] Upon killing a deer and validating (notching) a license tag, bonus deer permit or special permit, as provided above, the licensee or permittee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag, bonus deer permit or special permit to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's ~~toll-free Telecheck~~ *automated harvest reporting* system. At such time, the person checking or reporting the carcass will be given a game check card *furnished by the department* or a ~~Telecheck~~ confirmation number *from the automated reporting system*. The successful hunter shall then immediately record the game check card number or ~~Telecheck~~ confirmation number, in ink, on the line provided ~~adjacent to~~ *on* the ~~license~~ tag that was validated (notched) in the field. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using ~~Telecheck~~ *the automated harvest reporting system*, no check card is required as long as the hunter who killed the animal is in possession of the carcass. If the ~~Telecheck~~ *automated harvest* reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the ~~Telecheck~~ confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass.

[~~D.~~ *C.*] It shall be unlawful for any person to destroy the identity of the sex of any deer killed unless and until the license tag, bonus deer permit or special permit is validated (notched) and checked as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required above, as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the ~~Telecheck~~ *automated harvest reporting* system. Any deer found in *the* possession of any person without a validated (notched) license tag or documentation that the deer has been checked (via a big game check station or ~~Telecheck~~ *the automated harvest reporting system*) as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

4 VAC 15-90-241. Checking deer by persons exempt from license requirement or holding a license authorization number.

A. [~~This section is effective July 1, 2004.~~

~~B.~~] Upon killing a deer, any person exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, or the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's ~~toll-free Telecheck~~ *automated harvest reporting* system. At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department or a ~~Telecheck~~ confirmation number *from the automated reporting system*. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the ~~Telecheck~~ *automated harvest* reporting system, the successful hunter shall immediately create written documentation including the successful hunter's full name, the date the animal was killed, and the ~~Telecheck~~ confirmation number. This written documentation must be kept in possession with the carcass until the carcass is processed. If the ~~Telecheck~~ *automated harvest* reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass.

[~~C.~~ *B.*] It shall be unlawful for any person to destroy the identity (sex) of any deer killed until the deer is checked as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill as long at they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the ~~Telecheck~~ *automated harvest reporting* system. *Any deer that has not been checked (via a big game check station or the automated harvest reporting system) as required by this section found in the possession of any person exempt from license requirements or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law.*

4 VAC 15-240-81. Validating tags and checking turkey by licensee.

A. [~~This section is effective July 1, 2004.~~

~~B.~~] Any person killing a turkey shall, before removing the carcass from the place of kill, validate an appropriate tag on his special license for hunting *bear, deer and* turkey by ~~notching the designated area and~~ completely removing the *designated* notch ~~adjacent to the tag on the left margin of the license~~ *area from the tag*. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a turkey tag from any special license for hunting bear, deer, and turkey prior to the killing of a turkey. A turkey tag that is mistakenly validated (notched) prior to the killing of a turkey must be immediately voided by the licensee by writing, in ink, the word "VOID" on the line provided ~~adjacent to the notched license~~ *on the* tag.

[~~C.~~ *B.*] Upon killing a turkey and validating (notching) a license tag, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed or report their spring kill (as provided by 4 VAC 15-240-40) through the department's ~~toll-free Telecheck~~ *automated harvest reporting* system. At such time, the person checking or reporting the carcass will be given a game check card *furnished by the department* or a ~~Telecheck~~ confirmation number *from the automated harvest reporting system*. The successful hunter shall then immediately record the game check card number or ~~Telecheck~~ confirmation number, in ink, on the line provided ~~adjacent to~~ *on* the license tag that was validated (notched) in the field. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If a spring-season kill is reported using ~~Telecheck~~ *the automated harvest reporting system*, no check card is required as long as the hunter who killed the animal is in possession of the carcass. If the ~~Telecheck~~ *automated harvest* reported spring carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the ~~Telecheck~~ confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left

unattended, this written documentation must be securely attached to the carcass.

[~~D.~~ *C.*] It shall be unlawful for any person to destroy the identity of the sex of any turkey killed unless and until the license tag is validated (notched) and checked as required by this section. Any turkey found in *the* possession of any person without a validated (notched) license tag or documentation that the turkey has been checked (via a big game check station or ~~Telecheck~~ *the automated harvest reporting system*) as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

4 VAC 15-240-91. Checking turkey by persons exempt from license requirement or holding a license authorization number.

A. [~~This section is effective July 1, 2004.~~

~~B.~~] Upon killing a turkey, any person exempt from the license requirement as described in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, or the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever comes first, and without unnecessary delay, present the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the turkey was killed or report their spring kill (as provided by 4 VAC 15-240-40) through the department's ~~toll-free Telecheck~~ *automated harvest reporting* system. At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department or a ~~Telecheck~~ confirmation number *from the automated harvest reporting system*. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If a spring-season kill is reported using the ~~Telecheck~~ *automated harvest* reporting system, the successful hunter shall immediately create written documentation including the successful hunter's full name, the date the animal was killed, and the ~~Telecheck~~ confirmation number. This written documentation must be kept in possession with the carcass until the carcass is processed. If the ~~Telecheck~~ *automated harvest* reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass.

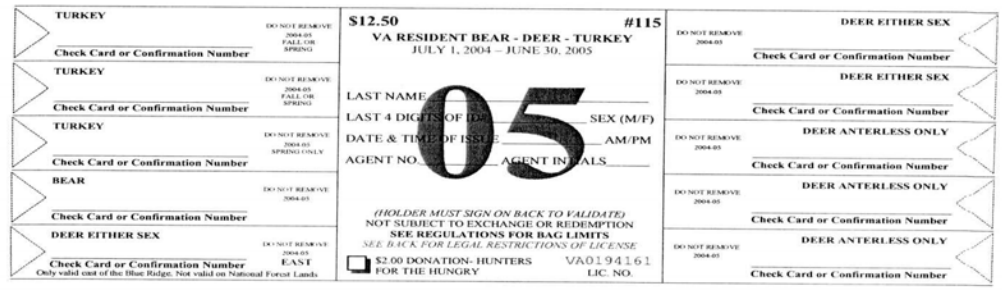
[~~C.~~ *B.*] It shall be unlawful for any person to destroy the identity of the sex of any turkey killed until the turkey is checked as required by this section. *Any turkey that has not been checked (via a big game check station or the automated harvest reporting system) as required by this section found in the possession of any person exempt from license requirements or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law.*

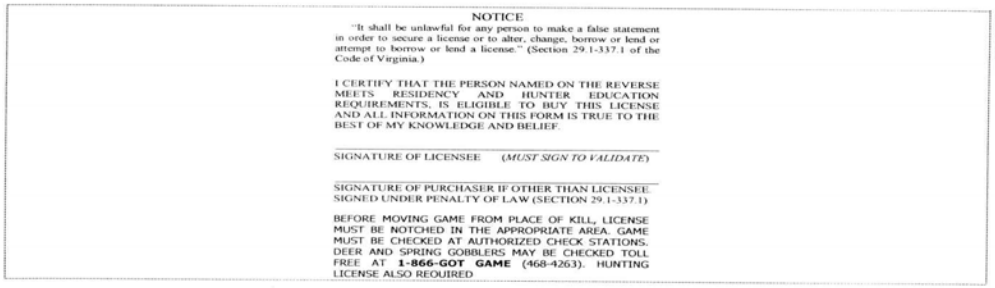
NOTICE: The form used in administering 4 VAC 15-50, Game: Bear; 4 VAC 15-90 Game: Deer; and 4 VAC 15-240, Game: Turkey, is listed and published below.

[FORMS

Card Check - Turkey, Bear, Deer, Form 115 (eff. 8/04).]

Virginia Department of Game and Inland Fisheries Form Number 115





VA.R. Doc. No. R04-136, R04-137, R04-138; Filed July 7, 2004, 11:13 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Board of Coal Mining Examiners

Title of Regulation: **4 VAC 25-20. Board of Coal Mining Examiners Certification Requirements (amending 4 VAC 25-20-20, 4 VAC 25-20-30, 4 VAC 25-20-40, 4 VAC 25-20-50, 4 VAC 25-20-70, 4 VAC 25-20-90, 4 VAC 25-20-100, [*4 VAC 25-20-110,*] 4 VAC 25-20-140, 4 VAC 25-20-190, 4 VAC 25-20-200, 4 VAC 25-20-210, 4 VAC 25-20-220, 4 VAC 25-20-250, 4 VAC 25-20-255, 4 VAC 25-20-259 [~~and~~ *,*] 4 VAC 25-20-390 [*, 4 VAC 25-20-410 and 4 VAC 25-20-430*]).**

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

Effective Date: August 25, 2004.

Agency Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237, or e-mail stephen.walz@dmme.virginia.gov.

Summary:

The amendments:

1. Remove language requiring the division to mail certificate holders notices of certification dates and deadlines regarding completion requirements.

2. Require miners to retake any "sections" failed on completion of a segmented format examination. This will represent a first retake of an examination.

3. Amend provisions addressing reciprocal agreements with other states to require miners to meet both conditions set forth by the reciprocating party and meet Virginia-unique requirements.

4. Require underground shot firers to recertify every five years by providing proof of experience, examination, or continuing education.

5. Exclude performing electrical work at surface locations from the underground electrical repairman requirements.

6. Require hoisting engineers to recertify every five years by providing proof that they have been performing hoisting duties in their work or passing a practical exam.

7. Require instructors to use applicable specialized equipment to help reinforce their teaching.

8. Require miners to have a practical knowledge of mine gases as part of their gas detection qualification.

9. Prohibit surface miners without underground mining experience from working underground without the required training and knowledge.

10. Require BCME training and continuing education instructors to be knowledgeable of or certified in the areas they teach. In addition students will be able to critique instructor effectiveness

Several clarifying amendments were added since publication of the proposed amendments.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:24 VA.R. 3465-3479, August 11, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have been changed since publication of the proposed regulation are set out.

4 VAC 25-20-20 through 4 VAC 25-20-70. [No change from proposed.]

4 VAC 25-20-90. Underground shot firer.

A. Applicants shall possess two years coal mining experience underground, one year of the two years shall have included handling and using explosives underground under the direction of a certified underground shot firer, or appropriately related work experience approved by the chief.

B. Applicants shall pass the underground shot firer and gas detection examinations.

C. [~~*Twelve months after the effective date of this regulation*~~ *Beginning August 25, 2005*]*, a certified underground shot firer must be recertified every five years by:*

1. Presenting written proof that he has performed underground blasting duties in his work during two of the last three years immediately preceding the expiration date;

2. Retaking and passing the underground shot firer examination; or

3. Presenting verification of completion of underground mine foreman or other continuing education that included underground blasting safety training.

D. Failure to maintain education or training requirements shall result in suspension of a person's certification pending completion of continuing education or training. If the continuing education or training requirement is not met within two years from the suspension date, the certification shall be revoked by the BCME.

E. The division shall send notice of any suspension to the last address the certified person reported to the division in accordance with 4 VAC 25-20-20 I. Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4 VAC 25-20-100. Underground electrical repairman.

A. Applicants shall possess one year of electrical experience in underground coal mining under the direction of a certified underground electrical repairman or appropriately related work experience approved by the chief.

B. Applicants shall pass the underground electrical repairman and gas detection examinations.

C. Applicants may be given six months credit for electrical educational training from a college, technical school, or vocational school.

D. Applicants who are certified may perform electrical work at underground ~~and surface~~ locations.

E. Continuing education requirements.

1. An underground electrical repairman certification shall remain valid if the certified person meets the MSHA annual [*electrical*] retraining requirements (30 CFR 75.153(g)).

2. Submission of a copy of documentation sent to MSHA shall be acceptable to meet this requirement.

3. If a certificate expires because the certificate holder fails to complete the electrical retraining requirements, then the holder of the expired certificate shall meet requirements of Part I (4 VAC 25-20-10 et seq.) of this chapter and pass the electrical repairman examination prior to reinstatement of certification by the board.

[**4 VAC 25-20-110. Surface electrical repairman.**

A. Applicants shall possess one year of electrical experience in surface coal mining under the direction of a certified surface electrical repairman or appropriately related work experience approved by the chief.

B. Applicants shall pass the surface electrical repairman and gas detection examinations.

C. Applicants may be given six months credit for electrical educational training from a college, technical school, or vocational school.

D. Applicants who are certified may perform electrical work at surface locations only.

E. Continuing education requirements.

1. A surface electrical repairman certification shall remain valid if the certified person meets the MSHA annual electrical retraining requirements (30 CFR ~~75.153(g)~~ *77.103(g)*).

2. Submission of a copy of documentation sent to MSHA shall be acceptable to meet this requirement.

3. If a certificate expires because the certificate holder fails to complete the retraining requirements, then the holder of the expired certificate shall meet requirements of Part I (4 VAC 25-20-10 et seq.) of this chapter and pass the surface electrical repairman examination prior to reinstatement of certification by the board.]

4 VAC 25-20-140 through 4 VAC 25-20-200. [No change from proposed.]

4 VAC 25-20-210. Advanced first aid.

A. Applicants shall complete a 24-hour advanced first aid class, at minimum, taught by a certified advanced first aid instructor or possess appropriately related work experience approved by the chief and pass the advanced first aid examination.

B. Approved advanced first aid classes shall cover the following subjects:

1. Introduction to first aid;

2. Respiratory emergencies and cardiopulmonary resuscitation; i.e., heart saver or other four-hour equivalent;

3. Removal of foreign bodies from the throat (the Heimlich Maneuver);

4. Wounds;

5. Shock;

6. Specific injuries including head and chest;

7. Contamination, infection, and prevention;

8. Burns;

9. Cold exposure and frost bite;

10. Bone and joint injuries;

11. Dressings and bandages;

12. Sudden illness;

13. Emergency underground rescue and transfer;

14. Unusual rescue situations related to mining;

15. Poisoning, toxic and hazardous materials;

16. Transportation of victims; and

17. Heat exposure.

C. *An advanced first aid certification in good standing with the BCME shall remain valid until the last day of the month following the anniversary date of the initial* [*or continuing education*] *training.* Certified persons shall complete four hours continuing education annually, which is taught by a certified advanced first aid instructor, to maintain their advanced first aid card. This continuing education requirement shall include recertification in CPR.

D. The holder of the certificate shall submit documentation to the division indicating the required continuing education has been completed.

E. Applicants holding a valid EMT card or EMT first responder card, shall be deemed eligible to receive advanced first aid certification without having to complete the initial advanced first aid class or without passing the advanced first aid examination. All applicants shall complete eight hours of continuing education. The advanced first aid certification shall start on the day the applicant's EMT certification or EMT first responder certification expires.

F. Failure to complete required continuing education shall result in suspension of the certification pending completion of the continuing education. If the continuing education requirement is not met within one year from the suspension date, then the certification shall be revoked by the BCME.

G. The division shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4 VAC 25-20-20 I. ~~and to the last known employer address.~~ *Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.*

4 VAC 25-20-220 through 4 VAC 25-20-390. [No change from proposed.]

[**4 VAC 25-20-410. Prehearing procedures.**

A. Any person wishing to bring any matter before the board shall use these procedures except for good cause shown before the board.

B. Petitions for action by the board shall be in writing, shall state the grounds for the petition before the board, shall state the relief sought, and shall include any applicable supporting material, as set out below:

1. For certification to be revoked in accordance with § 45.1-161.35 B of the Code of Virginia, the petitioner or petitioners shall submit specific charges, which set forth the reasons why the certification should be revoked.

2. To request a reexamination for a certificate revoked pursuant to § 45.1-161.35 of the Code of Virginia, the holder of the revoked certificate shall submit a request for reexamination with evidence that the cause for revocation of his certificate has ceased to exist.

3. For other petitions before the board, the petitioner shall submit a written petition explaining the request being made and the relief being sought.

C. The division shall assign a docket number to all petitions before the board. The division shall provide written notice to all parties to any proceeding in accordance with § 45.1-161.35 D of the Code of Virginia and the Administrative Process Act (§ ~~9-6.14:1~~ *2.2-4000* et seq. of the Code of Virginia).

D. Persons wishing to address the board, except those making a petition for board action, will be provided an opportunity at the conclusion of the board meeting.

E. Persons shall make any request for change to the board's regulations in accordance with the DMME and the board's Public Participation Guidelines, 4 VAC 25-10~~-10 et seq~~.]

[**4 VAC 25-20-430. Post-hearing procedures.**

A. The board may require submittal of briefs from the parties to a hearing concerning the issues of record before the board. The board shall schedule submittal of briefs at the time of the hearing.

B. Transcripts of the proceeding shall be provided on request to any party to the hearing at cost. Motions to correct any transcript shall be filed within 10 working days after delivery of the transcript, and shall be ruled on by the chief within 10 working days after his receipt of the motion. Any corrections shall be sent to all parties to the hearing who have received a copy of the transcript.

C. Decisions shall be rendered in writing and communicated to parties to the proceeding in accordance with the Administrative Process Act (§ ~~9-6.14:1~~ *2.2-4000* et seq. of the Code of Virginia).]

FORMS **[No change from proposed.]**

VA.R. Doc. No. R02-266; Filed June 25, 2004, 1:43 p.m.

Board of Mineral Mining Examiners

Title of Regulation: **4 VAC 25-35. Certification Requirements for Mineral Miners (amending 4 VAC 25-35-10 through 4 VAC 25-35-40, 4 VAC 25-35-80, 4 VAC 25-35-100, 4 VAC 25-35-110, and 4 VAC 25-35-120 [*; adding 4 VAC 25-35-75*]).**

Statutory Authority: § 45.1-161.292:19 of the Code of Virginia.

Effective Date: August 25, 2004.

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

Summary:

The changes include administrative changes to allow different forms of payment for mineral mining certification. Substantive changes include requiring applicants to take a written examination for certification as an electrician, regardless of experience. However, this new requirement does not apply to electricians with an electrical journeyman's card. The Board of Examiners (BOE) certificates are not valid after July 1, 1999. Lastly, surface blasters will be required to possess a valid record of three hours of first aid training from an organization using nationally recognized standards or training that meets the federal requirements found in 30 CFR Part 48. Presently, the certificate holder is only required to possess a valid MSHA 5000-23 form.

Since the proposed amendments were published, several clarifying amendments were made and a new section was added to allow cement plant inspections to be conducted by general mineral miners with the appropriate experience.

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.

4 VAC 25-35-10. Initial certification requirements.

A. Applicants shall submit:

1. The Application for Certification Examination form (BMME-1).

2. A copy of all degrees required for certification and a valid first aid certificate or card or as noted in Part II, Minimum Certification Requirements (4 VAC 25-35-50 et seq.). When not otherwise specified, first aid cards shall be issued by an organization that uses nationally recognized standards and is approved by the Division of Mineral Mining (DMM), e.g., American Red Cross and National Safety Council.

3. A $10 fee for each examination application received at least five working days prior to an examination. Cash will be accepted if paying in person at a Department of Mines, Minerals and Energy (DMME) office.

4. A Verification of Work Experience form (BMME-2) and documentation of equivalent work experience for approval by DMM, if required for the certification. This form shall be signed by a company official who is knowledgeable of the experience of the applicant [~~and shall be notarized~~].

B. Applicants shall fulfill the requirements of 4 VAC 25-35-10 and accumulate the required years of experience within five years of taking the examination or start the process over including payment of fee.

C. Applicants for the general mineral miner certification shall submit a $10 processing fee with their application.

D. Persons requesting replacement of a lost or destroyed certificate shall submit a letter to DMM with a $1.00 fee. ~~The fee shall be in the form of a certified check, cashier's check or money order made payable to the Treasurer of Virginia per § 45.1-161.50 of the Code of Virginia.~~ Cash will be accepted if paying in person at a DMME office.

4 VAC 25-35-20. Examination requirements.

A. All applicants for certification shall take a written examination except candidates for the general mineral miner certification and electrical certification applicants who hold a journeyman card ~~or those applicants with comparable work experience acceptable to DMM under 4 VAC 25-35-100 A~~. Applicants for the foreman certification shall score at least 85% and applicants for other certifications shall score at least 80% on each section of the written examination.

B. If all or part of an examination is failed, the applicant must pay the examination fee and retake the failed section or sections within 90 days to continue the certification process. If a section of the examination is failed a second time, the applicant must pay the fee and retake the entire examination. If the examination is failed on the third try, the applicant must pay the fee and wait the longer of 90 days from the re-examination date or one year from the initial examination date before retaking the entire exam. After the third attempt, the application cycle starts over.

4 VAC 25-35-30. Reciprocity requirements.

Reciprocity shall be available for certified persons in other states as provided for in § ~~45.1-161.51~~ *45.1-161.292:24* of the Code of Virginia. Applicants for reciprocity must submit a current copy of their pocket card or certificate, examination grades, and documentation of equivalent work experience for review and approval by the Board of Mineral Mining Examiners (BMME).

4 VAC 25-35-40. Renewal requirements.

A. Certificates issued by the Board of Examiners (BOE) ~~prior to July 1, 1994,~~ shall *not* be accepted as valid ~~until the BMME issues a certificate to replace the BOE certificate. The BMME will issue replacement certificates with expiration dates spread between 1996 until 1999. No BOE certificate shall be valid~~ after July 1, 1999.

B. DMM will send renewal notices to the last known address of the certificate holder at least 180 days prior to the expiration of the certificate. Certified persons shall apply for renewal of certificates by submitting the Application for Renewal form (BMME-3) and the Verification of Work Experience form (BMME-2) to DMM no more than 180 days prior to the expiration of their certificate. The forms shall be submitted in time to be received at least five working days prior to the date of the examination or refresher class.

C. Certified persons, except mine inspectors, who have worked a cumulative minimum of 24 months in the last five years shall select one of two options to renew their certificates; either take an examination or complete a refresher class on any changes in regulations and law since the initial certification or the certificate was last renewed. No examination or class shall be required if there have been no such changes.

D. Certified persons shall take the examination described in 4 VAC 25-35-20 if their certificate has expired, they have not worked in the area for which they are certified for a cumulative minimum of 24 months in the last five years, or DMM has issued the individual violations ~~which~~ *that* have not been corrected.

E. Successful completion of the mine inspector renewal shall suffice for renewing the mine foreman certification.

F. Applicants for renewal of certifications shall hold a valid first aid certificate or card to renew their certification.

G. Applicants shall submit a $10 fee for the examination or the refresher class which shall be received at least five working days prior to the examination or class. Cash will be accepted if paying in person at a DMME office.

[***4 VAC 25-35-75. Cement plant examiner.***

A. Competent persons who are certified as a general mineral miner and who possess at least one year experience working at a cement plant may assist the surface foreman in performing examinations of active work areas of cement plants at the beginning of each shift.

B. The surface foreman shall oversee any preshift inspections of the plant that are performed by a cement plant examiner.

C. Cement plant examiners shall be trained in the safety and health aspects of the plant area they may examine and be trained in the procedures for work place examination and recordkeeping. The operator shall maintain records of the training as required in 4 VAC 25-40-100.]

4 VAC 25-35-80. Surface blaster.

A. Surface blaster applicants shall possess one year of blasting experience on a surface mineral mine under the supervision of a certified blaster or possess equivalent work experience approved by DMM.

B. Applicants shall possess a valid ~~Mine Safety and Health Administration (MSHA) 5000-23~~ [~~form showing training in~~] *record of three hours of training in first aid from an organization that uses nationally recognized standards or a*

valid record of training to meet the requirements in 30 CFR Part 48 that includes first aid.

4 VAC 25-35-100. Mineral mining electrician (electrical repairman).

A. Applicants for certification as a mineral mining electrician shall ~~hold~~ *possess work experience as demonstrated by* a valid journeyman electrical certification issued ~~under~~ *by the* Department of Professional and Occupational Regulation, Tradesmen ~~Certification~~ Section~~, criteria~~ or ~~possess equivalent work experience~~ *as* approved by DMM *as equivalent to that required for a journeyman certification*.

B. Applicants shall submit documentation of training as required by *30 CFR Part 46 or* 30 CFR Part 48 or provide evidence of their knowledge of safe working practices on the mine site as approved by DMM.

4 VAC 25-35-110. Mine inspector.

In addition to the requirements set forth in § ~~45.1-161.19~~ *45.1-161.292:11* of the Code of Virginia, mine inspector applicants shall demonstrate knowledge and competence in those areas specified in § ~~45.1-161.20~~ *45.1-161.292:12* of the Code of Virginia through the examination process. A certificate will not be issued until an applicant is employed by DMME.

4 VAC 25-35-120. General mineral miner.

A. As set forth in § ~~45.1-161.55~~ *45.1-161.292:28* of the Code of Virginia, miners commencing work after January 1, ~~1996~~ *1997*, shall have a general mineral miner certification. For the purposes of these regulations, "commencing work" means after employment but before beginning job duties. Persons excluded from the general mineral miner certification are those involved in delivery, office work, maintenance, service and construction work, other than the extraction and processing of minerals, who are contracted by the mine operator. Hazard training as required by *30 CFR Part 46 or* 30 CFR Part 48 shall be provided to these persons.

B. Applicants shall complete certification training in first aid and mineral mining regulations and law which is conducted by a training instructor approved by DMM, a certified MSHA instructor, or a certified mine foreman. Training shall include the following topics, subtopics and practical applications:

1. First aid training shall convey a knowledge of first aid practices including identification of trauma symptoms, recognition and treatment of external and internal bleeding, shock, fractures, and exposure to extreme heat or cold. To prove to the BMME that an applicant has knowledge of first aid practices, the training shall include a demonstration of skills or passing a written examination, as evidenced by the instructor certification as contained in the BMME-4 form.

2. Law and regulation training shall convey highlights of the mineral mine safety laws of Virginia and the safety and health regulations of Virginia. Specifically, information shall be provided on miner responsibilities and accountability, certification requirements, violations, penalties, appeals and reporting violations to DMM. To prove to the BMME that an applicant has knowledge of the mineral mine safety laws of Virginia and the safety and health regulations, the training shall include a demonstration of skills or passing a written examination, as evidenced by the instructor certification as contained in the BMME-4 form.

C. The trainer will certify to the BMME that the training and demonstrations required by § ~~45.1-161.55~~ *45.1-161.292:28* B of the Code of Virginia and this section have occurred by completing the BMME-4 form.

D. Applicants who hold a valid first aid card or certificate as noted in 4 VAC 25-35-10 shall be considered to have met the first aid requirements.

E. Applicants who have completed training may commence work and shall be considered provisionally certified for up to 60 days from the date the instructor completes the training.

F. The instructor shall submit a BMME-4 form and the $10 fee for each applicant who completes the training, together with a class roster of all persons who complete the training, within 30 days of the training date.

G. The mine operator shall maintain the following records for those miners required to obtain a general mineral miner certification and those who qualify for exemption, starting January 1, ~~1996~~*1997*:

1. The employee name, address, phone number.

2. The job title, employment date and general mineral miner number if applicable.

3. The date training was completed and the instructor providing it for nonexempt employees.

4. If the employee is exempt from the requirements, the date they began working in the mineral mining industry in Virginia.

VA.R. Doc. No. R02-267; Filed June 25, 2004, 1:42 p.m.

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Title of Regulation: **4 VAC 25-125. Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities (adding 4 VAC 25-125-10 through 4 VAC 25-125-40).**

Statutory Authority: §§ 45.1-161.3, 45.1-161.106 and 45.1-161.254 of the Code of Virginia.

Effective Date: August 25, 2004.

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

Summary:

The regulation establishes minimum standards to ensure the safe use of heavy equipment on coal stockpiles and in facilities that store, handle, and transport unconsolidated bulk materials and applies to coal stockpiles and facilities storing, handling, or transporting unconsolidated bulk materials directly related to coal mining activities.

The regulation establishes (i) general safety requirements for coal stockpiles, including those with underlying feeders;

(ii) specific work safety procedures and equipment safety requirements for coal stockpiles with underlying feeders; and (iii) safety provisions for storage bins, bunkers, hoppers, and silos where unconsolidated bulk materials are stored, handled, or transported.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 125.
REGULATIONS GOVERNING COAL STOCKPILES AND BULK STORAGE AND HANDLING FACILITIES.

4 VAC 25-125-10. Definitions.

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

"Bin" means a container for storage of bulk material.

"Bunker" means a vessel for the bulk storage of material; the lowermost portion is usually constructed in the form of a hopper.

"Chief" means the Chief of the Division of Mines of the Department of Mines, Minerals and Energy.

"Division" means the Division of Mines of the Department of Mines, Minerals and Energy.

"Hopper" means a vessel not primarily intended for storage into which materials are fed; usually constructed in the form of an inverted pyramid or cone terminating in an opening through which the material is discharged.

"Safety line" means a component consisting of a flexible line for connection to an anchorage at one end to hang vertically (vertical lifeline), or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

"Silo" means a tall structure, usually cylindrical and of reinforced concrete construction, in which bulk material is stored and discharged through feeders that draw materials from the bottom.

"Stockpile" means any accumulation of material formed to create a reserve for loading or other purposes.

4 VAC 25-125-20. General provisions for coal stockpiles and on stockpiles with underlying feeders.

A. Stockpile design and management shall be such that materials can be safely stored and handled.

B. Stockpiles shall be maintained so as not to become unstable. Any hazardous condition that is observed on or around such areas shall be immediately reported to the mine foreman in charge. Immediate action shall be taken to correct such conditions when encountered.

C. Stockpiles and stockpile dumping locations shall be visually examined by an authorized person prior to work commencing and as frequently as ground conditions warrant. Where there is evidence of ground failure at a stockpile dumping location, loads shall be dumped a safe distance back from the edge of the unstable area of the bank and pushed to the stockpile.

D. Sufficient illumination shall be provided to maintain safe working conditions. When visibility is insufficient, the operation of mobile equipment on stockpiles shall be suspended until conditions permit sufficient visibility.

E. All employees who work on or around stockpiles shall be trained on potential hazards. Hazard training shall also be provided for anyone other than employees that perform work associated with stockpiles, including but not limited to maintenance personnel or contractors.

4 VAC 25-125-30. Safety precautions for stockpiles with underlying feeders.

A. Telephone or equivalent two-way communications shall be established between equipment operators working on stockpiles and those persons who are operating conveyors, feeders, hoppers or load-out facilities drawing from those stockpiles. Communication shall be maintained as necessary to keep such equipment operators advised of potential hazards during draw down activities.

B. No person shall travel on foot directly over areas of coal stockpiles where underlying feeders are in place, except:

1. In accordance with the provisions of subdivision D 5 of this section, or

2. On an emergency basis, under direct supervision of a certified foreman while secured by a safety line with coal stockpile feeders de-energized, locked out, and suitably tagged.

C. No person shall operate equipment on a coal stockpile directly over areas where underlying coal feeders are in place without a stockpile safety plan approved by the chief. The plan shall be submitted by the mine operator or agent and, when approved, shall be posted at the mine site. Before any person first works on stockpiles with underlying feeders, the approved plan shall be reviewed with that person. A record shall be maintained of such review for a period of two years.

D. The plan shall outline procedures to protect the health and safety of mobile equipment operators working on a stockpile or coal storage area directly over areas where underlying coal feeders are in place. Plan procedures shall be approved and shall include:

1. A method of determining that no miners or equipment are in the affected area before starting stockpile underlying feeders;

2. A method of determining the expected draw hole size in correlation to the stockpile size;

3. Safe procedures for breaking through bridged cavities;

4. Development of contingencies for safe recovery of personnel should a piece of equipment become entrapped, which shall be reviewed with all personnel during annual retraining;

5. Safe procedures for travel by foot should it be necessary during nonemergencies;

6. Information on how the operator will comply with the requirements of this section.

E. The following requirements will be met where mobile equipment operators work on stockpiles with underlying feeders:

1. Beginning [~~*(with the effective date of this regulation)*~~ *August 25, 2004*]*, all mobile equipment manually operated on coal stockpiles, where there is a potential of the equipment falling into a cavity, shall be equipped with an enclosed cab fitted with chemically tempered glass and a window support system. However, glass certified to withstand 40 psi may be installed without a window support system provided that such glass is installed in a frame that provides equal strength and support. Other types of glass and window frames or support system may be used provided that an equal or greater amount of protection is afforded.*

2. Mobile equipment shall be equipped with an enclosed cab and doors and windows shall be closed and secured at all times the equipment is in operation on the stockpile.

3. The equipment cab shall be provided with two self-contained self-rescuers. Equipment operators shall be trained in the donning and use of self-rescuers.

4. The equipment operator shall be provided with a remote control device capable of stopping the flow of coal from the feeder and coal coming onto the stockpile. Such device shall be tested weekly.

5. Emergency lighting shall be provided for the mobile equipment operator.

6. Warning signs shall be posted at the entrances to all coal stockpiles with underlying coal feeders.

7. Underlying free-flowing feeders shall be equipped with gates or other controls so that material cannot inadvertently discharge when the feeder is not activated.

8. When pushing material over the crest of a stockpile or draw hole, the equipment shall be stopped a safe distance from the edge and other material will be used to bump the material over such area.

9. When underlying feeders are used, the location of each draw-off point will be clearly indicated by a marker suspended directly above the underlying feeder.

10. Visual indicators shall be provided to show the mobile equipment operators which feeders are being used.

11. The equipment shall have a primary two-way communications system and a back-up communication system supplied by an independent power source.

4 VAC 25-125-40. Storage bins, bunkers, hoppers, and silos.

Storage bins, bunkers, hoppers, and silos where unconsolidated bulk materials are stored, handled or transported shall be equipped and maintained as follows:

1. Equipped with mechanical devices or other effective means of handling materials so that during normal operations persons are not required to enter or work where they are exposed to entrapment by caving or sliding of materials.

2. Equipped with supply and discharge operating controls. The controls shall be located so that spills or overruns will not endanger persons.

3. Where persons are required to move around or over any storage bin, bunker, hopper, or silo where unconsolidated bulk material is stored, handled or transported, suitable walkways or passageways shall be provided.

4. Ladders, platforms, or landings shall be provided for maintenance or inspection purposes where persons are required to enter any storage bin, bunker, hopper, or silo where unconsolidated bulk material is stored, handled or transported. No person shall enter the facility until the supply and discharge of materials has ceased and the supply and discharge equipment is de-energized, locked out and suitably tagged. Persons entering the facility shall wear a safety belt or harness equipped with a safety line. A second person, similarly equipped, shall be stationed near where the safety line is fastened and shall constantly adjust it or keep it tight as needed, with minimum slack.

VA.R. Doc. No. R02-268; Filed June 25, 2004, 1:42 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: **6 VAC 20-210. Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for all Violent Felonies and Certain Burglaries (adding 6 VAC 20-210-10 through 6 VAC 20-210-110).**

Statutory Authority: §§ 9.1-102 and 19.2-310.3:1 of the Code of Virginia.

Effective Date: August 26, 2004.

Agency Contact: Katya Newton, Counsel for Division of Forensic Science, Department of Criminal Justice Services, 700 North 5th St., Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or e-mail knewton@dfs.state.va.us.

Summary:

The regulation provides guidance to agencies responsible for collecting DNA samples from persons arrested for any violent felony and for certain burglaries as specified in §§ 19.2-310.2:1 and 19.2-310.3:1 of the Code of Virginia. The regulation describes when a sample is required, who is responsible for collecting the sample, how the sample is to be collected and labeled, and how to transport the sample to the Division of Forensic Science for analysis.

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.

CHAPTER 210.
REGULATIONS FOR THE IMPLEMENTATION OF THE LAW PERMITTING DNA ANALYSIS UPON ARREST FOR ALL VIOLENT FELONIES AND CERTAIN BURGLARIES.

PART I.
DEFINITIONS AND GENERAL PROVISIONS.

6 VAC 20-210-10. Definitions.

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

"Arrestee" means a person arrested for a qualifying offense under § 19.2-310.2:1 of the Code of Virginia.

"Buccal sample" means a sample taken by swabbing the cheek inside an arrestee's mouth.

"Buccal sample kit" means a kit specified by the division for the collection of buccal cell samples.

"CCRE" means the Central Criminal Records Exchange operated by the Virginia State Police.

"Clerk" means the clerk of court of any general district, juvenile and domestic relations or circuit court in the Commonwealth, and includes deputy clerks.

"Data bank" means the database of DNA profiles from biological samples maintained by the division for convicted felons and arrestees.

"Division" means the Division of Forensic Science, Department of Criminal Justice Services.

"DNA" means deoxyribonucleic acid.

"DNA analysis" means the analysis conducted on saliva or tissue samples to obtain a genetic profile of identification characteristics.

"DNA sample" means a biological sample taken for DNA analysis.

"DNA sample tracking application" means an application that can be queried to determine whether an arrestee has a sample in the data bank.

"Document control number" means the number that is preprinted on the fingerprint card (CCRE arrest forms SP179 and SP180) or assigned by Live-Scan.

"LIDS" means the Local Inmate Data System administered by the State Compensation Board.

"Qualifying offense" means an offense requiring a saliva or tissue sample to be taken upon arrest as described in § 19.2-310.2:1 of the Code of Virginia.

6 VAC 20-210-20. Substantial compliance.

These regulations and the procedures set forth herein relating to the taking, handling and identification of saliva or tissue samples, and the completion or filing of any form or record prescribed by these regulations, are procedural in nature and not substantive. Substantial compliance therewith shall be deemed sufficient.

PART II.
QUALIFYING OFFENSE WARRANTS

6 VAC 20-210-30. Qualifying offense warrants.

All warrants for qualifying offenses shall contain the following language: "Take buccal sample if LIDS shows no DNA sample in Data Bank."

PART III.
DNA SAMPLE TRACKING APPLICATION.

6 VAC 20-210-40. Use of LIDS.

An Internet accessible DNA sample tracking application developed by the State Compensation Board through LIDS shall be accessible through the State Compensation Board's website at www.scb.state.va.us. Access to the DNA sample tracking application shall be located under the website's "Restricted Access" section. User identifications and passwords shall be assigned to all law-enforcement agencies responsible for taking saliva or tissue samples from arrestees.

6 VAC 20-210-50. Screening for duplicates.

Prior to taking the saliva or tissue sample, the LIDS DNA sample tracking application, or any such other DNA sample tracking application approved by the division and permitted by the Code of Virginia, shall be queried to determine if there is a DNA sample already in the data bank for the arrestee. If the DNA sample tracking application indicates that a sample previously has been taken from the arrestee, no additional sample shall be taken. If the DNA sample tracking application indicates no sample has been taken from the arrestee, a saliva or tissue sample shall be taken in accordance with the procedures outlined in this chapter.

PART IV.
PROCEDURES FOR TAKING SALIVA OR TISSUE SAMPLE.

6 VAC 20-210-60. Collection of samples.

The samples shall be collected during booking by the sheriff's office, police department or regional jail responsible for booking upon arrest.

6 VAC 20-210-70. Buccal sample kits.

Saliva and tissue samples shall be collected using buccal sample kits specified and distributed by the division. Each buccal sample kit shall contain a submission form, at least one buccal sample collection device and instructions on the procedure for using the device. These instructions shall be followed when collecting the buccal samples.

6 VAC 20-210-80. When buccal sample kits are unavailable.

In circumstances where a buccal sample kit is unavailable, the division may accept samples collected without using the buccal sample collection devices contained in the buccal sample kits. These samples shall be collected through the use of sterile swabs and satisfy the sealing and labeling requirements of 6 VAC 20-210-90.

6 VAC 20-210-90. Sealing and labeling samples.

All saliva and tissue samples collected shall be placed in sealed, tamper-resistant containers. Samples shall be submitted with the following identifying information: the arrestee's name, social security number, date of birth, race and gender; the name of the person collecting the samples; the date and place of collection; information identifying the arresting or accompanying officer; the qualifying offense; and the document control number (DCN).

6 VAC 20-210-100. Transportation of samples to the division.

Samples shall be transported to the division in sealed containers not more than 15 days following collection. A copy of the arrest warrant or capias shall be included with the sample when it is transported to the division. Samples may be hand delivered or mailed to the division.

PART V.
NOTIFICATION OF FINAL DISPOSITION.

6 VAC 20-210-110. Notification of final disposition.

Timely submission of the final disposition of a qualifying offense to CCRE by the clerk shall satisfy the requirement that the clerk notify the division of final disposition of the criminal proceedings under § 19.2-310.2:1 of the Code of Virginia.

VA.R. Doc. No. R03-111; Filed June 28, 2004, 10:52 a.m.

STATE BOARD OF JUVENILE JUSTICE

Title of Regulation: **6 VAC 35-160. Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System (adding 6 VAC 35-160-10 through [~~6 VAC 35-160-380~~ *6 VAC 35-160-390*]).**

Statutory Authority: §§ 16.1-223 and 66-10 of the Code of Virginia.

Effective Date: August 25, 2004.

Agency Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743, FAX (804) 371-0773 or e-mail carigndr@djj.state.va.us.

Summary:

The regulation establishes standards governing the form and content of juvenile record information submitted to the Virginia Juvenile Justice Information System, ensures the integrity of the data, protects the confidentiality of the juvenile record information, and governs the dissemination of information in accordance with law.

The following changes are made to the proposed regulation:

1. Clarifications are made to the definitions of "dissemination," "juvenile record information," and "need to know."

2. A distinction is made between the overall "VJJIS administrator," who is the person having overall responsibility for the Virginia Juvenile Justice Information System, and the "functional administrators" who are responsible for a specific component of the Virginia Juvenile Justice Information System.

3. Clarifications are made concerning which entities qualify as "participating agencies" in the VJJIS.

4. Changes are made to reflect the current state of technology.

5. Amendments are made to require compliance with federal laws concerning health records and substance abuse treatment records.

6. Amendments are made to strengthen protections against unauthorized dissemination of juvenile record information.

7. A new section is added that requires records in the Juvenile Justice Information System to be retained and disposed of in accordance with regulations issued by the Library of Virginia. The change makes specific requirements that already exist in statute and regulation.

8. Procedures for handling requests for information and for handling court-ordered expungement of records are clarified.

9. Oversight and enforcement powers are clarified. Annual audits are permitted but not required. Administrative sanctions available to the department are retained. A reference to applicable Code of Virginia sections is added, and a requirement for the department to report to the board on any administrative sanctions imposed is added. The department is required to periodically report to the board on the operation of the VJJIS and its oversight activities. Because 6 VAC 35-160-390 provides oversight of the challenge process, the administrative process proposed in 6 VAC 35-160-290 to review an administrative process is redundant and is therefore deleted.

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.

CHAPTER 160.
REGULATIONS GOVERNING JUVENILE RECORD INFORMATION AND THE VIRGINIA JUVENILE JUSTICE INFORMATION SYSTEM.

PART I.
GENERAL PROVISIONS.

6 VAC 35-160-10. Definitions.

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

"Access" means the ability directly to obtain information concerning an individual juvenile contained in manual or automated files.

"Department" means the Department of Juvenile Justice.

"Destroy" means to totally eliminate and eradicate by various methods, including, but not limited to, shredding, incinerating, or pulping.

"Dissemination" means any transfer of juvenile record information, whether orally, in writing, or by electronic means to any person other than an employee of a participating agency who has [~~*both a need and*~~] *a right to* [~~*know*~~] *the information* [*under § 16.1-300 of the Code of Virginia and who is not barred from receiving the information by other applicable law*].

"Expunge" means to destroy all records concerning an individual juvenile, or all identifying information related to an individual juvenile that is included in aggregated files and databases, in accordance with a court order.

"Juvenile record information" means any information in the possession of a participating agency pertaining to the case of a juvenile who is or has been the subject of [~~*a petition*~~ *an action by an intake officer*] *as provided by § 16.1-260 of the Code of Virginia, as well as to identifying information concerning such a juvenile in any database or other aggregated compilation of records. The term does not apply to statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.*

[*"Need to know" means the principle that a user should access only the specific information necessary to perform a particular function in the exercise of his official duties. Once access to an application is authorized, the authorized data user is still obligated to assess the appropriateness of each specific access on a need-to-know basis.*]

"Participating agency" means the Department of Juvenile Justice [*, including state-operated court service units,*] *or any* [*locally operated*] *court service unit, detention home, group home or emergency shelter; or any public agency, child welfare agency, private organization, facility or person who is treating or providing services to a child pursuant to a contract with the department or pursuant to the Virginia Juvenile Community Crime Control Act as set out in Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia, that is approved by the department to have direct access to juvenile record information through the Virginia Juvenile Justice Information System or any of its component or derivative information systems. The term "participating agency" does not include any court.*

"Virginia Juvenile Justice Information System (VJJIS)" means the equipment, facilities, agreements and procedures used to collect, process, preserve or disseminate juvenile record information in accordance with § 16.1-224 or § 16.1-300 of the Code of Virginia. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"VJJIS [*functional*] *administrator" means* [~~*the*~~ *a*] Department *of Juvenile Justice employee who is responsible for overseeing the* [~~*overall*~~] *operation of* [*a specific component of*] *the Virginia Juvenile Justice Information System.* [*Such persons are sometimes referred to as "functional proponents" of particular information reporting systems. The functional administrator is not to be confused with the department's overall administrator of the VJJIS.*]

6 VAC 35-160-20. Applicability of these standards.

These regulations apply to information, data and records maintained on or derived from the Virginia Juvenile [*Justice*] *Information System, including originals and copies of manual or automated juvenile record information.*

PART II.
PARTICIPATING AGENCIES IN THE VIRGINIA JUVENILE JUSTICE INFORMATION SYSTEM.

6 VAC 35-160-30. Designation as a participating agency.

A. [*The department, including its central administration, department-operated facilities and*] *state-operated* [~~*and*~~ *court service units, is considered a single participating agency for purposes of this regulation.*]

[*B.*] *Locally operated court services units,* [~~*and*~~] *detention homes and boot camps as defined in § 16.1-228 of the Code of Virginia* [*,*] *shall be participating agencies in the Virginia Juvenile Justice Information System.*

[~~*B.*~~ *C.*] *Any other agency that is eligible to receive juvenile record information under § 16.1-300 of the Code of Virginia may apply* [*to the department*] *for status as a participating agency.*

6 VAC 35-160-40. Signed agreement required.

The department shall develop a written agreement with each [*other*] *participating agency delineating the participating agency's access to and responsibility for information contained in the Virginia Juvenile Justice Information System.*

6 VAC 35-160-50. Data submissions.

A. All participating agencies shall submit data and other information as required by department policy to ensure that juvenile record information is complete, accurate, current and consistent.

B. Administrators of participating agencies are responsible for ensuring that entries into the juvenile justice information system are accurate, timely, and in a form prescribed by the department.

C. All information entered into the Virginia Juvenile Justice Information System shall become part of a juvenile's record and shall be subject to the confidentiality provisions of § 16.1-300 of the Code of Virginia.

6 VAC 35-160-60. Access provided to participating agencies.

A. In accordance with policies governing confidentiality of information and system security, the department may limit or expand the scope of access granted to participating agencies.

B. When individuals or participating agencies are providing treatment or rehabilitative services to a juvenile as part of an agreement with the department, their access to juvenile record information shall be limited to that portion of the information that is relevant to the provision of the treatment or service. [*Once access to an application is authorized, the authorized data user is still obligated to assess the appropriateness of each specific access on a need-to-know basis.*]

C. An individual's juvenile record information shall be made available only to participating agencies currently supervising or providing services to the juvenile, and only upon presentation of the unique identifying number assigned to the juvenile. [*Once access to an application is authorized, the authorized data user is still obligated to assess the appropriateness of each specific access on a need-to-know basis.*]

6 VAC 35-160-70. Designation of authorized individuals.

A. Each participating agency shall determine what positions in the agency require regular access to juvenile record information as part of their job responsibilities.

B. In accordance with applicable law and regulations, the department may require a background check of any individual who will be given access to the VJJIS system through any participating agency. The department may deny access to any person based on the results of such background investigation or due to the person's violation of the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of juvenile record information.

C. Only authorized employees shall have direct access to juvenile record information.

D. Use of juvenile record information by an unauthorized employee, or for a purpose or activity other than one for which the person is authorized to receive juvenile record information, will be considered an unauthorized dissemination.

E. Persons who are given access to juvenile record information shall be required to sign an agreement stating that they will use and disseminate the information only in compliance with law and these regulations, and that they understand that there are criminal and civil penalties for unauthorized dissemination.

6 VAC 35-160-80. [~~***Administrator to ensure***~~ ***Responsibility for***] ***compliance*** [~~***with regulations***~~]***.***

The administrator of each participating agency shall ensure that employees who have access to juvenile record information are made familiar with the substance of this regulation and are briefed on their responsibility to protect the confidentiality of juvenile record information. The administrator of each participating agency is also responsible for reviewing all procedures connected with [*the*] *security of juvenile record information to ensure their relevance and continuing effectiveness.*

6 VAC 35-160-90. Security of physical records.

A. A participating agency that possesses physical records or files containing juvenile record information shall institute procedures to ensure the physical security of such juvenile record information from unauthorized access, disclosure, dissemination, theft, sabotage, fire, flood, wind or other natural or man-made disasters.

B. Only authorized persons who are clearly identified shall have access to areas where juvenile record information is collected, stored, processed or disseminated. Locks, guards or other appropriate means shall be used to control access.

6 VAC 35-160-100. Requirements when records are automated.

Participating agencies having automated juvenile record information files shall:

1. Designate a system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures;

2. Maintain "backup" copies of juvenile record information, preferably off-site;

3. Develop a disaster recovery plan, which shall be available for inspection and review by the department; [~~*and*~~]

4. Carefully control system specifications and documentation to prevent unauthorized access and dissemination [~~*.*~~*; and*

5. Develop procedures for discarding old computers to ensure that information contained on those computers is not available to unauthorized persons.]

6 VAC 35-160-110. [~~***Operational programs***~~ ***Access controls***] ***for computer security.***

A. Where juvenile record information is computerized, [~~*operational programs will*~~ *access controls shall be put in place to*] *ensure that records can be queried, updated or destroyed only from approved* [~~*terminals*~~ *system user accounts. Industry standard levels of encryption shall be required to protect all juvenile record information moving through any network*].

B. The [~~*operational programs*~~ *access controls*] *described in subsection A of this section shall be known only to the employees of the participating agency who are responsible for control of the juvenile record information system or to individuals and agencies operating under a specific agreement with the participating agency to provide such security programs. The* [~~*programs*~~ *access controls*] *shall be kept under maximum security conditions.*

C. Computer operations, whether dedicated or shared, that support juvenile record information shall operate in accordance with procedures developed or approved by the department.

D. Juvenile record information shall be stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged or overlaid in any fashion [~~*by terminals outside of the participating agencies*~~ *except via an approved system user account*] *.*

6 VAC 35-160-120. Procedures to protect security of juvenile record information.

Participating agencies shall establish procedures to detect unauthorized access or attempted access of juvenile record information, either physically or electronically, as well as procedures to be followed when an attempt or unauthorized access is detected. Such procedures shall be part of the orientation of employees working in any office, room, space or area in which juvenile record information is regularly collected, processed, stored, or disseminated.

6 VAC 35-160-130. Security of telecommunications.

A. Ordinarily, dedicated telecommunications lines shall be required for direct or remote access to computer systems containing juvenile record information. However, the department may permit the use of a nondedicated means of data transmission to access juvenile record information when there are adequate and verifiable safeguards in place to restrict access to juvenile record information to authorized persons. [*Industry standard levels of encryption shall be required to protect all juvenile record information moving through any network.*]

B. Where remote access of juvenile record information is permitted, remote access devices must be secure. Remote access devices capable of receiving or transmitting juvenile record information shall be [~~*attended*~~ *secured*] *during periods of operation. When the remote access device is unattended, the device shall be made inoperable for purposes of accessing juvenile record information.* [*In addition, appropriate identification of the remote access device operator shall be required.*]

C. Telecommunications facilities used in connection with the remote access device shall also be secured. [~~*The remote access device shall be identified on a hardware basis to the host computer. In addition, appropriate identification of the remote access device operator shall be required. Equipment associated with the remote access device*~~ *The telecommunications facilities*] *shall be reasonably protected from possible tampering or tapping.*

6 VAC 35-160-140. Timelines for data submission.

The Virginia Juvenile Justice Information System makes it possible to record most juvenile record information instantaneously. All transactions [*occurring in a participating agency*] *that are not entered immediately into the juvenile justice information system through on-line submission shall be entered within* [~~*24 hours, except as follows:*~~ *timeframes established by department procedures.*]

[~~*1. Disposition. Notice of the court's final action on a case shall be recorded on the juvenile justice information system no more than 10 days from the date the order is entered by the presiding judge;*~~

~~*2. Appeals. In the case of an appeal, the court's action on the appeal shall be recorded within 10 days after final action of the case; and*~~

~~*3. Release from direct care. Designated department personnel shall record notice of a ward's release within 24 hours of the release.*~~]

6 VAC 35-160-150. Correcting errors.

Participating agencies shall immediately notify the [~~*juvenile justice information system*~~ *appropriate VJJIS functional*] *administrator when it is found that incorrect information has been entered into the juvenile justice information system. The* [*VJJIS functional*] *administrator will make arrangements to correct the information as soon as practicable in accordance with department procedures.*

PART III.
RESPONDING TO REQUESTS FOR JUVENILE RECORD INFORMATION.

6 VAC 35-160-160. Existence of records shall not be confirmed or denied.

No participating agency or individual shall confirm or deny the existence or nonexistence of juvenile record information to persons or agencies that would not be eligible to receive the information pursuant to § 16.1-300 of the Code of Virginia.

6 VAC 35-160-170. Information to be disseminated only in accordance with law and regulation.

A. In accordance with § 16.1-223 of the Code of Virginia, data stored in the Virginia Juvenile Justice Information System shall be confidential [~~*, and*~~ *.*] *Information from such data that* [~~*may be used to identify a*~~ *identifies an individual*] *juvenile may be released only in accordance with § 16.1-300 of the Code of Virginia* [*, applicable federal law,*] *and this regulation.*

B. Unauthorized dissemination of juvenile record information will result in the disseminator's being subject to the administrative sanctions described in 6 VAC 35-160-380. Unlawful dissemination [~~*is*~~] *also* [*may be prosecuted as*] *a Class 3 misdemeanor* [~~*(see*~~ *under*] *§ 16.1-309 of the Code of Virginia* [~~*)*~~ *or as a Class 2 misdemeanor under § 16.1-225 of the Code of Virginia*].

[*C. Additional disclosure limitations are provided in the Health Insurance Portability and Accountability Act (42 USC §§ 1320d-5 and 1320d-6) and the federal substance abuse law (42 USC § 290dd2(f)).*]

6 VAC 35-160-180. Fees.

Participating agencies may charge a reasonable fee for search and copying time expended when an individual or a nonparticipating agency requests juvenile record information. The participating agency shall [~~*post*~~ *inform the requester of*] *the* [~~*schedule of*~~] *fees to be charged, and shall obtain* [~~*approval*~~ *agreement*] *from the requester to pay such costs prior to initiating the search* [*for requested information*].

6 VAC 35-160-190. Requesting juvenile record information.

Individuals or nonparticipating agencies requesting juvenile record information must submit a written request for each record or part thereof to which they request access. This may be done in person, by mail, or by electronic means.

6 VAC 35-160-200. Verifying requestor's identity.

A person requesting juvenile record information shall be required to present proper evidence of his own identity, the identity of the individual whose juvenile record information is requested, and authorization from the individual, the individual's attorney, or, if the individual is a juvenile, the individual's parent, guardian or other person standing in loco parentis.

6 VAC 35-160-210. Determining requestor's eligibility to receive the information.

A. Upon receipt of a request for juvenile record information, [~~*the*~~ *an appropriately designated*] *person* [~~*responding to the request*~~] *shall determine whether the requesting agency or individual is eligible to receive juvenile record information as provided in § 16.1-300 of the Code of Virginia and this regulation.*

B. [~~*For purposes of this regulation,*~~ *The determination as to whether*] *a person, agency or institution* [~~*shall be deemed to have*~~ *has*] *a "legitimate interest" in a juvenile's case* [~~*under*~~ *shall be based on the criteria specified in*] *§ 16.1-300 A 7 of the Code of Virginia* [~~*when (i) the requestor is providing treatment or rehabilitative services that is related to allegations contained in a delinquency petition concerning the juvenile or (ii) the requestor has custody of or is providing supervision for a juvenile and the information is requested in the interest of maintaining security in a secure facility*~~].

[*C. When there is a request to disseminate health records or substance abuse treatment records, the person responding to the request shall determine whether the requested information is protected by the Health Insurance Portability and Accountability Act of 1996 or by the federal law on substance abuse treatment records (42 USC § 290dd-2 and 42 CFR Part 2), and may consult with designated department personnel in making this determination. Health records and substance abuse treatment records shall be disseminated only in strict compliance with the federal requirements.*]

6 VAC 35-160-220. Responding to requests.

A. Once it is determined that a requestor is entitled to juvenile record information, [~~*the person responding to the request*~~ *a designated individual*] *shall inform the requestor of the procedures for reviewing the juvenile record information, including the general restrictions on the use of the data, when the record will be available, and any costs that may be involved.*

B. When the request for juvenile record information is made by an individual's parent, guardian, legal custodian or other person standing in loco parentis, the request shall be referred to designated personnel of the department. (See 6 VAC 35-160-230.)

C. Before beginning the search for the requested juvenile record information, [~~*the person responding to the request*~~ *a designated individual*] *shall* [*inform the requester of any fees that will be charged pursuant to 6 VAC 35-160-180 and shall*] *obtain the consent of the requester to pay any charges associated with* [~~*the dissemination*~~ *providing the requested information*].

D. Except as provided in subsection B of this section, requested records shall be provided as soon as practicable, but in any case within seven days [*unless compliance with other applicable regulations requires a longer response time*]. [~~*If the participating agency does not have access to the entire juvenile record maintained on the VJJIS, the requestor shall be so notified and shall be told how to request access to the entire record.*~~]

[*E. If the request for information is made to a participating agency and the participating agency does not have access to the particular information requested, the requestor shall be so notified and shall be told how to request the information from the appropriate source.*]

[~~*E.*~~ *F.*] *Personnel of the participating agency shall provide reasonable assistance to the individual or his attorney to help understand the record.*

[~~*F.*~~ *G.*] *The person releasing the record shall also inform the individual of his right to challenge the record.*

[~~*G.*~~ *H.*] *If no record can be found, a statement shall be furnished to this effect.*

6 VAC 35-160-230. Certain information may be withheld from release.

[*A.*] *Section 16.1-300 B of the Code of Virginia provides that any portion of a juvenile's record may be withheld from inspection by a child's parent, guardian, legal custodian or other person standing in loco parentis when the staff of the department determines, in its discretion, that disclosure of such information would be detrimental to the child, provided that the juvenile and domestic relations district court of the jurisdiction in which the juvenile currently resides shall concur in such determination.*

[*B.*] *If the department withholds from inspection any portion of such record or report pursuant to the preceding provisions, the department shall (i) inform the individual making the request of the action taken to withhold any information and the reasons for such action; (ii) provide such individual with as much information about the child's progress as is deemed appropriate under the circumstances; and (iii) notify the individual in writing at the time of the request of his right to request judicial review of the department's decision. The circuit court of the jurisdiction where the child currently resides shall have jurisdiction over petitions filed by a parent, guardian, legal custodian or other person standing in loco parentis for review of the department's decision to withhold reports or records as provided herein.*

[*C. Health record information shall not be disseminated to persons or entities authorized to have access to juvenile record information by § 16.1-300 of the Code of Virginia when such persons or entities are not authorized to receive health information by the federal Health Insurance Portability and Accountability Act of 1996.*]

6 VAC 35-160-240. Notice to accompany disseminated juvenile record information.

The following printed message shall accompany all juvenile record information disseminated outside the Virginia Juvenile Justice Information System: "UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

6 VAC 35-160-250. Maintaining a dissemination log.

Each participating agency shall maintain a record, either automated or manual, of any dissemination [*made pursuant to 6 VAC 35-160-220*] *for a period of at least* [~~*three*~~ *six*] *years from the date of the dissemination.*

The dissemination log must list all requests for juvenile record information and shall include the following information on each dissemination:

1. The date of inquiry;

2. The name and address of the individual or agency making the request;

3. If an agency request, the name and position of the individual making the request;

4. Whether the request was referred to the [*designated*] *department* [*personnel*] *(see 6 VAC 35-160-220 B);* [~~*and*~~]

5. The name of the person responding to the request [*; and*

6. A brief indication of what information was requested].

6 VAC 35-160-260. Reporting unauthorized disseminations.

A. Participating agencies shall notify the department when they observe any violations of the above dissemination regulations. The department will investigate and respond to the violation as provided in law and this chapter.

B. A participating agency that knowingly fails to report a violation may be subject to immediate audit of its entire dissemination log and procedures to ensure that disseminations are being appropriately managed.

6 VAC 35-160-270. Interstate dissemination.

Interstate dissemination of juvenile record information shall be subject to this regulation. Dissemination to an agency outside of the Commonwealth shall be carried out in compliance with Virginia law and this chapter, as if the agency were within the jurisdiction of the Commonwealth.

PART IV.
CHALLENGE TO AND CORRECTION OF JUVENILE RECORD INFORMATION.

6 VAC 35-160-280. Challenge.

A. Individuals, or persons acting on an individual's behalf as provided for by law, may challenge their own juvenile record information by completing documentation provided by the department and forwarding it to the [*functional proponent who is responsible for the applicable component of the*] *the Virginia Juvenile Justice Information System* [~~*or the participating agency that originated the record information*~~ *as prescribed in department procedures*].

[~~*B. The individual may keep a duplicate copy of the form and the challenged record.*~~

~~*C.*~~ *B.*] *When a record that is maintained by the VJJIS is challenged, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD." The individual shall be given an opportunity to make a brief statement describing how the information contained in the record is alleged to be inaccurate. When a challenged record is disseminated while under challenge, the record shall carry both the flagged message and the individual's statement, if one has been provided.*

[~~*D.*~~ *C.*] *The VJJIS* [*functional*] *administrator or designee shall examine the individual's record to determine if a data entry error was made. If a data entry error is not obvious, the VJJIS* [*functional*] *administrator shall send a copy of the challenge form and any relevant information to all agencies that could have originated the information under challenge, and shall ask them to examine their files to determine the validity of the challenge.*

[~~*E.*~~ *D.*] *The participating agencies shall examine their source data, the contents of the challenge, and information supplied by the VJJIS for any discrepancies or errors, and shall advise the VJJIS* [*functional*] *administrator of the results of the examination.*

[~~*F.*~~ *E.*] *If a modification of a VJJIS record is required, the VJJIS* [*functional*] *administrator shall* [~~*make*~~ *ensure that*] *the required change* [*is made*] *and shall notify all participating agencies that were asked to examine their records in connection with the challenge.*

[~~*G. The VJJIS administrator shall also send notification of the correction to all recipients of the record within the last 24 months.*~~

~~*H.*~~ *F.*] *Participating agencies that* [*, pursuant to 6 VAC 35-160-220,*] *have disseminated an erroneous or incomplete record shall in turn notify all entities that have received the erroneous juvenile record information as recorded on the agency's dissemination log.*

[~~*I.*~~ *G.*] *The participating agency that received the challenge shall notify the individual or person acting on the individual's behalf of the results of the challenge and the right to request an administrative review and appeal those results.*

6 VAC 35-160-290. Administrative review of challenge results.

A. If not satisfied with the results of the challenge, the individual or those acting on his behalf may, within 30 days, request in writing an administrative review of the challenge by the Director of the Department of Juvenile Justice.

B. Within 30 days of receiving the written request for the administrative review, the Director of the Department of Juvenile Justice, or a designee who is not the VJJIS [~~*system*~~ *functional*] *administrator* [*who responded to the challenge*], *shall review the challenge, the findings of the review and the action taken by the VJJIS* [*functional*] *administrator. If the administrative review supports correction of the juvenile record information, the correction shall be made as prescribed above.* [~~*In any event, the director or designee shall give the individual or those acting on his behalf written notice of the decision and of the option to request an administrative appeal through the department within 30 days of the postmarked date of the notification of the decision.*~~]

6 VAC 35-160-300. Removal of a challenge designation.

When juvenile record information is determined to be correct, either as a result of a challenge or an administrative review of the challenge, the VJJIS [*functional*] *administrator shall notify the affected participating agencies to remove the challenge designation from their files.*

PART V.
EXPUNGEMENT.

6 VAC 35-160-310. Expungement requirements.

When a court orders the expungement of an individual's juvenile records, all records and identifying information associated with [~~*such person*~~ *the expungement order*] *shall be destroyed* [*in accordance with the court order*]*. Nonidentifying information may be kept in databases or other aggregated files for statistical purposes.*

6 VAC 35-160-320. Notification to participating agencies.

The VJJIS [*functional*] *administrator shall notify all participating agencies to purge their records of any reference to the person whose record has been ordered expunged. The notification shall include a copy of the applicable court order, along with notice of the penalties imposed by law for disclosure of such identifying information (see § 16.1-309 of the Code of Virginia).*

6 VAC 35-160-330. Procedures for expunging juvenile record information.

A. Paper versions of records that have been ordered expunged shall be destroyed by shredding, incinerating, pulping or otherwise totally eradicating the record.

B. Computerized versions of records that have been ordered expunged shall be deleted from all databases and electronic files in such a way that the records cannot be accessed or recreated through ordinary use of any equipment or software that is part of the Virginia Juvenile Justice Information System.

C. If identifying information concerning the subject individual is included in records that are not ordered expunged, the identifying information relating to the individual whose records have been ordered expunged shall be obliterated on the original or a new document shall be created eliminating the identifying references to the individual whose record has been ordered expunged.

6 VAC 35-160-340. Confirmation notice required to VJJIS [***functional***] ***administrator.***

Within 30 days of receiving expungement instructions from the VJJIS [*functional*] *administrator, the participating agency shall expunge the juvenile record information in accordance with 6 VAC 35-160-330 and shall notify the VJJIS* [*functional*] *administrator when the records have been expunged. The notification to the VJJIS* [*functional*] *administrator shall indicate that juvenile records were expunged in accordance with court order and shall not identify the juvenile whose records where expunged.*

6 VAC 35-160-350. Expungement order received directly by participating agency.

When a participating agency receives an expungement order directly from a court, the participating agency shall promptly comply with the expungement order in accordance with 6 VAC 35-160-330 and shall notify the VJJIS [*functional*] *administrator of the court-ordered expungement. The VJJIS* [*functional*] *administrator shall, upon receipt of such notification, obtain a copy of the order from the appropriate court.*

[*PART VI.*
DISPOSITION OF RECORDS IN THE JUVENILE JUSTICE INFORMATION SYSTEM.

6 VAC 35-160-355. Record retention.

All records in the Virginia Juvenile Justice Information System shall be retained and disposed of in accordance with the applicable records retention schedules approved by the Library of Virginia. When a participating agency or a unit of a participating agency disposes of records in the physical possession of the participating agency or the unit of a participating agency, the person who disposes of such records shall notify the VJJIS functional administrator to remove that same information from VJJIS.]

PART [~~*VI.*~~ *VII.*]
ENFORCEMENT.

6 VAC 35-160-360. Oversight by the Department of Juvenile Justice.

A. The Department of Juvenile Justice shall have the responsibility for monitoring compliance with this chapter and for taking enforcement action as provided in this chapter or by law.

B. The department shall have the right to audit, monitor, and inspect any facilities, equipment, software, systems or procedures established pursuant to this chapter.

6 VAC 35-160-370. Audits authorized [~~***and required***~~] ***.***

A. The department [~~*shall annually conduct an*~~ *may*] *audit* [~~*of a random representative sample of*~~] *participating agencies to ensure and verify adherence to this chapter and to ensure that juvenile record information records are accurate and complete.*

B. The audits may include, but will not be limited to, examination of (i) record accuracy, (ii) completeness of information, (iii) timely submission of information, (iv) controls governing dissemination of information and adequate dissemination logs, (v) security provisions, (vi) evidence of notification of the individual's right of access and challenge, (vii) appropriate handling of record challenges, (viii) timely correction of erroneous records, (ix) evidence of timely notifications of required changes, and (x) appropriate notifications to the department as required.

C. [~~*In addition to random audits,*~~] *The department may conduct audits at any time for cause, including but not limited to occasions when erroneous record information has been identified through a challenge to any person's juvenile record information.*

6 VAC 35-160-380. Administrative sanctions.

[*A.*] *In addition to any criminal or civil sanctions to which a violator of this chapter may be subject pursuant to §* [*16.1-225 or §*] *16.1-309 of the Code of Virginia, the department may impose administrative sanctions including but not limited to the following:*

1. Temporary or permanent suspension of an individual's authorization to access the Virginia Juvenile Justice Information System;

2. Temporary or permanent suspension of an entity's designation as a "participating agency"; or

3. Temporary or permanent suspension of a participating agency's authorization to access any subsystem of the Virginia Juvenile Justice Information System.

[*B. The department shall report to the board at its next regular meeting any administrative actions taken against a participating agency for failure to comply with this regulation.*]

[***6 VAC 35-160-390. Annual report to the board.***

The department shall annually report to the board on the status of the Juvenile Justice Information System, including a summary of (i) any known security breaches and corrective actions taken; (ii) any audits conducted, whether random or for cause; and (iii) any challenges received alleging erroneous information and the outcome of any investigation in response to such a challenge.]

VA.R. Doc. No. R02-42; Filed June 25, 2004, 4:11 p.m.

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TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Title of Regulation: **8 VAC 20-340. Regulations Governing Driver Education (amending 8 VAC 20-340-10; adding 8 VAC 20-340-20 and 8 VAC 20-340-30).**

Statutory Authority: §§ 22.1-16, 22.1-205 and 46.2-334 of the Code of Virginia.

Effective Date: August 25, 2004.

Agency Contact: Vanessa Wigand, Specialist in Driver Education, Department of Education, P.O. Box 2120, Richmond, VA 23113, telephone (804) 225-3300, FAX (804) 225-2524.

Summary:

The amendments require that local school boards determine whether to offer a driver education program and require a minimum of 50 miles driven during the in-car phase of driver education instruction. New provisions define (i) length of class periods for driver education, (ii) the contents of a state-approved driver education program, (iii) application of regulations to private schools, (iv) collection of fees, (iv) specialized requirements for driver education teachers, (v) requirements for completion of program prior to the school issuing the 90-day provisional license to a student, (vi) the requirement that successful completion of a standardized end-of-course road skills assessment must be achieved prior to the school issuing a 90-day provisional license, (vii) the minimum requirement for driver education vehicles, and (viii) teacher requirements.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:6 VA.R. 536-538 December 1, 2003, 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. R01-259; Filed July 7, 2004, 9:11 a.m.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

REGISTRAR'S NOTICE: The State Council of Higher Education for Virginia is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: **8 VAC 40-130. Virginia Student Financial Assistance Program Regulations (amending 8 VAC 40-130-10 and 8 VAC 40-130-25).**

Statutory Authority: § 23-38.53:4 of the Code of Virginia.

Effective Date: July 26, 2004.

Agency Contact: Lee Andes, Manager of Financial Aid, State Council of Higher Education for Virginia, James Monroe Building, 101 N. Fourteenth Street, Richmond, VA 23219, telephone (804) 225-2614, FAX (804) 225-2604, or e-mail andes@schev.edu.

Summary:

The definition of satisfactory academic progress is amended to reflect a change in the 2003 Appropriation Act. An amendment is also made to clarify the usage of funds as permitted by the regulation.

8 VAC 40-130-10. Definitions.

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

"Academic period" means the academic year as defined by the institution for federal Title IV compliance purposes.

"Approved course of study" means a curriculum of courses in a certificate, diploma, or degree program at the undergraduate, graduate or first professional level.

"Awards" mean grants from state funds appropriated for the Virginia Student Financial Assistance Program; among these grants are the Commonwealth awards and Virginia Guaranteed Assistance Program (VGAP) awards.

"Book allowance" means the allowance for education-related book and supply expenses as determined by an institution for purposes of calculating a student's financial need and awarding federal student aid funds.

"Cost of attendance" means the sum of tuition, required fees, room, board, books and supplies, and other education related expenses, as determined by an institution for purposes of calculating a student's financial need and awarding federal student aid funds.

"Council" means the State Council of Higher Education for Virginia.

"Domiciliary resident of Virginia" means a student who is determined by the council or by a participating institution to meet the eligibility requirements specified by § 23-7.4 of the Code of Virginia.

"Expected family contribution" or "EFC" means the amount a student and the student's family is expected to contribute toward the cost of college attendance. A student's EFC will be determined by the federal aid need analysis method used for Title IV programs. The participating institution may exercise professional judgment to adjust the student's EFC, as permitted under federal law, based on factors which affect the family's ability to pay.

"Financial need" means any positive difference between a student's cost of attendance and the student's expected family contribution (see definition of "remaining need").

"Full-time study" means enrollment for at least 12 credit hours per semester or its equivalent at the undergraduate level and enrollment for at least nine credit hours per semester or its equivalent at the graduate or first professional level. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses which normally are not counted toward a degree at the participating institution.

"Gift assistance" means financial aid in the form of scholarships, grants, and other sources that do not require work or repayment.

"Graduate student" means a student enrolled in an approved master's, certificate of graduate study, specialist, doctoral, or first professional degree program.

"Half-time study" means enrollment for at least six credit hours per semester or quarter, or its equivalent at the undergraduate level, and at least five credit hours per semester or quarter, or its institutional equivalent at the graduate level. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses which normally are not counted toward a certificate, diploma, or degree at the participating institution.

"Institution" means any public institution of higher education in Virginia participating in the Virginia Student Financial Assistance Program.

"Program" means the Virginia Student Financial Assistance Program.

"Proportionate award schedule" means the table or formula used by institutions to award program funds such that needier students receive larger awards than do less needy students with VGAP recipients receiving larger awards than Commonwealth recipients with equivalent need.

"Remaining need" means any positive difference between a student's financial need and the sum of all need-based gift assistance known by the institution at the time of packaging awards under the Virginia Student Financial Assistance Program (see definition of "financial need").

"Satisfactory academic progress" means:

1. Acceptable progress towards completion of an approved program, as defined by the institution for the purposes of eligibility under Section 668 of the Federal Compilation of Student Financial Aid Regulations; and

2. For a student receiving a Virginia Guaranteed Assistance Program award, acceptable progress towards completion of an approved program in which a student earns not less than the minimum number of credit hours required for full-time standing during an academic period and maintains a cumulative minimum grade point average of 2.0. ~~Effective July 1, 2003, satisfactory academic progress shall mean: (i) for a student receiving a Commonwealth Award, acceptable progress as defined by the institution towards completion of an approved program for the purposes of eligibility under Section 668 of the Federal Compilation of Student Financial Aid Regulations while maintaining a cumulative minimum grade point average of 2.0 at the completion of 60 or more credit hours for undergraduate students; and (ii) for a student receiving a Virginia Guaranteed Assistance Program award, acceptable progress towards completion of an approved program in which a student earns not less than the minimum number of credit hours required for full-time standing during an academic period and maintains a cumulative minimum grade point average of 2.0; and (iii) students may receive VSFAP awards for a maximum of 15 credit hours beyond the minimum hours required to complete the student's course of study.~~

"Undergraduate" means a matriculated student in an approved program leading to a certificate, diploma, associate's degree, or bachelor's degree.

"VGAP" means the Virginia Guaranteed Assistance Program, as authorized by the laws of the Commonwealth including §§ 23-38.53:4, 23-38.53:5 and 23-38.53:6 of the Code of Virginia.

8 VAC 40-130-25. Type of awards.

~~Any institution~~ *In addition to the Commonwealth Award and the Virginia Guaranteed Assistance Program, institutions* may, with the approval of the council, use funds from its appropriation to provide the institutional contribution to any undergraduate student financial aid grant program established by the federal government or private sources which requires the matching of the contribution by institutional funds, except for programs requiring work. Awards may include one or both of the following:

1. Grants to undergraduate students enrolled full-time in an approved degree, certificate, or diploma program; and

2. Institutional contributions to federal or private undergraduate student aid grant pro-grams requiring matching funds by the institution, except for programs requiring work.

VA.R. Doc. No. R04-223; Filed July 6, 2004, 11:36 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9 VAC 5-20. General Provisions (Rev. B04) (amending 9 VAC 5-20-204 and 9 VAC 5-20-205).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110 and 182 of the Clean Air Act; 40 CFR Part 51.

Effective Date: August 25, 2004.

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.virginia.gov.

Summary:

On April 30, 2004, EPA amended 40 CFR Part 81 by adding a list of areas that are nonattainment for the 8-hour ozone standard. The new ozone nonattainment areas became effective on June 15, 2004. 40 CFR 51.903(a) contains the Phase I provisions for the implementation of the 8-hour ozone NAAQS, including requirements for area classifications, along with associated planning requirements. In addition to providing the basis for broad-based nonregulatory plans for attainment and maintenance of the standards, the nonattainment area designations and classifications are also part of the legally enforceable means by which the state implements the new source review program for nonattainment areas. On April 30, 2004, EPA promulgated a final rule to implement Phase I of the 8-hour ozone standard, including the transition from the 1-hour to the 8-hour standard. 40 CFR 50.9 has been revised to indicate that the 1-hour standard is no longer effective one year after the effective date of the rule, which means that the 8-hour standard replaces the 1-hour standard on June 15, 2005.

9 VAC 5-20-204. Nonattainment areas.

A. Nonattainment areas are geographically defined below by locality for the criteria pollutants indicated. Following the name of each nonattainment area, in parentheses, is the classification assigned pursuant to § 181(a) ~~for ozone and § 186 (a) for carbon monoxide~~ of the federal Clean Air Act (42 USC § 7511(a) and ~~42 USC § 7512(a)~~ *40 CFR 51.903(a)*).

1. Ozone *(1-hour)*.

Northern Virginia Ozone Nonattainment Area (severe).

Arlington County	Alexandria City
Fairfax County	Fairfax City
Loudoun County	Falls Church City
Prince William County	Manassas City
Stafford County	Manassas Park City

2. *Ozone (8-hour).*

Fredericksburg Ozone Nonattainment Area (moderate).

Spotsylvania County	*Fredericksburg City*
Stafford County	

Northern Virginia Ozone Nonattainment Area (moderate).

Arlington County	*Alexandria City*
Fairfax County	*Fairfax City*
Loudoun County	*Falls Church City*
Prince William County	*Manassas City*
	Manassas Park City

Hampton Roads Ozone Nonattainment Area (marginal).

Gloucester County	*Poquoson City*
Isle of Wight County	*Portsmouth City*
James City County	*Norfolk City*
York County	*Suffolk City*
Chesapeake City	*Virginia Beach City*
Hampton City	*Williamsburg City*
Newport News City	

Richmond Ozone Nonattainment Area (moderate).

Charles City County	*Colonial Heights City*
Chesterfield County	*Hopewell City*
Hanover County	*Petersburg City*
Henrico County	*Richmond City*
Prince George County	

Shenandoah National Park Ozone Nonattainment Area (basic).

Madison County (portions located in Shenandoah National Park)
Page County (portions located in Shenandoah National Park)

3. All other pollutants.

None.

B. Subdivision A 1 of this section shall not be effective after June 15, 2005.

9 VAC 5-20-205. Prevention of significant deterioration areas.

A. Prevention of significant deterioration areas are geographically defined below by locality for the following criteria pollutants:

1. Particulate matter.

~~AQCR 1 through 7 – All areas~~

All areas not designated nonattainment for particulate matter in 9 VAC 5-20-204.

2. Sulfur dioxide.

~~AQCR 1 through 7 – All areas~~

All areas not designated nonattainment for sulfur dioxide in 9 VAC 5-20-204.

3. Carbon monoxide.

~~AQCR 1 through 7 All areas~~

All areas not designated nonattainment for carbon monoxide in 9 VAC 5-20-204.

4. Ozone (volatile organic compounds):

~~a. AQCR 1 All areas~~

~~b. AQCR 2 All areas~~

~~c. AQCR 3 All areas~~

~~d. AQCR 4 All areas except Stafford County~~

~~e. AQCR 5 All areas~~

~~f. AQCR 6 All areas~~

~~g. AQCR 7 No area~~

All areas not designated nonattainment for ozone in 9 VAC 5-20-204.

5. Nitrogen oxides.

~~AQCR 1 through 7 All areas~~

All areas not designated nonattainment for nitrogen oxides in 9 VAC 5-20-204.

6. Lead.

~~AQCR 1 through 7 All areas~~

All areas not designated nonattainment for lead in 9 VAC 5-20-204.

B. All areas of the state are geographically defined as prevention of significant deterioration areas for the following pollutants:

~~Mercury~~
~~Beryllium~~
~~Asbestos~~
Fluorides
Sulfuric acid mist
~~Vinyl chloride~~

Total reduced sulfur:
Hydrogen sulfide
Methyl mercaptan
Dimethyl sulfide
Dimethyl disulfide

Reduced sulfur compounds:
Hydrogen sulfide
Carbon disulfide
Carbonyl sulfide

Municipal waste combustor organics (measured as total tetra-chlorinated through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)

Municipal waste combustor metals (measured as particulate matter)

Municipal waste combustor acid gases (measured as the sum of SO_2 and HC1)

C. The classification of prevention of significant deterioration areas is as follows:

1. Class I.

a. Federal--James River Face Wilderness Area (located in AQCR 2) and Shenandoah National Park (located in AQCR 2 and AQCR 4).

b. State--None.

2. Class II--All areas of the state not designated in Class I.

3. Class III--None.

D. The area classification prescribed in subsection C of this section may be redesignated in accordance with 40 CFR 52.21(e), (g), (u) and (t).

VA.R. Doc. No. R04-211; Filed July 1, 2004, 8:10 a.m.

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REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exclusion from the Administrative Process Act in accordance with the third enactment of Chapters 249 and 324 of the 2004 Acts of Assembly, which exempt the initial implementation of regulations implementing the acts and provide that such initial regulations become effective upon filing with the Registrar of Regulations. The State Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9 VAC 5-80. Permits for Stationary Sources (Rev. C04) (adding 9 VAC 5-80-2250 through 9 VAC 5-80-2300).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 112, 165, 173, and 182 and Title V of the Clean Air Act; 40 CFR Parts 51, 61, 63, 70 and 72.

Effective Date: July 1, 2004.

Agency Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510, or e-mail: gegraham@deq.virginia.gov.

Summary:

Pursuant to Chapters 249 and 324 of the 2004 Acts of Assembly, the State Air Pollution Control Board is adding Article 10 (9 VAC 5-80-2250 et seq.) to Part II of 9 VAC 5 Chapter 80. New stationary sources that are classified as "major" in one of the new source review programs are subject to permit application fees. Since that classification is unique to each program, the definitions of "major stationary source" and "major source" from each applicable program are used to determine applicability.

The amount of the fee for each permit application is based upon the new source review program that is applicable. Applications subject only to Prevention of Significant Deterioration (PSD) new source review requirements are also subject to a permit application fee of $30,000. Applications subject only to nonattainment area new source

review requirements are also subject to a permit application fee of $20,000. Applications subject only to hazardous air pollutant (HAP) new source review requirements are also subject to a permit application fee of $15,000. Applications for a "state major" source subject only to minor source new source review requirements are also subject to a permit application fee of $5,300. Applications for a general permit for a new major stationary source are subject to a permit application fee of $300. The total permit application fee will depend on how many of these new source review programs are applicable to the new source, but the maximum permit application fee for any one application is $30,000.

The permit application fee is nonrefundable and due when the application is submitted to the department. If the permit application fee payment is not complete, then the permit application is not complete. Departmental review of the application may not proceed beyond the initial applicability determination until a permit application fee for the proper amount is received.

The owner of the source may apply the paid amount of the permit application fee as credit towards the annual permit program fees owed for the first two years of the source's operation.

Article 10.
Permit Application Fees for Stationary Sources.

9 VAC 5-80-2250. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply as follows:

1. For permit applications subject to review under the provisions of Article 6 (9 VAC 5-80-1100 et seq.) of this part, the provisions of this article shall apply to any of the following:

a. Permit applications for the construction of a major stationary source at an undeveloped site.

b. Permit applications for the construction of a major source, as defined in 40 CFR 63.2.

c. Applications for coverage of a major stationary source (or portion thereof) or a major source (or portion thereof) under a general permit issued for a stationary source category, if the source is to be located at an undeveloped site.

d. Permit applications for the reactivation of any major source or major stationary source that was shut down in accordance with 9 VAC 5-20-220.

2. For permit applications subject to review under the provisions of Article 7 (9 VAC 5-80-1400 et seq.) of this part, the provisions of this article apply to permit applications for the construction of a major source at an undeveloped site.

3. For permit applications subject to review under the provisions of Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part, the provisions of this article apply to any of the following:

a. Permit applications for the construction of a major stationary source at an undeveloped site.

b. Permit applications for the reactivation of any major stationary source that was shut down in accordance with 9 VAC 5-80-1930 or 9 VAC 5-20-220.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. Applications for permits for reconstruction of all or part of any stationary source, providing that the application is not otherwise subject to permit application fees pursuant to the provisions of subsection A of this section.

2. Applications that are deemed complete prior to July 1, 2004.

D. The department shall make any final determinations required by this article, including, but not limited to:

1. The applicability of this article;

2. Any applicability determinations required pursuant to Articles 6 (9 VAC 5-80-1100 et seq.), 7 (9 VAC 5-80-1400 et seq.), 8 (9 VAC 5-80-1700 et seq.) and 9 (9 VAC 5-80-2000 et seq.) of this part that affect the applicability of this article; and

3. The amount of permit application fees owed.

9 VAC 5-80-2260. Definitions.

A. For the purpose of this article and subsequent amendments or any orders issued by the board, the words or phrases shall have the meaning given them in subsection D of this section.

B. All words and phrases not defined in subsection D of this section shall have the meaning given them in Article 6 (9 VAC 5-80-1110 C), Article 7 (9 VAC 5-80-1410 C), Article 8 (9 VAC 5-80-1710 C) or Article 9 (9 VAC 5-80-2010 C) of this part, as may apply, unless otherwise required by context.

C. All words and phrases not defined in subsection D of this section and not defined in applicable subsections of Article 6 (9 VAC 5-80-1110 C), Article 7 (9 VAC 5-80-1410 C), Article 8 (9 VAC 5-80-1710 C) or Article 9 (9 VAC 5-80-2010 C) of this part shall have the meaning given them in 9 VAC 5 Chapter 10 unless otherwise required by context.

D. Terms defined.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Undeveloped site" means any site or facility at which no emissions units are located.

9 VAC 5-80-2270. General.

Any person submitting a permit application subject to this article shall pay a permit application fee in the amount determined in accordance with 9 VAC 5-80-2280.

9 VAC 5-80-2280. Permit application fee calculation.

A. The amount of the permit application fee shall be the sum of the following, as applicable:

1. Permit applications subject to review pursuant to the provisions of Article 9 (9 VAC 5-80-2000 et seq.) of this part shall be subject to a permit application fee of $20,000.

2. Permit applications subject to review pursuant to the provisions of Article 8 (9 VAC 5-80-1700 et seq.) of this part shall be subject to a permit application fee of $30,000.

3. Permit applications subject to review pursuant to the provisions of Article 7 (9 VAC 5-80-1400 et seq.) of this part shall be subject to a permit application fee of $15,000.

4. Permit applications subject to the provisions of Article 6 (9 VAC 5-80-1100 et seq.) of this part (other than applications for coverage under general permits issued under 9 VAC 5-80-1250) shall be subject to a permit application fee of $5,300.

5. Applications for coverage under a general permit pursuant to the provisions of Article 6 (9 VAC 5-80-1250) of this part shall be subject to a permit application fee of $300.

B. The total amount of the fee for a single permit application shall not exceed $30,000.

9 VAC 5-80-2290. Permit application fee payment.

A. The permit application fee required by this article is due on the date that the permit application is received by the department. The permit application fee is nonrefundable. Incomplete payment shall be deemed as nonpayment.

B. The permit application shall not be considered complete until a permit application fee for the proper amount is received. Review of the application will not proceed past an initial applicability determination until a permit application fee for the proper amount is received.

C. The fee shall be paid by check, draft or postal money order made payable to the "Treasurer of Virginia" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, Virginia 23240. When the department is able to accept electronic payments, payments may be submitted electronically.

D. The permit application should be mailed to the appropriate regional office.

9 VAC 5-80-2300. Annual permit program fee credit.

A. The amount of the permit application fee paid by the owner shall be credited towards the amount of annual permit program fees owed pursuant to Article 2 (9 VAC 5-80-310 et seq.) of this part as follows:

1. The amount of the credit applied shall not exceed the amount of annual permit program fees owed during the first two years of the source's operation.

2. The credit shall be applied as follows:

a. A portion of the permit application fee shall be credited toward the annual permit program fee owed for the first year of operation, up to the full amount of the permit application fee or up to the full amount of the annual permit program fee owed, whichever is less.

b. Any remainder of credit for the permit application fee shall be applied to the annual permit program fee owed for the second year of operation, up to the amount of those annual permit program fees. Any amount of the permit application fee remaining after applying credit for the first two years of operation shall not be carried forward as credit for annual permit program fees for a third year of operation or any later year.

c. In the event that the proper credit for the permit application fee is not reflected in the annual permit program fee billed to the owner, the owner shall request that the bill for the annual permit program fee amount be revised in accordance with 9 VAC 5-80-350 B 3. Failure to request such a revision shall not be grounds for applying remaining credit to annual permit program fees owed for the third year of operation or any later year.

VA.R. Doc. No. R04-214; Filed July 1, 2004, 8:08 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

REGISTRAR'S NOTICE: The Virginia Waste Management Board is claiming an exclusion from the Administrative Process Act in accordance with the third enactment of Chapters 249 and 324 of the 2004 Acts of Assembly, which exempt the initial implementation of regulations implementing the acts and provide that such initial regulations become effective upon filing with the Registrar of Regulations. The Virginia Waste Management Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9 VAC 20-60. Virginia Hazardous Waste Management Regulations (amending 9 VAC 20-60-18, 9 VAC 20-60-262, 9 VAC 20-60-270, 9 VAC 20-60-315, 9 VAC 20-60-1260, 9 VAC 20-60-1270, 9 VAC 20-60-1280 and 9 VAC 20-60-1285; adding 9 VAC 20-60-1283, 9 VAC 20-60-1284 and 9 VAC 20-60-1286).**

Statutory Authority: § 10.1-1402 and Article 4 (§ 10.1-1426 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia; 42 USC § 6921 et seq.; and 40 CFR Parts 260-272.

Effective Date: July 1, 2004.

Agency Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327, or e-mail rgwickline@deq.virginia.gov.

Summary:

Pursuant to Chapters 249 and 324 of the 2004 Acts of Assembly, the amendments alter the schedule of fees for a permit to operate a treatment, storage or disposal facility and add new annual fees to be paid by facilities and large quantity generators of hazardous waste. The new rules specify procedures for the payment of the fees and describe discounts for participants in the Virginia Environmental Excellence Program.

9 VAC 20-60-18. Applicability of incorporated references based on the dates on which they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the Federal Register prior to July 1, 2003, with the effective date as published in the Federal Register notice or ~~March 26~~ *November 5*, 2003, whichever is later.

9 VAC 20-60-262. Adoption of 40 CFR Part 262 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 262 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 262 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 262 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 262.42(a)(2), the words "for the Region in which the generator is located" is deleted from the incorporated text and is not a part of these regulations.

2. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. For accumulation areas established before March 1, 1988, a generator who is not otherwise exempted by 40 CFR 261.5 shall notify the department of each location where he accumulates hazardous waste in accordance with 40 CFR 262.34 by March 1, 1988. For accumulation areas established after March 1, 1988, he shall notify the department and document in the operating record that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34 prior to or immediately upon the establishment of each accumulation area. In the case of a new generator who creates such accumulation areas after March 1, 1988, he shall notify the department at the time the generator files the Notification of Hazardous Waste Activity that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34. This notification shall specify the exact location of the accumulation area at the site.

5. In addition to the requirements in 40 CFR Part 262, management of hazardous wastes is required to comply with the Regulations Governing the Transportation of Hazardous Materials (9 VAC 20-110), including packaging and labeling for transport.

6. A generator shall not offer his hazardous waste to a transporter or to a facility that has not received a permit and an EPA identification number.

7. In 40 CFR Part 262, Subpart H, the terms "EPA" and "Environmental Protection Agency" shall mean the United States Environmental Protection Agency.

8. In addition to the requirements of this section, large quantity generators are required to pay an annual fee. The fee schedule and fee regulations are contained in Part XII (9 VAC 20-60-1260 through 9 VAC 20-60-1285) of this chapter.

9 VAC 20-60-270. Adoption of 40 CFR Part 270 by reference.

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 270 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 270 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 270 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR Part 270 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

2. In 40 CFR 270.5, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 270.5, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia, and no permits shall be issued for underground injection facilities.

5. Validity of the federal HWM permits. This section replaces 40 CFR 270.51, which is not included in the incorporation of 40 CFR Part 270 by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

a. Hazardous waste management facilities located in Virginia which possess an effective final RCRA permit issued by the United States Environmental Protection Agency will be considered to possess a valid Virginia hazardous waste management permit for the duration of the unexpired term of the federal permit, provided that:

(1) The facility remains in compliance with all of the conditions specified in the federal permit;

(2) The operator submits a complete copy of the federal permit to the department no later than the effective date of the federal permit; and

(3) The owner and operator of the facility submit a request to continue the federal permit addressed to the department.

b. Federal permits issued to hazardous waste management facilities located in Virginia by the United States Environmental Protection Agency pursuant to HSWA requirements which constitute the federal portion of the combined Virginia--United States Environmental Protection Agency RCRA permits are considered, for the purposes of this chapter, as addenda to the Virginia permits and will remain in effect during the unexpired term of the Virginia permit.

6. All permit applications and reapplications required by these regulations shall be accompanied by an appropriate permit application fee as specified in Part XII (9 VAC 20-60-1260 et seq.) of this chapter. Applications or reapplications not accompanied by such fees will not be considered complete. The director shall not issue a permit before receiving a complete application except permits by rule, emergency permits, or continued federal permits. In addition, an application for a permit is not complete until the department receives an application form and any supplemental information, which are completed to the department's satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. In cases where Part A of the application was first submitted to the United States Environmental Protection Agency Administrator, a copy of such submission shall also be sent to the department.

7. Interim status.

a. The director may deny interim status to any owner or operator if, at the time the Part A application is submitted, the facility is in violation of any regulation of the board so as to pose a substantial present or potential hazard to human health or environment.

b. Unless subject of an exception specified in 40 CFR 270.73, interim status terminates when final disposition of a permit application is made or when interim status is terminated by the director. Interim status may be terminated for any of the following reasons:

(1) Failure to submit a completed Part B application on time;

(2) Failure to furnish any information required by this chapter;

(3) Falsification, misrepresentation or failure to fully disclose any information submitted or required to be kept under this chapter;

(4) Violation of this chapter; and

(5) A determination that the facility poses a significant threat to public health or the environment.

c. The director may terminate the interim status upon receiving a voluntary request for such an action from the owner and the operator of the facility.

(1) To be considered for voluntary termination such request shall:

(a) Be received by the department prior to the issuance of the request to submit Part B of the permit application in accordance with this section; and

(b) Be accompanied by a waiver of procedures contained in this section.

(2) Termination under this part will not be granted to the owner and operator of the facility:

(a) Which is not in compliance with the standards contained in 9 VAC 20-60-265; or

(b) When termination proceedings have been instituted under this section.

d. The effective date of the termination of the interim status will be determined by the director to allow for proper closure of the facility in accordance with Subpart G of 40 CFR Part 264 and Subpart G of 40 CFR Part 265, as applicable.

8. Each permit shall include permit conditions necessary to achieve compliance with the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia) and regulations, including each of the applicable requirements specified in this part (Part III) of these regulations. In satisfying this provision, the director may incorporate applicable requirements of Part III directly into the permit or establish other permit conditions that are based on these requirements.

9. In addition to the other general information requirements to be part of the contents of any Part B in 40 CFR 270.14(b), the following information is required for all hazardous waste management facilities, except as provided otherwise:

a. A copy of the general inspection schedule required by 40 CFR 264.15(b). Include, where applicable, as part of

the inspection schedule, specific requirements in 40 CFR 264.174, 40 CFR 264.193(i), 40 CFR 264.195, 40 CFR 264.226, 40 CFR 264.254, 40 CFR 264.273, 40 CFR 264.303, 40 CFR 264.573, 40 CFR 264.574, 40 CFR 264.602, 40 CFR 264.1033, 40 CFR 264.1052, 40 CFR 264.1053, and 40 CFR 264.1058.

b. Traffic pattern, estimated volume (number, types of vehicles) and control; describe access road surfacing and load bearing capacity; show traffic control signals.

10. A period of 30 days shall elapse between the date of public notice and the date of a public hearing under 40 CFR 270.42(b)(4) and 40 CFR 270.42(c)(4).

11. Notices given under 40 CFR 270.30(l)(1) shall be written.

12. The following additional information is required from owners or operators of facilities that store or treat hazardous waste in waste piles if an exemption is sought to Subpart F of 40 CFR Part 264 and 40 CFR 264.251 as provided in 40 CFR 264.250(c) and 40 CFR 264.90(b)(2):

a. An explanation of how the standards of 40 CFR 264.250(c) will be complied with; and

b. Detailed plans and an engineering report describing how the requirements of 40 CFR 264.90(b)(2) will be met.

13. The agencies of the Commonwealth publish notices of regulatory activity, permit hearings and other official notices in the Virginia Register. Any references in incorporated federal text that indicate a publication is to be made in the Federal Register shall be construed to mean the Virginia Register when such publication is to be made by an agency of the Commonwealth.

14. Appeal rights and procedures related to a remedial action plan (RAP) included in 40 CFR 270.155, especially appeals to the EPA Environmental Appeals Board, are not incorporated into these regulations. Appeals of actions related to the content or process of developing a RAP will be governed by the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

15. The conditions of an expired permit continue in force until the effective date of the new permit if the permittee has submitted a timely reapplication that is a complete application for a new permit; and the director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. Permits that are continued remain fully effective and enforceable.

When the permittee is not in compliance with the conditions of the expiring or expired permit, the director may choose to do any or all of the following:

a. Initiate enforcement action based on the permit ~~which~~ *that* has been continued;

b. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

c. Issue a new permit with appropriate conditions; or

d. Take other actions authorized by this chapter.

16. Part XII (9 VAC 20-60-1260 through 9 VAC 20-60-1285) of this chapter applies to all permitted facilities, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators. In addition to permit application fees, a permitted treatment, storage, and disposal facility is assessed an annual fee. A facility that operates under interim status, a facility that is subject to an order or agreement, and a large quantity generator are also assessed annual fees.

9 VAC 20-60-315. Notification.

A. Any person that notified the EPA of hazardous waste management activities as referenced in 9 VAC 20-60-305 B shall provide a copy of that notification to the department.

B. Any person involved in hazardous waste management activities that did not comply with the notification requirements of the EPA as referenced in 9 VAC 20-60-305 B but is subject to those requirements shall notify the department in writing of their hazardous waste management activities by the effective date of this chapter. Notification shall be accomplished by the use of EPA Form 8700-12.

C. Any person who initiated a hazardous waste management activity subsequent to the preliminary notification period of 42 USC § 6930 but prior to the effective date of this chapter shall notify the department of the initiation of such activities by the effective date of this chapter. Notification shall be accomplished by the use of EPA Form 8700-12.

D. ~~(Reserved.)~~ *Anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record. Any large quantity generator who ceases to be a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.*

E. Transporters shall provide only one notification form for all transportation activities.

F. One notification form is required for each generator site.

G. A notification form is required for each storage, treatment, disposal, or other facility. However, if one geographic site includes more than one storage, treatment or disposal activity, only one notification form for the entire facility site is required.

H. New generators, transporters, treaters, storers, and disposers (those initiating activities subsequent to the assumption of the hazardous waste management program by the Commonwealth) shall comply with the requirements of 9 VAC 20-60-262, 9 VAC 20-60-263, and 9 VAC 20-60-264, as applicable, to obtain an identification number from the administrator or the department.

PART XII.
PERMIT APPLICATION *AND ANNUAL* FEES.

9 VAC 20-60-1260. Purpose, scope, and applicability.

A. The purpose of this part is to establish a schedule of fees collected by the department in the support of its ~~permit issuance~~ programs required by Parts III (9 VAC 20-60-270 et seq.)*, IV (9 VAC 20-60-305 et seq.)* and VII (9 VAC 20-60-420 et seq.) of this chapter.

B. Part XII (9 VAC 20-60-1260 et seq.) of this chapter applies to all persons required to submit a permit application ("applicants") under 9 VAC 20-60-270 and 9 VAC 20-60-420 E unless specifically exempt under ~~9 VAC 20-60-1260~~ *subsection* G *of this section, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators*. The fees shall be assessed in accordance with 9 VAC 20-60-1270 *through 9 VAC 20-60-1286*.

C. When the director finds it necessary to modify any permit under 9 VAC 20-60-270, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9 VAC 20-60-1270 D even if the director shall have initiated the modification action.

D. When the director finds it necessary to revoke and reissue any permit in accordance with 9 VAC 20-60-270, the holder of that permit shall be considered an applicant for a new permit and shall be assessed a fee in accordance with 9 VAC 20-60-1270 C.

E. If the director finds it necessary either to revoke and reissue a permit or to perform a minor modification of a permit in accordance with 9 VAC 20-60-270, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9 VAC 20-60-1270 E. *The holder of a permit shall not be assessed a permit modification fee for minor modifications.*

F. When the director finds it necessary to issue an emergency treatment, storage, or disposal permit in accordance with 9 VAC 20-60-270, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9 VAC 20-60-1270 F. No permit application fee will be assessed to the holders of the emergency transportation permits issued in accordance with 9 VAC 20-60-450 H.

G. Exemptions.

1. The owners and operators of HWM treatment, storage, and disposal facilities who have submitted Part A of their application and who have qualified for interim status in accordance with 9 VAC 20-60-270 are exempt from the requirements of ~~Part XII of this chapter~~ *9 VAC 20-60-1270* until a Part B application for the entire facility or a portion of the facility has been requested or voluntarily submitted. The owner and operator of a HWM facility submitting a Part B application will be considered an applicant for a new permit.

2. The owners and operators of HWM facilities that are deemed to possess a permit by rule in accordance with 9 VAC 20-60-270 are exempt from the requirements of ~~Part XII of this chapter~~ *9 VAC 20-60-1270*.

3. Hazardous waste generators that accumulate wastes on-site in accordance with 40 CFR 262.34 are not subject to regulations contained in ~~Part XII of this chapter~~ *9 VAC 20-60-1270* since HWM permits are not required for such accumulations.

~~H. Permit fees shall be assessed based on the date of approval of the permit and the application of 9 VAC 20-60-1270, 9 VAC 20-60-1280, and 9 VAC 20-60-1285.~~

9 VAC 20-60-1270. Determination of application fee amount.

A. General.

1. Each application for a new *or renewed* permit and each application for a modification to a permit is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of ~~9 VAC 20-60-1270~~ *this section*.

2. The amount of the permit application fee is based on the costs directly associated with the permitting program required by Parts III (9 VAC 20-60-270 et seq.) and VII (9 VAC 20-60-420 et seq.) of this chapter and includes costs for personnel and contractual effort and the prorated costs of supplies, equipment, communications and office space. The fee schedules are shown in 9 VAC 20-60-1285. ~~These schedules will be re-evaluated annually and the results of such re-evaluations will be used to recommend to the Virginia Waste Management Board the necessary adjustments.~~

B. Transporter fees.

1. Application fees for the transporter permits are shown in 9 VAC 20-60-1285 A. Based on the greater regulatory effort associated with the issuance of permits to the transporters without terminals or other facilities in the Commonwealth, the out-of-state transporters are charged higher fees.

2. Since Part VII of this chapter does not provide for a modification procedure, all transporter permit applications are considered to be for new permits.

C. New HWM facility permits.

1. All applicants for new *or renewed* hazardous waste treatment, storage, and disposal facility permits are assessed a base fee shown in 9 VAC 20-60-1285 B.

2. Applicants for a facility permit which includes one or more of the hazardous waste treatment, storage or disposal units or processes that require ground water protection or corrective action for solid waste management units in accordance with Subpart F of 40 CFR Part 264, Subpart K of 40 CFR Part 264, Subpart L of 40 CFR Part 264, Subpart M of 40 CFR Part 264, and Subpart N of 40 CFR Part 264, as applicable, ("land-based TSD units") are assessed a supplementary fee shown in 9 VAC 20-60-1285 B, in addition to the base fee specified ~~9 VAC 20-60-1270 C~~ *in subdivision* 1 *of this subsection* and any other supplementary fee that may be appropriate.

3. Applicants for a facility permit which includes one or more hazardous waste incineration, boiler, or industrial furnace

units or processes regulated in accordance with Subpart O of 40 CFR Part 264 are assessed a supplementary fee shown in 9 VAC 20-60-1285 B, in addition to the base fee specified in ~~9 VAC 20-60-1270 C~~ *subdivision* 1 *of this subsection* and any other supplementary fee that may be appropriate.

4. Applicants for a facility permit for storage of hazardous wastes in containers, tanks or drip pads, or both, subject to Subpart I of 40 CFR Part 264, Subpart J of 40 CFR Part 264, and Subpart W of 40 CFR Part 264 will not be assessed any supplementary fees unless required to close and perform post-closure care as landfills as provided for in 40 CFR 264.197(b) and 40 CFR 264.571(b).

5. The transporter permits are separate permits and require a separate administrative action. Applicants for new treatment, storage, and disposal facility permits who also apply for a transporter permit will be assessed separate fees in accordance with ~~9 VAC 20-60-1270~~ *subsection* B *of this section*.

D. Modifications to existing HWM facility permits.

1. Except as provided for in ~~9 VAC 20-60-1270~~ *subsection* E *of this section*, all applicants for a modification of an existing HWM facility permit are assessed a modification base fee shown in 9 VAC 20-60-1285 C.

2. Applicants for a modification that includes or involves the addition of hazardous wastes not currently in the permit are assessed a supplementary modification fee shown in 9 VAC 20-60-1285 C, in addition to the base fee specified in ~~9 VAC 20-60-1270 D~~ *subdivision* 1 *of this subsection* and any other supplementary fee that may be appropriate.

3. Applicants for a major (Class 3) modification that includes or involves corrective action for solid waste management units under 40 CFR 264.101 and Title 40, Subpart S shall be assessed a supplementary modification fee shown in 9 VAC 20-60-1285 C in addition to supplementary fees specified in ~~9 VAC 20-60-1270 D~~ *subdivision* 1 *of this subsection* and any other supplementary fee that may be appropriate.

4. Applicants for a major (Class 3) modification that includes or involves the addition of one or more new hazardous waste land-based TSD units or processes; or requires a substantive change in the design of the existing land-based TSD units or processes, are assessed a supplementary modification fee shown in 9 VAC 20-60-1285 C in addition to the base fee specified in ~~9 VAC 20-60-1270 D~~ *subdivision* 1 *of this subsection* and any other supplementary fee that may be appropriate. For the purpose of ~~9 VAC 20-60-1270 D~~ *this subsection*, it will be deemed that a major change is required whenever a change in the design of the ground water protection system or whenever a new land treatment demonstration permit specified in 9 VAC 20-60-270 is necessary.

5. Applicants for a major (Class 3) modification that includes or involves the addition of one or more hazardous waste incineration units or processes, or requires a substantive change in the design of an existing incineration unit or process, are assessed a supplementary modification fee shown in 9 VAC 20-60-1285 C, in addition to the base fee specified in ~~9 VAC 20-60-1270 D~~ *subdivision* 1 *of this subsection* and any other supplementary fee that may be appropriate. For the purposes of ~~9 VAC 20-60-1270 D~~ *this subsection*, it will be deemed that a major change is required whenever a change occurs that necessitates the performance of a trial burn in accordance with 9 VAC 20-60-270.

6. Applicants for a major (Class 3) modification which includes or involves new treatment, storage or disposal units, processes or areas, or requires a substantive change in the design of any existing hazardous waste treatment, storage or disposal units, processes or areas, neither of which is a hazardous waste land-based TSD or incineration unit, are assessed a supplementary modification fee shown in 9 VAC 20-60-1285 C, in addition to the base fee specified in ~~9 VAC 20-60-1270 D~~ *subdivision* 1 *of this subsection* and any other supplementary fee that may be appropriate. For the purposes of ~~9 VAC 20-60-1270 D~~ *this subsection*, expansion of an existing container storage facility is not considered to be a major change.

7. Applicants for a modification that is not a minor modification and is a substantive (Class 2) as specified in 9 VAC 20-60-270 and that is not subject to the requirements of ~~9 VAC 20-60-1270 D~~ *subdivisions* 2 through ~~9 VAC 20-60-1270 D~~ 6~~,~~ *of this subsection* are assessed a supplementary modification fee shown in 9 VAC 20-60-1285 C, in addition to the base fee specified in ~~9 VAC 20-60-1270 D~~ *subdivision* 1 *of this subsection*.

8. Applicants for numerous modifications subject to several supplementary fees will not be assessed a permit application fee in excess to the one required for a new permit for a comparable HWM facility.

E. Minor modifications of existing HWM facility permits. All applicants for minor (Class 1) modification of an existing HWM facility permit provided for in 9 VAC 20-60-270 are <u>not</u> assessed a fee ~~shown in 9 VAC 20-60-1285 D~~.

F. Emergency permits. Applicants for an emergency hazardous waste treatment, storage or disposal permit as provided for in 9 VAC 20-60-270 are assessed a fee shown in 9 VAC 20-60-1285 E, unless the director shall determine that a lesser fee is appropriate at the time the permit is issued. *No permit fee will be assessed for emergency treatment, storage, or disposal necessary for the remediation of abandoned or orphaned hazardous waste by the U.S. Environmental Protection Agency, the Virginia Department of Environmental Quality, the Virginia Department of Emergency Management, the Virginia State Police, the Virginia Department of Transportation, a U.S. Department of Defense Explosive Ordnance Disposal Team, a U.S. Army Technical Escort Unit or other federal government entities trained in explosive or munitions emergency response. No permit fee will be assessed for emergency treatment, storage, or disposal when a determination has been made by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality.*

9 VAC 20-60-1280. Payment of *application* fees.

A. Due date.

1. Except as specified in subdivision 2 of this subsection, all permit application fees are due on the day of application and must accompany the application.

2. All holders of a Virginia HWM facility permit issued prior to ~~the effective date of this part~~ *January 1, 1988,* shall submit the application fees as required by the conditions specified in that permit.

B. Method of payment. ~~Acceptable payment is cash or check made payable to the Commonwealth of Virginia, Department of Environmental Quality.~~ *Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240. When the department is able to accept electronic payments, payments may be submitted electronically.*

C. Incomplete payments. All incomplete payments will be deemed nonpayments.

D. Late payment. No applications will be deemed to be complete (see 9 VAC 20-60-270) until the department receives proper payment.

9 VAC 20-60-1283. Determination of annual fee amount.

A. Each operator of a hazardous waste treatment, storage, or disposal facility shall be assessed an annual fee as shown in 9 VAC 20-60-1285 F to be paid in accordance with 9 VAC 20-60-1284.

B. Each large quantity generator of hazardous waste shall be assessed an annual fee as shown in 9 VAC 20-60-1285 G to be paid in accordance with 9 VAC 20-60-1284.

C. A hazardous waste treatment, storage, or disposal facility operating under interim status and a facility subject to an order or agreement operate by accession and shall be assessed an annual fee as described in 9 VAC 20-60-1285 F to be paid in accordance with 9 VAC 20-60-1284.

An order or agreement may be issued to the operator of a facility, a generator, or a person who is both a facility operator and a generator. If a person is issued an order or agreement whose terms allows that person to conduct an activity that is by these regulations reserved for persons operating a facility under a permit or interim status, that person shall be considered to be operating a facility subject to an order or agreement. If the order or agreement is issued to a generator and the terms of the order do not allow that person to conduct any activity that is by these regulations reserved for persons operating a facility under a permit or interim status and the person is not otherwise operating a facility at the site of generation, that person shall not be considered to be operating a facility subject to an order or agreement.

D. Annual fees are separate and accumulative. However, a facility that is assessed an annual fee as a facility shall not also be assessed a second annual fee as a large quantity generator for hazardous waste generated at that facility.

E. Anyone who operates a facility (including those described in subsections A and C of this section) or who is a large quantity generator at any time during the year shall be assessed the full annual fee amount no matter how short the period the facility is operated or how briefly the generator is a large quantity generator. A generator who is a large quantity generator episodically or provisionally (having received a provisional EPA Identification Number) shall be assessed the full annual fee for any year in which the generator was a large quantity generator. For the evaluation of facility status or of generator status, the annual year shall be considered to be from January 1 to December 31.

F. No annual fee as a facility or large quantity generator will be assessed for emergency treatment, storage, or disposal necessary for the remediation of abandoned or orphaned hazardous waste by the U.S. Environmental Protection Agency, the Virginia Department of Environmental Quality, the Virginia Department of Emergency Management, the Virginia State Police, the Virginia Department of Transportation, a U.S. Department of Defense Explosive Ordnance Disposal Team, a U.S. Army Technical Escort Unit or other federal government entities trained in explosive or munitions emergency response. No annual fee will be assessed for emergency treatment, storage, or disposal when a determination has been made by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality.

Persons who are remediating a brownfield as defined in the Brownfield Restoration and Land Renewal Act (§ 10.1-1230 et seq. of the Code of Virginia) shall not be assessed an annual fee as a large quantity generator with regard to hazardous waste management activities at a waste management unit and that result from the remediation of the brownfield.

G. Discounted annual fees may be offered based on the criteria listed in 9 VAC 20-60-1286. An operator of a facility or a large quantity generator will be notified by the department if discounted annual fees are applicable.

9 VAC 20-60-1284. Payment of annual fees.

A. Due date. The operator of the treatment, storage, or disposal facility and each large quantity generator shall pay the correct fees to the Department of Environmental Quality. The department may bill the facility or generator for amounts due or becoming due in the immediate future. All payments are due and shall be received by the department no later than the first day of October 2004 (for the 2003 annual year), and no later than the first day of October of each succeeding year thereafter (for the preceding annual year) unless a later payment date is specified by the department in writing.

B. Method of payment.

1. The operator of the facility or the large quantity generator shall send a payment transmittal letter to the Department of Environmental Quality. The letter shall contain the name and address of the facility or generator, the Federal Identification Number (FIN) for the facility or generator, the amount of the payment enclosed, and the period that the payment covers. With the transmittal letter shall be payment in full for the correct fees due for the annual period. A copy of the transmittal letter only shall be maintained at the

facility or the site where the hazardous waste was generated.

2. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240. When the department is able to accept electronic payments, payments may be submitted electronically.

C. Late payment and incomplete payments. In addition to any other provision provided by statute for the enforcement of these regulations, interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to § 6621(a)(2) of the Internal Revenue Code. This rate is prescribed in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee may also be charged to any delinquent (over 90 days past due) account. The Department of Environmental Quality is entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover any attorney's fees and other administrative costs incurred in pursuing and collecting any past due amount.

9 VAC 20-60-1285. Permit application fee ~~schedule~~ *and annual fee schedules*.

(The effective date of this fee schedule is July 1, ~~2003~~ *2004*.)

Table 1. Permit Application Fees.		
A. Transporter fees	~~Column 2~~	~~Column 3~~
Type of application	~~July 1, 2003 through June 30, 2004~~	~~July 1, 2004 and thereafter~~
Transporters with terminals or other facilities within the Commonwealth.	~~$240~~	$140
Other transporters.	~~$360~~	$210
B. New *or renewed* TSD facility fees.		
Elements of applications	~~July 1, 2003 through June 30, 2004~~	~~July 1, 2004 and thereafter~~
Base fee for all facilities, including corrective action for solid waste management units.	~~$29,160~~	$16,900
Supplementary fee for one or more land-based TSD units, including corrective action for solid waste management units.	~~$67,770~~	$39,280
Supplementary fee for one or more incineration, boiler, or industrial furnace units (BIF).	~~$43,470~~	$25,200
C. Major (Class 3) Permit modification fees.		
Elements of Applications for Major Permit Modifications	~~July 1, 2003 through June 30, 2004~~	~~July 1, 2004 and thereafter~~
Base fee for all major (Class 3) modifications, including major changes related to corrective action for solid waste management unit.	~~$150~~	$90
Addition of new wastes.	~~$3,990~~	$2,310
Addition of or major (Class 3) change to one or more land-based TSD units, including major change related to corrective action for land-based solid waste management units.	~~$77,760~~	$45,070
Addition of or major (Class 3) change to one or more incineration, boiler, or industrial furnace units.	~~$58,290~~	$33,790
Addition of or major (Class 3) change to other treatment, storage or disposal units, processes or areas and major change related to corrective action for solid waste management units that are not land based.	~~$24,240~~	$14,050
Substantive changes (Class 2).	~~$3,990~~	$2,310
D. Minor (Class 1) permit modification fees.		
Type of application	~~July 1, 2003 through June 30, 2004~~	~~July 1, 2004 and thereafter~~
Minor (Class 1) permit modification fee.	~~$150~~	~~$90~~ *$0*
E. Emergency Permit fee		
Type of application	~~July 1, 2003 through June 30, 2004~~	~~July 1, 2004 and thereafter~~
Emergency Permit fee	~~$3,990~~	$2,310
Table 2. Annual Fees.		
F. Facilities fees.		
Permitted treatment, storage, and disposal		*$2,800*

facility.	
Interim status treatment, storage, and disposal facility.	*$2,800*
Facility subject to an order or agreement.	*$2,800*
G. Large quantity generator fees.	
Large quantity generators.	*$1,000*

Illustrative Examples

Example 1.

The applicant is submitting a Part B application for a HWM permit for a facility consisting of several surface impoundments, a land treatment process and an ancillary tank and container storage facility. The required fee is calculated as follows:

Base fee. +
Supplementary fee for land-based TSD units. +
Tank storage facility (see 9 VAC 20-60-1270 C 4). =
Total fee.

Example 2.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to change the manufacturing process and apply for a modification to allow for an addition of several new hazardous streams to be treated in two new incinerators. The required modification fee is calculated from subsection C of this section as follows:

Base fee. +
Addition of new wastes. +
Addition of new incineration units. =
Total modification fee.

The fee for a comparable new permit calculated on the basis of subsection B of this section is as follows:

Base fee. +
Supplementary fee for land-based units. +
Supplementary fee for incineration units. =
Storage facility.
Total fee.

Example 3.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to expand their container storage facility for a storage of additional new waste streams, and apply for a permit modification. The required modification fee is calculated from subsection C of this section as follows:

Base fee. +
Addition of a new waste. +
Fee for nonsubstantive change =
Total modification fee.

9 VAC 20-60-1286. Discounted annual fees for Environmental Excellence program participants.

A. The term "Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMS). The program is based on the use of environmental management systems that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

B. Participants in the VEEP shall be eligible for reduced annual fees. The VEEP includes the Environmental Enterprise (E2) level of participation and the Exemplary Environmental Enterprise (E3) level of participation.

C. Annual fee discounts will not become effective until 2005. The availability of discounts to the annual fees will be dependent upon acceptance and continued participation in the VEEP.

D. Eligibility for reduced annual fees shall be based upon the department's review of the annual report that is required to be submitted by the VEEP. The department shall review annual reports to verify that facilities continue to meet VEEP criteria prior to offering discounted annual fees.

1. The participant's annual report must reflect activities occurring through December 31 and must satisfy all reporting requirements established in the VEEP.

2. Annual reports must be received at the department's central office by April 1 of the following year to be eligible for a reduction of the annual fees.

3. The annual report must list all regulated and permitted activities included within the scope of the facility's environmental management system.

4. A participant's level of participation will be evaluated as of December 31 of each calendar year.

E. If a facility participated in the VEEP but participation in the program was terminated, discounted fees will not be available to participants until they have been reaccepted into the VEEP.

F. Participants at the E2 level of participation will be eligible to receive a discount to annual fees for up to a maximum of three years.

G. Prior to distributing bills for annual fees, the department shall calculate the discounted hazardous waste management annual fees. The total amount of facilities' discounts to hazardous waste management annual fees shall not exceed $26,000 annually.

1. The total of a 10% discount for each participant at the E3 level of participation and a 5.0% discount for each participant at the E2 level of participation shall be calculated.

2. If the calculated total of the discounts to annual fees would exceed $26,000, annual fees for participants at the E3 level of participation shall be discounted 5.0%, additional discounts of annual fees for participants at the E3 level of participation shall not be available, and annual fees for participants at the E2 level of participation shall not be discounted,

3. If the calculated total of the discounts to annual fees would not exceed $26,000, annual fees for participants at the E3 level of participation shall be discounted 10%, annual fees for participants at the E2 level of participation shall be discounted 5.0%, and a larger discount may be provided for participants at the E3 level of participation, based upon direct program costs and program revenues, not to exceed a total discount of 20%. The total of all discounts shall not exceed $26,000. Any additional discounted fees will be calculated as follows:

(Total program revenues in the previous fiscal year minus direct program costs for the previous fiscal year) multiplied by 0.75 equals the additional discounts to be distributed to program participants. Additional discounts will be distributed to participants at the E3 level of participation in equal whole percentages.

4. If the calculated total of all facilities' discounts exceeds $26,000, the department shall reevaluate the discounts offered to VEEP participants and shall begin the regulatory process to revise the discounts offered to VEEP participants.

VA.R. Doc. No. R04-216; Filed July 1, 2004, 8:13 a.m.

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Title of Regulation: **9 VAC 20-90. Solid Waste Management Permit Action Fees and Annual Fees (amending 9 VAC 20-90-10, 9 VAC 20-90-30, 9 VAC 20-90-50, 9 VAC 20-90-60, 9 VAC 20-90-70, 9 VAC 20-90-90, 9 VAC 20-90-100, 9 VAC 20-90-110 and 9 VAC 20-90-120; adding 9 VAC 20-90-65, 9 VAC 20-90-115, 9 VAC 20-90-117 and 9 VAC 20-90-130).**

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

Effective Date: July 1, 2004.

Agency Contact: Michael Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4327, or e-mail mjdieter@deq.virginia.gov.

Summary:

Pursuant to Chapters 249 and 324 of the 2004 Acts of Assembly, the amendments modify the fees for new permits and modifications to permits for solid or regulated medical waste management facilities to include the new requirements and establish appropriate administrative procedures for implementation of the new annual fee requirements.

CHAPTER 90.
SOLID WASTE MANAGEMENT PERMIT ACTION FEES *AND ANNUAL FEES*.

9 VAC 20-90-10. Definitions.

Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia defines words and terms that supplement those in this chapter. The Virginia Solid Waste Management Regulations, 9 VAC 20-80, and the Virginia Regulated Medical Waste Management Regulations, 9 VAC 20-120, define additional words and terms that supplement those in the statute and this chapter. When the statute, as cited, and the solid waste management regulations, as cited, define a word or term differently, the definition of the statute is controlling. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Department" means the Virginia Department of Environmental Quality.

"Director" means the director of the Department of Environmental Quality.

"Operating" means actively managing solid waste, or conducting closure or post closure activities. A facility will begin operating on the date of the approval of the certificate to operate (CTO) or the approval of the permit-by-rule (PBR) as applicable. The facility will no longer be considered operating upon certification of completion of closure activities or in the case of a disposal facility upon release from post closure responsibility.

"Permit-by-rule" means provisions of the chapter stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Permitted facility" means a facility holding the written permission of the director to conduct solid waste management activities; this includes facilities operating under permit-by-rule.

9 VAC 20-90-30. Purpose of regulation.

A. The purpose of these regulations is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit or seeking a modification or an amendment to an existing permit for operation of a solid or regulated medical waste management facility in the Commonwealth of Virginia. These regulations also establish fees for the review of other permit-related documents required to be reviewed by the department.

B. These regulations establish schedules and procedures pertaining to the payment of annual fees to be submitted by any person operating a permitted facility for the disposal, storage, or treatment of nonhazardous solid waste.

9 VAC 20-90-50. Applicability of regulations.

A. These regulations apply to all ~~applicants for permit actions under~~ *persons operating or proposing to operate a permitted facility for the management of solid waste under the provisions of*:

1. Part VII (9 VAC 20-80-480 through 9 VAC 20-80-620) of the Virginia Solid Waste Management Regulations;

2. Part X (9 VAC 20-120-680 through 9 VAC 20-120-830) of the Regulated Medical Waste Management Regulations;

3. Part V (9 VAC 20-101-160 through 9 VAC 20-101-180) of the Vegetative Waste Management and Yard Waste Composting Regulations; or

4. Part V (9 VAC 20-85-170 through 9 VAC 20-85-180) of the Regulation Governing Management of Coal Combustion By-Products.

The fees shall be assessed in accordance with Part III (9 VAC 20-90-70 through 9 VAC 20-90-120) of this chapter.

B. When the director finds it necessary to amend or modify any permit in accordance with § 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, 9 VAC 20-80-620 of the Virginia Solid Waste Management Regulations or Part X (9 VAC 20-120-680 through 9 VAC 20-120-830) of the Regulated Medical Waste Management Regulations, as applicable, the holder of that permit shall be ~~considered an applicant and shall be~~ assessed a fee in accordance with 9 VAC 20-90-90 even if the director has initiated the amendment or modification action.

C. When the director finds it necessary to revoke and reissue any permit in accordance with § 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, 9 VAC 20-80-600 B 1 of the Virginia Solid Waste Management Regulations, or Part X (9 VAC 20-120-680 through 9 VAC 20-120-830) of the Regulated Medical Waste Management Regulations, as applicable, the holder of that permit shall be ~~considered an applicant for a new permit and shall be~~ assessed a fee in accordance with 9 VAC 20-90-80.

D. If the director finds it necessary either to revoke and reissue a permit in accordance with § 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, *or* 9 VAC 20-80-600 B 2 of the Virginia Solid Waste Management Regulations, ~~or to perform a minor amendment or modification of a permit in accordance with 9 VAC 20-80-620 F of the Virginia Solid Waste Management Regulations, or Part X (9 VAC 20-120-680 through 9 VAC 20-120-830) of the Regulated Medical Waste Management Regulations, as applicable,~~ the holder of that permit shall be ~~considered an applicant and shall be~~ assessed a fee in accordance with 9 VAC 20-90-100.

9 VAC 20-90-60. Payment~~, deposit, and use~~ of *permit action* fees.

A. Due date.

1. Except as specified in subdivisions 2, 3, and 4 of this subsection, all permit action fees are due on the day of application and must accompany the application.

2. Applicants for solid waste management permits shall submit the appropriate fee along with the certification from the local governing body and the disclosure statements at the time of the submittal of the notice of intent. An applicant for a new facility shall submit appropriate Part A fees with the notice of intent, and submit the Part B action fee when the Part B application is submitted.

3. Applicants for an emergency permit shall submit the permit action fee to the department within 60 days of submitting an application.

4. For facilities entering the corrective action program, the fee for Corrective Action, Module XIV, is due upon submission of the proposal for presumptive remedy or assessment of corrective measures. If during the course of the corrective action program, modifications to the corrective action program are required, no additional fee will be assessed.

B. Method of payment. ~~Acceptable payment is cash or check payable to the Commonwealth of Virginia, Department of Environmental Quality.~~ *Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia." When the department is able to accept electronic payments, payments may be submitted electronically.*

C. Incomplete payments. All incomplete payments will be deemed nonpayments.

D. Payment required. No applications will be deemed to be complete until proper payment is received by the department. The department shall not begin a review of an incomplete application unless the application is for an emergency permit. Nonpayment of fees will result in a processing delay. If the director is amending or revoking and re-issuing a permit for cause, nonpayment of fees may lead to termination of the permit.

~~E. Deposit and use of fees. The department shall collect all fees pursuant to this chapter and deposit them into a special fund for use as described in § 10.1-1402.1 of the Code of Virginia.~~

9 VAC 20-90-65. Payment of annual fees.

A. Operators of permitted solid waste management facilities shall pay annual fees based on the requirements of this part. An annual fee is required for each activity occurring at a permitted facility. For facilities engaged in multiple activities under the provisions of a single permit, an operator shall pay multiple annual fees. These activities and the associated fees are provided in Table 4.1 of 9 VAC 20-90-130.

Annual fees assessed for single or multiple activities conducted under a permit reflect the time and complexity of inspecting and monitoring the different categories of facilities identified in § 10.1-1402.1:1 of the Code of Virginia.

B. Due date.

1. Submission date. The department may bill the operator for amounts due or becoming due in the immediate future. Payments are due on or before October 1, or 30 days after receipt of a bill from the department, whichever comes later, unless the operator is using the deferred payment or quarter payment option. Each operator of a permitted waste management facility shall be assessed an annual fee as shown in Table 4.1 of 9 VAC 20-90-130. Except as specified in subdivisions 2 and 3 of this subsection, all annual fees are submitted on a yearly basis and are due on or before October 1. Annual fees, including those that are based on annual tonnage shall be calculated using the procedures in 9 VAC 20-90-115. Annual tonnage will be determined from the total amount of waste reported as having been either landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9 VAC 20-80-115 and 9 VAC 20-130-165).

2. All fees to be paid in 2004 will be submitted on or before October 1, 2004, (for the 2003 annual year) unless the operator of a facility submits a written request to the department prior to that date requesting a deferred payment until January 1, 2005. Requests for deferral will be sent to the address listed in subdivision C 2 of this section. No deferred payment will be allowed for facilities opting to use

a quarter payment schedule. Subsequent annual payments will be submitted on or before the first day of October (for the preceding annual year).

3. Optional quarter payment. Facility operators that are required to pay annual fees exceeding $8,000 for single or multiple permits may submit four equal payments totaling the annual fee on or before October 1, January 1, April 1, and June 1. The annual payment cycle for quarter payments will begin with the October 1 payment and will end with the June 1 payment. Those facilities opting for the quarter payment schedule shall accompany all payments with a copy of DEQ form PF001.

4. Late quarter payments. If the quarter payment is not paid by the deadline, DEQ may, in addition to seeking other remedies available under the law, issue a notice of failure to pay. The notice shall require payment of the entire remainder of the annual fee payment within 30 days of the date of the notice, or inform the owner that he is ineligible to opt for the quarter payment schedule until eligibility is reinstated by written notice from the department, or both.

C. Method of payment.

1. The operator of the facility shall send a payment transmittal letter to the Department of Environmental Quality. The letter shall contain the name and permit number of the facility, the Federal Identification Number (FIN) for the facility or operator, the amount of the annual fee, and for sanitary landfills and incinerators, the waste reported as landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9 VAC 20-80-115 and 9 VAC 20-130-165). In addition, a copy of the transmittal letter will be placed in the facility's operating record.

2. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia/DEQ," and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240. When the department is able to accept electronic payments, payments may be submitted electronically. The payment transmittal letter required in subdivision 1 of this subsection shall accompany the payment.

D. Incomplete payments. All incomplete payments will be deemed nonpayments.

E. Late payment of annual fee. Interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to Section 6621(a)(2) of the Internal Revenue Code. This rate is prescribed in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee may be charged to any delinquent (over 90 days past due) account. The Department of Environmental Quality is entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover any attorney's fees and other administrative costs incurred in pursuing and collecting any past due amount.

F. Annual fees received by the department shall be deposited in the Virginia Waste Management Permit Program Fund and used exclusively for the solid waste management program as set forth in the Code of Virginia.

9 VAC 20-90-70. General.

A. Each application for a new permit, each application for a modification or amendment to a permit, and each revocation and issuance of a permit is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of this Part III (9 VAC 20-90-70 through 9 VAC 20-90-120).

~~B. The amount of the permit action fee is based on the costs directly associated with the permitting program required by Part VII of the Virginia Solid Waste Management Regulations or Part X of the Regulated Medical Waste Management Regulations and includes costs for personnel and directly related public participation costs. The fee schedules are shown in 9 VAC 20-90-120 as Tables 3.1-1, 3.1-2, 3.1-3, and 3.1-4.~~

~~C. Fees in Column 3 of the tables in 9 VAC 20-90-120 have been adjusted to the Consumer Price Index for All Urban Consumers (CPI-U, 1982-84 = 100) for February 2003 (published monthly by the U.S. Bureau of Labor Statistics, Washington, D.C. 20212, http://www.bls.gov), rounded to the nearest $10 increment.~~

B. Right of entry, inspection and audit. Upon presentation of appropriate credentials and upon consent of the owner or operator of the facility, the director of the Virginia Department of Environmental Quality or his designee, in addition to the routine inspection of the facility provided in 9 VAC 20-80-100, or 9 VAC 20-120-740 shall have the right to enter, inspect and audit the records of the facility consistent with § 10.1-1456 of the Code of Virginia. The director may designate rights of entry, inspection and audit to any department personnel or contractors to the department. The owner of operator of the facility shall provide complete and timely access during business hours to all equipment, and facility records. The director shall have the right to require an audit of the facility's records related to the payment of annual fees.

~~D.~~ *C.* In addition to permit action fees listed in Tables 3.1-1, 3.1-2, *and* 3.1-3 ~~and 3.1-4~~ of 9 VAC 20-90-120, the applicant for a permit action shall arrange for the newspaper publication and radio broadcast and bear the cost of the publication and broadcast if required. The department shall send notification to the applicant that the publication and broadcast are required, and the notification shall include the text of the notice, dates of publication and broadcast, and the acceptable newspapers and radio stations wherein the notice may be published. The department shall also require the petitioner for a variance from any regulation to arrange for any newspaper publication and radio broadcast required under the Virginia Solid Waste Management Regulations (9 VAC 20-80) or the Regulated Medical Waste Management Regulations (9 VAC 20-120) and to bear the cost of such publication and broadcast. The department may arrange for the newspaper publication and radio broadcast listed in this subsection and require the applicant to remit the cost of such publication and broadcast.

9 VAC 20-90-90. Applications for permit actions, amendment or modification.

A. General. Facility permits issued by the director are typically based on the modular concept to assure completeness and consistency of the documents. Each facility permit may consist of several modules dealing with the requirements addressing separate topics pertinent to the specific facility. The modules used in the solid and regulated medical waste program are:

1. The general permit conditions module (Module I) that contains the general conditions required for all solid or regulated medical waste facility permits and includes documents to be submitted prior to operation, documents that must be maintained at the facility, and a compliance schedule, if any.

2. The general facility requirements module (Module II) that contains the listing of wastes that the facility may accept or a list of wastes prohibited from acceptance, an analysis plan, security and site access information, inspection requirements, personnel training requirements, special standards based on particular location, a preparedness and prevention plan, a contingency plan, closure and post-closure cost estimates, and facility-specific financial assurance requirements.

3. The separate facility modules, one for each of the different type of facility provided for in Parts V and VI of the Virginia Solid Waste Management Regulations, containing design requirements (e.g., liners, leachate management systems, aeration systems, wastewater collection systems), specific operating requirements (e.g., compaction and cover requirements, equipment, monitoring), and recordkeeping requirements. The following modules have been developed:

a. Module III--Sanitary landfills;

b. Module IV--Construction/demolition/debris landfill;

c. Module V--Industrial landfill;

d. Module VI--Compost facility;

e. Module VII--Transfer station;

f. Module VIII--Materials recovery facility; and

g. Module IX--Energy recovery and incineration facility.

4. All gas management plans submitted for review (Module III, IV, or V) will be assessed a fee as listed in Table 3.1-2 ~~or 3.1-3~~ of 9 VAC 20-90-120.

5. The groundwater monitoring modules contain requirements for well location, installation, and construction, listing of monitoring parameters and constituents, sampling and analysis procedures, statistical procedures, data evaluation, recordkeeping and reporting, and special requirements when significant increases occur in monitoring parameters. Module X is designed specifically for Phase I or detection monitoring and Module XI for Phase II or assessment monitoring. If groundwater protection standards are being established for facilities without Modules X and XI, then both Modules X and XI will be issued for the major modification fee. However, for facilities with Module X already included in their permit, the major modification fee will be assessed to add Module XI.

6. The closure module (Module XII), included in all permits, contains requirements for actions during the active life of the facility (updating plan), during the closure process, and after the closure has been performed. Facilities required to submit a closure plan in accordance with §§ 10.1-1410.1 and 10.1-1410.2 A 1 of the Code of Virginia will be assessed a fee for Module XII as listed in Table 3.1-2 of 9 VAC 20-90-120.

7. The post-closure module (Module XIII), included in solid waste disposal facility permits, contains requirements during the post-closure period and for periodic updating of the post-closure plan. Facilities required to submit a post-closure plan in accordance with § 10.1-1410.2 of the Code of Virginia will be assessed a fee for Module XIII as listed in Table 3.1-2 of 9 VAC 20-90-120.

8. The schedule for compliance for corrective action (Module XIV) is used when facility groundwater monitoring results indicate groundwater protection standards have been statistically exceeded.

9. The leachate handling module (Module XV), included in solid waste disposal facility permits, contains requirements for storage, treatment and disposal of leachate generated by the facility.

10. The regulated medical waste storage module (Module XVI) and regulated medical waste treatment module (Module XVII) have been developed for facilities storing and/or treating regulated medical waste.

B. Applicants for a modification or amendment of an existing permit will be assessed a fee associated with only those modules that will require changes. In situations where the modular concept is not employed (for example, changes incorporated directly into a nonmodular permit), fees will be assessed as appropriate for the requirements stipulated for modules in subsection A of this section had they been used.

C. Applicants for a modification or amendment or subject to revocation and reissuance of an existing permit will be assessed a separate public participation fee whenever the modification or amendment requires a public hearing.

D. The fee schedules for major permit actions, amendments, or modifications are shown in Table 3.1-2 of 9 VAC 20-90-120.

E. In no case will the fee for a modification, amendment or revocation and reissuance of a permit be higher than that for a new facility of the same type.

9 VAC 20-90-100. Minor actions, amendments or modifications.

~~Notwithstanding the provisions of 9 VAC 20-90-90, an applicant for a minor amendment or modification or minor permit action of an existing facility permit based on 9 VAC 20-80-620 F of the Virginia Solid Waste Management Regulations or Part X (9 VAC 20-120-680 through 9 VAC 20-120-830) of the Regulated Medical Waste Management~~

~~Regulations will be assessed a fee shown in Table 3.1-3 of 9 VAC 20-90-120.~~ *Applicants for minor modifications and minor permit amendments under the provisions of 9 VAC 20-80-620 F shall not be assessed a permit modification fee.*

9 VAC 20-90-110. Review of variance requests.

Applicants requesting variances from the Virginia Solid Waste Management Regulations (9 VAC 20-80), the Regulated Medical Waste Management Regulations (9 VAC 20-120), or the Regulation Governing Management of Coal Combustion By-Products (9 VAC 20-85) will be assessed a fee as shown in Table ~~3.1-4~~ *3.1-3* of 9 VAC 20-90-120. All variance requests are subject to base fees. Additional fees are listed for reviews of specific types of variance requests and are to be submitted in addition to base fees. For example, a variance request for an alternate liner design would require submission of the base fee in addition to the fee associated with the review of the alternate liner system design. Variance requests are not subject to public participation fees listed in Table 3.1-2 of 9 VAC 20-90-120.

9 VAC 20-90-115. Annual fee calculation.

A. General. All persons operating a sanitary landfill or other facility permitted under the regulations outlined in 9 VAC 20-90-50 shall submit annual fees according to the procedures provided in 9 VAC 20-90-65. Annual fees are provided in Table 4.1, Annual Waste Management Facility Fees, in 9 VAC 20-90-130. Annual fees that include an additional fee based on tonnage shall be calculated using the procedures in this section. Annual tonnage will be determined from the total amount of waste reported as having been either landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9 VAC 20-80-115 and 9 VAC 20-130-165).

B. Fee calculation. Sanitary landfills are required to submit the base tonnage fee, plus a fee per ton of waste over the base tonnage that is landfilled based on the tonnage reported on the previous year's Solid Waste Information Reporting Table, Form DEQ 50-25. Incinerators are required to submit a fee based on the amount of waste incinerated on the previous year's Solid Waste Information Reporting Table, Form DEQ 50-25. The tonnage used in the fee calculation will be rounded to the nearest full ton of waste. Other facilities are required to submit only an annual fee based on the facility type. Fees shall be rounded to the nearest dollar.

Examples:

1. A composting facility is required to submit only the base fee in Table 4.1.

Composting facility annual fee = base fee = $500.

2. A sanitary landfill that reported 120,580 tons landfilled on the Solid Waste Information Reporting Table, Form DEQ 50-25, from the previous year, is required to submit a base tonnage fee plus an additional fee per ton of waste over the base tonnage as provided in Table 4.1. The base fee and the fee per ton vary with the tonnage of the waste that the facility landfilled.

Sanitary landfill annual fee = base tonnage fee + [(tonnage landfilled from previous year's waste information assessment - base tonnage) x fee per ton] = $10,000 + [(120,580 tons-100,001 tons) x $0.09/ton] = $11,852.

3. An incinerator that reported 501,230 tons incinerated on the Solid Waste Information Reporting Table, Form DEQ 50-25, from the previous year, is required to submit the fee required in Table 4.1. Incinerator fees vary with the tonnage of waste that the facility incinerated.

Incinerator annual fee = annual fee associated with the tonnage incinerated = $5000.

C. Weight/volume conversions. For facilities required to pay annual fees based on the tonnage of the waste landfilled or incinerated, the annual fee shall be based on the accurate weight of waste. If scales are unavailable, the volume of the waste landfilled or incinerated by the facility must be multiplied by 0.50 tons per cubic yard to determine the weight of the waste landfilled or incinerated. If the volume of waste is used to determine the tonnage of waste landfilled or incinerated, accurate and complete records of the waste received and managed must be maintained in addition to the calculated weight records described in this part. These records must be maintained onsite throughout the life of the facility and made available to the department upon request.

D. Emergency. The director may waive or reduce annual fees assessed during a state of emergency or for waste resulting from an emergency response action. A facility operator may request a determination if a given volume of waste landfilled or incinerated in a given calendar year qualifies for a waived or reduced fee by submitting documentation of the emergency to the regional office where the facility is located. The request will provide the name and permit number of the facility, a facility contact, the nature of the emergency or response action, a description of the waste, and an accurate accounting of the type and tonnage of waste managed as a result of the emergency. Requests for a determination by the director must be submitted by March 31 of the year following the emergency coincident with the solid waste information assessment report. A separate request shall be provided for each year if the emergency lasts for multiple years.

E. Annual fee discounts for environmental excellence program participants are set out in 9 VAC 20-90-117.

F. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution or contract for solid waste processing or disposal operations at the facility.

G. Closure. Facilities that remove all waste materials at the time of closure and are subject only to closure requirements are subject to payment of the annual fee if they were operating at any time during the calendar year.

H. Transition from closure to post-closure care. Landfills entering post-closure care will pay the full annual fee for an active facility if they were operating, were inactive or were conducting closure activities at any time during the calendar year. Landfills in post-closure care for a full calendar year (January 1 through December 31) will pay the annual fee for post-closure care provided in Table 4.1. The post-closure

care period will begin on the date provided in 9 VAC 20-80-250 E 7, 9 VAC 20-80-260 E 6, or 9 VAC 20-80-270 E 6 as applicable.

9 VAC 20-90-117. Discounted annual fees for Environmental Excellence Program participants.

A. The term "Virginia Environmental Excellence Program" (VEEP) means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement Environmental Management Systems (EMS). The program is based on the use of EMS that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

B. Participants in the VEEP shall be eligible for reduced annual fees. The VEEP program includes the Environmental Enterprise (E2) level of participation and the Exemplary Environmental Enterprise (E3) level of participation.

C. Annual fee discounts will not become effective until 2005. The availability of discounts to the annual fees will be dependent upon acceptance and continued participation in the VEEP.

D. Eligibility for reduced annual fees shall be based upon the department's review of the annual report that is required to be submitted by the VEEP. The department shall review annual reports to verify that facilities continue to meet VEEP criteria prior to offering discounted annual fees.

1. The participant's annual report must reflect activities occurring through December 31 and must satisfy all reporting requirements established in the VEEP.

2. Annual reports must be received at the department's central office by April 1 of the following year to be eligible for a reduction of the annual fees.

3. The annual report must list all regulated and permitted activities included within the scope of the facility's Environmental Management System.

4. A participant's level of participation will be evaluated as of December 31 of each calendar year.

E. If a facility participated in the VEEP but participation in the program was terminated, discounted fees will not be available to participants until they have been reaccepted into the VEEP.

F. Participants at the E2 level of participation will be eligible to receive a discount to annual fees for up to a maximum of 3 years.

G. Prior to distributing bills for annual fees, the department shall calculate the discounted annual fees. The total amount of all facilities' discounts to solid waste annual fees shall not exceed $ 140,000 annually.

1. The total of a 20% discount for each participant at the E3 level of participation and a 10% discount for each participant at the E2 level of participation shall be calculated.

2. If the calculated total of the discounts to annual fees would exceed $140,000, annual fees for participants at the E3 level of participation shall be discounted 10%, and annual fees for participants at the E2 level of participation shall not be discounted.

3. If the calculated total of the discounts to annual fees would not exceed $140,000, annual fees for participants at the E3 level of participation shall be discounted 20%, and annual fees for participants at the E2 level of participation shall be discounted 10%.

4. If the calculated total of all facilities' discounts to annual fees exceeds $140,000, the department shall reevaluate the discounts offered to VEEP participants and shall begin the regulatory process to revise the discounts offered to VEEP participants.

9 VAC 20-90-120. Permit application fee schedules.

TABLE 3.1-1. NEW OR INITIAL ISSUANCE OR ACTION.

TYPE OF FACILITY	~~Column 2~~	~~Column 3~~
	FEE	
	~~July 1, 2003, through June 30, 2004~~	~~July 1, 2004, and thereafter~~
All landfills:		
Part A application	~~$9,600~~	$4,180
Part B application	~~$42,900~~	$18,680
Incineration/Energy Recovery Facility	~~$13,500~~	$5,880
Transfer Station, Materials Recovery Facility, Regulated Medical Waste Storage Facility, or Regulated Medical Waste Treatment Facility	~~$9,900~~	$4,310
Compost Facility		
Facilities Processing Category I Waste	~~$29,100~~	$6,850
Facilities Processing Waste Categories I, II, or III, or Categories III and Lower	~~$29,100~~	$10,550
Facilities Processing Waste Categories I, II, III, or IV, or Categories IV and Lower	~~$29,100~~	$12,670
Experimental Solid Waste Facility	~~Reserved~~[1]	$2,090
Permit-by-rule Initial Review and Confirmation		$390
Emergency Permit		$2,310

[1] ~~Indicates insufficient experience at the present time to determine proper fee. Should an application for such a facility be received, the lowest fee in the table will be assessed.~~

TABLE 3.1-2. MAJOR PERMIT ACTIONS, AMENDMENTS OR MODIFICATIONS.

TYPE OF PERMIT MODULE	~~Column 2~~	~~Column 3~~
	FEE	
	~~July 1, 2003, through June 30, 2004~~	~~July 1, 2004, and thereafter~~
Landfill Part A	~~$9,600~~	$4,180
General - Module I	~~$900~~	$390
Facility - Module II	~~$3,000~~	$1,310
Landfill - Module III, IV, or V	~~$16,200~~	$7,050
Design plan review	~~$2,100~~	$910
Liner design review	~~$4,500~~	$1,960
Leachate system review	~~$3,000~~	$1,310
Gas management plan review		$1,700
Drainage plan review	~~$2,100~~	$910
Cover design review	~~$4,200~~	$1,830
Equipment		$390
Compost facility - Module VI	~~$8,400~~	$3,660
Design plan review	~~$1,500~~	$650
Liner design review	~~$3,000~~	$1,310
Leachate system review	~~$2,100~~	$910
Drainage plan review	~~$1,500~~	$650
Equipment		$390
Transfer station - Module VII	~~$2,700~~	$1,180
Material recovery facility - Module VIII	~~$3,600~~	$1,570
Waste supply analysis	~~$1,500~~	$650
Waste management areas	~~$1,200~~	$520
Wastewater management areas	~~$900~~	$390
Incinerator/Energy recovery facility - Module IX	~~$6,900~~	$3,000
Waste and residue storage	~~$2,100~~	$910
Operational requirements	~~$3,600~~	$1,570
Waste control procedures	~~$1,200~~	$520
Groundwater monitoring - Module X or XI	~~$7,500~~	$3,260
Well placement	~~$3,000~~	$1,310
Materials and specifications	~~$900~~	$390
Sampling plan	~~$3,600~~	$1,570
Closure - Module XII	~~$900~~	$390
Post-closure - Module XIII	~~$900~~	$390
Corrective action - Module XIV	~~Reserved~~	$22,860
Leachate handling Module XV	~~Reserved~~	$1,310
Regulated medical waste storage facility - Module XVI	~~Reserved~~	$390
Regulated medical waste treatment facility - Module XVII	~~Reserved~~	$390
Permit-by-rule Modification Review and Confirmation		$390
Public participation (does not include costs of newspaper advertisements or radio broadcasts)	~~$2,400~~	$1,040

~~TABLE 3.1-3. MINOR PERMIT ACTIONS, AMENDMENT OR MODIFICATION~~

~~TYPE OF PERMIT MODULE~~	~~Column 2~~	~~Column 3~~
	~~FEE~~	
	~~July 1, 2003, through June 30, 2004~~	~~July 1, 2004, and thereafter~~
~~Minor amendment or modification (excluding Gas Management Plans)~~	~~$900~~	~~$390~~
~~Gas Management Plans~~		~~$1,700~~

TABLE ~~3.1-4~~ *3.1-3*. VARIANCE REQUESTS.

Type of Variance	~~Column 2~~	~~Column 3~~
	FEE	
	~~July 1, 2003, through June 30, 2004~~	~~July 1, 2004, and thereafter~~
Base fee for all variances		$390
Supplemental fees based on variance type		
Exemption from classification as a solid waste		$520
Variance to permitting requirements		
Siting requirements		$520
Facility design (other than alternate liner design)		$520
Operational requirements		---
Groundwater monitoring (other than groundwater protection standards and location of monitoring system)		$920
Closure requirements		---
Post-closure requirements		---
Groundwater Protection Standards		---

Alternate liner system design		$1,570
Location of groundwater monitoring system		$920

9 VAC 20-90-130. Annual fee schedules.

TABLE 4.1. ANNUAL WASTE MANAGEMENT FACILITY FEES.

Category of Facility/Activity	*Annual Fee*
1. Noncaptive industrial landfills	*$8,000*
2. Construction and demolition debris landfills	*$4,000*
3. Sanitary landfills shall be assessed a two part fee based on their annual tonnage as follows:	
Base Tonnage to Maximum Tonnage / *Base Tonnage Fee* / *Additional Fee Per Ton Over Base Tonnage*	
Up to 10,000 / *$1,000* / *none*	
10,001 to 100,000 / *$1,000* / *$0.09*	
100,001 to 250,000 / *$10,000* / *$0.09*	
250,001 to 500,000 / *$23,500* / *$0.075*	
500,001 to 1,000,000 / *$42,250* / *$0.06*	
1,000,001 to 1,500,000 / *$72,250* / *$0.05*	
Over 1,500,000 / *$97,250* / *$0.04*	
4. Incinerators and energy recovery facilities shall be assessed a fee based upon their annual tonnage as follows:	
Annual Tonnage / *Fee*	
10,000 or less / *$2,000*	
10,001 to 50,000 / *$3,000*	
50,001 to 100,000 / *$4,000*	
100,001 or more / *$5,000*	
5. Other types of facilities shall be assessed a fee a follows:	
Composting / *$500*	
Regulated medical waste / *$1,000*	
Materials recovery / *$2,000*	
Transfer station / *$2,000*	
Facilities in post-closure care / *$500*	

VA.R. Doc. No. R04-217; Filed July 1, 2004, 8:12 a.m.

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exclusion from the Administrative Process Act in accordance with the third enactment of Chapters 249 and 324 of the 2004 Acts of Assembly, which exempt the initial implementation of regulations implementing the acts and provide that such initial regulations become effective upon filing with the Registrar of Regulations. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9 VAC 25-20. Fees for Permits and Certificates (amending 9 VAC 25-20-10 through 9 VAC 25-20-80, 9 VAC 25-20-100 through 9 VAC 25-20-130; adding 9 VAC 25-20-142 and 9 VAC 25-20-145; and repealing 9 VAC 25-20-140).**

Statutory Authority: § 62.1-44.15:6 of the Code of Virginia.

Effective Date: July 1, 2004.

Agency Contact: Burt Tuxford, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone 804-698-4086, FAX 804-698-4032, or e-mail: brtuxford@deq.virginia.gov.

Summary:

The amendments conform the existing water permit fee regulation with the changes to the Code of Virginia made by Chapters 249 and 324 of the 2004 Acts of Assembly. The substantive amendments (i) add definitions for "major reservoir," "minor reservoir," and "single jurisdiction" and delete the three VWP Project Category definitions; (ii) clarify that permit application fees do not apply to farming operations engaged in production for market, or for maintenance dredging for federal navigation channels or other Corps of Engineers-sponsored dredging projects; (iii) clarify that permit maintenance fees do not apply to facilities operating under a general permit, farming operations engaged in production for market, or for Virginia Water Protection, Surface Water Withdrawal, and Ground Water Withdrawal permits; (iv) add an exemption from paying the Annual Permit Maintenance Fee that is due on October 1, 2004, for VPDES and VPA permittees that terminate their permits prior to October 1, 2004; (v) add an exemption from paying the Annual Permit Maintenance Fee that is due on October 1, 2004, for permit holders that applied/reapplied for a municipal minor VPDES permit with a design flow of 10,000 gpd or less between July 1, 2003, and July 1, 2004, and who paid the applicable permit application fee; (vi) add information on late payments indicating that interest may be charged at the IRS underpayment rate, that a 10% late fee may apply for accounts over 90-days past due, and that the remedies available under the Code of Virginia apply for the collection of past due accounts; (vii) modify the fees in the permit application fees and permit modification fees sections to be consistent with the changes to § 62.1-44.15:6 of the Code of Virginia; (viii) add a section for annual "permit maintenance fees" that replace the fee to reapply for a permit for VPDES and VPA individual permits, and are due by October 1 of each year (additional permit maintenance fees apply to facilities with more than five process wastewater discharge outfalls, and to facilities in a toxics management program); (ix) add a section to allow

discounted permit maintenance fees for facilities participating in the Environmental Excellence Program.

9 VAC 25-20-10. Definitions.

Unless otherwise defined in this chapter or unless the context clearly indicates otherwise, the terms used in this regulation shall have the meanings ascribed to them by the State Water Control Law, § 62.1-44.3; the board's *Virginia Pollutant Discharge Elimination System* Permit Regulation, ~~9 VAC 25-30-10~~ *9 VAC 25-31-10; the board's Virginia Pollution Abatement Permit Regulation, 9 VAC 25-32-10*; the board's Virginia Water Protection Permit *Program* Regulation, 9 VAC 25-210-10; the board's Surface Water Management Area Regulation, 9 VAC 25-220-10; and the *board's* Ground Water ~~Management Act of 1992, § 62.1-255 of the Code of Virginia~~ *Withdrawal Regulations, 9 VAC 25-610-10*, including any general permits issued thereunder.

"Applicant" means for the purposes of this chapter any person filing an application for issuance, reissuance, or modification, except as exempted by 9 VAC 25-20-50, of a permit, certificate or special exception or filing a registration statement *or application* for coverage under a general permit issued in response to Chapters 3.1 (§ 62.1-44.2 et seq.), 24 (§ 62.1-242 et seq.), and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Application" means for the purposes of this chapter the forms approved by the State Water Control Board for applying for issuance or reissuance of a permit, certificate or special exception or for filing a registration statement *or application* for coverage under a general permit issued in response to Chapters 3.1, 24, and 25 of Title 62.1 of the Code of Virginia. In the case of modifications to an existing permit, *permit authorization,* certificate or special exception requested by the permit, *permit authorization,* certificate or special exception holder and not exempted by 9 VAC 25-20-50, the application shall consist of the formal written request and any accompanying documentation submitted by the permit, *permit authorization,* certificate or special exception holder to initiate the modification.

"Existing permit" means for the purposes of this chapter a permit, *permit authorization,* certificate or special exception issued by the board and currently held by an applicant.

"Major modification" means for the purposes of this chapter modification or amendment of an existing permit ~~or~~, *permit authorization,* certificate or special exception before its expiration which is not a minor modification as defined in this regulation.

"Major reservoir" means for the purposes of this chapter any new or expanded reservoir with greater than or equal to 17 acres of total surface water impacts (stream and wetlands), or a water withdrawal of greater than or equal to 3,000,000 gallons in any one day.

"Minor modification" means for the purposes of this chapter minor modification or amendment of an existing permit, *permit authorization,* certificate or special exception before its expiration as specified in ~~9 VAC 25-30~~ *9 VAC 25-31-400, 9 VAC 25-32-240*, 9 VAC 25-210-210, 9 VAC 25-220-230, or in ~~regulations promulgated in response to Chapter 25 of Title 62.1 of the Code of Virginia~~ *9 VAC 25-610-330*. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. *A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.*

"Minor reservoir" means for the purposes of this chapter any new or expanded reservoir with less than 17 acres of total surface water impacts (stream and wetlands), or a water withdrawal of less than 3,000,000 gallons in any one day.

"New permit" means for the purposes of this chapter a permit, *permit authorization,* certificate or special exception issued by the board to an applicant that does not currently hold and has never held a permit, *permit authorization,* certificate or special exception *of that type, for that activity,* at that location.

"Revoked permit" means for the purposes of this chapter an existing permit, *permit authorization,* certificate or special exception which is terminated *by the board* before its expiration.

"Single jurisdiction" means for the purposes of this chapter a single county or city. The term county includes incorporated towns which are part of the county.

~~"VWP Category I Project" means for the purposes of this chapter a project requiring complex staff review including, but not limited to, those that affect instream flows such as reservoirs, hydropower impoundments, and surface water withdrawals; major subdivisions, industrial parks, commercial developments, and regional stormwater facilities that cumulatively impact five acres or more of surface waters, including wetlands; projects in waters containing wild trout or threatened or endangered species; and new marinas, navigational dredging projects, and instream sand and gravel mining operations.~~

~~"VWP Category II Project" means for the purposes of this chapter a project requiring moderately complex staff review including, but not limited to, those impacting between two and five acres of surface waters, including wetlands, expansion of existing marinas and dredging of navigation channels.~~

~~"VWP Category III Project" means for the purposes of this chapter a project requiring routine staff review including, but not limited to, those that impact two acres or less of surface waters, including wetlands.~~

9 VAC 25-20-20. Purpose.

Section 62.1-44.15:6 of the Code of Virginia requires the promulgation of regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, Department of Game and Inland Fisheries', and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, or modify any permit*, permit*

authorization or certificate which the board has the authority to issue from the applicant for such permit*, permit authorization* or certificate. These regulations establish the required fee assessment and collection system.

9 VAC 25-20-30. Authority.

The authority for this chapter is pursuant to §§ 62.1-44.15(7) and (10) and- 62.1-44.15:6 of the Code of Virginia.

9 VAC 25-20-40. Applicability.

A. This chapter applies to:

1. All applicants for issuance of a new permit*, permit authorization* or certificate*,* or reissuance of an existing permit*, permit authorization* or certificate ~~who apply on or after July 1, 1992, that have not been issued a permit or certificate as of July 1, 1993~~*, except as specifically exempt under 9 VAC 25-20-50 A*. The fee due shall be as specified under 9 VAC 25-20-110~~,~~ *or* 9 VAC 25-20-130 ~~or 9 VAC 25-20-140 of this chapter~~.

2. All permit*, permit authorization* or certificate holders who request that an existing permit*, permit authorization* or certificate be modified, except as specifically exempt under 9 VAC 25-20-50 ~~of this chapter, who apply on or after July 1, 1992, whose permit or certificate has not been modified as of July 1, 1993~~ *A 3*. The fee due shall be as specified under 9 VAC 25-20-120 ~~or 9 VAC 25-20-140 of this chapter~~.

B. An applicant for a permit*, permit authorization* or certificate involving a ~~revoked~~ permit ~~which~~ *that* is to be *revoked and* reissued shall be considered an applicant for a new permit. The fee due shall be as specified under 9 VAC 25-20-110 ~~or 9 VAC 25-20-140 of this chapter~~.

C. Permit maintenance fees apply to each Virginia Pollutant Discharge Elimination System (VPDES) permit holder and each Virginia Pollution Abatement (VPA) permit holder, except those specifically exempt under 9 VAC 25-20-50 B of this chapter. The fee due shall be as specified under 9 VAC 25-20-142.

D. Virginia Water Protection (VWP) Individual/Minimum Instream Flow permit fees apply to any permit for the construction of an intake on a stream or river, or to any permit for the construction of a new intake on an existing reservoir. The fee due shall be as specified under 9 VAC 25-20-110 or 9 VAC 25-20-120, as applicable.

E. VWP Individual/Reservoir permit fees apply to any permit for the construction of a new reservoir, or the expansion of an existing reservoir in which one of the purposes of the reservoir is for water supply. The fee due shall be as specified under 9 VAC 25-20-110 or 9 VAC 25-20-120, as applicable. VWP Individual/Reservoir permit fees do not apply to the construction of any impoundment, pond or lake in which water supply is not part of the project's purpose.

9 VAC 25-20-50. Exemptions.

A. No permit application fees will be assessed to:

1. ~~Applicants for permits or certificates who submitted complete applications before July 1, 1992, whether or not a permit or certificate is issued before July 1, 1993~~ *An applicant for a permit, permit authorization, certificate or special exception pertaining to a farming operation engaged in production for market*.

2. ~~Applicants for permits or certificates who submitted complete applications on or after July 1, 1992, where permits or certificates have been issued before July 1, 1993~~ *An applicant for a permit, permit authorization, or certificate pertaining to maintenance dredging for federal navigation channels or other U.S. Army Corps of Engineers-sponsored dredging projects*.

3. Permit holders who request minor modifications ~~of~~ *or minor amendments to* permits*, permit authorizations* or certificates as defined in 9 VAC 25-20-10 ~~of this chapter~~.

4. Permit*, permit authorization* or certificate holders whose permits*, permit authorizations* or certificates are modified *or amended* at the initiative of the board.

5. VPDES permit holders or VPA permit holders for the regularly scheduled renewal of an individual permit for an existing facility, except VPDES and VPA permit holders whose permits expire on or before December 27, 2004.

B. No permit maintenance fees will be assessed to:

1. VPDES and VPA facilities operating under a general permit.

2. Permits pertaining to a farming operation engaged in production for market.

3. Virginia Water Protection (VWP), Surface Water Withdrawal (SWW), and Ground Water Withdrawal (GWW) permits, permit authorizations, certificates and special exceptions.

9 VAC 25-20-60. Due ~~date~~ *dates*.

A. ~~Except as specified in 9 VAC 25-20-60 B, all permit~~ *Virginia Pollutant Discharge Elimination System (VPDES) and Virginia Pollution Abatement (VPA) permits.*

1. Application fees *for all new permit applications* are due on the day an application is submitted and ~~must accompany the application~~ *shall be paid in accordance with 9 VAC 25-20-70 A*. Applications will not be processed without payment of the required fee. ~~No permit will be automatically continued without payment of the required fee.~~

2. For reissuance of permits that expire on or before December 27, 2004, the application fee for new permit applications as set forth in this regulation is due on the day the application is submitted.

3. An application fee is due on the day an application is submitted for either a major modification or a permit reissuance that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a regularly scheduled renewal of an individual permit for an existing facility, unless the permit for the facility expires on or before December 27, 2004. There is no application fee for a major modification or amendment that is made at the board's initiative.

4. Permit maintenance fees shall be paid to the board by October 1 of each year. Additional permit maintenance fees for facilities in a toxics management program, and for facilities that have more than five process wastewater discharge outfalls at a single facility (not including "internal" outfalls) shall also be paid to the board by October 1 of each year. No permit will be reissued or automatically continued without payment of the required fee.

a. Existing individual permit holders with an effective permit as of July 1, 2004, (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the board by October 1, 2004, unless one of the following conditions apply:

(1) The permit is terminated prior to October 1, 2004; or

(2) The permit holder applied or reapplied for a municipal minor VPDES permit with a design flow of 10,000 gallons per day or less between July 1, 2003, and July 1, 2004, and paid the applicable permit application fee.

b. Effective April 1, 2005, any permit holder whose permit is effective as of April 1 of a given year (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the board by October 1 of that same year.

B. ~~Applicants that submitted applications on or after July 1, 1992, where a permit or certificate has not been issued before July 1, 1993, will be assessed fees as specified in 9 VAC 25-20-140. Payment of the fee shall be made within 60 days of the applicant's notification by the board of the fee due. No permit will be issued without payment of the required fee.~~ *Surface Water Withdrawal (SWW), and Ground Water Withdrawal (GWW) permits.*

1. All permit application fees are due on the day an application is submitted and shall be paid in accordance with 9 VAC 25-20-70 A. Applications will not be processed without payment of the required fee. No permit will be automatically continued without payment of the required fee.

2. For reissuance of GWW permits that expire on or before March 27, 2005, the application fee for new permit applications as set forth in this regulation is due on the day the application is submitted.

3. Application fees for major modifications or amendments are due on the day an application is submitted. Applications will not be processed without payment of the required fee. There is no fee for a major modification or amendment that is made at the board's initiative.

C. Virginia Water Protection (VWP) permits.

1. VWP permit application fees shall be paid in accordance with 9 VAC 25-20-70 A. Review of applications may be initiated before the fee is received; however, draft permits or authorizations shall not be issued prior to payment of the required fee. No permit or permit authorization shall be automatically continued without payment of the required fee.

2. VWP application fees for major modifications shall be paid in accordance with 9 VAC 25-20-70 A. Review of applications may be initiated before the fee is received; however, major modifications shall not be issued prior to payment of the required fee. There is no application fee for a major modification that is made at the board's initiative.

9 VAC 25-20-70. Method of payment.

A. Fees shall be paid by check, draft or postal money order payable to the ~~Commonwealth~~ *Treasurer* of Virginia, ~~State Water Control Board~~ *or submitted electronically (if available),* and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. *All fees shall be sent to the following address (or submitted electronically, if available): Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, Virginia 23240.*

B. Required information. All applicants for new permit issuance, permit reissuance or permit modification shall submit the following information along with the fee payment:

1. Applicant name, address and daytime phone number.

2. Applicant Federal Identification Number (FIN).

3. The name of the facility/activity, and the facility/activity location.

4. The type of permit applied for.

5. Whether the application is for a new permit issuance, permit reissuance or permit modification.

6. The amount of fee submitted.

7. The existing permit number, if applicable.

9 VAC 25-20-80. Incomplete payments *and late payments*.

All incomplete payments will be deemed *as* nonpayments.

Interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to § 6621(a)(2) of the Internal Revenue Code. This rate is prescribed in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

A 10% late payment fee may be charged to any delinquent (over 90 days past due) account.

The Department of Environmental Quality is entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover any attorney's fees and other administrative costs incurred in pursuing and collecting any past due amount.

9 VAC 25-20-100. General.

Each application for a new permit*, permit authorization* or certificate, each application for reissuance of a permit*, permit authorization* or certificate, each application for major modification of a permit*, permit authorization* or certificate, and each revocation and reissuance of a permit*, permit authorization* or certificate is a separate action and shall be assessed a separate fee*, as applicable*. The fees for each

type of permit*, permit authorization* or certificate ~~which~~ *that* the board has the authority to issue, reissue or modify will be as specified in this part.

9 VAC 25-20-110. Fee schedules for individual *VPDES and VPA* new permit issuance, and individual *VWP, SWW and GWW new permit issuance and* existing permit reissuance.

~~A. Through June 30, 2004, the following fee schedules apply to applications for issuance of a new individual permit or certificate and reissuance of an existing individual permit or certificate:~~

~~1.~~ *A.* Virginia Pollutant Discharge Elimination System (VPDES) permits. *The following fee schedules apply to applications for issuance of a new individual VPDES permit or certificate. (Note: All flows listed in the table below are facility "design" flows.)*

VPDES Industrial Major	$24,000
VPDES Municipal Major	$21,300
VPDES Municipal *Major* Stormwater*/MS4*	$21,300
VPDES Industrial Minor/No Standard Limits	$10,200
VPDES Industrial Minor/Standard Limits	$~~6,600~~ *3,300*
VPDES Industrial Stormwater	$7,200
VPDES Municipal Minor/*Greater Than* 100,000 GPD ~~or More~~	$7,500
VPDES Municipal Minor/~~More Than 10,000~~ *10,001* GPD-~~Less Than~~ 100,000 GPD	$6,000
VPDES Municipal Minor/~~More Than 1,000~~ *1,001* GPD-10,000 GPD ~~or Less~~	$5,400
VPDES Municipal Minor/1,000 GPD or less	$~~4,200~~ *2,000*
VPDES Municipal Minor Stormwater/MS4	*$2,000*

~~2.~~ *B.* Virginia Pollution Abatement (VPA) permits. *The following fee schedules apply to applications for issuance of a new individual VPA permit or certificate. (Note: Land application rates listed in the table below are facility "design" rates.)*

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	*$15,000*
VPA Industrial Wastewater Operation*/Land Application of Less Than 10 Inches Per Year*	$10,500
VPA Industrial Sludge Operation	$7,500
VPA Municipal Wastewater Operation	$13,500
VPA Municipal Sludge Operation	$7,500
All other operations not specified above	$750

~~3.~~ *C.* Virginia Water Protection (VWP) permits. *The following fee schedules apply to applications for issuance of a new individual and reissuance of an existing individual VWP permit or certificate. Only one permit application fee shall be assessed per application; for a permit application involving more than one of the operations described below, the governing fee shall be based upon the primary purpose of the proposed activity. (Note: Withdrawal amounts shown in the table below are maximum daily withdrawals.)*

VWP ~~Category I Project~~ *Individual/Surface Water Impacts (Wetlands, Streams and/or Open Water)*	~~$9,000~~ *$2,400 plus $220 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) ($60,000 maximum)*
VWP ~~Category II Project~~ *Individual/Minimum Instream Flow - Withdrawals equal to or greater than 3,000,000 gallons on any day*	~~$6,300~~ *$25,000*
VWP Individual/Minimum Instream Flow - Withdrawals between 2,000,000 and 2,999,999 gallons on any day	*$20,000*
VWP Individual/Minimum Instream Flow - Withdrawals between 1,000,000 and 1,999,999 gallons on any day	*$15,000*
VWP Individual/Minimum Instream Flow - Withdrawals less than 1,000,000 gallons on any day that do not otherwise qualify for a general VWP permit for water withdrawals	*$10,000*
VWP ~~Category III Project~~ *Individual/Reservoir - Major*	~~$2,400~~ *$35,000*
VWP Individual/Reservoir - Minor	*$25,000*
VWP Individual/Nonmetallic Mineral Mining	*$2,400 plus $220 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) ($7,500 maximum)*

~~4.~~ *D.* Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia. *The following fee schedules apply to applications for issuance of a new individual, and reissuance of an existing individual SWW permit or certificate.*

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons	(Reserved)

or greater in any single month	
~~Certificate for an Existing Nonagricultural Withdrawal~~	~~$6,000~~
~~Permit for a New or Expanded Nonagricultural~~ *Surface Water* Withdrawal	~~$9,000~~ *$12,000*

~~5.~~ *E. Ground Water Withdrawal (GWW)* Permits ~~for the withdrawal of groundwater~~ issued in response to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia. *The following fee schedules apply to applications for issuance of a new individual, and reissuance of an existing individual GWW permit or certificate.*

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Ground Water Withdrawal/Initial Permit for an Existing ~~Nonagricultural~~ Withdrawal *Based Solely on Historic Withdrawals*	$1,200
~~Permit for a New or Expanded Nonagricultural~~ *Ground Water* Withdrawal	$6,000

~~B. Effective July 1, 2004, the following fee schedules apply to applications for issuance of a new individual permit or certificate and reissuance of an existing individual permit or certificate:~~

~~1. Virginia Pollutant Discharge Elimination System (VPDES) permits.~~

~~VPDES Industrial Major~~	~~$8,000~~
~~VPDES Municipal Major~~	~~$7,100~~
~~VPDES Municipal Stormwater~~	~~$7,100~~
~~VPDES Industrial Minor/No Standard Limits~~	~~$3,400~~
~~VPDES Industrial Minor/Standard Limits~~	~~$2,200~~
~~VPDES Industrial Stormwater~~	~~$2,400~~
~~VPDES Municipal Minor/100,000 GPD or More~~	~~$2,500~~
~~VPDES Municipal Minor/More Than 10,000 GPD Less Than 100,000 GPD~~	~~$2,000~~
~~VPDES Municipal Minor/More Than 1,000 GPD 10,000 GPD or Less~~	~~$1,800~~
~~VPDES Municipal Minor/1,000 GPD or less~~	~~$1,400~~

~~2. Virginia Pollution Abatement (VPA) permits.~~

~~VPA Concentrated Animal Feeding Operation~~	~~(Reserved)~~
~~VPA Intensified Animal Feeding Operation~~	~~(Reserved)~~
~~VPA Industrial Wastewater Operation~~	~~$3,500~~
~~VPA Industrial Sludge Operation~~	~~$2,500~~
~~VPA Municipal Wastewater Operation~~	~~$4,500~~
~~VPA Municipal Sludge Operation~~	~~$2,500~~
~~All other operations not specified above~~	~~$250~~

~~3. Virginia Water Protection (VWP) permits.~~

~~VWP Category I Project~~	~~$3,000~~
~~VWP Category II Project~~	~~$2,100~~
~~VWP Category III Project~~	~~$800~~

~~4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1 242 et seq.) of Title 62.1 of the Code of Virginia.~~

~~Agricultural withdrawal not exceeding 150 million gallons in any single month~~	~~(Reserved)~~
~~Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month~~	~~(Reserved)~~
~~Agricultural withdrawal of 300 million gallons or greater in any single month~~	~~(Reserved)~~
~~Certificate for an Existing Nonagricultural Withdrawal~~	~~$2,000~~
~~Permit for a New or Expanded Nonagricultural Withdrawal~~	~~$3,000~~

~~5. Permits for the withdrawal of groundwater issued in response to Chapter 25 (§ 62.1 254 et seq.) of Title 62.1 of the Code of Virginia.~~

~~Agricultural withdrawal not exceeding 150 million gallons in any single month~~	~~(Reserved)~~
~~Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month~~	~~(Reserved)~~
~~Agricultural withdrawal of 300 million gallons or greater in any single month~~	~~(Reserved)~~
~~Initial Permit for an Existing Nonagricultural Withdrawal~~	~~$400~~
~~Permit for a New or Expanded Nonagricultural Withdrawal~~	~~$2,000~~

9 VAC 25-20-120. Fee schedules for major modification of individual permits or certificates requested by the permit or certificate holder.

~~A. Through June 30, 2004,~~ The following fee schedules apply to applications for major modification of an individual permit or certificate requested by the permit or certificate holder:

1. Virginia Pollutant Discharge Elimination System (VPDES) permits. *The application fees listed in the table below apply to a major modification that occurs (and becomes effective) before the stated permit expiration date. (Note: All flows listed in the table below are facility "design" flows.)*

VPDES Industrial Major	$12,000
VPDES Municipal Major	$10,650
VPDES Municipal *Major* Stormwater*/MS4*	~~$10,650~~ *5,150*
VPDES Industrial Minor/No Standard Limits	$5,100
VPDES Industrial Minor/Standard Limits	$3,300
VPDES Industrial Stormwater	$3,600
VPDES Municipal Minor/ *Greater Than* 100,000 GPD ~~or More~~	$3,750
VPDES Municipal Minor/~~More Than 10,000~~ *10,001* GPD-~~Less Than~~ 100,000 GPD	$3,000
VPDES Municipal Minor/~~More Than 1,000~~ *1,001* GPD-10,000 GPD ~~or Less~~	$2,700
VPDES Municipal Minor/1,000 GPD or Less	~~$2,100~~ *1,000*
VPDES Municipal Minor Stormwater/MS4	*$1,000*

2. Virginia Pollution Abatement (VPA) permits. *The application fees listed in the table below apply to a major modification that occurs (and becomes effective) before the stated permit expiration date. (Note: Land application rates listed in the table below are facility "design" rates.)*

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	*$7,500*
VPA Industrial Wastewater Operation*/Land Application of Less Than 10 Inches Per Year*	$5,250
VPA Industrial Sludge Operation	$3,750
VPA Municipal Wastewater Operation	$6,750
VPA Municipal Sludge Operation	$3,750
All other operations not specified above	$375

3. Virginia Water Protection (VWP) permits. . *(Note: Only one permit application fee shall be assessed per application; for a permit application involving more than one of the operations described below, the governing fee shall be based upon the primary purpose of the proposed activity.)*

VWP ~~Category I Project~~ *Individual/Surface Water Impacts (Wetlands, Streams and/or Open Water)*	~~$4,500~~ *$1,200 plus $110 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) ($30,000 maximum)*
VWP ~~Category II Project~~ *Individual/Minimum Instream Flow*	~~$3,150~~ *5,000*
VWP ~~Category III Project~~ *Individual/Reservoir (Major or Minor)*	~~$1,200~~ *12,500*
VWP Individual/Nonmetallic Mineral Mining	*$1,200 plus $110 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) ($3,750 maximum)*

4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
~~Certificate for an Existing Nonagricultural Withdrawal~~	~~$3,000~~
~~Permit for a New or Expanded Nonagricultural~~ *Surface Water* Withdrawal	~~$4,500~~ *6,000*

5. *Ground Water Withdrawal (GWW)* Permits ~~for the withdrawal of groundwater~~ issued in response to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
*Ground Water Withdrawal/*Initial Permit for an Existing ~~Nonagricultural~~ Withdrawal *Based Solely on Historic Withdrawals*	$600
~~Permit for a New or Expanded Nonagricultural~~ *Ground Water* Withdrawal	$3,000

~~B. Effective July 1, 2004, the following fee schedules apply to applications for major modification of an individual permit or certificate requested by the permit or certificate holder:~~

~~1. Virginia Pollutant Discharge Elimination System (VPDES) permits.~~

~~VPDES Industrial Major~~	~~$4,000~~
~~VPDES Municipal Major~~	~~$3,550~~
~~VPDES Municipal Stormwater~~	~~$3,550~~
~~VPDES Industrial Minor/No Standard Limits~~	~~$1,700~~
~~VPDES Industrial Minor/Standard Limits~~	~~$1,100~~
~~VPDES Industrial Stormwater~~	~~$1,200~~

~~VPDES Municipal Minor/100,000 GPD or More~~	~~$1,250~~
~~VPDES Municipal Minor/More Than 10,000 GPD Less Than 100,000 GPD~~	~~$1,000~~
~~VPDES Municipal Minor/More Than 1,000 GPD 10,000 GPD or Less~~	~~$900~~
~~VPDES Municipal Minor/1,000 GPD or Less~~	~~$700~~

~~2. Virginia Pollution Abatement (VPA) permits.~~

~~VPA Concentrated Animal Feeding Operation~~	~~(Reserved)~~
~~VPA Intensified Animal Feeding Operation~~	~~(Reserved)~~
~~VPA Industrial Wastewater Operation~~	~~$1,750~~
~~VPA Industrial Sludge Operation~~	~~$1,250~~
~~VPA Municipal Wastewater Operation~~	~~$2,250~~
~~VPA Municipal Sludge Operation~~	~~$1,250~~
~~All other operations not specified above~~	~~$125~~

~~3. Virginia Water Protection (VWP) permits.~~

~~VWP Category I Project~~	~~$1,500~~
~~VWP Category II Project~~	~~$1,050~~
~~VWP Category III Project~~	~~$400~~

~~4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1 242 et seq.) of Title 62.1 of the Code of Virginia.~~

~~Agricultural withdrawal not exceeding 150 million gallons in any single month~~	~~(Reserved)~~
~~Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month~~	~~(Reserved)~~
~~Agricultural withdrawal of 300 million gallons or greater in any single month~~	~~(Reserved)~~
~~Certificate for an Existing Nonagricultural Withdrawal~~	~~$1,000~~
~~Permit for a New or Expanded Nonagricultural Withdrawal~~	~~$1,500~~

~~5. Permits for the withdrawal of groundwater issued in response to Chapter 25 (§ 62.1 254 et seq.) of Title 62.1 of the Code of Virginia.~~

~~Agricultural withdrawal not exceeding 150 million gallons in any single month~~	~~(Reserved)~~
~~Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month~~	~~(Reserved)~~
~~Agricultural withdrawal of 300 million gallons or greater in any single month~~	~~(Reserved)~~
~~Initial Permit for an Existing Nonagricultural Withdrawal~~	~~$200~~
~~Permit for a New or Expanded Nonagricultural Withdrawal~~	~~$1,000~~

9 VAC 25-20-130. Fees for filing registration statements *or applications* for general permits issued by the board.

~~A. Through June 30, 2004,~~ The following fees apply to filing of applications or registration statements for all general permits issued by the board, except:

1. The fee for filing a registration statement for coverage under 9 VAC 25-110 *(General VPDES Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 GPD)* is $0.

2. The fee for filing a registration statement for coverage under 9 VAC 25-120 *(General VPDES Permit Regulation for Discharges From Petroleum Contaminated Sites)* is $0.

3. The fee for filing an application or registration statement for coverage under ~~any~~ *a* VWP General Permit ~~authorizing impacts to one tenth of an acre or more but less than one-half of an acre of nontidal surface waters shall be $600.~~ *issued by the board shall be:*

VWP General/Less Than 4,356 sq. ft. (1/10 acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	*$0*
VWP General/4,356 sq. ft. to 21,780 sq. ft. (1/10 acre to 1/2 acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	*$600*
VWP General/21,781 sq. ft. to 43,560 sq. ft. (greater than 1/2 acre to one acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	*$1,200*
VWP General/43,561 sq. ft. to 87,120 sq. ft. (greater than one acre to two acres) of Surface Water Impact (Wetlands, Streams and/or Open Water)	*$1,200 plus $120 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 43,560 sq. ft. (one acre) ($2,400 maximum)*
VWP General/Minimum Instream Flow/Reservoir - Water withdrawals and/or pond construction	*$2,400*

4. ~~The fee for filing an application or registration statement for coverage under any VWP General Permit authorizing impacts to one half of an acre or more of nontidal surface waters shall be $1,200~~ *VPDES Storm Water General Permits.*

a. Except as specified in subdivision 4 b of this section, the fee for filing a registration statement for coverage under a VPDES storm water general permit issued by the board shall be:

VPDES General/Industrial Storm Water Management	*$500*
VPDES General/Storm Water Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than 5 acres)	*$500*
VPDES General/Storm Water Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development less than 5 acres)	*$300*

b. Owners of facilities that are covered under the Industrial Activity (VAR5) and Construction Site (VAR10) storm water general permits that expire on June 30, 2004, and who are reapplying for coverage under the new general permits that are effective on July 1, 2004, must submit an application fee of $600 to reapply.

5. Except as specified in subdivisions 1, 2, 3 and 4 of this ~~subsection~~ *section*, the ~~maximum~~ fee for filing an application or registration statement for coverage under any general permit issued by the board shall be $600. ~~Fees for coverage under general permits will be based on the number of years from the filing of a registration statement until the general permit expires. The annual prorated amount is equal to the maximum fee of $600 divided by the total term of the general permit. The fee is the annual prorated amount multiplied by the number of years rounded to the nearest whole year from the filing of a registration statement until the expiration of the general permit.~~

~~B. Effective July 1, 2004, the following fees apply to filing of applications or registration statements for all general permits issued by the board, except:~~

~~1. The fee for filing a registration statement for coverage under 9 VAC 25-110 is $0.~~

~~2. The fee for filing a registration statement for coverage under 9 VAC 25-120 is $0.~~

~~3. The fee for filing an application or registration statement for coverage under any VWP General Permit authorizing impacts to one tenth of an acre or more but less than one-half of an acre of nontidal surface waters shall be $200.~~

~~4. The fee for filing an application or registration statement for coverage under any VWP General Permit authorizing impacts to one-half of an acre or more of nontidal surface waters shall be $400.~~

~~5. Except as specified in subdivisions 1, 2, 3 and 4 of subsection A of this section and subdivisions 1, 2, 3 and 4 of this subsection, the maximum fee for filing a registration statement for coverage under any general permit issued by the board shall be $200. Fees for coverage under general permits will be based on the number of years from the filing of a registration statement until the general permit expires. The annual prorated amount is equal to the maximum fee of $200 divided by the total term of the general permit. The fee is the annual prorated amount multiplied by the number of years rounded to the nearest whole year from the filing of a registration statement until the expiration of the general permit.~~

9 VAC 25-20-140. ~~Fee assessment.~~ ***(Repealed.)***

~~Applicants that submitted applications on or after July 1, 1992, where a permit or certificate has not been issued as of July 1, 1993, shall be assessed the applicable fee as specified in 9 VAC 25-20-110, 9 VAC 25-20-120 or 9 VAC 25-20-130, as appropriate, except that where a public notice has been published before July 1, 1993, the fee shall be 50% of the fee specified in 9 VAC 25-20-110, 9 VAC 25-20-120, or 9 VAC 25-20-130.~~

9 VAC 25-20-142. Permit maintenance fees.

A. The following annual permit maintenance fees apply to each individual VPDES and VPA permit, including expired permits that have been administratively continued, except those exempted by 9 VAC 20-25-50 B or 9 VAC 20-25-60 A 4:

1. Virginia Pollutant Discharge Elimination System (VPDES) permitted facilities. (Note: All flows listed in the table below are facility "design" flows.)

VPDES Industrial Major	*$4,800*
VPDES Municipal Major/Greater Than 10 MGD	*$4,750*
VPDES Municipal Major/2 MGD - 10 MGD	*$4,350*
VPDES Municipal Major/Less Than 2 MGD	*$3,850*
VPDES Municipal Major Stormwater/MS4	*$3,800*
VPDES Industrial Minor/No Standard Limits	*$2,040*
VPDES Industrial Minor/Standard Limits	*$1,200*
VPDES Industrial Minor/Water Treatment System	*$1,200*
VPDES Industrial Stormwater	*$1,440*
VPDES Municipal Minor/Greater Than 100,000 GPD	*$1,500*
VPDES Municipal Minor/10,001 GPD - 100,000 GPD	*$1,200*
VPDES Municipal Minor/1,001 GPD - 10,000 GPD	*$1,080*
VPDES Municipal Minor/1,000 GPD or Less	*$400*
VPDES Municipal Minor Stormwater/MS4	*$400*

2. Virginia Pollution Abatement (VPA) permits. (Note: Land application rates listed in the table below are facility "design" rates.)

VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	*$1,500*
VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year	*$1,050*
VPA Industrial Sludge Operation	*$750*
VPA Municipal Wastewater Operation	*$1,350*
VPA Municipal Sludge Operation	*$750*

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
All other operations not specified above	$75

B. Additional permit maintenance fees.

1. An additional permit maintenance fee of $1,000 shall be paid annually by permittees in a toxics management program. Any facility that performs acute or chronic biological testing for compliance with a limit or special condition requiring monitoring in a VPDES permit is included in the toxics management program.

2. An additional permit maintenance fee of $1,000 shall be paid annually by permittees that have more than five process wastewater discharge outfalls at a single facility (not including "internal" outfalls).

3. For a local government or public service authority with permits for multiple facilities in a single jurisdiction, the total permit maintenance fees for all permits held as of April 1, 2004, shall not exceed $20,000 per year.

C. If the category of a facility (as described in 9 VAC 25-20-142 A 1 or 2) changes as the result of a permit modification, the permit maintenance fee based upon the permit category as of April 1 shall be submitted by October 1.

D. Annual permit maintenance fees may be discounted for participants in the Environmental Excellence Program as described in 9 VAC 25-20-145.

9 VAC 25-20-145. Discounted permit maintenance fees for Environmental Excellence Program participants.

A. The term "Virginia Environmental Excellence Program" (VEEP) means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement Environmental Management Systems (EMS). The program is based on the use of EMSs that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

B. Participants in the VEEP shall be eligible for reduced annual permit maintenance fees. The VEEP includes the Environmental Enterprise (E2) level of participation and the Exemplary Environmental Enterprise (E3) level of participation.

C. Annual permit maintenance fee discounts will not become effective until 2005. The availability of discounts to the annual permit maintenance fees will be dependent upon acceptance and continued participation in the VEEP.

D. Eligibility for reduced annual permit maintenance fees shall be based upon the department's review of the annual report that is required to be submitted by the VEEP. The department shall review annual reports to verify that facilities continue to meet VEEP criteria prior to offering discounted annual permit maintenance fees.

1. The participant's annual report must reflect activities occurring through December 31 and must satisfy all reporting requirements established in the VEEP.

2. Annual reports must be received at the department's central office by April 1 of the following year to be eligible for a reduction of the annual permit maintenance fees.

3. The annual report must list all regulated and permitted activities included within the scope of the facility's Environmental Management System.

4. A participant's level of participation will be evaluated as of December 31 of each calendar year.

E. If a facility participated in the VEEP but participation in the program was terminated, discounted fees will not be available to participants until they have been reaccepted into the VEEP.

F. Participants at the E2 level of participation will be eligible to receive a discount to annual permit maintenance fees for up to a maximum of three years.

G. Prior to distributing bills for annual permit maintenance fees, the department shall calculate the discounted annual permit maintenance fees. The total amount of all facilities' discounts to water annual permit maintenance fees shall not exceed $64,000 annually.

1. The total of a 5.0% discount for each participant at the E3 level of participation and a 2.0% discount for each participant at the E2 level of participation shall be calculated.

2. If the calculated total of the discounts to annual permit maintenance fees would exceed $64,000, annual permit maintenance fees for participants at the E3 level of participation shall be discounted 2.0%, additional discounts of annual permit maintenance fees for participants at the E3 level of participation shall not be available, and annual permit maintenance fees for participants at the E2 level of participation shall not be discounted.

3. If the calculated total of the discounts to annual permit maintenance fees would not exceed $64,000, annual permit maintenance fees for participants at the E3 level of participation shall be discounted 5.0%, annual permit maintenance fees for participants at the E2 level of participation shall be discounted 2.0%, and a larger discount may be provided for participants at the E3 level of participation, based upon direct program costs and program revenues, not to exceed a total discount of 20%. The total of all discounts shall not exceed $64,000. Any additional discounted fees will be calculated as follows:

(Total program revenues in the previous fiscal year minus direct program costs for the previous fiscal year) multiplied by 0.75 equals the additional discounts to be distributed to program participants. Additional discounts will be distributed to participants at the E3 level of participation in equal whole percentages.

4. If the calculated total of all facilities' discounts to annual fees exceeds $64,000, the department shall reevaluate the discounts offered to VEEP participants and shall begin the

regulatory process to revise the discounts offered to VEEP participants.

NOTICE: The form used in administering 9 VAC 25-20, Fees for Permits and Certificates, is not being published; however, the name of the form is listed below. Forms are available for public inspection at the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Water *Quality* Division Permit Application Fee Form~~, issued July 1996~~ *(rev. 7/04)*.

VA.R. Doc. No. R04-219; Filed July 1, 2004, 8:14 a.m.

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Title of Regulation: **9 VAC 25-770. Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects (adding 9 VAC 25-770-10 through 9 VAC 25-770-180).**

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

Effective Date: August 25, 2004.

Agency Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032, or e-mail egilinsky@deq.state.va.us.

Summary:

The regulation specifies the mechanisms by which the State Water Control Board may require demonstration of financial responsibility for the completion of compensatory mitigation requirements for dredging projects in tidal waters permitted under the Virginia Water Protection Permit (VWPP) Program. Financial responsibility may be demonstrated by a letter of credit, certificate of deposit, or performance bond. When the U.S. Army Corps of Engineers requires demonstration of financial responsibility, then the mechanism and amount approved by the Corps shall be used to meet this requirement.

Amendments since publication of the proposed regulation remove unnecessary definitions, add an exemption for state and federal government projects, and modify compliance dates to allow DEQ staff more time to review the financial assurance documents prior to project onset. In addition, amendments clarify the means to transfer financial assurance with transfer of the permit and the mechanism by which purchase of mitigation bank credits or in lieu of fee contributions satisfy the regulation.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:24 VA.R. 3496-3506 August 11, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed regulation are set out.

CHAPTER 770.
VIRGINIA FINANCIAL RESPONSIBILITY REQUIREMENTS FOR MITIGATION ASSOCIATED WITH TIDAL DREDGING PROJECTS.

PART I.
DEFINITIONS.

9 VAC 25-770-10. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Applicant" means a person applying for a VWP individual or general permit.

[*~~"Aquatic resources" or "aquatic environment" mean surface waters and the habitat they provide, including both plant and animal communities.~~*]

"Board" means the State Water Control Board.

"Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

"Compensatory mitigation plan" means the written plan describing the proposed compensatory mitigation activities required by 9 VAC 25-210-80 of the Virginia Water Protection Permit Program Regulation.

[*~~"Creation" means the establishment of a wetland or other aquatic resource where one did not formerly exist.~~*]

"Director" means the Director of the Department of Environmental Quality (DEQ) or an authorized representative.

[*~~"Dredged material" means material that is excavated or dredged from surface waters.~~*]

"Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

[*~~"Enhancement" means activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions or values.~~*]

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

[*~~"Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris.~~*

~~"Fill material" means any pollutant that replaces portions of surface water with dry land or that changes the bottom elevation of a surface water for any purpose.~~]

"General permit" means a permit authorizing a specified category of activities.

"In-lieu fee fund" means a monetary fund operated by a nonprofit organization or governmental agency that receives financial contributions from persons impacting wetlands or streams pursuant to an authorized permitted activity and that expends the moneys received to provide consolidated compensatory mitigation for permitted wetland or stream impacts.

"Law" means the State Water Control Law of Virginia.

[~~*"Minimization" means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.*~~]

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks, and is operating under a signed banking agreement.

[~~*"Mitigation banking" means compensating for unavoidable wetland or stream losses in advance of development actions through the sale, purchase or use of credits from a mitigation bank.*~~]

"Permittee" means the person who holds a VWP individual or general permit.

"Person" means any firm, corporation, association, or partnership, one or more individuals, or any governmental unit or agency of it.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes.

[~~*"Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.*~~

~~*"Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.*~~

~~*"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss of more than minimal degradation of its existing ecological functions.*~~]

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

"Surface water" means all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.

"USACE" means the United States Army Corps of Engineers.

"VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:5 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

PART II.
GENERAL INFORMATION.

9 VAC 25-770-20. Applicability.

This regulation applies to all persons required to obtain or modify a VWP permit pursuant to the Virginia Water Protection Permit Program Regulation, 9 VAC 25-210, for completion of dredging projects in tidal waters governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

[*State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial responsibility obligations and are not required to comply with the requirements of this chapter.*]

9 VAC 25-770-30. Compliance date.

An applicant for a VWP permit for completion of a dredging project in tidal waters must file [~~*a financial responsibility mechanism or*~~] *proof of mitigation bank credit purchase or in-lieu fee fund donation* [*or a financial responsibility mechanism*] *with the board* [~~*with any required final compensatory mitigation plan*~~ *at least 60 days prior to onset of any activity in permitted impact areas*]. *The compensatory mitigation plan and financial responsibility documentation* [*or proof of mitigation bank credit purchase or in-lieu fee fund donation*] *shall be submitted by the permittee and approved by the board prior to the onset of any dredging activities in permitted impact areas.*

9 VAC 25-770-40 and 9 VAC 25-770-50. **[No change from proposed.]**

9 VAC 25-770-60. Transfer of permit.

The new permittee must submit [*proof of mitigation bank credit purchase or in-lieu fee fund donation or*] *evidence of financial responsibility to the board in accordance with this chapter within 60 days of the transfer of the permit from the existing permittee to the new permittee.* [*If the old permittee has completed mitigation activities by filing proof of mitigation bank credit purchase or in-lieu fee fund donation before the transfer of the permit, the new permittee is not required to do so or to provide any additional evidence of financial*

responsibility.] *When a transfer of the permit occurs, the old permittee shall continue to comply with the requirements of this chapter until the new permittee has demonstrated that he is complying with the requirements of this chapter. The new permittee shall demonstrate compliance with this chapter within 60 days of the date of the transfer of the permit. Upon demonstration to the board by the new permittee of compliance with this chapter, the board shall notify the old permittee that he or she no longer needs to comply with this chapter as of the date of demonstration.*

PART III.
COMPENSATORY MITIGATION PLAN AND FINANCIAL RESPONSIBILITY CRITERIA.

9 VAC 25-770-70. Compensatory mitigation requirements.

A. Compensatory mitigation for any project subject to a VWP permit must include measures to avoid and reduce impacts to surface waters to the maximum extent practicable, and where impacts cannot be avoided, the means by which compensation will be accomplished to achieve no net loss of wetland acreage and function.

B. The applicable compensatory mitigation standards are described in 9 VAC 25-210-80 and 9 VAC 25-210-115 of the Virginia Water Protection Permit Program Regulation. All aspects of the compensatory mitigation plan, including documentation of financial responsibility [*or proof of mitigation bank credit purchase or in-lieu fee fund donation*]*, shall be finalized, submitted and approved by the board prior to the onset of any dredging activities in permitted impact areas.*

9 VAC 25-770-80. Cost [~~***estimate***~~ ***estimates***] ***for*** [~~***compensatory mitigation activities other than***~~] ***in-lieu fee fund donations*** [~~***or***~~ ***and***] ***mitigation bank credit purchases.***

[~~*A. The permittee shall prepare for approval by the board a detailed written estimate of the cost of implementing compensatory mitigation activities. The written cost estimate shall be submitted concurrently with the final compensatory mitigation plan.*~~

~~*1. The compensatory mitigation plan cost estimate shall equal the full cost of implementation of the plan.*~~

~~*2. The compensatory mitigation cost estimate shall be based on and include the costs to the permittee of hiring a third party to implement the compensatory mitigation plan. The third party may not be either a parent corporation or subsidiary of the permittee.*~~

~~*3. The compensatory mitigation cost estimate may not incorporate any salvage value that may be realized by the sale of materials, facility structures or equipment, land or other facility assets at the time of implementation of the plan.*~~

~~*B. If the length of the estimated project life exceeds one year, the permittee shall add to the total cost estimate an amount to represent an appropriate forecasted rate of inflation over the period covering the life of the project.*~~

~~*C. During the term of the VWP permit, the permittee shall revise the cost estimate concurrently with any revision made to the compensatory mitigation plan or at any time unforeseen circumstances occur that increase the implementation cost. The revised implementation cost estimate shall be adjusted for inflation as specified in subsection B of this section.*~~

~~*D. The permittee may reduce the cost estimate and the amount of financial responsibility provided under this chapter, if it can be demonstrated that the cost estimate exceeds the cost of implementation of the compensatory mitigation plan. The permittee shall obtain the approval of the board prior to reducing the amount of financial responsibility.*~~

A. Permittees with compensatory mitigation plans that provide for donations to in-lieu fee funds must submit to the board as part of the final mitigation plan proof that the entity is willing to accept the contribution along with a detailed, written cost estimate.

B. Permittees with compensatory mitigation plans that provide for purchase of mitigation bank credits must provide to the board as part of the final mitigation plan proof that the selected bank has available credits, along with a detailed, written cost estimate.]

9 VAC 25-770-90. Cost [~~***estimates***~~ ***estimate***] ***for*** [~~***in-lieu fee fund donations and***~~ ***compensatory mitigation activities other than in-lieu fee fund donations or***] ***mitigation bank credit purchases.***

[~~*A. Permittees with compensatory mitigation plans that provide for donations to in-lieu fee funds must submit to the board, proof that the entity is willing to accept the contribution along with a detailed, written cost estimate as part of the conceptual mitigation plan.*~~

~~*B. Permittees with compensatory mitigation plans that provide for purchase of mitigation bank credits must provide to the board, proof that the selected bank has available credits, along with a detailed, written cost estimate as part of the conceptual mitigation plan.*~~

A. The permittee shall prepare for approval by the board a detailed written estimate of the cost of implementing compensatory mitigation activities. The written cost estimate shall be submitted concurrently with the final compensatory mitigation plan.

1. The compensatory mitigation plan cost estimate shall equal the full cost of implementation of the plan.

2. The compensatory mitigation cost estimate shall be based on and include the costs to the permittee of hiring a third party to implement the compensatory mitigation plan. The third party may not be either a parent corporation or subsidiary of the permittee.

3. The compensatory mitigation cost estimate may not incorporate any salvage value that may be realized by the sale of materials, facility structures or equipment, land or other facility assets at the time of implementation of the plan.

B. If the length of the estimated project life exceeds one year, the permittee shall add to the total cost estimate an amount to

represent an appropriate rate of inflation over the period covering the life of the project.

C. During the term of the VWP permit, the permittee shall revise the cost estimate concurrently with any revision made to the compensatory mitigation plan or at any time unforeseen circumstances occur which increase the implementation cost. The revised implementation cost estimate shall be adjusted for inflation as specified in subsection B of this section.

D. During the term of the VWP permit, the permittee may reduce the cost estimate and the amount of financial responsibility provided under this chapter, if it can be demonstrated that the cost estimate exceeds the cost of implementation of the compensatory mitigation plan. The permittee shall obtain the approval of the board prior to reducing the amount of financial responsibility.]

9 VAC 25-770-100. Payment of in-lieu fee fund donations and mitigation bank credit purchases.

A. Permittees with compensatory mitigation plans that provide for donations to in-lieu fee funds or mitigation bank credit purchases shall make the entire donation or purchase before the onset of activity in the permitted impact areas. Permittees shall submit documentation of the payment or donation to the board for approval a minimum of [~~*10*~~ *60*] *days prior to onset of activity in permitted areas.*

B. A permittee may satisfy the requirements of this section, wholly or in part, by submitting a photocopy of the documentation submitted to the USACE pursuant to § 404 of the Clean Water Act (33 USC § 1251 et seq., as amended in 1987) documenting the donation or purchase for the current project along with a photocopy of the document issued by the USACE indicating approval of the documentation, if applicable. Any documentation of the in-lieu fee fund donation or mitigation banking credit purchase pursuant to this subsection must demonstrate clearly that the donation or purchase was made to provide compensatory mitigation for the project that is the subject of the VWP permit.

9 VAC 25-770-110. Allowable financial mechanisms for compensatory mitigation activities other than in-lieu fee fund donations or mitigation bank credit purchases.

A. [*If a permittee does not purchase mitigation bank credits or donate to an in-lieu fee fund as part of his compensatory mitigation plan, the permittee must demonstrate financial responsibility using one of the mechanisms specified in 9 VAC 25-770-120 through 9 VAC 25-770-150.*] *The mechanisms used to demonstrate evidence of financial responsibility shall ensure that the funds necessary to meet the costs of completing compensatory mitigation requirements for the permitted project as described in 9 VAC 25-770-70 will be available whenever they are needed.* [~~*Permittees shall choose from the options specified in 9 VAC 25-770-120 through 9 VAC 25-770-150.*~~] *Financial responsibility mechanisms shall be in the amount equal to the cost estimate approved by the board.*

B. The permittee shall provide continuous coverage to implement the compensatory mitigation plan until released from financial responsibility requirements by the board.

C. The director may reject the proposed evidence of financial responsibility if the mechanism submitted does not adequately assure that funds will be available to complete the necessary compensatory mitigation activities. The permittee shall be notified in writing within 60 days of receipt of a complete financial responsibility submission of the tentative decision to accept or reject the proposed evidence.

9 VAC 25-770-120 through 9 VAC 25-770-180. **[No change from proposed.]**

VA.R. Doc. No. R03-74; Filed July 1, 2004, 8:15 a.m.

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TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Title of Regulation: **11 VAC 10-20. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering (amending 11 VAC 10-20-220).**

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

Effective Date: August 25, 2004.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418, or e-mail David.Lermond@vrc.virginia.gov.

Summary:

The amendments (i) allow the commission to consider an assignment or revision of racing days at its next regular meeting without waiting 15 days after receipt of such request, (ii) change the racing days upon application by the licensee instead of at the beginning of any calendar year, and (iii) allow for a letter of credit instead of a bond with surety.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

11 VAC 10-20-220. Assignment of racing days.

A. Generally. The commission shall promptly consider a request for racing days and assign racing days to a licensee.

B. Consideration of requests. Upon receipt of a request for assignment or revision of racing days, the commission shall consider the request at its next regular meeting~~, which is scheduled 15 days after receipt of a request,~~ and may, in its discretion, assign the racing days as requested, modify the request, deny the request, or hold a public hearing pursuant to the following procedures.

1. If the commission deems a hearing is appropriate, the commission shall send written notice to the licensee and give due notice of the public hearing. The notice must include a brief description of the request, a statement that persons wishing to participate may do so in writing, the time and place of any public hearing on the request, and the earliest and latest date ~~which~~ *that* the commission may act.

2. The licensee will be afforded the opportunity to make an oral presentation, and the licensee or its representative shall be available to answer inquiries by the commissioners.

3. Any affected parties, including horsemen, breeders, employees of the licensee, representatives of other state and local agencies will be afforded the opportunity to make oral presentations. The public may be afforded the opportunity to make oral presentations and shall be given the opportunity to submit written comments.

4. If, after a request is received, the commission determines that additional information from the licensee is necessary to fully understand the request, the commission shall direct the licensee to submit additional information.

5. If the commission further determines it is necessary for a full understanding of a request, the commission shall request the licensee or a person submitting comments to appear before the commission. The commission shall request the appearance in writing at least five days in advance.

6. If a licensee fails to comply with the foregoing, the commission may deny the request for racing days.

7. A record of the proceedings shall be kept, either by electronic means or by court reporter, and the record shall be maintained until any time limits for any subsequent court appeals have expired.

8. Three or more members of the commission are sufficient to hear the presentations. If the chairman of the commission is not present, the commissioners shall choose one from among them to preside over the hearing.

C. Criteria for assignment of racing days. The commission, in making its determination, must consider the success and integrity of horse racing; the public health and safety, and welfare; public interest, necessity and convenience; as well as the following factors:

1. The integrity of the licensee;

2. The financial resources of the licensee;

3. The ability of the licensee to conduct horse racing, including the licensee's facilities, systems, managers, and personnel;

4. Past compliance of the licensee with statutes, regulations, and orders regarding horse racing with pari-mutuel wagering privileges;

5. The licensee's market, including area, population, and demographics;

6. The performance of the horse race meeting with previously assigned dates;

7. The impact of the assignment of racing days on the economic viability of the horse racing facility including attendance and pari-mutuel handle;

8. The quantity and quality of economic development and employment generated;

9. Commonwealth tax revenues from racing and related economic activity;

10. The entertainment and recreation opportunities for residents of the Commonwealth;

11. The breeds of horse racing;

12. The quality of racing;

13. The availability and quality of horses;

14. The development of horse racing;

15. The quality of the horse racing facility;

16. Security;

17. Purses;

18. Benefits to Virginia breeders and horse owners;

19. Stability in racing dates;

20. Competition among horse racing facilities, other racing days and with other providers of entertainment and recreation as well as its effects;

21. The social effects;

22. The environmental effects;

23. Community and government support;

24. Sentiment of horsemen; and

25. Any other factors related to the assignment of racing days ~~which~~ *that* the commission deems crucial to its decision-making as long as the same factors are considered with regard to all requests.

D. Assigning racing days. In assigning racing days to a licensee, the commission shall designate in writing the total number of racing days assigned, the dates within which the racing days are to be conducted and dark days, the breed or breeds to be utilized, the type or types of racing to be offered, the horse racing facility where the racing days will be conducted, and the hours of racing.

1. The commission shall approve, deny or give its qualified approval to a request for racing days within 45 days after a public hearing, if a public hearing was held on the request.

2. *Upon application by the licensee,* the commission may, in its discretion, change ~~at the beginning of any calendar year~~ the assignment of racing days previously made.

3. The commission shall require a bond with surety or ~~within the~~ *a letter of credit in an* amount ~~of $1 million or a higher amount as the commission may require~~ *it determines to be sufficient* to cover any indebtedness, including but not limited to purses, awards to horsemen and moneys due the Commonwealth of Virginia, incurred by the licensee.

E. Denial of request final. The denial of a request by the commission shall be final unless appealed by the licensee under the provisions of these regulations.

VA.R. Doc. No. R03-78B; Filed June 29, 2004, 11:10 a.m.

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Title of Regulation: **11 VAC 10-20. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering (amending 11 VAC 10-20-190).**

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

Effective Date: August 25, 2004.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418, or e-mail david.lermond@vrc.virginia.gov.

Summary:

The amendments allow the Virginia Racing Commission to alter the number of live racing days in the Commonwealth and require licensees to post a sign where pari-mutuel wagering is conducted with a toll-free number for "Gamblers Anonymous" or for other similar organizations providing assistance to compulsive gamblers. The amendments also establish new racetrack, equipment, and safety specifications.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:26 VA.R. 3897-3905 September 8, 2003, 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. R003-78A; Filed June 29, 2004, 11:09 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Title of Regulation: **18 VAC 30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (amending 18 VAC 30-20-80, 18 VAC 30-20-150, 18 VAC 30-20-160, and 18 VAC 30-20-320).**

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Effective Date: August 25, 2004.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Summary:

The amendments increase the renewal and related fees for licensees and amend policies for late renewal and reinstatement for consistency with other professions and with the established fee principles for all boards. In addition, the renewal cycle is changed from a biennial renewal to an annual renewal.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:9 VA.R. 882-885 January 12, 2004, with changes made to the forms associated with this regulation. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the amended forms list is set out.

[FORMS

~~Application Checklist - Applicants by ASHA Certification (rev. 3/03).~~

Application for a License to Practice by ASHA Certification (rev. ~~2003~~ *6/04*).

~~Application Checklist - Applicants by ABA Certification (rev. 3/03).~~

Application for a License to Practice by ABA *(AAA)* Certification (rev. ~~3/03~~ *6/04*).

~~Application Checklist - Applicants by Education/Examination (rev. 3/03).~~

Application for a License to Practice by Education (rev. 6/04).

~~Examination Application for a License to Practice (rev. 10/02).~~

~~Application Checklist - Applicants for School Speech-Language Pathology License (rev. 3/03).~~

Application for a License as a School Speech-Language Pathologist (rev. ~~10/02~~ *6/04*).

~~Reinstatement~~ Application for ~~a~~ *Reinstatement of* License to Practice (rev. 10/02).

Application for Reinstatement of License to Practice as: School Speech Language Pathologist (rev. 6/04).

Renewal Notice and Application, 2201 (rev. ~~12/02~~ *6/04*).

Renewal Notice and Application, 2202 (rev. ~~12/02~~ *6/04*).

Renewal Notice and Application, 2203 (rev. 6/04).

Continued Competency Activity and Assessment Form (eff. 3/01).

Application for Approval as a Continuing Competency Sponsor (rev. 6/04)].

VA.R. Doc. No. R03-206; Filed June 30, 2004, 11:42 a.m.

BOARD OF MEDICINE

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Medicine will receive, consider and respond to

petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18 VAC 85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18 VAC 85-120-10 through 18 VAC 85-120-150).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.4 of the Code of Virginia.

Effective Date: August 25, 2004.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Summary:

Pursuant to Chapter 669 of the 2004 Acts of Assembly, the amendments change the level of regulation for athletic trainers from mandatory certification to licensure.

CHAPTER 120.
REGULATIONS GOVERNING THE ~~CERTIFICATION~~ *LICENSURE* OF ATHLETIC TRAINERS.

18 VAC 85-120-10. Definitions.

In addition to words and terms defined in § 54.1-2900 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Accredited educational program" means a program in athletic training accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or any other agency approved by the National Athletic Trainers' Association Board of Certification (NATABOC) for its entry level certification examination or any other organization approved by the board.

"Advisory board" means the Advisory Board on Athletic Training to the board as specified in § 54.1-2957.5 of the Code of Virginia.

"Athletic trainer" ~~or "certified athletic trainer"~~ means a person ~~certified~~ *licensed* by the Virginia Board of Medicine to engage in the practice of athletic training as defined in § 54.1-2900 of the Code of Virginia.

"Board" means the Virginia Board of Medicine.

"NATABOC" means the National Athletic Trainers' Association Board of Certification.

18 VAC 85-120-20. Public participation.

A separate board regulation, 18 VAC 85-10~~-10 et seq.~~, Public Participation Guidelines, provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.

18 VAC 85-120-30. Current name and address.

Each ~~certificate holder~~ *licensee* shall furnish the board his current name and address. All notices required by law or by these regulations to be mailed by the board to any such ~~certificate holder~~ *licensee* shall be validly given when mailed to the latest address given to the board. Any change of name or address shall be furnished to the board within 30 days of such change.

PART II.
REQUIREMENTS FOR ~~CERTIFICATION~~ *LICENSURE* AS AN ATHLETIC TRAINER.

18 VAC 85-120-40. General requirements.

No person shall practice or hold himself out as practicing as an athletic trainer in the Commonwealth unless ~~certified~~ *licensed* by the board except as provided in § 54.1-2957.6 of the Code of Virginia.

18 VAC 85-120-50. Application.

An applicant for ~~certification~~ *licensure* shall submit the following on forms provided by the board:

1. A completed application and fee as prescribed in 18 VAC 85-130-150;

2. Verification of professional education in athletic training as required in 18 VAC 85-130-60;

3. Verification of professional activity as required on the application form;

4. Documentation of passage of the national examination as required in 18 VAC 85-130-70; and

5. If licensed or certified in any other jurisdiction, documentation of practice as an athletic trainer and verification as to whether there has been any disciplinary action taken or pending in that jurisdiction.

18 VAC 85-120-60. Educational requirements.

An applicant for ~~certification~~ *licensure* shall:

1. Be a graduate of an accredited educational program for athletic trainers; or

2. Have met the educational requirement necessary to hold current credentialing as a Certified Athletic Trainer (ATC) from NATABOC or another credentialing body approved by the board.

18 VAC 85-120-70. Examination requirements.

An applicant for a ~~certificate~~ *license* to practice as ~~a certified~~ *an* athletic trainer shall submit to the board written evidence that the applicant has passed the NATABOC entry level examination for athletic trainers or its equivalent as determined by the board.

18 VAC 85-120-80. Provisional ~~certification~~ *licensure*.

A. An applicant who is a graduate of an accredited education program or has fulfilled internship educational requirements through NATABOC and who has applied to take the certification examination may be granted a provisional ~~certificate~~ *license* to practice athletic training under the supervision and control of ~~a certified~~ *an* athletic trainer.

B. The graduate shall submit an application for a provisional ~~certificate~~ *license* to the board for review and approval by the

Chair of the Advisory Board on Athletic Training or his designee.

C. The provisional ~~certificate~~ *license* shall expire one year from issuance or upon ~~certification~~ *licensure* as an athletic trainer by the board, whichever comes first.

18 VAC 85-120-85. Registration for voluntary practice by out-of-state trainers.

Any athletic trainer who does not hold a ~~certificate~~ *license* to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

1. File an application for registration on a form provided by the board at least 15 days prior to engaging in such practice;

2. Provide a complete record of professional certification or licensure in each state in which he has held a certificate or license and a copy of any current certificate or license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.

18 VAC 85-120-90. Renewal of ~~certificate~~ *license*.

A. Every ~~certified~~ athletic trainer intending to continue ~~his certification~~ *licensure* shall biennially in each odd-numbered year in his birth month:

1. Register with the board for renewal of ~~his certification~~ *licensure*;

2. Pay the prescribed renewal fee at the time he files for renewal; and

3. Attest to current NATABOC certification.

B. An athletic trainer whose ~~certificate~~ *license* has not been renewed by the first day of the month following the month in which renewal is required shall pay a late fee as prescribed in 18 VAC 85-130-150.

18 VAC 85-120-100. Reinstatement.

A. In order to reinstate a ~~certificate~~ *license* that has been lapsed for more than two years, an athletic trainer shall file an application for reinstatement, pay the fee for reinstatement of his ~~certificate~~ *license* as prescribed in 18 VAC 85-130-150, and submit to the board evidence of current certification by NATABOC.

B. An athletic trainer whose ~~certificate~~ *license* has been revoked by the board and who wishes to be reinstated shall file a new application to the board and pay the fee for reinstatement of his ~~certificate~~ *license* as prescribed in 18 VAC 85-130-150 pursuant to § 54.1-2921 of the Code of Virginia.

18 VAC 85-120-110. Individual responsibilities.

The ~~certified~~ athletic trainer's responsibilities are to evaluate the individual being treated, plan the treatment program, and administer and document treatment within the limit of his professional knowledge, judgment and skills and in accordance with the practice of athletic training as set forth in § 54.1-2900 of the Code of Virginia.

18 VAC 85-120-120. General responsibilities.

A. ~~A certified~~ *An* athletic trainer shall be responsible for the actions of persons engaging in the practice of athletic training under his supervision and direction.

B. ~~A certified~~ *An* athletic trainer shall ensure that ~~noncertified~~ *unlicensed* persons under his supervision shall not perform those functions that require professional judgment or discretion in the practice of athletic training.

18 VAC 85-120-130. Supervisory responsibilities.

A. The ~~certified~~ athletic trainer supervising the practice of persons holding a provisional ~~certificate~~ *license* issued by the board shall develop a written protocol with the provisional ~~certificate holder~~ *licensee* to include but not be limited to the following:

1. Provisions for periodic review and evaluation of services being provided, including a review of outcomes for individuals being treated; and

2. Guidelines for availability and ongoing communications proportionate to such factors as practice setting, acuity of population being served, and experience of the provisional ~~certificate holder~~ *licensee*.

B. The ~~certified~~ athletic trainer supervising the practice of student athletic trainers shall:

1. Provide daily, on-site supervision and shall plan, direct, advise and evaluate the performance and experience of the student trainer.

2. Delegate only nondiscretionary tasks that are appropriate to the level of competency and experience of the student athletic trainer, practice setting and acuity of population being served.

18 VAC 85-120-140. Violations.

Violations of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia may subject a ~~certificate holder~~ *licensee* to sanctions as set forth in § 54.1-2915 of the Code of Virginia.

18 VAC 85-120-150. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. The following fees have been adopted by the board:

1. The application fee shall be $130.

2. The fee for renewal of ~~certification~~ *licensure* shall be $135 and shall be due in the licensee's birth month, in each odd-numbered year.

3. A fee of $50 for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.

4. The fee for reinstatement of a ~~certificate~~ *license* that has expired for two or more years shall be $180 and shall be submitted with an application for reinstatement.

5. The fee for reinstatement of a ~~certificate~~ *license* pursuant to § 54.1-2921 of the Code of Virginia shall be $2,000.

6. The fee for a duplicate renewal ~~certificate~~ *license* shall be $~~5.00~~, and the fee for a duplicate wall certificate shall be $15.

7. The fee for a returned check shall be $25.

8. The fee for a letter of verification to another jurisdiction shall be $10.

NOTICE: The forms used in administering 18 VAC 85-120, Regulations Governing the Licensure of Athletic Trainers, 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 Health Professions, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Instructions for Completing an Athletic Trainer *Licensure* Application (rev. ~~3/03~~ *5/04*).

Application for a ~~Certificate~~ *License* to Practice *as an* Athletic ~~Training~~ *Trainer* (rev. ~~3/03~~ *5/04*).

Form A, Claims History Sheet (rev. ~~3/03~~ *5/04*).

Form B, Activity Questionnaire (rev. ~~3/03~~ *5/04*).

Form C, Clearance from Other State Boards (rev. ~~3/03~~ *5/04*).

Form L, Certificate of Professional Education (rev. ~~3/03~~ *5/04*).

Provisional ~~Certificate~~ *License* to Practice as an Athletic Trainer (rev. ~~3/03~~ *5/04*).

Renewal Notice (eff. 5/04).

License Renewal Notice and Application (rev. ~~11/02~~ *5/04*).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).

VA.R. Doc. No. R04-197; Filed June 30, 2004, 11:41 a.m.

BOARD OF PHARMACY

Title of Regulation: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-10 through 18 VAC 110-20-40, 18 VAC 110-20-60, 18 VAC 110-20-70, 18 VAC 110-20-80, 18 VAC 110-20-90, 18 VAC 110-20-105, 18 VAC 110-20-110, 18 VAC 110-20-120 through 18 VAC 110-20-220, 18 VAC 110-20-240, 18 VAC 110-20-250, 18 VAC 110-20-280, 18 VAC 110-20-285, 18 VAC 110-20-330, 18 VAC 110-20-350, 18 VAC 110-20-355, 18 VAC 110-20-360, 18 VAC 110-20-410, 18 VAC 110-20-412, 18 VAC 110-20-415, 18 VAC 110-20-420, 18 VAC 110-20-440, 18 VAC 110-20-450, 18 VAC 110-20-460, 18 VAC 110-20-470, 18 VAC 110-20-490, 18 VAC 110-20-500, 18 VAC 110-20-510, 18 VAC 110-20-530, 18 VAC 110-20-540, 18 VAC 110-20-550, 18 VAC 110-20-555, 18 VAC 110-20-590, 18 VAC 110-20-680 through 18 VAC 110-20-710; adding 18 VAC 110-20-121; repealing 18 VAC 110-20-370, 18 VAC 110-20-380, 18 VAC 110-20-480).**

Statutory Authority: §§ 54.1-103 and 54.1-2400 and Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: August 25, 2004.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.state.va.us.

Summary:

The amendments (i) lengthen the period after pharmacist licensure renewal due dates by which a licensee may pay a late fee in lieu of reinstatement, (ii) change the required fees for licensure reinstatement, (iii) introduce the reinspection process and a reinspection fee for pharmacy permits, (iv) eliminate the requirement that applicants for examination file affidavits or certificates of experience with the board no less than 30 days prior to the date of the examination, (v) for those seeking reinstatement, cap the number of required continuing education hours at 60 hours, (vi) for those whose licenses have been suspended, lapsed or inactive for more than five years, require passage of the board-approved law examination and documentation of either active practice in another state or practical experience of at least 160 hours within the past six months as a pharmacy intern, (vii) eliminate the requirement that pharmacists maintain continuing education documentation at their principal place of practice, (viii) allow a pharmacist to serve as pharmacist-in-charge (PIC) at two pharmacies rather than just one, (ix) specify that a PIC who is absent from practice for more than 30 consecutive days is deemed to no longer be the PIC, (x) allow extensions to the 14-day deadline to obtain a replacement PIC, (xi) eliminate requirements that certain equipment and resources be kept if unnecessary for pharmacy's practice, (xii) permit pharmacy technicians to enter the prescription department in the absence of a licensed pharmacist under certain conditions, (xiii) allow off-site storage of certain required records, (xiv) allow an electronic image of a prescription to be maintained in an electronic database in lieu of a hard copy file for Schedule VI prescriptions, (xv) allow an electronic image of a prescription to be maintained in an electronic database in lieu of a hard copy file for Schedule II through V prescriptions if permitted by federal law, (xvi) allow prescriptions to be faxed from a long-term care facility or a hospice, (xvii) eliminate certain pharmaceutical labeling requirements for drugs dispensed to patients of a hospital or long-term care facility where all drugs are administered by

persons licensed to administer, (xviii) eliminate the requirement that a signed release be obtained when nonspecial (nonchild resistance) packaging is requested, (xix) allow transfer between two pharmacies of a prescription whether it has been filled or not, (xx) when authorized by the PIC, permit nurses other than the supervisory nurse to have access to the pharmacy in the absence of the pharmacist in order to obtain emergency medication, (xxi) allow receipts of floor stock drugs and the records that are used to document administration of Schedule II through V drugs to be maintained by the hospital pharmacy in offsite storage, (xxii) permit audits of the distribution and administration of drugs from automated dispensers to cover a sample of records, rather than all records, (xxiii) expand the permitted use of automated dispensing devices in nursing homes, (xxiv) permit certain cost-saving measures by correctional institutions, and (xxv) allow medical equipment suppliers to keep original orders on file at a centralized office.

Changes since the proposed stage (i) eliminate "blood" from the list of Schedule VI controlled substances, since it is not a controlled substance, and clarify that the PIC responsibility extends to blood components and derivatives that are prescription drugs; (ii) eliminate the proposal to allow "attending physicians" to use the ID number assigned by the DEA to the hospital since it would make tracking the prescription more difficult, and all physicians who prescribe must have their own DEA number; and (iii) clarify terminology in several sections.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:8 VA.R. 762-796 December 29, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

18 VAC 110-20-10. Definitions.

In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACPE" means the [~~American Council on Pharmaceutical Education~~ *Accreditation Council for Pharmacy Education*].

"Acquisition" of an existing entity permitted, registered or licensed by the board means (i) the purchase or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor or change in partnership composition; (iii) the acquiring of 50% or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; or (iv) the merger of a corporation owning the entity, or of the parent corporation of a wholly owned subsidiary owning the entity, with another business or corporation.

"Aseptic processing" means the technique involving procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.

"Beyond-use date" means the date beyond which the integrity of a compounded, repackaged, or dispensed drug can no longer be assured and as such is deemed to be adulterated or misbranded as defined in §§ 54.1-3461 and 54.1-3462 of the Code of Virginia.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Class 100 environment" means an atmospheric environment which contains less than 100 particles, 0.5 microns in diameter, per cubic foot of air.

"Closed system transfer" means the movement of sterile products from one container to another in which the container-closure system and transfer devices remain intact throughout the entire transfer process, compromised only by the penetration of a sterile, pyrogen-free needle or cannula through a designated stopper or port to effect transfer, withdrawal, or delivery, to include the withdrawal of a sterile solution from an ampul in a class 100 environment.

"Compliance packaging" means packaging for dispensed drugs which is comprised of a series of containers for solid oral dosage forms and which is designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Cytotoxic drug" means a drug which has the capability of killing living cells.

"DEA" means the United States Drug Enforcement Administration.

"Electronic transmission prescription" is any prescription, other than an oral or written prescription or a prescription transmitted by facsimile machine, that is electronically transmitted from a practitioner authorized to prescribe directly to a pharmacy without interception or intervention from a third party, or from one pharmacy to another pharmacy.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"Facsimile (FAX) prescription" means a written prescription or order which is transmitted by an electronic device over telephone lines which sends the exact image to the receiver (pharmacy) in a hard copy form.

"FDA" means the United States Food and Drug Administration.

"Floor stock" means a supply of drugs [~~which~~ *that*] have been distributed for the purpose of general administration by a prescriber or other authorized person pursuant to a valid order of a prescriber.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the USAN and the USP Dictionary of Drug Names.

"Hermetic container" means a container that is impervious to air or any other gas under the ordinary or customary conditions of handling, shipment, storage, and distribution.

"Home infusion pharmacy" means a pharmacy which compounds solutions for direct parenteral administration to a patient in a private residence, long-term care facility or hospice setting.

"Hospital" or "nursing home" means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

"Inactive license" means a license which is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

"Light-resistant container" means a container that protects the contents from the effects of light by virtue of the specific properties of the material of which it is composed, including any coating applied to it. Alternatively, a clear and colorless or a translucent container may be made light resistant by means of an opaque covering, in which case the label of the container bears a statement that the opaque covering is needed until the contents have been used. Where a monograph directs protection from light, storage in a light-resistant container is intended.

"Long-term care facility" means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

" [~~*On-duty*~~ *On duty*] *" means that a pharmacist is on the premises at the address of the permitted pharmacy and is available as needed.*

"Open-system transfer" means the combining of products in a nonsealed reservoir before filling or when a solution passes through the atmosphere during a transfer operation.

"Permitted physician" means a physician who is licensed pursuant to § 54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Pharmacy closing" means that the permitted pharmacy ceases pharmacy services or fails to provide for continuity of pharmacy services or lawful access to patient prescription records or other required patient records for the purpose of continued pharmacy services to patients.

"PIC" means the pharmacist-in-charge of a permitted pharmacy.

"Practice location" means any location in which a prescriber evaluates or treats a patient.

"Prescription department" means any contiguous or noncontiguous areas used for the compounding, dispensing and storage of all Schedule II through VI drugs and devices and any Schedule I investigational drugs.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for voluntary examination and certification of pharmacy technicians.

"Quality assurance plan" means a plan approved by the board for continuous monitoring, measuring, evaluating, and, if necessary, improving the performance of a pharmacy function or system.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Robotic pharmacy system" means a mechanical system controlled by a computer that performs operations or activities relative to the storage, packaging, labeling, dispensing, or distribution of medications, and collects, controls, and maintains all transaction information.

"Safety closure container" means a container which meets the requirements of the federal Poison Prevention Packaging Act of 1970 (15 USC §§ 1471-1476), i.e., in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five-minute period and that 80% fail in another five minutes after a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

"Satellite pharmacy" means a pharmacy which is noncontiguous to the centrally permitted pharmacy of a hospital but at the location designated on the pharmacy permit.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Sterile pharmaceutical product" means a dosage form free from living microorganisms.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. "Cold" means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).

2. "Room temperature" means the temperature prevailing in a working area.

3. "Controlled room temperature" is a temperature maintained thermostatically that encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F); that results in a mean kinetic temperature calculated to be not more than 25°C; and that allows for excursions between 15° and 30°C (59° and 86°F) that are experienced in pharmacies, hospitals, and warehouses.

4. "Warm" means any temperature between 30° and 40°C (86° and 104°F).

5. "Excessive heat" means any temperature above 40°C (104°F).

6. "Protection from freezing" means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of its characteristics, the container label bears an appropriate instruction to protect the product from freezing.

7. "Cool" means any temperature between 8° and 15°C (46° and 59°F).

"Terminally ill" means a patient with a terminal condition as defined in § 54.1-2982 of the Code of Virginia.

"Tight container" means a container that protects the contents from contamination by extraneous liquids, solids, or vapors, from loss of the drug, and from efflorescence, deliquescence, or evaporation under the ordinary or customary conditions of handling, shipment, storage, and distribution, and is capable of tight reclosure. Where a tight container is specified, it may be replaced by a hermetic container for a single dose of a drug and physical tests to determine whether standards are met shall be as currently specified in United States Pharmacopeia-National Formulary.

"Unit dose container" means a container that is a single-unit container, as defined in United States Pharmacopeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container but are obtained by the person administering directly from a prescriber's order or medication administration record.

"USP-NF" means the United States Pharmacopeia-National Formulary.

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

18 VAC 110-20-20 through 18 VAC 110-20-80. [No change from proposed.]

18 VAC 110-20-90. Requirements for continuing education.

A. On and after December 31, 1993, a ~~licensee~~ *pharmacist* shall be required to have completed a minimum of 1.5 CEUs or 15 contact hours of continuing pharmacy education in an approved program for each annual renewal of licensure. CEUs or hours in excess of the number required for renewal may not be transferred or credited to another year.

B. A pharmacy education program approved for continuing pharmacy education is:

1. One that is approved by the [~~American Council on Pharmaceutical Education~~ *Accreditation Council for Pharmacy Education*](ACPE);

2. One that is approved as a Category I Continuing Medical Education (CME) course, the primary focus of which is pharmacy, pharmacology or drug therapy; or

3. One that is approved by the board *in accordance with the provisions of 18 VAC 110-20-100*.

C. The board may grant an extension pursuant to § 54.1-3314 E of the Code of Virginia. Any subsequent extension shall be granted only for good cause shown.

D. ~~Licensees~~ *Pharmacists* are required to attest to compliance with CE requirements ~~on~~ *in a manner approved by the board at the time of* their annual license renewal. Following t~~he~~ *each* renewal period, the board may conduct an audit of ~~licensees~~

the immediate past two years' CE documents to verify compliance *with requirements*. ~~Licensees~~ *Pharmacists are required to maintain, for two years following renewal, the original certificates documenting successful completion of CE, showing date and title of the CE program or activity, the number of CEU's or contact hours awarded, and a certifying signature or other certification of the approved provider. Pharmacists* selected for audit must provide *these* original documents ~~certifying that they have fulfilled their CE requirements~~ *to the board* by the deadline date ~~as~~ specified by the board *in the audit notice*.

~~E. All licensees are required to maintain original documents verifying the date and subject of the program or activity, the CEUs or contact hours, and certification from an approved provider. Documentation shall be maintained for a period of two years following renewal in a file available to inspectors at the pharmacist's principal place of practice or, if there is no principal place of practice, at the pharmacist's address of record.~~

~~F. A pharmacist who holds an inactive license, who has allowed his license to lapse or who has had his license suspended or revoked must submit evidence of completion of CEUs or hours equal to the requirements for the number of years in which his license has not been active.~~

18 VAC 110-20-105. [No change from proposed.]

18 VAC 110-20-110. Pharmacy permits generally.

A. A pharmacy permit shall not be issued to a pharmacist to be simultaneously in charge of more than ~~one pharmacy~~ *two pharmacies*.

B. The pharmacist-in-charge *(PIC)* or the pharmacist on duty shall control all aspects of the practice of pharmacy. Any decision overriding such control of the ~~pharmacist-in-charge~~ *PIC* or other pharmacist on duty shall be deemed the practice of pharmacy and may be grounds for disciplinary action against the pharmacy permit.

C. When the ~~pharmacist-in-charge~~ *PIC* ceases practice at a pharmacy or no longer wishes to be designated as ~~pharmacist-in-charge~~ *PIC*, he shall take a complete and accurate inventory of all Schedule II through V controlled substances on hand and shall immediately return the pharmacy permit to the board. *A PIC who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the PIC. Pharmacists-in-charge having knowledge of upcoming absences for longer than 30 days shall be responsible for notifying the board, returning the permit, and taking the required inventory. For unanticipated absences by the PIC, which exceed 15 days with no known return date within the next 15 days, the owner shall immediately notify the board and shall obtain a new PIC.*

D. An application for a permit designating the new ~~pharmacist-in-charge~~ *PIC* shall be filed with the required fee within 14 days *of the original date of resignation or termination of the PIC* on a form provided by the board. It shall be unlawful for a pharmacy to operate without a new permit past the 14-day deadline *unless the board receives a request for an extension prior to the deadline. The* [~~*executor*~~ *executive*] *director for the board may grant an extension for up to an additional 14 days for good cause shown*.

18 VAC 110-20-120 through 18 VAC 110-20-140. [No change from proposed.]

18 VAC 110-20-150. Physical standards for all pharmacies.

A. The prescription department shall not be less than 240 square feet. The patient waiting area or the area used for *counseling,* devices, cosmetics, and proprietary medicines shall not be considered a part of the minimum 240 square feet. The total area shall be consistent with the size and scope of the services provided.

B. Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the pharmacist shall not be through the prescription department. A rest room in the prescription department, used exclusively by pharmacists and personnel assisting with dispensing functions, may be allowed provided there is another rest room outside the prescription department available to other employees and the public. This subsection shall not apply to prescription departments in existence prior to [~~the effective date of this chapter~~ *November 4, 1993*].

C. The pharmacy shall be constructed of permanent and secure materials. Trailers or other moveable facilities or temporary construction shall not be permitted.

D. The entire area of the location of the pharmacy practice, including all areas where drugs are stored shall be well lighted and well ventilated; the proper storage temperature shall be maintained to meet USP-NF specifications for drug storage.

E. The prescription department counter work space shall be used only for the compounding and dispensing of drugs and necessary record keeping.

F. A sink with hot and cold running water shall be within the prescription department.

G. Adequate refrigeration facilities equipped with a monitoring thermometer for the storage of drugs requiring cold storage temperature shall be maintained within the prescription department, if the pharmacy stocks such drugs.

18 VAC 110-20-160 and 18 VAC 110-20-170. [No change from proposed.]

18 VAC 110-20-180. Security system.

A device for the detection of breaking shall be installed in each prescription department of each pharmacy. The installation and the device shall be based on accepted burglar alarm industry standards, and shall be subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

2. The device shall be maintained in operating order and shall have an auxiliary source of power.

3. The device shall fully protect the prescription department and shall be capable of detecting breaking by any means when activated.

4. Access to the alarm system for the prescription department area of the pharmacy shall be restricted to the pharmacists working at the pharmacy, *except for access by other persons in accordance with 18 VAC 110-20-190 B 2,* and the system shall be activated whenever ~~those areas are~~ *the prescription department is* closed for business.

5. This chapter shall not apply to pharmacies which have been granted a permit prior to [~~the effective date of this chapter~~ *November 4, 1993,*] provided that a previously approved security alarm system is in place, that no structural changes are made in the prescription department, that no changes are made in the security system, that the prescription department is not closed while the rest of the business remains open, and provided further that a breaking and loss of drugs does not occur.

6. If the prescription department was located in a business with extended hours prior to [~~the effective date of this chapter~~ *November 4, 1993,*] and had met the special security requirements by having a floor to ceiling enclosure, a separately activated alarm system shall not be required.

7. This section shall not apply to pharmacies which are open and staffed by pharmacists 24 hours a day. If the pharmacy changes its hours or if it must be closed for any reason, the ~~pharmacist in charge~~ *PIC or owner* must immediately notify the board and have installed within 72 hours a security system which meets the requirements of subdivisions 1 through 4 of this section.

18 VAC 110-20-190 through 18 VAC 110-20-380. [No change from proposed.]

18 VAC 110-20-410. Permitted physician licensed by the board.

~~Permitted~~ *A. Pursuant to § 54.1-3304 of the Code of Virginia,* physicians licensed by the board to dispense drugs*, when pharmacy services are not reasonably available,* shall be subject to *the following sections of this chapter. For purposes of this section, the terms "pharmacist," "pharmacist-in-charge," and "PIC" in the following shall be deemed to mean the physician permitted by the board:*

1. 18 VAC 110-20-110 C and D;

2. 18 VAC 110-20-130 A;

3. 18 VAC 110-20-140 A and C;

4. 18 VAC 110-20-150 except that these requirements shall not apply to physicians licensed prior to [~~*[the effective date of this regulation]*~~ *August 25, 2004,*] *unless the dispensing area is relocated or remodeled;*

5. 18 VAC 110-20-160;

6. 18 VAC 110-20-180*;*

7. 18 VAC 110-20-190 A, B and C;

8. 18 VAC 110-20-200;

9. 18 VAC 110-20-210; and

10. 18 VAC 110-20-240 through 18 VAC 110-20-410.

B. A physician may apply for a special or limited use permit in accordance with 18 VAC 110-20-120.

18 VAC 110-20-412 through 18 VAC 110-20-420. [No change from proposed.]

18 VAC 110-20-440. Responsibilities of the pharmacist-in-charge.

A. The ~~pharmacist in charge~~ *PIC* in a pharmacy located within a hospital or the ~~pharmacist in charge~~ *PIC* of any outside pharmacy providing pharmacy services to a hospital shall be responsible for establishing procedures for and assuring maintenance of the proper storage, security, and dispensing of all drugs used throughout the hospital.

B. The ~~pharmacist in charge~~ *PIC* of a pharmacy serving a hospital shall be responsible for ~~a monthly review of drug therapy for each patient within the hospital for a length of stay of one month or greater. A record of such review shall be signed and dated by the pharmacist and shall~~ *maintaining a policy and procedure for providing reviews of drug therapy to* include ~~but not limited to~~ *at a minimum* any irregularities in drug therapy, drug interactions, drug administration, or transcription errors. All significant irregularities shall be brought to the attention of the attending practitioner or other person having authority to correct the potential problem.

C. Prior to the opening of a satellite pharmacy within the hospital, the ~~pharmacist in charge~~ *PIC* shall notify the board as required by 18 VAC 110-20-140 and shall ensure compliance with subsections B through G of 18 VAC 110-20-150, 18 VAC 110-20-160, ~~subdivisions 5 and 6 of~~ 18 VAC 110-20-170, 18 VAC 110-20-180 and 18 VAC 110-20-190. No drugs shall be stocked in a satellite pharmacy until an inspection has been completed and approval given for opening.

D. For the following list of Schedule VI controlled substances, the PIC of a pharmacy serving a hospital may authorize the storage in an area of the hospital outside the pharmacy, and may delegate the ordering and distribution within the hospital to nonpharmacy personnel provided the conditions for proper storage and adequate security and the procedures for distribution are set forth in the pharmacy's policy and procedure manual, and provided that the PIC assures that these storage areas are checked monthly for compliance. The storage areas must be locked when authorized staff is not present in the area. Except for nitrous oxide, medical gases may be stored in an unlocked area.

1. Large volume parenteral solutions that contain no active therapeutic drugs other than electrolytes;

2. Irrigation solutions;

3. Contrast media;

4. Medical gases;

5. Sterile sealed surgical trays that may include a Schedule VI drug; and

6. Blood [*~~, blood~~*] *components and derivatives, and synthetic blood components and products* [*that are classified as prescription drugs*] .

18 VAC 110-20-450 through 18 VAC 110-20-500. [No change from proposed.]

18 VAC 110-20-510. Identification for medical intern or resident prescription form in hospitals.

The prescription form for the prescribing of drugs for use by [*~~attending physicians,~~*] medical interns or residents who prescribe only in a hospital shall bear the prescriber's signature, the legibly printed name, address, and telephone number of the prescriber and an identification number assigned by the hospital. The identification number shall be the Drug Enforcement Administration number assigned to the hospital pharmacy plus a suffix assigned by the institution. The assigned number shall be valid only within the course of duties ~~within the hospital~~ *as part of the residency program*.

18 VAC 110-20-530 through 18 VAC 110-20-710. [No change from proposed.]

NOTICE: The forms used in administering 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, 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 Health Professions, 6603 West 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. ~~12/02~~ *6/04*).

Affidavit of Practical Experience, Pharmacy Intern (rev. 12/02).

Application for Licensure as a Pharmacist by Examination (rev. 10/02).

Application to Reactivate Pharmacist License (rev. 10/02).

Application for Approval of a Continuing Education Program (rev. 11/02).

Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 11/02).

Application for License to Dispense Drugs (permitted physician) (rev. 10/02).

Application for a Pharmacy Permit (rev. ~~10/02~~ *11/02*).

Application for a Nonresident Pharmacy Registration (rev. 10/02).

Application for a Permit as a Medical Equipment Supplier (rev. 10/02).

Application for a Permit as a Restricted Manufacturer (rev. 10/02).

Application for a Permit as a Nonrestricted Manufacturer (rev. 10/02).

Application for a Permit as a Warehouser (rev. 10/02).

Application for a License as a Wholesale Distributor (rev. 10/02).

Application for a Nonresident Wholesale Distributor Registration (rev. 10/02).

Application for a Controlled Substances Registration Certificate (rev. 10/02).

Renewal Notice and Application, 0201 Pharmacy (rev. 12/02).

Renewal Notice and Application, 0202 Pharmacist (rev. 12/02).

Renewal Notice and Application, 0205 Permitted Physician (rev. 12/02).

Renewal Notice and Application, 0206 Medical Equipment Supplier (rev. 12/02).

Renewal Notice and Application, 0207 Restricted Manufacturer (rev. 12/02).

Renewal Notice and Application, 0208 Non-Restricted Manufacturer (rev. 12/02).

Renewal Notice and Application, 0209 Humane Society (rev. 12/02).

Renewal Notice and Application, 0214 Non-Resident Pharmacy (rev. 12/02).

Renewal Notice and Application, 0215 Wholesale Distributor (rev. 12/02).

Renewal Notice and Application, 0216 Warehouser (rev. 12/02).

Renewal Notice and Application, 0219 Non-Resident Wholesale Distributor (rev. 12/02).

Renewal Notice and Application, 0220 Business CSR (rev. 12/02).

Renewal Notice and Application, 0228 Practitioner CSR (rev. 12/02).

Application to Reinstate a Pharmacist License (rev. 11/02).

Application for a Permit as a Humane Society (rev. 10/02).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. ~~11/02~~ *6/04*).

Closing of a Pharmacy (rev. ~~11/02~~ *3/03*).

Application for Approval of a Robotic Pharmacy System (rev. 11/02).

Notice of Inspection Fee Due for Approval of Robotic Pharmacy System (rev. 11/02).

Application for Approval of an Innovative (Pilot) Program (rev. 11/02).

Application for Registration as a Pharmacy Technician (12/02).

Application for Approval of a Pharmacy Technician Training Program (12/02).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).

DOCUMENTS INCORPORATED BY REFERENCE

~~The United States Pharmacopoeia -- National Formulary, United States Pharmacopoeia Convention.~~

The United States Pharmacopeia~~--~~ *and* National Formulary ~~USP23 NF18, January 1, 1995~~ *, USP27-NF 22, revised June 2004, revisions official August 1, 2004*, United States Pharmacopeial Convention, Inc.]

VA.R. Doc. No. R03-26; Filed June 24, 2004, 3:27 p.m.

REAL ESTATE BOARD

Title of Regulation: **18 VAC 135-20. Virginia Real Estate Board Licensing Regulations (amending 18 VAC 135-20-80, 18 VAC 135-20-120, 18 VAC 135-20-140 and 18 VAC 135-20-370).**

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-2105 of the Code of Virginia.

Effective Date: September 1, 2004.

Agency Contact: Christine Martine, Executive Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, or e-mail reboard@dpor.virginia.gov.

Summary:

The amendments increase the fees charged by the board.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18 VAC 135-20-80. Application fees.

A. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date [~~which~~ *that*] will be used to determine whether it is on time.

B. Application fees are as follows:

Salesperson by education and examination	~~$75~~ *$150*
Salesperson by reciprocity	~~$64~~ *$150*
Salesperson's or associate broker's license as a business entity	~~$75~~ *$190*
Broker by education and examination	~~$85~~ *$190*
Broker by reciprocity	~~$85~~ *$190*
Broker concurrent license	~~$65~~ $140
Firm license	~~$125~~ *$250*
Branch office license	~~$65~~ *$190*
Transfer application	~~$35~~ *$60*
Activate application	~~$35~~ *$60*

C. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ ~~11-35~~ *2.2-4300* et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed $90 per candidate.

18 VAC 135-20-120. Fees for renewal.

A. All fees for renewals are nonrefundable, and the date of receipt by the board or its agent is the date [~~which~~ *that*] will be used to determine whether it is on time.

B. Renewal fees are as follows:

Salesperson	~~$39~~ *$65*
Salesperson's or associate broker's license as a business entity	~~$39~~ *$90*
Broker	~~$42~~ *$80*
Concurrent broker	~~$42~~ *$80*
Firm	~~$65~~ *$160*
Branch office	~~$38~~ *$90*

18 VAC 135-20-140. Failure to renew; reinstatement required.

A. All applicants for reinstatement must meet all requirements set forth in 18 VAC 135-20-100. Applicants for reinstatement of an active license must have completed the continuing education requirement in order to reinstate the license. Applicants for reinstatement of an inactive license are not required to complete the continuing education requirement for license reinstatement.

B. If the requirements for renewal of a license, including receipt of the fee by the board, are not completed by the licensee within 30 days of the expiration date noted on the license, a reinstatement fee ~~of $85~~ is required~~.~~ *as follows:*

Salesperson	*$100*
Salesperson's or associate broker's license as a business entity	*$135*
Broker	*$120*
Concurrent Broker	*$120*
Firm	*$245*
Branch Office	*$135*

C. A license may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the license may not be reinstated under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.

D. Any real estate activity conducted subsequent to the expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18 VAC 135-20-370. Fees.

A. The application fee for an original certificate for a proprietary school shall be ~~$75~~ $*190*.

B. The renewal fee for proprietary school certificates expiring biennially on June 30 shall be ~~$38~~ *$90*.

C. If the requirements for renewal of a proprietary school certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date noted on the certificate, a reinstatement fee of ~~$85~~ *$135* is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.

D. The application for an original instructor certificate shall be ~~$100~~ *$190*.

E. The renewal fee for an instructor certificate expiring biennially on June 30 shall be ~~$50~~ *$75*.

F. If the requirements for renewal of an instructor certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date on the certificate, a reinstatement fee of ~~$85~~ *$110* is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.

G. The board in its discretion may deny renewal of a certificate for the same reasons it may deny initial approval.

VA.R. Doc. No. R03-84; Filed June 30, 2004, 3:02 p.m.

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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 that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **20 VAC 5-425. Rules Governing Enhanced 911 (E-911) Service (adding 20 VAC 5-425-10 through [~~20 VAC 5-425-40~~ *20 VAC 5-425-50*]).**

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

Effective Date: July 1, 2004.

Agency Contact: Steve Bradley, Deputy Director, State Corporation Commission, Division of Communications, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9420, FAX (804) 371-9069, or e-mail sbradley@scc.state.va.us.

Summary:

The rules as adopted seek to bring additional reliability and accountability to the provision of E-911 telecommunications services by requiring a Local Exchange Carrier (LEC) to: provide adequate and accurate customer information to the Public Safety Access Point (PSAP); submit no less than 95% of database-affecting changes to the PSAP within 48 hours of the LEC's receipt of notice of the change, and 100% of database-affecting changes within 72 hours of the LEC's receipt of notice; correct, or cause to be corrected, any incorrect automatic location identification (ALI) record within 48 hours of receipt of notification of the error; exclude from the E-911 database those telephone numbers not capable of conveying automatic number identification (ANI) information; and consult with a PSAP to assist in the ordering of E-911 service. The rules as adopted differ, in part, from the proposed rules by: eliminating the requirement that a LEC temporarily maintain E-911 service during the suspension of local telecommunications services for nonpayment; eliminating the requirement that LECs assist the PSAP in identifying the number of access lines associated with each LEC in that PSAP's territory; and establishing that a LEC may only charge a PSAP for services actually rendered by the LEC to the PSAP.

REGISTRAR'S NOTICE: The distribution lists referenced as Appendices A, B and C in the following order are not being published. However, the lists are available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday; or may be viewed at the Office of the Virginia Registrar of Regulations, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219, during regular office hours.

AT RICHMOND, JUNE 23, 2004

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. PUC-2003-00103

Ex Parte: In the matter of establishing
rules governing the provision of enhanced
911 service by local exchange carriers

ORDER ADOPTING RULES

On August 1, 2003, the State Corporation Commission ("Commission") entered an Order for Notice and Comment or Requests for Hearing ("Order") docketing Case No. PUC-2003-00103 and providing the opportunity for comments or requests for hearing regarding proposed "Rules Governing Enhanced 911 Service" ("Proposed Rules") that seek to govern the provision of Enhanced 911 ("E-911") service by local exchange carriers. In addition, the Commission requested comments from interested parties on the following questions: (1) what are the relevant and necessary components that constitute intrastate regulated E-911 service as they are currently provisioned; (2) how should localities be precluded from being assessed duplicate charges for intrastate regulated E-911 services; and (3) for purposes of Public Service Answering Point ("PSAP") billing, how should E-911 accessible lines be counted (i.e., thousand blocks, hundred blocks, or other) and by whom? The purpose of these rules, proposed by the Staff of the Commission ("Staff"),

is to establish a framework that provides reliable E-911 service to the citizens of Virginia and encourages accountability in the provision of such services.

Comments or requests for hearing were to be filed by September 26, 2003. On September 24, 2003, the Commission entered an Order Extending Time for Comment or Requests for Hearing. The new deadline was set for October 10, 2003. Comments were received from the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel"); AT&T Communications of Virginia, LLC ("AT&T"); Cavalier Telephone, LLC ("Cavalier"); the City of Covington; the City of Virginia Beach; the County of Chesterfield; Fairfax County; Cox Virginia Telecom, Inc. ("Cox"); WorldCom, Inc. ("MCI"); NTELOS Inc. ("NTELOS"); Central Telephone Company of Virginia, United Telephone-Southeast, Inc., and Sprint Communications Company of Virginia, Inc. (collectively, "Sprint"); Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon"); the Virginia Cable Telecommunications Association ("VCTA"); the Virginia Telecommunications Industry Association ("VTIA"); the Virginia Information Technologies Agency ("VITA"); and three private citizens. Comments were late-filed by York County.

NOW THE COMMISSION, having considered the Proposed Rules and the comments thereto, finds that we should adopt the rules appended to this Order as Attachment A, effective July 1, 2004.

The rules we adopt herein contain several modifications and clarifications to those rules originally proposed by the Staff and published in the Virginia Register of Regulations on August 25, 2003. These changes were made after our consideration of the comments by the interested parties to this proceeding and our analysis of how best to balance the interests of the general public, local governments, and service providers. We will not review each final rule in detail but will comment briefly on several of them.

Final 20 VAC 5-425-20 2 requires that a local exchange carrier ("LEC") provide access to LEC personnel to assist the relevant PSAP administrator in obtaining E-911 record-related information when processing an E-911 call. This rule is intended to facilitate communication between the LEC and PSAP when the pertinent automatic location identification ("ALI") record does not provide sufficient detail to the PSAP to dispatch correctly emergency services during an actual emergency.

Final 20 VAC 5-425-20 4 follows the National Emergency Number Association standard for database error rates and differs from the proposed rule in that the failure to meet this standard is not handled on a reported exception basis but rather upon complaints received from a PSAP.

Final 20 VAC 5-425-20 5 differs from the proposed rule in that it requires all E-911 database affecting changes to be reported to the E-911 ALI database provider within 48 hours (excluding holidays and weekends) of the LEC's receipt of such notice instead of 24 hours. Cox commented that, because it contracts with a third party to update its E-911 database, 24 hours does not provide enough time to comply with the proposed rule.

Final 20 VAC 5-425-20 6 requires a LEC to correct any incorrect ALI record within 48 hours (excluding holidays and weekends) of receiving notification of a mistake. Although the City of Covington requested the ALI records be corrected in eight (8) hours, we believe that to be too onerous a requirement. Additionally, we believe that 48 hours is enough time to satisfy the concerns expressed by both Verizon and the VTIA. We take note of NTELOS' comment that it routinely corrects E-911 database errors within 24 hours, and we commend such prompt efforts.

We clarify 20 VAC 5-425-20 7 to reflect that telephone numbers that cannot convey automatic number identification ("ANI") shall be excluded from the E-911 ALI database.

Final 20 VAC 5-425-20 9 requires a LEC to inform end-user customers of the potential for problems reaching the appropriate PSAP that may be inherent with a particular service that a customer is seeking to purchase.

Proposed 20 VAC 5-425-20 11, as set forth in the Proposed Rules, would have required LECs to provide at least seven days of "warm" (or "soft") dial tone that would continue to make available E-911 service to customers during periods of temporary suspension of local telephone service for non-payment. Cox, Verizon, and the VTIA opposed the mandatory provision of warm dial tone; AT&T raised a number of cost and operational questions regarding the proposed rule; and NTELOS, while noting that it found the requirement reasonable, suggested that companies would need ample time to implement such a requirement. Because this rule may have unintended detrimental consequences to customers, we will dispense with the requirement in our Final Rules.

Final 20 VAC 5-425-20 11, as adopted, requires a LEC to provide, upon request and no more than once every six months at no charge, detail sufficient to allow a PSAP to verify the accuracy of its E-911 bill. This differs from the proposed rule in that it no longer requires the ALI database provider to share LEC access line information that may be confidential and proprietary.

Final 20 VAC 5-425-30 A requires that a competitive local exchange carrier's ("CLEC's") rates for E-911 services shall be no higher than the lowest rate of the largest incumbent local exchange carrier ("ILEC") serving in a particular PSAP's geographic area. This clarifies for a CLEC, when it charges for E-911 services, the relevant ILEC's rate that the CLEC cannot exceed.

Final 20 VAC 5-425-30 B requires a LEC to structure its E-911 service offerings so that the LEC charges a PSAP only for the services it renders to the PSAP. While this rule may seem to state the obvious, the Commission is aware of complaints from localities claiming that they have received bills from multiple LECs for the same E-911 services rendered. Should compliance with this rule necessitate that an ILEC revise its tariffs, then we require that any tariff revisions be filed within 60 days of the effective date of these rules. Similarly affected CLECs shall file any necessary tariff revisions within 30 days of the effective date of the relevant ILEC's revised tariffs. However, should compliance with this rule necessarily result in (1) a change to a LEC's current regulatory classification of any component of E-911 services; (2) an increase in revenue

to a LEC; or (3) an increase in any customer's rate, then the LEC shall take the appropriate action as provided for by the Code of Virginia, any applicable Alternative Regulatory Plan, and any other applicable rules and regulations. Such a LEC may request an extension of the 60-day deadline to accommodate a proceeding that results from the occurrence of any of the three conditions described above.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt the amended and final Rules Governing Enhanced 911 ("E-911") Service, appended hereto as Attachment A.

(2) ILECs who currently have tariffed E-911 services shall, within sixty (60) days of the effective date of these rules, file any necessary E-911 service tariff revisions in accordance with 20 VAC 5-425-30 B, all other Commission rules and regulations, the Code of Virginia, and any applicable Alternative Regulatory Plan.

(3) CLECs who currently have tariffed E-911 services shall, within thirty (30) days of the effective date of the relevant ILEC's new E-911 tariffs, file revised tariffs in accordance with 20 VAC 5-425-30 B, all other Commission rules and regulations, and the Code of Virginia.

(4) A copy of this Order and the rules adopted herein shall be forwarded promptly for publication in the Virginia Register of Regulations.

(5) This case is dismissed, and the papers filed herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all local telephone carriers certificated in Virginia as shown on Appendix A attached hereto; all interexchange carriers certificated in Virginia as shown on Appendix B attached hereto; all PSAPs as shown on Appendix C attached hereto; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and the Division of Communications.

CHAPTER 425.
RULES GOVERNING ENHANCED [~~9-1-1~~ 911] (E-911) SERVICE.

20 VAC 5-425-10. Definitions.

The words and terms in § 56-484.12 of the Code of Virginia shall have application to this chapter. In addition, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Automatic location identification (ALI)" means the feature by which the name, [service] address, and supplemental emergency service information associated with the calling party's telephone number are forwarded to the Public Safety Answering Point (PSAP) for automatic display on the PSAP terminal equipment.

"Automatic number identification (ANI)" means a feature by which the [~~calling party's~~] telephone number associated with [~~the~~ a network] access line is [initially generated and] forwarded to [~~the~~ a] PSAP for display on [~~the~~ a] 911 terminal.

"Average busy hour" means the one-hour period during the week statistically shown over time to be the hour in which the most telephone calls are received.

[*"Commission" means the Virginia State Corporation Commission.*]

"Competitive local exchange carrier (CLEC)" means an entity, other than a locality, [~~certificated~~ authorized] to provide local exchange telecommunications services in Virginia [~~after January 1, 1996,~~] pursuant to § 56-265.4:4 of the Code of Virginia [~~An incumbent local exchange carrier shall be considered a CLEC in any territory that is outside the territory it was certificated to serve as of December 31, 1995, for which it obtains a certificate to provide local exchange telecommunications services on or after January 1, 1996~~ and 20 VAC 5-417].

"Database error" means an error [in ALI address information] caused by a Local Exchange Carrier (LEC) that affects the ability of a PSAP to route [~~correctly~~] emergency services [correctly].

"E-911 ALI database" means the set of ALI records residing on a computer system.

"E-911 [~~service~~ services]" means the tariffed services purchased by a jurisdiction for the purpose of processing [wireline] E-911 calls.

"Foreign central office service" means local exchange telecommunications [~~services~~ service] that [~~are~~ is] furnished from one central office to a location typically served by another central office.

"Foreign exchange service" means local exchange telecommunications [~~services~~ service] that [~~are~~ is] furnished from one exchange to a location typically served by another exchange.

"Incumbent local exchange carrier (ILEC)" or "incumbent" means a public service company providing local exchange telecommunications services in Virginia on December 31, 1995, pursuant to a certificate of public convenience and necessity, or the successors to any such company.

"Local exchange carrier (LEC)" means a certificated provider of local exchange telecommunications services, whether an incumbent or a new entrant.

"Local exchange telecommunications services" means local exchange telephone service as defined by § 56-1 of the Code of Virginia.

"Locality" means a city, town, or county that operates an electric distribution system in Virginia.

"Municipal local exchange carrier (MLEC)" means a locality certificated to provide local exchange telecommunications services pursuant to § 56-265.4:4 of the Code of Virginia.

"Network access line (NAL)" means a [~~*customer dial tone*~~ *wireline*] *line,* [*trunk,*] *or* [~~*its*~~] *equivalent* [~~*, that provides access to the public switched network*~~].

"New entrant" means a CLEC or an MLEC.

"P.01 grade of service" means a standard of service quality reflecting the probability that no more than one call out of 100 during the average busy hour will be blocked.

"Public safety answering point (PSAP)" means a facility [~~*that has been designated*~~ *equipped and staffed*] *to receive* [*and process*] *911 calls and route them to emergency services personnel.*

"Staff" means the commission's Division of Communications and associated personnel.

[~~*"Trunk" means a communication line between two switching systems.*~~]

20 VAC 5-425-20. General provisions.

[~~*A.*~~] *A LEC shall:*

1. Provide [*to its end-user customers*] *access to E-911 service on all NALs where applicable;*

2. Provide each relevant PSAP with a means for immediate access to [*LEC*] *personnel to assist in* [*PSAPs, while processing an emergency-related 911 call,*] *obtaining E-911 record-related information on a 24-hour basis, 365 days a year. Any changes to this contact information shall be communicated in writing to affected PSAPs within five business days;*

3. Provide LEC [*company*] *identification* [~~*information*~~ *codes*] *on each ALI record submitted to the E-911 ALI database* [*provider*]*;*

4. Provide [~~*customer*~~] *ALI* [*record*] *information such that* [~~*the*~~ *its*] *E-911* [~~*ALI*~~] *database error rate* [*, for a given PSAP,*] *is no greater than 1.0%. The ALI database error rate shall be* [~~*calculated by dividing*~~] *the number of* [*a LEC's*] *incorrect ALI* [*address*] *records* [~~*returned from PSAPs to a serving LEC*~~ *divided*] *by the* [*total*] *number of* [*a LEC's*] *ALI records* [~~*submitted by a LEC, on a company-wide basis,*~~ *queried*] *during* [~~*any given*~~ *a calendar*] *quarter* [~~*. Deviations from this standard shall be reported in writing to the staff no later than the last business day of the month following the end of each quarter. A corrective action plan may be required when appropriate as determined by the staff*~~]*;*

5. Submit [*, or cause to be submitted, no less than 95% of*] *all E-911 ALI database affecting changes* [*(including nonpublished and nonlisted telephone numbers)*] *to the E-911 ALI database provider within* [~~*24*~~ *48*] *hours of the* [*LEC's receipt of*] *notice of the change* [*and 100% within 72 hours*]*, excluding holidays and weekends;*

6. Correct, or cause to be corrected, any ALI record within [~~*24*~~ *48*] *hours of* [*receiving written*] *notification* [~~*from a PSAP*~~]*,* [*including but not limited to electronic mail ("e-mail") and facsimile,*] *excluding holidays and weekends;*

7. Exclude [*, or cause to be excluded,*] *from the* [~~*E-911*~~] *ALI database* [*, ALI records that contain*] *telephone numbers* [~~*not capable of accessing E-911 services*~~ *that cannot convey ANI*]*;*

[~~*8. Provide the ANI and ALI for nonpublished and nonlisted telephone numbers in the normal database entry process. This provision does not apply to any telephone number excluded by government mandate;*~~

~~*9.*~~ *8.*] *Provide* [~~*customer*~~] *ALI* [*record*] *information relating to an E-911 emergency immediately upon the verbal request of a verified authorized agent of the PSAP;*

[~~*10.*~~ *9.*] *Advise customers applying for foreign exchange* [~~*or*~~ *,*] *foreign central office service* [~~*of*~~ *, or any other wireline service, when there is*] *the potential for problems* [*in*] *reaching the appropriate PSAP;*

[~~*11. Maintain access to E-911 service during any period of temporary suspension for the nonpayment of residential local exchange telecommunications services for a period of not less than seven calendar days from the date of temporary suspension, where practicable; and*~~

~~*12.*~~ 10.] *Render to* [~~*each*~~ *a requesting*] *PSAP,* [~~*on an annual basis, at no charge,*~~] *where* [~~*it*~~ *the LEC*] *provides ALI database services,* [~~*billing*~~] *detail sufficient to* [~~*identify the number*~~ *verify the accuracy*] *of* [~~*access lines associated with each LEC in that PSAP's territory.*~~ *ALI database telephone number, name, and address information. Such information shall be provided to the PSAP by the LEC on no more than a semi-annual basis and at a reasonable cost;*

11. Render to a PSAP, upon request, on no more than a semi-annual basis, at no charge, detail sufficient to verify the accuracy of its E-911 services billing; and

12. Notify each relevant PSAP at least 30 days prior to the commencement or discontinuance of local exchange telecommunications services.]

[~~*B. A new entrant shall notify each relevant PSAP at least 30 days prior to the commencement or discontinuance of local exchange telecommunications services.*~~]

20 VAC 5-425-30. Rates and tariffs.

A. A new entrant's rates for any E-911 [~~*service*~~ *services*] *shall be no higher than the lowest applicable rates established by the* [*largest*] *ILEC* [~~*or ILECs*~~ *, as measured by the number of its NALs,*] *serving the geographic area of the relevant PSAP.*

B. A LEC [~~*shall input or cause to be input E-911 ALI database information as part of the general cost of providing local exchange telecommunications services*~~ *, if it provides and charges for E-911 services, shall structure its E-911 services so that it charges PSAPs only for those services that it renders*]*.*

[~~*C. A LEC shall structure its tariffed E-911 services to preclude a PSAP from purchasing duplicate services.*~~]

20 VAC 5-425-40. Provisioning.

A LEC providing E-911 services shall:

1. Design, construct, maintain, and operate its facilities to [~~*provide*~~ *minimize interruptions to*] *E-911 services* [~~*on an uninterrupted basis*~~]*;*

2. Determine [~~*wireline*~~] *E-911 service requirements in consultation with the relevant PSAP. These requirements shall be communicated to the PSAP prior to implementation and shall include detail sufficient to allow the PSAP to order E-911 service consistent with a* [*minimum of a*] *P.01 grade of service; and*

3. Provide E-911 service consistent with [~~*a P.01 grade*~~ *the level*] *of service* [~~*. Performance below this standard for three consecutive months, and*~~ *ordered by*] *a* [~~*detailed explanation of such, shall be reported in writing to the*~~] *PSAP* [~~*and to the staff no later than the last business day of the month following the end of a quarter*~~].

[***20 VAC 5-425-50. Waiver.***

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter.]

VA.R. Doc. No. R03-308; Filed June 28, 2004, 3:12 p.m.

◆ ◆

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Titles of Regulations: **22 VAC 40-32-10 et seq. Aid to Families with Dependent Children (AFDC) Program - Determining AFDC Eligibility When Only Dependent Child Receives Foster Care Benefits (REPEALED).**

VA.R. Doc. No. R00-135; Filed July 1, 2004, 12:09 p.m.

22 VAC 40-290-10. Earned Income Disregards/Student Earnings in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-134; Filed July 1, 2004, 12:09 p.m.

22 VAC 40-300-10 et seq. Lump Sum Ineligibility Period in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-133; Filed July 1, 2004, 12:09 p.m.

22 VAC 40-310-10 et seq. Maximum Resource Limit in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-132; Filed July 1, 2004, 12:09 p.m.

22 VAC 40-320-10 et seq. Disclosure of Information to Law-Enforcement Officers in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-131; Filed July 1, 2004, 12:09 p.m.

22 VAC 40-350-10 et seq. Real Property Disposition Period in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-130; Filed July 1, 2004, 12:09 p.m.

22 VAC 40-360-10 et seq. Definition of a Home in the Aid to Families with Dependent Children (AFDC) and General Relief (GR) Programs (REPEALED).

VA.R. Doc. No. R00-129; Filed July 1, 2004, 12:09 p.m.

22 VAC 40-370-10 et seq. Job Training Partnership Act (JTPA) Income Disregards in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-128; Filed July 1, 2004, 12:09 p.m.

22 VAC 40-380-10 et seq. Disregard of Certain Income Received by Indian Tribes in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-127; Filed July 1, 2004, 12:10 p.m.

22 VAC 40-390-10 et seq. Persons and Income Required to be Considered When Evaluating Eligibility for Assistance in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-126; Filed July 1, 2004, 12:10 p.m.

22 VAC 40-420-10 et seq. Aid to Families with Dependent Children: Unemployed Parent Demonstration (AFDC-UPDEMO) Project (REPEALED).

VA.R. Doc. No. R00-125; Filed July 1, 2004, 12:10 p.m.

22 VAC 40-430-10 et seq. Treatment of Casual and Inconsequential Income in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-124; Filed July 1, 2004, 12:12 p.m.

22 VAC 40-440-10 et seq. Aid to Families with Dependent Children (AFDC) Program Allocation of Income (REPEALED).

VA.R. Doc. No. R00-123; Filed July 1, 2004, 12:15 p.m.

22 VAC 40-450-10 et seq. Lump Sum Payments in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-122; Filed July 1, 2004, 12:12 p.m.

22 VAC 40-460-10 et seq. Deeming of Stepparent Income in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-121; Filed July 1, 2004, 12:12 p.m.

22 VAC 40-490-10 et seq. Aid to Families with Dependent Children (AFDC) Program - Deprivation Due to the Incapacity of a Parent (REPEALED).

VA.R. Doc. No. R00-120; Filed July 1, 2004, 12:12 p.m.

22 VAC 40-500-10 et seq. Work-Related Child Care Expenses Disregarded in the Aid to Families with Dependent Children (AFDC) Program (REPEALED).

VA.R. Doc. No. R00-119; Filed July 1, 2004, 12:12 p.m.

22 VAC 40-510-10 et seq. Aid to Families with Dependent Children (AFDC) Program - Entitlement Date (REPEALED).

VA.R. Doc. No. R00-118; Filed July 1, 2004, 12:12 p.m.

22 VAC 40-520-10 et seq. Aid to Families with Dependent Children (AFDC) Program – Disregarded Income and Resources (REPEALED).

VA.R. Doc. No. R00-117; Filed July 1, 2004, 12:12 p.m.

22 VAC 40-530-10 et seq. Aid to Families with Dependent Children (AFDC) Program - Deprivation Due to Continued Absence (REPEALED).

VA.R. Doc. No. R00-116; Filed July 1, 2004, 12:13 p.m.

22 VAC 40-550-10 et seq. Aid to Families with Dependent Children Program - Unemployed Parent (AFDC-UP) Program (REPEALED).

VA.R. Doc. No. R00-115; Filed July 1, 2004, 12:13 p.m.

22 VAC 40-580-10 et seq. Aid to Families with Dependent Children (AFDC) – Elimination of Monthly Reporting (REPEALED).

VA.R. Doc. No. R00-114; Filed July 1, 2004, 12:13 p.m.

22 VAC 40-590-10 et seq. Aid to Families with Dependent Children - Earned Income Tax Credit (EITC) Disregard (REPEALED).

VA.R. Doc. No. R00-113; Filed July 1, 2004, 12:13 p.m.

22 VAC 40-610-10 et seq. Aid to Families with Dependent Children (AFDC) Program - Exclusion of Children Receiving Adoption Assistance and Foster Care Maintenance Payment (REPEALED).

VA.R. Doc. No. R00-112; Filed July 1, 2004, 12:13 p.m.

22 VAC 40-620-10 et seq. Aid to Families with Dependent Children (AFDC) Program - Fifth Degree Specified Relative (REPEALED).

VA.R. Doc. No. R00-111; Filed July 1, 2004, 12:13 p.m.

22 VAC 40-650-10 et seq. Aid to Families with Dependent Children (AFDC) Program - Disqualification for Intentional Program Violation (REPEALED).

VA.R. Doc. No. R00-110; Filed July 1, 2004, 12:13 p.m.

22 VAC 40-750-10 et seq. Grant Diversion (REPEALED).

VA.R. Doc. No. R00-109; Filed July 1, 2004, 12:13 p.m.

22 VAC 40-760-10 et seq. Employment Services Program Policy (REPEALED).

VA.R. Doc. No. R00-108; Filed July 1, 2004, 12:13 p.m.

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: September 1, 2004.

Agency Contact: Mark L. Golden, TANF Program Manager, Department of Social Services, 730 N. Eighth Street, Richmond, Virginia 23219, telephone (804) 726-7385 or FAX (804) 726-7356, or e-mail mark.golden@dss.virginia.gov.

Summary:

The Board of Social Services repealed 28 regulations that apply to the now obsolete Aid to Families with Dependent Children (AFDC) program. The Temporary Assistance for Needy Families (TANF) program has replaced the AFDC program and all rules regarding this program have been consolidated into one regulation, 22 VAC 40-295, Temporary Assistance for Needy Families, which is currently in the final stage of the promulgation process.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

* * * * * * * *

Title of Regulation: **22 VAC 40-295. Temporary Assistance for Needy Families (TANF) (adding 22 VAC 40-295-10 through 22 VAC 40-295-170).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: September 1, 2004.

Agency Contact: Mark L. Golden, TANF Manager, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7356, or e-mail mark.golden@dss.virginia.gov.

Summary:

Currently, there are several separate regulations addressing Temporary Assistance for Needy Families (TANF), and these regulations are in the process of being amended or repealed. The new regulation, 22 VAC 40-295, will replace the old regulations, simplify program rules and align many rules with other public assistance programs. Substantive changes include: (i) simplifying eligibility rules regarding a child's having to reside with a relative and increasing the time a child can be out of the home and remain eligible; (ii) excluding the earned income of students under 18; (iii) establishing the beginning date of assistance and redetermination time frame; (iv) clarifying provisions for hearings; (v) simplifying TANF-Emergency Assistance; (vi) adding definitions related to child care to comply with federal regulations; and (vii) providing authority for the Department of Social Services to establish pilot projects to test future program changes.

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.

REGISTRAR'S NOTICE: The reproposed regulation was adopted as published in 20:5 VA.R. 438-453 November 18, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the reproposed regulation are set out.

CHAPTER 295.
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES
[*(TANF)*].

22 VAC 40-295-10. Definitions.

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

"Administrative disqualification hearing" or "ADH" means an impartial review by a hearing officer of an individual's actions involving an alleged intentional program violation for the purpose of rendering a decision of guilty or not guilty of committing an intentional program violation.

"Adoption assistance" means a money payment or services provided to adoptive parents on behalf of a child with special needs.

"Affordable child care arrangements" means the cost of the child care is less than or equal to the payment amounts specified in the Virginia Department of Social Services Child [~~Day~~] Care Services policy (Volume VII, Section II, Chapter D, Revised February 2000).

"Application" means a ~~written~~ request for financial assistance received by the local social services agency in the format prescribed by the Virginia Department of Social Services.

"Appropriate child care" means child care arranged by the participant or, if the participant cannot arrange for the child's care, child care arranged by the local department of social services with a legally-operating provider.

"Assistance unit" means those persons who must participate together as a family unit.

~~"Beginning date of assistance" means the date assistance begins.~~

"Board" means the State Board of Social Services.

"Caretaker" means the natural or adoptive parent or other relative ~~(e.g., aunt, uncle, grandparent, etc.)~~ with whom the ~~children reside~~ child resides who is responsible for supervision and care of the needy ~~children~~ child and is the individual to whom the assistance payment is made.

~~"Certification period" means the period of time within which an assistance unit is eligible to receive benefits.~~

"Child" means a child who is eligible for TANF and has not attained the age of ~~eighteen~~ 18 years, or if ~~eighteen and in school, is expected to graduate by his nineteenth birthday~~ regularly attending a secondary school or in the equivalent level of career and technical education, has not attained the age of 19 years and is reasonably expected to complete his senior year of school prior to attaining age 19.

"Department" means the Virginia Department of Social Services.

"Dependent child" means a child living in the home of a parent or relative. ~~This includes children who have been emancipated.~~

"Determination of eligibility" means the screening procedure to determine the need for assistance and the amount of the monthly assistance payment.

"Disregard" means income ~~or resources which are~~ that is not considered when determining eligibility for the TANF program.

"Earned income" means income from wages, salary, commissions, or profit from activities in which an individual is engaged as self-employed. ~~On-the-job training, tryout employment, and work experience are types of programs from which earnings are received by Job Training Partnership Act (JTPA) participants.~~

"Emancipated child" means a minor who has been released from parental care and responsibility by court order.

~~"Exempted resource in the TANF Program" means a resource that is not counted in determining eligibility for the TANF program.~~

"Former recipient" means an individual whose case has been closed and is not presently receiving an assistance payment through TANF.

"Gross earned and unearned income" means total income before application of any applicable disregards.

"Hearing officer" means an impartial representative of the Department of Social Services to whom requests for ~~administrative disqualification~~ hearings are assigned and by whom they are heard. The hearing officer has been delegated the authority by the Commissioner of the Department of Social Services to conduct and control hearings and to render decisions.

"Income" means all income, both earned and unearned, which is available or expected to be available to the assistance unit.

"Intentional program violation" or "IPV" means any action by an individual for the purpose of establishing or maintaining the family's eligibility for TANF or TANF service or for increasing or preventing a reduction in the amount of the grant which is intentionally a false or misleading statement or misrepresentation, concealment or withholding of facts or any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

"Local agency" means any one of the local departments of social services.

"Lump sum " means money received in the form of a nonrecurring ~~lump sum~~ payment that is treated as income in the month of receipt.

"Minor" means any person who is under the age of 18.

"Otherwise eligible" means that the individual is not precluded from eligibility by some provision of law or regulation.

"Overpayment" means an assistance payment or the value of services provided by a local department of social services ~~which~~ that is greater than the amount to which the assistance unit is eligible to receive.

"Parent" means a mother or father, married or unmarried, natural or, following entry of an interlocutory order, adoptive~~, following entry of an interlocutory order~~.

"Payee" means the person to whom the assistance payment is made payable. In most situations, the caretaker is the payee.

"Protective payee" means an appropriate individual to act for the caretaker in receiving and managing the assistance payment. The protective payee should be someone who is interested and concerned with the welfare of the caretaker and his children.

"Reasonable distance" means that the travel time from the child's home to the child care provider and the work site is generally no more than one hour, based on transportation available to the parent.

"Recipient" means a person whose application for TANF or TANF-UP has been approved and is currently a member of an eligible assistance unit.

"Recoupment" means withholding all or part of an assistance payment to a current assistance unit for the purpose of repaying a prior overpayment.

"Recovery" means a voluntary or court ordered arrangement with a current or former assistance unit for repayment of an overpayment.

~~*"Resource" means real and personal property, both liquid and nonliquid, including cash, bank accounts, lump sums, the cash value of bank accounts, the cash value of life insurance, trust funds, stocks, bonds, mutual funds, or any other financial instruments, which the assistance unit has the right, authority, or power to liquidate.*~~

"Sanctioned caretaker" means a caretaker whose needs are removed from the grant and who is ineligible for an assistance payment.

"SSN" means social security number.

"Standard of assistance" means the dollar amount, based on the family size, which has been established by the State Board of Social Services to cover predetermined monthly maintenance needs.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"Unearned income" means income that is not earned. ~~*Types of unearned income received by participants in Job Training Partnership Act (JTPA) programs include stipends paid to enrollees in classroom training and remedial education programs.*~~

"Unsuitability of informal child care" means that the child care arrangement does not meet the requirements for relative care in the Virginia Department of Social Services Child Day Care Services policy.

22 VAC 40-295-20. Specified relatives. **[No change from reproposed.]**

22 VAC 40-295-30. Assistance unit. **[No change from reproposed.]**

22 VAC 40-295-40. Minor children who are absent from the home. **[No change from reproposed.]**

~~***22 VAC 40-295-50. Resource eligibility.***~~ **[No change from reproposed.]**

~~***22 VAC 40-295-60***~~ ***22 VAC 40-295-50. Income eligibility.***

A. Income eligibility for all cases is based on a prospective determination that anticipates the countable income of the assistance unit. The assistance unit is income eligible if the net income of the assistance unit is less than the standard of assistance.

B. The following income of members of the assistance unit, a parent not included in the assistance unit, or anyone whose income is used in determining eligibility or the amount of TANF assistance, shall be disregarded:

1. Home produce of the assistance unit utilized for their own consumption;

2. The value of food [~~*coupons*~~ *benefits*] *under the Food Stamps program;*

3. The value of foods donated under the United States Department of Agriculture Commodity Distribution Program, including those furnished through school meal programs;

4. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC §§ 4601 et seq.);

5. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended (42 USC §§ 3001 et seq.);

6. Grants or loans to any undergraduate students for educational purposes made or insured under any program administered by the United States Secretary of Education. Programs that are administered by the United States Secretary of Education include: Pell Grant, Supplemental Education Opportunity Grant, Perkins Loan, Guaranteed Student Loan (including the Virginia Education Loan), PLUS Loan, Congressional Teacher Scholarship Program, College Scholarship Assistance Program, and the Virginia Transfer Grant Program;

7. Funds derived from the College Work Study Program;

8. A scholarship or grant obtained and used under conditions which preclude its use for current living costs;

9. Training allowance (transportation, books, required training expenses, and motivational allowance) provided by the Department of Rehabilitative Services (DRS) for persons participating in Rehabilitative Services Programs. This disregard is not applicable to the allowance provided by DRS to the family of the participating individual;

10. Any portion of an SSI payment or Auxiliary Grant;

11. Payments to VISTA Volunteers under Title I, when the monetary value of such payments is less than minimum wage as determined by the Director of the Action Office, and payments for services of reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and other programs pursuant to Titles II and III, of Public Law 93-13, the Domestic Volunteer Service Act of 1993 (42 USC §§ 4950 et seq.);

12. The Veterans Administration educational amount for the caretaker 18 or older when used specifically for education purposes. Any additional money included in the benefit

amount for dependents is to be counted as income to the assistance unit;

13. Foster care payments received by anyone in the assistance unit;

14. Unearned income received from Title IV, Part B (Job Corps) of the Job Training Partnership Act (JTPA) (29 USC §§ 1501 et seq.) by an eligible child is to be disregarded as an incentive payment. However, any payment received by any other Job Corps participant or any payment made on behalf of the participant's eligible child or children is to be counted as income to the assistance unit;

15. Income tax refunds including earned income tax credit advance payments and refunds;

16. Payments made under the Energy Assistance Program;

17. The value of supplemental food assistance received under the Child Nutrition Act of 1966 (42 USC §§ 1771-1789). This includes all school meals programs; the Women, Infants, and Children (WIC) program; and the Child Care Food program;

18. All federal, state, or local government rent and housing subsidies and utility payments;

19. Unearned income received by an eligible child under Title II, Parts A and B, and Title IV, Part A, of the Job Training Partnership Act (JTPA) (29 USC §§ 1501 et seq.);

20. Funds distributed to, or held in trust for, members of any Indian tribe under Public Laws 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, or 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income;

21. The following types of distributions received from a Native Corporation under the Alaska Native Claims Settlement Act (Public Law 100-241; 43 USC §§ 1601 et seq.):

a. Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per year;

b. Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

c. A partnership interest;

d. Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

e. An interest in a settlement trust.

22. Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Public Law 92-114);

23. The first $50 of total child or spousal support payments received each month by an assistance unit;

24. Federal major disaster and emergency assistance provided under the Disaster Relief and Emergency Assistance Amendments of 1988 (42 USC § 5121 nt.), and disaster assistance provided by state and local governments and disaster assistance organizations (Public Law 100-707);

25. Payments received by individuals of Japanese ancestry under the Civil Liberties Act of 1988, and by Aleuts under the Aleutian and Pribilof Islands Restitution Act (Public Law 100-383; 50 USC Appx. §§ 1989 et seq.);

26. Agent Orange payments;

27. Payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426; 42 USC § 2210 nt.);

28. Funds received pursuant to the Maine Indians Claims Settlement Act of 1980 (Public Law 96-420) and the Aroostook Band of Micmacs Settlement Act (Public Law 102-171; 25 USC § 1721);

29. Student financial assistance received under Title IV of the Higher Education Amendments of 1992 (Public Law 102-325);

30. Student financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act made available for attendance costs (Public Law 101-392; 20 USC § 2301 nt.);

31. Student financial assistance received under the Bureau of Indian Affairs student assistance programs;

32. All bona fide loans. The loan may be for any purpose and may be from a private individual as well as from a commercial institution. The disregard is limited to the principal of the loan. A simple statement signed by both parties indicating that the payment is a loan and must be repaid is sufficient to verify that a loan is bona fide. Interest earned on the proceeds of a loan while held in a savings or checking account or other financial instrument shall be counted as income only in the month received ~~and as a resource thereafter. Purchases made with a loan are counted as resources~~;

33. Up to $2,000 per year of income received by individual Indians, which are derived from leases or other uses of individually-owned trust or restricted lands shall be disregarded as income, and shall not be used to reduce or deny assistance or benefits to which the individual, or household, would otherwise be entitled to receive;

34. Nonrecurring monetary gifts for special occasions, such as birthdays, Christmas, graduations;

35. All other unearned income that is specifically disregarded in the calculation of TANF benefits by federal or state law or regulation.

C. When determining initial eligibility, or ongoing eligibility for non-VIEW participants, the following ~~earned income~~ is disregarded from the monthly earned income of ~~each individual whose needs are included in the eligibility determination~~ the assistance unit:

1. An amount equal to the standard deduction used in the Food Stamp program; and

2. Twenty percent of the remainder.

~~3.~~ *D. The earned income of ~~students~~ a student, who is not the head of household, under 18 years of age shall be disregarded.*

~~D.~~ *E. When a ~~parent~~ person is excluded or removed from the assistance unit due to noncompliance with a TANF rule, ~~the parent's gross unearned and earned income must be counted in determining eligibility for the assistance unit and the amount of payment~~ all income of the person is considered available to the assistance unit to the same extent if the person were not excluded or removed from the assistance unit.*

~~E.~~ *F. For self-employment, the profit obtained through self-employment is gross income in determining TANF eligibility. Profit is the income minus expenses.*

G. The income of a child who is not required to be in the assistance unit due to the application of 22 VAC 40-295-30 B is not considered available to the assistance unit.

H. The TANF payment shall be suspended if the amount of child support collected by the Division of Child Support Enforcement for two consecutive months, when treated like income, makes the family ineligible for TANF. The TANF case shall be closed if in the month of suspension the amount of child support collected by the Division of Child Support Enforcement, when treated like income, makes the family ineligible.

I. The monthly payment amount is equal to the standard of assistance minus the net income.

~~22 VAC 40-295-70~~ 22 VAC 40-295-60. **[No change from reproposed.]**

~~22 VAC 40-295-80. Certification periods~~ 22 VAC 40-295-70. Redetermination of benefits. **[No change from reproposed.]**

~~22 VAC 40-295-90~~ 22 VAC 40-295-80. Reporting changes. **[No change from reproposed.]**

~~22 VAC 40-295-100~~ 22 VAC 40-295-90. Notice of adverse action.

A. Prior to any action to reduce or terminate an assistance unit's TANF assistance, the agency shall provide a notice ~~which meets the requirements of 7 CFR 273.13 (a) and (b)~~ [of adverse action] before the adverse action is taken.

B. The notice [of adverse action] shall be issued at least 10 days before the date upon which the action [to reduce or terminate assistance] would become effective [~~if the change is to reduce or terminate the assistance~~]. [If a recipient requests a hearing before the effective date of such action, his assistance may not be reduced or terminated until a decision is rendered after a hearing unless the recipient requests that he not receive continued assistance pending a hearing decision. If the effective date of the action falls on a weekend or holiday, and a request for a hearing is received the day after the weekend or holiday, the hearing request shall be considered to have been made prior to the effective date of the action.

C. The notice of adverse action shall explain in easily understandable language:

1. The proposed action;

2. The reason for the proposed action;

3. The assistance unit's right to request a hearing;

4. The telephone number of the office, to include a toll-free number or a number where collect calls will be accepted for recipients outside the local calling area;

5. The availability of continued benefits;

6. The liability of the assistance unit for any overpayments received while awaiting a hearing if the hearing officer's decision is adverse to the assistance unit; [*and*]

7. The availability of an individual or organization that provides free legal representation, if such a service is available.

[~~C.~~ *D.*] *1. The local agency may notify an assistance unit that its benefits will be reduced or terminated no later than the date the assistance unit receives, or would have received, its payment, if any of the following conditions are met:*

a. The assistance unit reports the information that results in the reduction or termination, and the agency can determine the payment or ineligibility based solely on the information provided by the assistance unit;

b. The agency determines, based on reliable information, that all members of an assistance unit have died;

c. The agency determines, based on reliable information, that all members of an assistance unit have moved from the locality; or

d. The assistance unit voluntarily requests that its participation be terminated.

2. The assistance unit retains its rights to a fair hearing, and if a hearing request is received prior to the effective date of any proposed change in benefit status, the assistance unit appealing such change shall have the right to continued direct payment of TANF benefits pending final administrative action on such appeal.

[~~D.~~ *E.*] *Individual notices of adverse action shall not be provided when:*

1. The agency initiates a mass change that affects the entire caseload or significant portions of the caseload; or

2. The assistance unit's monthly payment varies from month to month to take into account changes that were anticipated at the time of application or redetermination, and the assistance unit was so notified in writing at that time.

~~22 VAC 40-295-110~~ 22 VAC 40-295-100. Mass changes. **[No change from reproposed.]**

~~22 VAC 40-295-120. Hearing requests.~~ 22 VAC 40-295-110. Hearings.

A. Every applicant or recipient shall have the right to request a hearing ~~either orally or in writing~~ before a hearing officer. An opportunity for a hearing shall be granted to any applicant who requests a hearing because his claim for financial assistance is denied, or is not acted upon with reasonable promptness,

and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance, or termination of assistance, or determination that a protective, vendor, or two-party payment should be made or continued. A hearing need not be granted when either state or federal law required automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation. A hearing may be requested by a clear expression, oral or written, by any member of an assistance unit or its authorized representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired.

B. [*An applicant or recipient shall be allowed to request a hearing on any agency action or loss of assistance for up to 30 days after receipt of the notice of adverse action if the proposed action is effective within the next 30 days. If the proposed action is effective more than 30 days following receipt of this notice, an appeal may be filed until the effective date. In addition, an assistance unit may at any time request a hearing to dispute its current level of assistance. Within 90 days of the receipt of a request for a hearing, the hearing shall be conducted, a decision reached, and the applicant or recipient shall be notified of the decision.*

C.] *The applicant or recipient shall be afforded all rights as specified in this section.*

[~~*C.*~~ *D.*] *Every applicant or recipient shall be informed in writing at the time of application and at the time of any action affecting his claim:*

1. Of his right to a hearing,

2. Of the method by which he may obtain a hearing;

3. That he may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or he may represent himself.

[~~*D.*~~ *E.*] *The hearing shall be conducted at a reasonable time, date, and place, and adequate preliminary written notice shall be given.*

[~~*E.*~~ *F.*] *When the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary.*

[~~*F.*~~ *G.*] *The hearing shall include consideration of:*

1. An agency action, or failure to act with reasonable promptness, on a claim for financial assistance, which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance;

2. An agency decision regarding:

a. Eligibility for financial assistance in both initial and subsequent determinations;

b. Amount of financial assistance or change in payments; or

c. The manner or form of payment, including restricted or protective payments.

[~~*G.*~~ *H.*] *The claimant, or his representative, shall have adequate opportunity to:*

1. Examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

2. At his option, present his case himself or with the aid of an authorized representative;

3. Bring witnesses;

4. Establish all pertinent facts and circumstances;

5. Advance any arguments without undue interference;

6. Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

[~~*H. Recommendations or*~~ *I.*] *Decisions of the hearing officer shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the* ~~*recommendation or*~~ *decision of the hearing officer shall constitute the exclusive record and shall be available to the claimant at a place accessible to him or his representative at a reasonable time.*

[~~*I.*~~ *J.*] *Decisions by the hearing officer shall:*

1. In the event of an evidentiary hearing, consist of a memorandum decision summarizing the facts and identifying the regulations supporting the decision;

2. In the event of a de novo hearing, specify the reasons for the decision and identify the supporting evidence and regulations.

[~~*J.*~~ *K.*] *The claimant shall be notified of the decision in writing.*

[~~*K.*~~ *L.*] *When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the Department of Social Services shall promptly make corrective payments retroactively to the date the incorrect action was taken.*

~~22 VAC 40-295-130~~ 22 VAC 40-295-120. Collection of overpayments. **[No change from reproposed.]**

~~22 VAC 40-295-140. Overpayments based on an intentional program violation.~~ **[No change from reproposed.]**

~~22 VAC 40-295-150~~ 22 VAC 40-295-130. Protective payee. **[No change from reproposed.]**

~~22 VAC 40-295-160~~ 22 VAC 40-295-140. Intentional program violation (IPV). **[No change from reproposed.]**

~~22 VAC 40-295-170~~ 22 VAC 40-295-150. TANF-Emergency Assistance (TANF-EA). **[No change from reproposed.]**

~~22 VAC 40-295-180~~ 22 VAC 40-295-160. Availability of child care and sanctioning for failure to engage in work. **[No change from reproposed.]**

22 VAC 40-295-170. Pilot projects.

The Department of Social Services shall have the authority to implement pilot projects that may have program rules different than those contained in this regulation [*; provided, however, that such rules shall not result in a reduction in assistance received by applicants or recipients and may not deprive them of rights set forth in 22 VAC 40-295-80, 22 VAC 40-295-90, 22 VAC 40-295-100, or 22 VAC 40-295-110*] *. Such program rules shall be made available to all program participants in the area in which the pilot is implemented. Pilot projects shall be evaluated for cost effectiveness, client impact, and the achievement of outcomes that support the long-term success of TANF recipients.* [*For purposes of applying this section, the pilot project may not include more restrictive eligibility rules than those contained in this regulation. Pilot projects may be implemented for no longer than two years.*]

DOCUMENT INCORPORATED BY REFERENCE

Virginia Department of Social Services Child [~~*Day*~~] *Care Services Policy, Volume VII, Section II, Chapter D, Revised February 2000.*

VA.R. Doc. No. R99-85; Filed July 1, 2004, 12:21 p.m.

* * * * * * * *

Title of Regulation: **22 VAC 40-330. Collection of Overpayments in the Refugee Other Assistance Program (amending 22 VAC 40-330-10 and 22 VAC 40-330-20).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: September 1, 2004.

Agency Contact: Mark L. Golden, TANF Manager, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 762-7385, FAX (804) 726-7356, or e-mail mark.golden@dss.virginia.gov.

Summary:

The amendments delete references to the AFDC program. Therefore, it will only apply to the Refugee Other Assistance Program. Language from this regulation regarding collection of overpayments will be included in the comprehensive regulation for Temporary Assistance for Needy Families, 22 VAC 40-295.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 330.
COLLECTION OF OVERPAYMENTS IN THE ~~AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) AND~~ REFUGEE OTHER ASSISTANCE ~~PROGRAMS~~ *PROGRAM*.

22 VAC 40-330-10. Definitions.

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

"Former recipient" means an individual who is not presently receiving an assistance payment through the ~~Aid to Families With Dependent Children (AFDC) or~~ Refugee Other Assistance Program.

"Overpayment" means an assistance payment made by a local department of social services which is incorrect because: (i) the assistance unit does not meet eligibility requirements and is ineligible for an assistance payment in a given month, or (ii) the payment is greater than the amount to which the assistance unit is entitled.

"Reasonable effort" means attempting to notify the former recipient of the amount of the overpayment, the reason the overpayment occurred and that repayment is required.

"Recoupment" means withholding all or part of an assistance payment to a current assistance unit for the purpose of repaying a prior overpayment.

"Recovery" means a voluntary or court ordered arrangement with a current or former recipient for repayment of all or a portion of an overpayment.

22 VAC 40-330-20. Collection process.

A local department of social services is to promptly recoup or recover any overpayment from a current recipient of ~~Aid to Families With Dependent Children (AFDC) or~~ Refugee Other Assistance, including overpayments ~~which~~ *that* are the result of assistance paid pending an appeal hearing decision in ~~which~~ *that* the adverse action taken by the agency is upheld by the hearing authority. All overpayments ~~which~~ *that* were made to former recipients ~~which~~ *that* are less than $35 shall be waived after the local agency has notified the former recipient, in writing, that an overpayment has occurred ~~which~~ *that* must be repaid and the former recipient fails to respond to the initial request for repayment. No further action to collect the overpayment is to be taken. In cases where an overpayment to a former recipient is $35, or more, the agency may elect to forego collection activity if, after reasonable efforts, it is determined that further action to collect the overpayment would not be cost effective. To ensure reasonable efforts have been made to collect the overpayment, the agency must: (i) have documentary evidence that they cannot locate the former recipient, or (ii) determine that the former recipient has no means by which to repay the overpayment, or (iii) secure a written statement from the former recipient that they refuse to repay the overpayment. The agency must maintain information for three years concerning former recipients who received an overpayment, including overpayments ~~which~~ *that* are less than $35, and must initiate recoupment procedures should one or

more of those individuals again be found eligible to receive assistance.

VA.R. Doc. No. R00-138; Filed July 1, 2004, 12:20 p.m.

* * * * * * * *

Title of Regulation: **22 VAC 40-340-10. Protective Payments in the Refugee Other Assistance Program (amending 22 VAC 40-340-10).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: September 1, 2004.

Agency Contact: Mark L. Golden, TANF Manager, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 762-7385, FAX (804) 726-7356, or e-mail mark.golden@dss.virginia.gov.

Summary:

The amendments delete references to the AFDC program. Therefore, it will only apply to the Refugee Other Assistance Program. Language from this regulation regarding protective payments will be included in the comprehensive regulation for Temporary Assistance for Needy Families, 22 VAC 40-295.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 340.
PROTECTIVE PAYMENTS IN THE ~~AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) AND~~ REFUGEE OTHER ASSISTANCE ~~PROGRAMS~~ *PROGRAM*.

22 VAC 40-340-10. Definitions.

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

"Caretaker relative" means the natural or adoptive parent or other relative of specified degree (i.e. aunt, uncle, grandparent, etc.) with whom the children reside who is responsible for supervision and care of the needy children and is the individual to whom the assistance payment is made.

"Employment Services Program" means a program operated by each locality ~~which~~ *that* is designed to enhance employment, education and training opportunities for ~~Aid to Dependent Children and~~ Refugee Other Assistance recipients.

"Payee" means the person to whom the assistance payment is made payable. In most situations, the caretaker relative is the payee.

"Protective payee" means an appropriate individual to act for the caretaker relative in receiving and managing the total assistance payment. The protective payee should be someone who is interested and concerned with the welfare of the caretaker relative and his children.

"Sanctioned caretaker relative" means a caretaker relative whose needs are removed from the grant and who is ineligible for an assistance payment because he failed to participate in the Employment Services Program, or who failed to assign rights to child/spousal support or cooperate in establishing paternity and securing such support.

VA.R. Doc. No. R00-137; Filed July 1, 2004, 12:07 p.m.

FAST-TRACK REGULATIONS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: **4 VAC 25-130. Coal Surface Mining Reclamation Regulations (amending 4 VAC 25-130-801.17 and 4 VAC 25-130-801.18).**

Statutory Authority: §§ 45.1-161.3, 45.1-230, and 45.1-241 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on September 26, 2004.
(See Calendar of Events section
for additional information)

Effective Date: October 12, 2004.

Agency Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237, or e-mail stephen.walz@dmme.virginia.gov.

Basis: Section 45.1-161.3 of the Code of Virginia gives DMME the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Title 45.1 and other relevant chapters, which regulations shall be promulgated by the department, the chief, or the director, as appropriate, in accordance with the provisions of Article 2 of the Administrative Process Act.

Section 45.1-230 of the Code of Virginia states that the DMME Director has the authority and the duty to publish and promulgate such regulations as may be necessary to carry out the purposes and provisions of the Virginia Coal Surface Mine Reclamation Act.

Section 45.1-241 C of the Code of Virginia states that the DMME Director is authorized to develop and promulgate an alternative bonding system that will achieve the objectives and purposes of the bonding program established under § 45.1-241 of the Code of Virginia.

Purpose: This proposed amendment to the Coal Surface Mining Reclamation Regulations is necessary because it updates language in the regulation that will help DMME customers operate and reclaim mine sites more effectively. Specifically, it removes bonding release language from 4 VAC 25-130-801.17 that can also be found in 4 VAC 25-130-840, without removing the essential performance requirements. Second, it clarifies requirements regarding minimum bond amounts.

There is no federal counterpart to these amendments. Because these requirements are designed to govern mine land reclamation and the bonding process, it is important to ensure that state requirements are kept current with today's standards.

The goals of the regulation sections being amended are to ensure that adequate funds are available for reclamation of coal mine sites. Timely reclamation of mined lands ensures the protection of the public's health, safety and welfare.

The goals of the amendments to this regulation are to remove the unique performance bond release procedures that have been applied only to bonds furnished pursuant to the Virginia alternative bonding system. This is being done because it will make bond release procedures for bonds issued under the alternative bonding system consistent with procedures for cost bonds. All coal mine sites that are being reclaimed will have their bonds released in phases as the sites are being reclaimed, making the bond capacity available to the operator for other sites. This amendment will also clarify that the minimum bond amount established for the total permit area by the Code of Virginia, §§ 45.1-241 and 45.1-270.3 B, and in 4 VAC 25-130-801.12 (b) will be retained until Phase III of the final bond release.

Rationale for using fast-track process: DMME is using the fast-track process to amend this regulation because of extensive work that has already been completed by a regulatory work group during the development of the amendment. The general acknowledgement is that the amendment helps to return bond capacity to the operators, thus making the bonds available for other sites.

This amendment will delete the unique performance bond release procedures that have been applied only to bonds furnished pursuant to the Virginia alternative bonding system. The action streamlines performance bonding used in the reclamation process.

Amendment approval by the Federal Office of Surface Mining is being sought concurrently with state submittal. Since the federal office has informally reviewed these proposed changes, approval is expected within 60 to 90 days.

Substance: Prior to the Surface Mine Control and Reclamation Act of 1977 (SMCRA), mined land was often abandoned without returning mined property to a condition where it may be of productive use. SMCRA set forth requirements to prevent such abandonment and to reclaim mined lands. Bonding of mine sites is essential in that it ensures that there will be money available to reclaim mined land if the mine operator does not complete the reclamation.

The language was developed through a series of regulatory and permit work group meetings. Recommendations were also received from the Coal Surface Mining Reclamation Fund Advisory Board.

Amendments to 4 VAC 25-130-801.17 and 4 VAC 25-130-801.18 apply to the bond release application and the criteria for release of the bond, respectively. The changes remove the duplicate language listing the bond release criteria that are found in 4 VAC 25-130-800.40 and instead just reference 4 VAC 25-130-800.40.

The amendment allows a phased release of the bonds on land in the pool bond program. Currently, a site participating in the pool is not eligible for a phased reduction until the land is reclaimed, post mining land use has been implemented, and two years have passed. At this point, the bond can be reduced to the minimum. Under this proposed change, the site, like a cost bond site, would be eligible to receive a 60% reduction when backfilling and regrading is achieved.

Issues: An issue that may arise from the proposed amendment is one that is related to the amount of a permittee's bond that will be retained or released for each increment of reclamation. Under the proposal, a portion of the bond will be released when backfilling and regrading are complete (Phase I). Additional bond will be released after revegetation is established on the land (Phase II). And lastly, the minimum bond will be retained until the reclamation has been completed to satisfaction (Phase III). This approach ensures that sufficient funds remain available for reclamation but excess funds are not held.

Phasing the release of bonds encourages mine operators to achieve early stages of reclamation more quickly. Reclaiming mined lands in a more timely manner is advantageous to public, private, and state entities because it more quickly reduces or eliminates environmental, health, and safety impacts associated with hazardous conditions that stem from mine high walls, mine waste material stockpiles, runoff from rain and dust, and other related conditions. In addition, reclaimed mined land can provide economic development potential if it can be used for commercial or industrial purposes. By releasing bond capacity earlier in the reclamation process, the bond capacity becomes available for use on additional mined lands. This will reduce costs to mine operators while retaining adequate bond coverage on mined lands. There are no disadvantages to the public or the Commonwealth associated with these 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 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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. Section 45.1-230 of the Code of Virginia provides the Department of Mines, Minerals and Energy (DMME) with the authority to publish and promulgate regulations necessary to carry out the purposes and provisions of the Virginia Coal Surface Mining Control and Reclamation Act. Specifically, § 45.1-241 of the Code of Virginia authorizes DMME to develop and promulgate an alternative bonding system that will achieve the objectives and purposes of the bonding program established under § 45.1-241.

Prior to the issuance of a permit for surface coal mining or approval of an acreage amendment to an existing permit, applicants are required to meet certain bonding requirements. These requirements are intended to ensure that sufficient funds are available to conduct reclamation activities in the event that a permittee does not adequately complete reclamation. The bonding requirement can be met through cost estimate performance bonds that cover the full cost of reclamation for each individual or through Virginia's alternative bonding system, the Coal Surface Mining Reclamation (Pool Bond) Fund, available to qualifying mine operators. Under either bonding method, the agency can accept a performance bond in the form of letters of credit, surety bonds, certificates of deposit, or cash.

The proposed regulation amends the bond release procedures for bonds furnished using the Coal Surface Mining Reclamation (Pool Bond) Fund. The bond release procedures for pool bonds are being made consistent with those used for cost estimate performance bonds. The proposed regulation also clarifies the minimum bond amount to be furnished under the Coal Surface Mining Reclamation (Pool Bond) Fund.

Estimated economic impact. The proposed regulation amends the bond release procedures for bonds furnished using Virginia's alternative bonding system, the Coal Surface Mining Reclamation (Pool Bond) Fund. The Code of Virginia requires that applicants seeking a surface coal mining permit or seeking to amend an existing permit furnish a bond to cover reclamation costs in the event that the permittee does not conduct adequate reclamation of the land following the conclusion of mining activities. The bonding requirement can be met through cost estimate performance bonds or through the Coal Surface Mining Reclamation (Pool Bond) Fund (available to qualifying mine operators). However, under existing regulations, the bond release procedures for cost estimate performance bonds are different from those for pool bonds. The proposed regulation amends the pool bond release procedures to make them consistent with those used for cost estimate performance bonds.

Under the existing regulation, permittees using the Coal Surface Mining Reclamation (Pool Bond) Fund to meet their bonding requirement can apply for a partial or total bond release for areas that have been reclaimed and revegetated. The first application for release of up to 60% of the bond or collateral can be made 12 months after establishment of post-mining land use or revegetation (a minimum of two full growing seasons after the completion of mining activity and the implementation of land use). Permittees can also apply for additional bond release, over and above 60%, once two growing seasons have elapsed since the end of mining activity and the implementation of land use. However, a minimum bond of not less than $10,000 is to be retained. The full amount of the bond is to be released after the successful implementation of the reclamation plan and the elapse of the minimum bond liability period. The bond is to be released once all the reclamation requirements of the Virginia Coal Surface Mining Control and Reclamation Act and the permit have been fully met.

Under the proposed regulation, pool bond release procedures are being made consistent with procedures applied to cost estimate performance bonds. DMME will be allowed to release all or part of the pool bond for the entire permit area or a portion of the permit area based on three phases of reclamation. Phase I requires the permittee to complete backfilling, regrading, and drainage control of the bonded area in accordance with the reclamation plan. Following DMME's determination of the adequate completion of Phase I, the agency could release up to 60% of the bond. Phase II requires the establishment of vegetation on the regraded mined land and a minimum of two growing seasons to have elapsed since the end of all mining activity and the implementation of land use. The additional amount of the bond released on completion of Phase II is to be determined by DMME based on any remaining reclamation and revegetation costs. A minimum bond of not less than $10,000 is to be retained. Phase III requires the successful completion of all surface mining and reclamation activities. Permittees can apply for release of the full amount of the bond after the completion of Phase III and the elapse of the minimum bond liability period. The bond is to be released once all the reclamation requirements of the Virginia Coal Surface Mining Control and Reclamation Act and the permit have been fully met.

According to DMME, the proposed Phase III bond release is identical to current pool bond release procedures. Phase II is also similar to current bond release procedures, insofar as permittees can apply for bond release of up to 60% or more (up to a $10,000 bond minimum) once revegetation has been established and two full growing seasons have elapsed. The difference between the proposed regulation and the existing regulation arises at Phase I. Under the proposed regulation, permittees will be allowed to apply for bond release of up to 60% once they complete backfilling, regrading, and drainage control of the bonded area. Under the existing regulation, they are eligible for up to 60% bond release a minimum of 12 months after revegetation has been established (or two full growing seasons). Thus, the proposed regulation provides the permittees with an opportunity to get a portion of their bond released earlier in the reclamation process than they would under the existing regulation.

The bonding requirement is intended to reduce the risk to the environment and to the public from surface coal mining activities. Permittees that are not implementing adequate reclamation impose costs on the citizens of Virginia, either by degrading the environment or by forcing the state to implement some form of reclamation in order to prevent environmental degradation (in the event of bond forfeiture). By requiring financial guarantees at the time the permit is issued or modified, the proposed regulation provides an incentive for permittees to fulfill their reclamation responsibilities and ensures that adequate resources are available for the state to conduct reclamation in the event that a permittee does not conduct adequate reclamation.

By easing the bond release requirements, the proposed regulation is likely to produce economic benefits for coal surface mining permit holders using the Coal Surface Mining Reclamation (Pool Bond) Fund to meet their bonding requirements. These permittees will now be able to get up to 60% of their bond released without waiting two growing seasons for revegetation to be established as required under the current regulation. The financial resources so released can then be used for other economic activities, including for meeting the bonding requirement on other surface coal mining sites. According to DMME, cost estimate performance or reclamation bonds are getting harder and more expensive to obtain. Thus, permittees are increasingly using pool bonds to meet their bonding requirements. The proposed change is likely to increase bonding capacity by allowing permittees to get quicker release of their bond.

According to DMME, there are 264 permitted sites currently using the Coal Surface Mining Reclamation (Pool Bond) Fund to meet the bonding requirement. This amounts to approximately $105 million posted as bonding for these sites. Under the proposed regulation, up to 60% or $63 million will be available for bond release once the permittee completes Phase I of the reclamation. Under the existing regulation, this amount is available for release only after revegetation has been established and two full growing seasons have elapsed from the time that mining activity ended and land use was implemented. Thus, the proposed change will allow permittees to seek and receive bond release earlier in the reclamation process than they would have under the existing regulation. However, a precise estimate of how much earlier, on average, bond release is likely to occur under the proposed regulation is not available at this time. Moreover, a precise estimate of the average amount of bond released after the completion of Phase I of reclamation is not available. Both estimates, of the average time taken to complete Phase I and of the average amount of bond released after Phase I, vary widely depending on factors such as site-specific conditions, the type of mining, and the eventual post-mining land use. Thus, it is not possible to precisely estimate the savings to permittees arising out of the proposed change.

The proposed change could also impose additional costs. By allowing for bond release earlier in the reclamation process, the proposed change could reduce the incentive for permittees to complete all the required reclamation. It also reduces financial resources available to conduct any remaining reclamation in the event that a permittee does not do so. In addition, by allowing for bond release earlier reclamation process and increasing the bonding capacity of mine operators, the proposed change could also result in more surface coal mining activity and more surface coal mining sites in the state. All these factors put together could increase the risk to the environment from surface coal mining activities and to the state of incurring mitigation costs to deal with the environmental degradation. However, DMME does not believe that the proposed change will significantly increase the risk of environmental degradation and of additional mitigation costs being imposed on the state. According to DMME, backfilling, regrading, and drainage control constitute the majority of reclamation costs and allowing for bond release following the completion of this stage will not significantly increase the risk to the environment and to the state. Moreover, according to DMME, the Coal Surface Mining Reclamation (Pool Bond) Fund, at over $5 million, is large enough to cover costs arising out of any potentially inadequate reclamations and forfeitures. In other words, it

appears that the aggregate risk to the environment and to the state posed by mine operators participating in the pool bond fund as a result of their activities is commensurate with the contributions of these operators to the Coal Surface Mining Reclamation (Pool Bond) Fund.

According to DMME, there have been 86 forfeitures on pool bonds and 81 forfeitures on cost estimate performance bonds since 1983. There have been no instances when financial resources have not been available to reclaim the land in the event of forfeiture.

The net economic impact of the proposed change will depend on whether the additional benefits provided are greater than or less than the additional risk to the environment from these activities and cost to the state of conducting mitigation and reclamation activities. While precise estimates of the benefits and costs are not available, it is likely that the proposed change will produce a net positive economic impact. The proposed change is likely to give permittees using the Coal Surface Mining Reclamation (Pool Bond) Fund greater flexibility in using their financial resources, while not significantly increasing the risk to the environment and to the state from surface coal mining activities.

Businesses and entities affected. The proposed change is likely to affect all new and existing surface coal mining permit holders. New and existing surface coal mining permit holders choosing to use the Coal Surface Mining Reclamation (Pool Bond) Fund to meet their bonding requirements will now be eligible to have a portion of their bond released earlier in the reclamation process than they would under the existing regulation.

According to DMME, there are 264 permitted sites currently using the Coal Surface Mining Reclamation (Pool Bond) Fund to meet the bonding requirement. Moreover, on average, DMME receives 20 applications per year for new permits and for significant revisions to existing permits, with approximately 50% using performance bonds and 50% using pool bonds. The agency expects this percentage to shift increasingly in favor of pool bonds as cost estimate performance bonds get harder and more expensive to come by.

Localities particularly affected. The proposed regulation applies to all localities in the Commonwealth. However, localities with surface coal mining activity are likely to be more affected.

Projected impact on employment. The proposed regulation is not likely to have a significant impact on employment in the Commonwealth.

Effects on the use and value of private property. The proposed regulation is likely to have a net positive economic impact on the use and value of private property. By allowing for bond release earlier in the reclamation process, the regulation provides surface coal mine operators with greater flexibility in the use of their financial resources, thus increasing the efficiency and hence the asset value of these businesses.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Mines Minerals and Energy concurs with the Department of Planning and Budget's economic impact analysis conducted on 4 VAC 25-130, Coal Surface Mining Reclamation Regulations.

Summary:

The amendments conform the performance bond release procedures that are applied to bonds furnished pursuant to the Coal Surface Mining Reclamation (Pool Bond) Fund, Virginia's "alternative bonding system," with bond release procedures used for other performance bonds. This allows use of a phased bond release for all permitted coal mine sites in Virginia. It also clarifies language regarding minimum bond amounts set for permits.

4 VAC 25-130-801.17. Bond release application.

(a) The permittee participating in the Pool Bond Fund, or any person authorized to act upon his behalf, may file an application with the division for *the Phase I, II or III* release of ~~all or part of~~ the bond furnished in accordance with 4 VAC 25-130-801.12 (b) for the *permit area or any applicable* increment ~~areas which have been adequately reclaimed and vegetation established pursuant to the postmining land use. A minimum of one (1) full growing season or a minimum of twelve (12) months, whichever is longer, must have elapsed before the division will determine that the vegetation is adequately established~~ *thereof. The bond release application, the procedural requirements and the released percentages shall be consistent with the release criteria of 4 VAC 25-130-800.40*. However, in no event shall the total bond of the permit be less than the minimum amounts established pursuant to ~~4 VAC 25-130-801.12 (b)~~ *§§ 45.1-241 and 45.1-270.3 B of the Virginia Coal Surface Mining Control and Reclamation Act* prior to completion of ~~the two full growing seasons and compliance with 4 VAC 25-130-801.18. Bond liability shall continue for not less than five years, or as provided by 4 VAC 25-130-800.13 or 4 VAC 25-130-800.17 (b)~~ *Phase III reclamation of the entire permit area*.

~~(1) Applications may only be filed at times or seasons that allow the division to evaluate properly the reclamation operations alleged to have been completed. The times or seasons appropriate for the evaluation of certain types of reclamation shall be identified in the mining and reclamation operations plan required in Subchapter VG and approved by the division.~~

~~(2) The application shall include copies of letters sent to adjoining property owners, surface owners, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area, notifying them of the permittee's intention to seek release of performance bond(s). These letters shall be sent before the permittee files the application for release.~~

~~(3) Within 30 days after filing the application for release the permittee shall submit proof of publication of the advertisement required by Paragraph (b) of this section. Such proof of publication shall be considered part of the bond release application.~~

~~(b) The permittee seeking total or partial bond release shall, at the time of filing an application under this section, advertise the filing of the application as provided by 4 VAC 25-130-800.40 (a) (2).~~

~~(c) The division shall inspect and evaluate the reclamation work involved within 30 days after receiving a completed application for bond release, or as soon thereafter as weather conditions permit. The surface owner, or agent, or lessee shall be given notice of such inspection and may participate with the division in making the bond release inspection.~~

~~(d) Division review and decision.~~

~~(1) The division shall consider, during the inspection evaluation, hearing and decision:~~

~~(i) Whether the permittee has met the criteria for release of the bond under 4 VAC 25-130-801.18;~~

~~(ii) The degree of difficulty in completing any remaining reclamation, restoration, or abatement work; and~~

~~(iii) Whether pollution of surface and subsurface water is occurring, the probability of future pollution or the continuance of any present pollution, and the estimated cost of abating any pollution.~~

~~(2) If no public hearing has been held under Paragraph (e), the division shall notify the permittee and any other interested parties in writing of its decision to release or not to release all or part of the performance bond or deposit within 60 days from the receipt of the completed application, or within 30 days from the public hearing if a public hearing was held.~~

~~(3) The notice of the decision shall state the reasons for the decision, and recommend any corrective actions necessary to secure the release.~~

~~(4) The division shall not release the bond until:~~

~~(i) When any application for total or partial bond release is filed with the division, the division has notified the town, city, or other municipality nearest the operation and the county in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond; and~~

~~(ii) The right to request a public hearing pursuant to 4 VAC 25-130-800.40 (f) has not been exercised, or a final decision by the Hearing Officer approving the release has been issued pursuant to 4 VAC 25-130-800.40 (f).~~

~~(e) Any person wishing to contest the division's decision to approve or disapprove the bond release shall have the right to appeal in accordance with 4 VAC 25-130-800.40 (f). In the event of an appeal, the division shall conduct the proceeding as provided by 4 VAC 25-130-800.40 (f) through (h).~~

4 VAC 25-130-801.18. Criteria for release of bond.

(a) The division shall release ~~the~~ bond ~~applicable to the permit area following completion of all reclamation, restoration, and abatement work required of the permittee by the approved plans, this chapter, and the Act~~ *furnished in accordance with §§ 45.1-241 and 45.1-270.3 of the Virginia Coal Surface Mining Control and Reclamation Act through the standards specified at 4 VAC 25-130-800.40 upon receipt of an application for Phase I, II or III release*.

(b) ~~The minimum period of bond liability for the entire permit shall continue for not less than five years following completion of all reclamation work. This period of liability shall be in accordance with the provisions of 4 VAC 25-130-800.13 and 4 VAC 25-130-800.17 (b). The total amount of bond for the permit area following this period of liability shall be as provided in Paragraph (c) of this section~~ *The division shall terminate jurisdiction for the permit area, or any increment thereof upon approval of the Phase III bond release for that area*.

~~(c) The division may choose to release portions of the bond, if the areas sought for release are capable of supporting the proposed postmining land use independent of the successful completion of the reclamation of portions of the permit area still under bond or not yet initially disturbed. A minimum of two full growing seasons must have elapsed before the division will consider any bond release for the permit area. Reclamation shall be deemed to be adequate when:~~

~~(1) Revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;~~

~~(2) The lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of Subchapter VK or the approved permit plans; and~~

~~(3) With respect to prime farmlands, soil productivity has been returned to the level of yield as required by 4 VAC 25-130-785.17 and Part 823 when compared with non-mined prime farmland in the surrounding areas as determined from the soil survey performed under the plan approved under 4 VAC 25-130-785.17; and~~

~~(4) The provisions of a plan approved by the division for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the division.~~

~~(d)~~ *(c)* In the event a forfeiture occurs ~~after partial bond release~~ *,* the division may, after utilizing the available bond monies, utilize the Fund as necessary to complete reclamation liabilities for the permit area.

VA.R. Doc. No. R04-196; Filed June 29, 2004, 9:19 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR HEARING AID SPECIALISTS

Title of Regulation: **18 VAC 80-10. Public Participation Guidelines (amending 18 VAC 80-10-10 through 18 VAC 80-10-90).**

Statutory Authority: §§ 2.2-4007 and 54.1-201 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until September 24, 2004.

(See Calendar of Events section
for additional information)

Effective Date: October 9, 2004.

Agency Contact: Karen W. O'Neal, Deputy Director for Regulatory Programs, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, or e-mail Karen.O'Neal@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia provides the authority for the board to promulgate regulations. The content of the regulations is determined at the discretion of the board, but shall not be in conflict with the purposes of the statutory authority. Section 2.2-4007 of the Code of Virginia provides further authority for the promulgation of Public Participation Guidelines (PPGs). The Public Participation Guidelines implement the requirements of the Administrative Process Act by establishing procedures to be followed by the board in soliciting, receiving and considering public comments.

Purpose: The Public Participation Guidelines are statutorily mandated and ensure the protection of the public's health, safety and welfare by documenting and formalizing the process through which the public has access to the regulatory review process. The amendments further increase the agency's efficiency in seeking public input into the regulatory process.

Rationale for Using Fast-Track Process: Section 2.2-4012.1 of the Code of Virginia permits the use of the fast-track rulemaking process for regulations that are expected to be noncontroversial. The amendments to the regulations do not substantively change the rules for providing public input into the regulatory process. The amendments permit persons and organizations to use additional options to be placed on a notification list while increasing the agency's efficiency by decreasing costs associated with mailing notifications.

Substance: 18 VAC 80-10-10 will be amended to provide a definition of "notification lists," which includes electronic mailing lists as well as regular mailing lists; to add a definition of "Administrative Process Act"; and to amend the definition of "agency" for clarity. 18 VAC 80-10-20 will be amended to permit the agency to send notification of how to obtain a copy of documents electronically rather than sending the actual document. 18 VAC 80-10-30 will be amended to specify how persons or organizations are deleted from electronic lists.

Issues: The primary advantage to the public, the agency and the Commonwealth is that the agency will be able to accept requests to be placed on a notification list and to notify PPG list members via electronic means. This will result in a more cost effective and efficient way of interacting with list members. No disadvantages to the agency or the public 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 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 Board for Hearing Aid Specialists (board) proposes to modify its public participation guidelines to: (i) permit requests to be placed on the board's public participation notification list be sent via electronic means, and (ii) allow regulatory notifications to be sent to list members electronically. Currently, only written requests and mailed notifications are permitted. In addition, the board proposes to add language specifying that when electronic notifications are returned as undeliverable over more than one day, the person or organization concerned will be deleted from the list.

Estimated economic impact. Under the Administrative Process Act, all state agencies that promulgate regulations are required to maintain public participation mailing lists containing the names of all parties that have registered an interest in a particular regulation. Membership on these lists typically includes members of the regulated community, public interest groups, law firms, and individual citizens with an interest in the particular area of regulation.

There are no clear disadvantages associated with allowing interested parties to use electronic communication rather than mail for joining the notification list and for receiving notifications. Individuals may choose to remain on the traditional mailing lists, which will continue to be maintained by the board. If electronic notification and comment becomes more prevalent, there would be a reduction in printing and mailing costs incurred by the board. In addition to the potential fiscal benefits, these changes also allow the board to increase the speed of notification and the amount of information readily available to interested parties, which will increase efficiency and may enhance public participation.

The current regulations state, "When mail is returned as undeliverable, individuals and organizations will be deleted from the (mailing) list." For various reasons email is sometimes returned as undeliverable even when accounts are still active. In order to prevent interested parties from being removed from the public participation mailing list due to server or other electronic problems, the proposed regulations add the sentence "When electronic notifications are returned as undeliverable over more than one day, the person or organization may be deleted from the list." By indicating that parties may be deleted from the list only when electronic notifications are returned as undeliverable over more than one day, the likelihood that individuals and organizations will be deleted from the notification list when their e-mail accounts remain active will be greatly diminished.

Businesses and entities affected. The proposed changes will affect hearing aid specialists and other persons or entities interested in the board's regulations. The Department of Professional and Occupational Regulation estimates that

there about 100 individuals and organizations that wish to be on the notification list.

Localities particularly affected. All Virginia localities may have individuals and organizations that have interest in regulatory changes pertaining to the board.

Projected impact on employment. The proposed changes are not projected to affect employment.

Effects on the use and value of private property. The proposed changes are unlikely to significantly affect the value of private property. There will be a modest increase in the use of computers due to the availability of the electronic notification list.

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

Summary:

The amendments (i) allow requests to be placed on the board's public participation notification list to be sent via electronic means; (ii) allow regulatory notifications to be sent to list members electronically; and (iii) add language specifying that when electronic notifications are returned as undeliverable over more than one day, the person or organization concerned will be deleted from the list.

18 VAC 80-10-10. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means ~~any authority, instrumentality, officer, board, or other unit of state government empowered by the basic laws to make regulations or decide cases~~ *the Board for Hearing Aid Specialists.*

"Notification lists" means lists used by the board to notify persons pursuant to this chapter. Such lists may include electronic mailing lists or regular mailing lists maintained by the board.

"Organization" means any one or more ~~associations~~ *association*, advisory council, committee, corporation, partnership, governmental body or legal entity.

"Person" means one or more individuals.

18 VAC 80-10-20. ~~Mailing list~~ *Notification lists*.

The agency will maintain ~~a list~~ *lists* of persons and organizations who will be mailed the following documents*, or notification of how to obtain a copy of the documents electronically,* as they become available:

1. "Notice of Intended Regulatory Action" to promulgate, amend or repeal regulations.

2. "Notice of Comment Period" and public hearings.

3. Notice that the final regulations have been adopted.

Failure of ~~these persons and organizations~~ *a person or organization* to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act, § ~~9-6.14:1~~ *2.2-4000* et seq. of the Code of Virginia.

18 VAC 80-10-30. Placement on the ~~mailing~~ *notification* list; deletion.

Any person *or organization* wishing to be placed on the mailing list may do so *by electronic notification or* by writing the agency. In addition, the agency, at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. ~~Persons~~ *Each person and organization* on the list will be provided all information stated in 18 VAC 80-10-20. ~~Individuals and organizations~~ *A person or organization* periodically may be requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, ~~individuals and organizations~~ *the person or organization* will be deleted from the list. *When electronic notifications are returned as undeliverable over more than one day, the person or organization may be deleted from the list.*

18 VAC 80-10-40. Petition for rulemaking.

Any person *or organization* may petition the agency to ~~adopt~~ *consider* or ~~amend~~ *review* any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition ~~within 180 days~~ *pursuant to § 2.2-4007 A of the Code of Virginia*. The agency shall have sole authority to dispose of the petition.

18 VAC 80-10-50. Notice of intent.

At least 30 days prior to filing the "Notice of Comment Period" and proposed regulations as required by §~~ 9-6.14:7.~~1 *2.2-4007* of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether the agency intends to hold a public hearing. The agency is required to hold a hearing on the proposed regulation upon request by (i) the Governor or (ii) 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register of Regulations.

18 VAC 80-10-60. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding, which may take the form of a public hearing, to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register *of Regulations*. Such proceedings may be held separately or in conjunction with other informational proceedings.

18 VAC 80-10-70. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur,

the subject matter shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register *of Regulations*.

If ~~there are~~ one or more changes ~~with~~ *have* substantial impact on a regulation, *then* any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency receives requests from at least 25 persons for an opportunity to make oral or written comment, *then* the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, *then* he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

18 VAC 80-10-80. Advisory committees.

The agency intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession~~,~~*;*

2. Industry, professional and trade associations' mailing lists~~, and~~*; or*

3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

18 VAC 80-10-90. Applicability.

18 VAC 80-10-20, 18 VAC 80-10-30, 18 VAC 80-10-40, 18 VAC 80-10-60 and 18 VAC 80-10-70 shall apply to all regulations promulgated and adopted in accordance with §~~ 9 6.14:9~~ *2.2-4012* of the Code of Virginia except those regulations promulgated in accordance with §~~ 9 6.14:4.1~~ *2.2-4002, 2.2-4006, 2.2-4011, 2.2-4012.1, 2.2-4018, or 2.2-4025* of the Administrative Process Act.

VA.R. Doc. No. R04-192; Filed June 24, 2004, 1:46 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Regulations: **Community-Based Residential Services.**

12 VAC 30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-130).

12 VAC 30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-61).

12 VAC 30-130. Amount, Duration and Scope of Selected Services (amending 12 VAC 30-130-860 through 12 VAC 30-130-890).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Item 325QQQ of Chapter 1042 of the 2003 Acts of Assembly.

Effective Dates: July 1, 2004, through June 30, 2005.

Agency Contact: Catherine Hancock, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4272, FAX (804) 786-1680, or e-mail Catherine.Hancock@dmas.virginia.gov.

Preamble:

The Virginia Appropriations Act of 2003, Item 325 QQQ, mandates that emergency regulations be promulgated to implement coverage of new community-based residential services. The effective date of this emergency regulation is contingent upon approval of the underlying State Plan Amendment by the federal Centers for Medicare and Medicaid Services.

This emergency regulatory action will provide for Medicaid coverage of new community-based residential services for children and adolescents. These services are currently paid for with state and local funds through the Comprehensive Services Act (CSA). Providing Medicaid coverage will allow the state to obtain federal financial participation for these same services and thereby significantly reduce the Commonwealth's expenditures in the state CSA budget.

Certain minor changes are made to existing regulations to distinguish between the requirements for current services and the new services. Because the reimbursement methodology for the new services is the same as that for the current services, no regulatory changes are required to initiate payment.

12 VAC 30-50-130. Skilled nursing facility services, EPSDT, and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

5. Community mental health services.

a. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication; education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community

responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

c. Community-Based Services for Children and Adolescents under 21 (Level A).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness, which results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by a licensed mental health professional.

(3) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization is required for Medicaid reimbursement.

(5) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(6) Providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Education under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10).

(7) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management.

(8) The facility/group home must coordinate services with other providers.

d. Therapeutic Behavioral Services (Level B).

(1) Such services must be therapeutic services rendered in a residential setting that provides structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness, which results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) Authorization is required for Medicaid reimbursement.

(3) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(4) Providers must be licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10).

(5) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The child must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12 VAC 30-50-100, 12 VAC 30-50-105, and 12 VAC 30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12 VAC 30-130-850 et seq.) of this chapter.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR 441.151 (a) and (b) and 441.152 through 441.156. Each

admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

C. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

12 VAC 30-60-61. Services related to the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT); community mental health services for children.

A. Intensive in-home services for children and adolescents.

1. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

2. At admission, an appropriate assessment is made by the LMHP or the QMHP and approved by the LMHP, documenting that service needs can best be met through intervention provided typically but not solely in the client's residence. An Individual Service Plan (ISP) must be fully completed within 30 days of initiation of services.

3. Services must be directed toward the treatment of the eligible child and delivered primarily in the family's residence with the child present. In some circumstances, such as lack of privacy or unsafe conditions, services may be provided in the community if supported by the needs assessment and ISP.

4. These services shall be provided when the clinical needs of the child put the child at risk for out-of-home placement:

a. When services that are far more intensive than outpatient clinic care are required to stabilize the child in the family situation, or

b. When the child's residence as the setting for services is more likely to be successful than a clinic.

5. Services may not be billed when provided to a family while the child is not residing in the home.

6. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful. The child and responsible parent/guardian must be available and in agreement to participate in the transition.

7. At least one parent or responsible adult with whom the child is living must be willing to participate in the intensive in-home services with the goal of keeping the child with the family.

8. The enrolled provider must be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services as a provider of intensive in-home services.

9. Services must be provided by an LMHP or a QMHP as defined in 12 VAC 30-50-226. Reimbursement shall not be provided for such services when they have been rendered by a QPPMH as defined in 12 VAC 30-50-226.

10. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, intensive in-home services is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of three hours a week of intensive in-home service, and includes a plan for service provision of a minimum of three hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive or nonhome based services.

11. The provider must ensure that the maximum staff-to-caseload ratio fully meets the needs of the individual.

12. Since case management services are an integral and inseparable part of this service, case management services may not be billed separately for periods of time when intensive in-home services are being provided.

13. Emergency assistance shall be available 24 hours per day, seven days a week.

B. Therapeutic day treatment for children and adolescents.

1. Therapeutic day treatment is appropriate for children and adolescents who meet one of the following:

a. Children and adolescents who require year-round treatment in order to sustain behavior or emotional gains.

b. Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(1) This programming during the school day; or

(2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. Children and adolescents who (i) have deficits in social skills, peer relations or dealing with authority; (ii) are hyperactive; (iii) have poor impulse control; (iv) are extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

2. Such services must not duplicate those services provided by the school.

3. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

4. The enrolled provider of therapeutic day treatment for child and adolescents services must be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide day support services.

5. Services must be provided by an LMHP, a QMHP or a QPPMH who is supervised by a QMHP or LMHP.

6. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

7. The program must operate a minimum of two hours per day and may offer flexible program hours (i.e., before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service shall be defined as a minimum of three but less than five hours in a given day. Three units of service shall be defined as five or more hours of service in a given day.

8. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

9. Services shall be provided following a diagnostic assessment that is authorized by an LMHP. Services must be provided in accordance with an ISP which must be fully completed within 30 days of initiation of the service.

C. Community-Based Services for Children and Adolescents under 21 (Level A).

1. The staff ratio must be at least 1 to 6 during the day and at least 1 to10 while asleep. The program director supervising the program/group home must be, at minimum, a qualified mental health professional (as defined in 12 VAC 35-105-20) with a bachelor's degree and have at least one year of direct work with mental health clients. The program director must be employed full time.

2. At least 50% of the direct care staff must meet DMAS paraprofessional staff criteria, defined in 12 VAC 30-50-226.

3. Authorization is required for Medicaid reimbursement. DMAS shall monitor the services rendered. All Community-Based Services for Children and Adolescents under 21 (Level A) must be authorized prior to reimbursement for these services. Services rendered without such authorization shall not be covered. Reimbursement shall not be made for this service when other less intensive services may achieve stabilization.

4. Services must be provided in accordance with an Individual Service Plan (ISP) (plan of care), which must be fully completed within 30 days of authorization for Medicaid reimbursement.

D. Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B).

1. The staff ratio must be at least 1 to 4 during the day and at least 1 to 8 while asleep. The clinical director must be a licensed mental health professional. The caseload of the clinical director must not exceed 16 clients including all sites for which the clinical director is responsible. The program director must be full time and be a qualified mental health professional with a bachelor's degree and at least one year's clinical experience.

2. At least 50% of the direct care staff must meet DMAS paraprofessional staff criteria, as defined at 12 VAC 30-50-226. The program/group home must coordinate services with other providers.

3. All Therapeutic Behavioral Services (Level B) must be authorized prior to reimbursement for these services. Services rendered without such prior authorization shall not be covered.

4. Services must be provided in accordance with an ISP (plan of care), which must be fully completed within 30 days of authorization for Medicaid reimbursement.

E. Utilization Review. Utilization reviews for Community-Based Services for Children and Adolescents under 21 (Level A) and Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B) shall include determinations whether providers meet all DMAS requirements.

12 VAC 30-130-860. Service coverage; eligible individuals; service certification.

A. Residential treatment programs *(Level C)* shall be 24-hour, supervised, medically necessary, out-of-home programs

designed to provide necessary support and address the special mental health and behavioral needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services must include, but shall not be limited to, assessment and evaluation, medical treatment (including drugs), individual and group counseling, and family therapy necessary to treat the child.

B. Residential treatment programs *(Level C)* shall provide a total, 24 hours per day, specialized form of highly organized, intensive and planned therapeutic interventions that shall be utilized to treat some of the most severe mental, emotional, and behavioral disorders. Residential treatment is a definitive therapeutic modality designed to deliver specified results for a defined group of problems for children or adolescents for whom outpatient day treatment or other less intrusive levels of care are not appropriate, and for whom a protected, structured milieu is medically necessary for an extended period of time.

C. *Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B) and Community-Based Services for Children and Adolescents under 21 (Level A) must be therapeutic services rendered in a residential type setting such as a group home or program that provides structure for daily activities, psychoeducation, therapeutic supervision and mental health care to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). The child or adolescent must have a medical need for the service arising from a condition due to mental, behavioral or emotional illness, which results in significant functional impairments in major life activities.*

D. Active treatment shall be required. Residential Treatment ~~services~~*, Therapeutic Behavioral and Community-Based Services for Children and Adolescents under age 21* shall be designed to serve the mental health needs of children. In order to be reimbursed for Residential Treatment *(Level C), Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B), and Community-Based Services for Children and Adolescents under 21 (Level A)*, the facility must provide active mental health treatment beginning at admission and it must be related to the recipient's principle diagnosis and admitting symptoms. To the extent that any recipient needs mental health treatment and his needs meet the medical necessity criteria for the service, he will be approved for these services. ~~The service definitions~~ *These services* do not include interventions and activities designed only to meet the supportive nonmental health special needs, including but not limited to personal care, habilitation or academic educational needs of the recipients.

~~D.~~ *E.* An ~~eligible~~ individual *eligible for Residential Treatment Services (Level C)* is a recipient under the age of 21 years whose treatment needs cannot be met by ambulatory care resources available in the community, for whom proper treatment of his psychiatric condition requires services on an inpatient basis under the direction of a physician~~, and~~.

An individual eligible for Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B) is a child, under the age of 21 years, for whom proper treatment of his psychiatric condition requires less intensive treatment in a structured, therapeutic residential program under the direction of a Licensed Mental Health Professional.

An individual eligible for Community-Based Services for Children and Adolescents under 21 (Level A) is a child, under the age of 21 years, for whom proper treatment of his psychiatric condition requires less intensive treatment in a structured, therapeutic residential program under the direction of a Qualified Mental Health Professional. The services *for all three levels* can reasonably be expected to improve ~~his~~ *the child's or adolescent's* condition or prevent ~~further~~ regression so that the services will no longer be needed.

~~E.~~ *F.* In order for Medicaid to reimburse for Residential Treatment ~~to be provided to a recipient~~ *(Level C), Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B), and Community-Based Services for Children and Adolescents under 21 (Level A)*, the need for the service must be certified according to the standards and requirements set forth in subdivisions 1 and 2 of this subsection. At least one member of the independent certifying team must have pediatric mental health expertise.

1. For an individual who is already a Medicaid recipient when he is admitted to a facility or program, certification must be*:*

a. Made by an independent certifying team that~~:~~ ~~a.~~ Includes a licensed physician~~; b.~~ *who (i)* has competence in diagnosis and treatment of pediatric mental illness; and ~~c.~~ *(ii)* has knowledge of the recipient's mental health history and current situation.

b. Signed and dated by a physician and the team.

2. For a recipient who applies for Medicaid while an inpatient in the facility or program, the certification must:

a. Be made by the team responsible for the plan of care;

b. Cover any period of time before the application for Medicaid eligibility for which claims for reimbursement by Medicaid are made; and

c. Be signed *and dated* by a physician ~~member of~~ *and* the team.

12 VAC 30-130-870. Preauthorization.

A. Authorization for Residential Treatment *(Level C)* shall be required within 24 hours of admission and shall be conducted by DMAS or its utilization management contractor using medical necessity criteria specified by DMAS. At preauthorization, an initial length of stay shall be assigned and the residential treatment provider shall be responsible for obtaining authorization for continued stay. ~~Reimbursement for residential treatment will be implemented on January 1, 2000. For cases already in care, DMAS will reimburse beginning January 1, 2000, or from the date when the required documentation is received and approved if the provider has a valid Medicaid provider agreement in effect on that date.~~

B. DMAS will not pay for admission to or continued stay in residential facilities (*Level C)* that were not authorized by DMAS.

C. Information that is required in order to obtain admission preauthorization for Medicaid payment shall include:

1. A completed state-designated uniform assessment instrument approved by the department.

2. A certification of the need for this service by the team described in 12 VAC 30-130-860 that:

a. The ambulatory care resources available in the community do not meet the specific treatment needs of the recipient;

b. Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

c. The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will not be needed.

3. Additional required written documentation shall include all of the following:

a. Diagnosis, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV, effective October 1, 1996), including Axis I (Clinical Disorders), Axis II (Personality Disorders/Mental Retardation, Axis III (General Medical Conditions), Axis IV (Psychosocial and Environmental Problems), and Axis V (Global Assessment of Functioning);

b. A description of the child's behavior during the seven days immediately prior to admission;

c. A description of alternative placements tried or explored and the outcomes of each placement;

d. The child's functional level and clinical stability;

e. The level of family support available; and

f. The initial plan of care as defined and specified at 12 VAC 30-130-890.

D. *Continued Stay Criteria for Residential Treatment (Level C): information for continued stay authorization (Level C) for Medicaid payment must include:*

1. A State Uniform Assessment Instrument, completed no more than 90 days prior to the date of submission;

2. Documentation that the required services are provided as indicated;

3. Current (within the last 30 days) information on progress related to the achievement of treatment goals. The treatment goals must address the reasons for admission, including a description of any new symptoms amenable to treatment;

4. Description of continued impairment, problem behaviors, and need for Residential Treatment level of care.

E. Denial of service may be appealed by the recipient consistent with 12 VAC 30-110-10 et seq.; denial of reimbursement may be appealed by the provider consistent with the Administrative Process Act (§ ~~9 6.14:4.1~~ *2.2-4007* et seq. of the Code of Virginia).

F. DMAS will not pay for services for Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B), and Community-Based Services for Children and Adolescents under 21 (Level A) that are not prior authorized by DMAS.

G. Authorization for Level A and Level B residential treatment shall be required within three business days of admission and shall be conducted by DMAS or its utilization management contractor using medical necessity criteria specified by DMAS. At the time of such preauthorization, an initial length of stay must be assigned and the provider shall be responsible for obtaining authorization for continued stay.

H. Information that is required in order to obtain admission authorization for Medicaid payment must include:

1. A current completed state-designated uniform assessment instrument approved by the department. The state-designated uniform assessment instrument must indicate at least two areas of moderate impairment for Level B and two areas of moderate impairment for Level A. A moderate impairment is evidenced by, but not limited to:

a. Frequent conflict in the family setting, for example, credible threats of physical harm.

b. Frequent inability to accept age-appropriate direction and supervision from caretakers, family members, at school, or in the home or community,

c. Severely limited involvement in social support, which means significant avoidance of appropriate social interaction, deterioration of existing relationships, or refusal to participate in therapeutic interventions.

d. Impaired ability to form a trusting relationship with at least one caretaker in the home, school or community.

e. Limited ability to consider the effect of one's inappropriate conduct on others, interactions consistently involving conflict, which may include impulsive or abusive behaviors.

2. A certification of the need for the service by the team described in 12 VAC 30-130-860 that:

a. The ambulatory care resources available in the community do not meet the specific treatment needs of the child;

b. Proper treatment of the child's psychiatric condition requires services in a community-based residential program; and

c. The services can reasonably be expected to improve the child's condition or prevent regression so that the services will not be needed.

3. Additional required written documentation must include all of the following:

a. Diagnosis, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV, effective October 1, 1996), including Axis I (Clinical Disorders), Axis II (Personality Disorders/Mental Retardation), Axis III (General Medical Conditions), Axis

IV (Psychosocial and Environmental Problems), and Axis V (Global Assessment of Functioning);

b. A description of the child's behavior during the 30 days immediately prior to admission;

c. A description of alternative placements tried or explored and the outcomes of each placement;

d. The child's functional level and clinical stability;

e. The level of family support available; and

f. The initial plan of care as defined and specified at 12 VAC 30-130-890.

I. Denial of service may be appealed by the child consistent with 12 VAC 30-110; denial of reimbursement may be appealed by the provider consistent with the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia.

J. Continued Stay Criteria for Levels A and B:

1. The length of the authorized stay shall be determined by DMAS or its contractor.

2. A current Individual Service Plan (ISP) (plan of care) and a current (within 30 days) summary of progress related to the goals and objectives on the ISP (plan of care) must be submitted for continuation of the service.

3. For reauthorization to occur, the desired outcome or level of functioning has not been restored or improved over the time frame outlined in the child's ISP (plan of care) or the child continues to be at risk for relapse based on history or the tenuous nature of the functional gains and use of less intensive services will not achieve stabilization. Any one of the following must apply:

a. The child has achieved initial service plan (plan of care) goals but additional goals are indicated that cannot be met at a lower level of care.

b. The child is making satisfactory progress toward meeting goals but has not attained ISP goals, and the goals cannot be addressed at a lower level of care.

c. The child is not making progress, and the service plan (plan of care) has been modified to identify more effective interventions.

d. There are current indications that the child requires this level of treatment to maintain level of functioning as evidenced by failure to achieve goals identified for therapeutic visits or stays in a nontreatment residential setting or in a lower level of residential treatment.

K. Discharge Criteria for Levels A and B. Reimbursement shall not be made for this level of care if either of the following applies:

1. The level of functioning has improved with respect to the goals outlined in the service plan (plan of care) and the child can reasonably be expected to maintain these gains at a lower level of treatment; or

2. The child no longer benefits from service as evidenced by absence of progress toward service plan goals for a period of 60 days.

12 VAC 30-130-880. Provider qualifications.

A. Providers must provide all residential treatment services *(Level C)* as defined within this part and set forth in 42 CFR Part 441 Subpart D.

B. Providers *of residential treatment services (Level C)* must be:

1. A residential treatment program for children and adolescents licensed by DMHMRSAS that is located in a psychiatric hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations;

2. A residential treatment program for children and adolescents licensed by DMHMRSAS that is located in a psychiatric unit of an acute general hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

3. A psychiatric facility that is (i) accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Quality and Leadership in Supports for People with Disabilities, or the Council on Accreditation of Services for Families and Children and (ii) licensed by DMHMRSAS as a residential treatment program for children and adolescents.

C. Providers of Community-Based Services for Children and Adolescents under 21 (Level A) must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Education under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10).

D. Providers of Therapeutic Behavioral Services (Level B) must be licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) under the Standards for Interdepartmental Regulation of Children's Residential Facilities.

12 VAC 30-130-890. Plans of care; review of plans of care.

A. *For Residential Treatment Services (Level C),* an initial plan of care must be completed at admission and a Comprehensive Individual Plan of Care must be completed no later than 14 days after admission.

B. Initial plan of care *(Level C)* must include:

1. Diagnoses, symptoms, complaints, and complications indicating the need for admission;

2. A description of the functional level of the recipient;

3. Treatment objectives with short-term and long-term goals;

4. Any orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the patient;

5. Plans for continuing care, including review and modification to the plan of care; ~~and~~

6. Plans for discharge*; and*

7. The initial plan of care must be signed and dated by the physician.

C. The Comprehensive Individual Plan of Care (CIPOC) *for Level C* must meet all of the following criteria:

1. Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the recipient's situation and must reflect the need for inpatient psychiatric care;

2. Be developed by an interdisciplinary team of physicians and other personnel specified under subsection F of this section, who are employed by, or provide services to, patients in the facility in consultation with the recipient and his parents, legal guardians, or appropriate others in whose care he will be released after discharge;

3. ~~Include~~ State treatment objectives that must include measurable short-term and long-term goals *and objectives, with target dates for achievement*;

4. Prescribe an integrated program of therapies, activities, and experiences designed to meet the treatment objectives related to the diagnosis; and

5. Describe *comprehensive* discharge plans and coordination of inpatient services and post-discharge plans with related community services to ensure continuity of care upon discharge with the recipient's family, school, and community.

D. Review of the Comprehensive Individual Plan of Care *for Level C*. The CIPOC must be reviewed every 30 days by the team specified in subsection F of this section to:

1. Determine that services being provided are or were required on an inpatient basis; and

2. Recommend changes in the plan as indicated by the recipient's overall adjustment as an inpatient.

E. The development and review of the plan of care *for Level C* as specified in this section satisfies the facility's utilization control requirements for recertification and establishment and periodic review of the plan of care, as required in 42 CFR 456.160 and 456.180.

F. Team developing the Comprehensive Individual Plan of Care *for Level C*. The following requirements must be met:

1. At least one member of the team must have expertise in pediatric mental health. Based on education and experience, preferably including competence in child psychiatry, the team must be capable of all of the following:

a. Assessing the recipient's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities;

b. Assessing the potential resources of the recipient's family;

c. Setting treatment objectives; and

d. Prescribing therapeutic modalities to achieve the plan's objectives.

2. The team must include, at a minimum, either:

a. A board-eligible or board-certified psychiatrist;

b. A clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy; or

c. A physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases, and a psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state psychological association.

3. The team must also include one of the following:

a. A psychiatric social worker;

b. A registered nurse with specialized training or one year's experience in treating mentally ill individuals;

c. An occupational therapist who is licensed, if required by the state, and who has specialized training or one year of experience in treating mentally ill individuals; or

d. A psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state psychological association.

G. All Medicaid services are subject to utilization review. Absence of any of the required documentation may result in denial or retraction of any reimbursement.

H. For Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B), the initial plan of care must be completed at admission by the Licensed Mental Health Professional (LMHP) and a Comprehensive Individual Plan of Care must be completed by the LMHP no later than 30 days after admission. The assessment must be signed and dated by the LMHP.

I. For Community-Based Services for Children and Adolescents under 21 (Level A), the initial plan of care must be completed at admission by the QMHP and a Comprehensive Individual Plan of Care must be completed by the QMHP no later than 30 days after admission. The individualized plan of care must be signed and dated by the Program director.

J. Initial plan of care for Levels A and B must include:

1. Diagnoses, symptoms, complaints, and complications indicating the need for admission;

2. A description of the functional level of the child;

3. Treatment objectives with short-term and long-term goals;

4. Any orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the patient;

5. Plans for continuing care, including review and modification to the plan of care; and

6. Plans for discharge.

K. The Comprehensive Individual Plan of Care (CIPOC) for Levels A and B must meet all of the following criteria:

1. Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the child's situation and must reflect the need for residential psychiatric care;

2. The CIPOC for both levels must be based on input from school, home, other healthcare providers, the child and family (or legal guardian);

3. State treatment objectives that include measurable short-term and long-term goals and objectives, with target dates for achievement;

4. Prescribe an integrated program of therapies, activities, and experiences designed to meet the treatment objectives related to the diagnosis; and

5. Describe comprehensive discharge plans with related community services to ensure continuity of care upon discharge with the child's family, school, and community.

L. Review of the Comprehensive Individual Plan of Care for Levels A and B. The CIPOC must be reviewed, signed, and dated every 30 days by the QMHP for Level A and by the LMHP for Level B. The review must include:

1. The response to services provided;

2. Recommended changes in the plan as indicated by the child's overall response to the plan of care interventions;

3. Determinations regarding whether the services being provided continue to be required; and

4. Updates must be signed and dated by the service provider.

M. All Medicaid services are subject to utilization review. Absence of any of the required documentation may result in denial or retraction of any reimbursement.

/s/ Mark R. Warner
Governor
Date: June 25, 2004

VA.R. Doc. No. R04-195; Filed June 28, 2004, 4:11 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Title of Regulation: **18 VAC 30-20. Regulations of the Board of Audiology and Speech-Language Pathology (adding 18 VAC 30-20-290).**

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

Effective Dates: August 25, 2004, through August 24, 2005.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Audiology and Speech-Language Pathology is required to comply with amendments to § 54.1-2400 (10) and the third enactment clause in Chapter 64 of the 2004 Acts of Assembly. Subdivision 10 establishes authority for health regulatory boards to appoint special conference committees and to delegate an informal fact-finding proceeding to an appropriately qualified agency subordinate. It further adds a mandate for the adoption of regulations, "Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

The third enactment clause of Chapter 64 of the 2004 Acts of Assembly, which states "That the health regulatory boards within the Department of Health Professions shall promulgate regulations to implement the provisions of this act relating to the delegation of fact-finding proceedings to an agency subordinate within 280 days of its enactment" requires the adoption of the regulation as an emergency in accordance with § 2.2-4011 of the Administrative Process Act, which states that an emergency situation is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Chapter 64 was enacted on March 10, 2004, the day HB 577 was signed by the Governor.

18 VAC 30-20-290 is added to Part IV, Standards of Practice, in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.

18 VAC 30-20-290. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate include, but are not limited to, those that involve:

1. Intentional or negligent conduct that causes or is likely to cause injury to a patient;

2. Mandatory suspension resulting from action by another jurisdiction or a felony conviction;

3. Impairment with an inability to practice with skill and safety;

4. Sexual misconduct;

5. Unauthorized practice.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

/s/ Mark R. Warner
Governor
Date: June 25, 2004

VA.R. Doc. No. R04-199; Filed June 30, 2004, 11:37 a.m.

BOARD FOR BARBERS AND COSMETOLOGY

Title of Regulation: **18 VAC 41-30. Regulations: Hair Braiding (adding 18 VAC 41-30-10 through 18 VAC 41-30-250).**

Statutory Authority: § 54.1-201 of the Code of Virginia; Chapter 600 of the 2003 Acts of Assembly.

Effective Dates: July 1, 2004, through June 30, 2005.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, or e-mail barbercosmo@dpor.virginia.gov.

Preamble:

Chapter 600 of the 2003 Acts of Assembly mandated a separate licensing category for hair braiders under the Board for Barbers and Cosmetology. The legislation set forth conditions for the board to waive the examination requirements for licensure as a hair braider for any individual making application for licensure between July 1, 2003, and July 1, 2004, and require regulations effective July 1, 2004. The regulations contain the requirements for obtaining a license, safety and sanitation procedures, and standards of professional conduct.

Over 404 hair braider licenses have been issued since July 1, 2003, to individuals practicing in Virginia with no regulations. Emergency action is justified, in this case due to the "imminent threat to public health or safety," by § 2.2-4011 A of the Administrative Process Act, which would result from the failure of the board to have regulations in place on July 1, 2004.

After July 1, 2004, without regulations the board will be unable to process applications for licensure due to the inability to determine the eligibility of the applicants. The statutes require licensure for individuals (§§ 54.1-703 and 54.1-704), shops and salons (§ 54.1-704.1), and schools (§ 54.1-704.2). All of the qualifications for licensure for all licenses issued by the board are contained in regulations; therefore, eligibility cannot be determined without regulations.

The board does not have authority to take enforcement action including safety and sanitation procedures and standards of professional conduct in regard to the licenses issued between July 1, 2003, and July 1, 2004 until the regulations are effective.

This action is based on the mandate of the 2003 Session of the General Assembly that the health, safety and welfare of the public would be endangered without the issuance of licenses and enforcement of regulations of this occupation.

The emergency regulatory action is necessary to ensure minimal competence of hair braiding practitioners. This regulatory action will establish qualifications for licensure, standards of practice and requirements for maintaining licensure as a hair braider, hair braiding salon, and hair braiding school in the Commonwealth of Virginia. This regulatory action will also establish fees necessary to administer the licensure of hair braiding practictioners, hair braiding salons, and hair braiding schools in the Commonwealth of Virginia.

CHAPTER 30.
REGULATIONS: HAIR BRAIDING.

PART I.
GENERAL.

18 VAC 41-30-10. Definitions.

The following words and terms when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Direct supervision" means that a Virginia licensed cosmetologist or hair braider shall be present in the hair braiding salon at all times when services are being performed by a temporary license holder.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state or jurisdiction.

"Licensee" means any individual, partnership, association, limited liability company, or corporation holding a license issued by the Board for Barbers and Cosmetology, as defined in § 54.1-700 of the Code of Virginia.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Virginia state institution" for the purposes of this chapter means any institution approved by the Virginia Department of Education or the Virginia Department of Corrections.

PART II.
ENTRY.

18 VAC 41-30-20. General requirements for a hair braider license.

A. In order to receive a license as a hair braider, an applicant must meet the following qualifications:

1. The applicant shall be in good standing as a licensed hair braider in every jurisdiction where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a cosmetologist or hair braider. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as a cosmetologist or hair braider.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia hair braiding license laws and the board's hair braiding regulations.

4. In accordance with § 54.1-204 of the Code of Virginia, the applicant shall not have been convicted in any jurisdiction of a misdemeanor or felony which directly relates to the profession of cosmetology or hair braiding. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of hair braiding. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board-approved examination, administered either by the board or by independent examiners.

B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia. Any person completing an approved hair braiding training program in a Virginia licensed cosmetology or hair braiding school, or a Virginia public school's hair braiding program approved by the State Department of Education shall be eligible for examination.

2. Training outside of the Commonwealth of Virginia, but within the United States and its territories.

Any person completing a hair braiding training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 170 hours of training to be eligible for examination. If less than 170 hours of hair braiding training was completed, an applicant must submit a certificate, diploma or other documentation acceptable to the board verifying the completion of a substantially equivalent hair braiding course and documentation of six months of work experience as a hair braider in order to be eligible for the hair braider examination.

18 VAC 41-30-30. License by endorsement.

Upon proper application to the board, any person currently licensed to practice as a hair braider or cosmetologist in any other state or jurisdiction of the United States and who has completed both a training program and a written and practical examination that is substantially equivalent to that required by this chapter, may be issued a hair braider license without an examination. The applicant must also meet the requirements set forth in 18 VAC 41-30-20 A.

18 VAC 41-30-40. Exceptions to training requirements.

A. Virginia licensed cosmetologists shall be eligible for the hair braider examination.

B. Any hair braider applicant having been trained as a hair braider in any Virginia state institution shall be eligible for the hair braiding examination.

C. Any hair braider applicant having a minimum of two years experience in hair braiding in the United States armed forces and having provided documentation satisfactory to the board of that experience shall be eligible for the examination.

18 VAC 41-30-50. Examination requirements and fees.

A. Applicants for initial licensure shall pass a written examination approved by the board. The examination may be administered by the board or by a designated testing service.

B. Any candidate failing to appear as scheduled for examination shall forfeit the examination fee.

C. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed $225 per candidate.

18 VAC 41-30-60. Reexamination requirements.

Any applicant who does not pass a reexamination within one year of the initial examination date shall be required to submit a new application and examination fee.

18 VAC 41-30-70. Examination administration.

A. The examination shall be administered by the board or the designated testing service.

B. The applicant shall follow all procedures established by the board with regard to conduct at the examination. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.

18 VAC 41-30-80. Hair braider temporary licenses.

A. A temporary license to work under the supervision of a currently licensed hair braider or cosmetologist may be issued only to applicants for initial licensure that the board finds eligible for examination. There shall be no fee for a temporary license.

B. The temporary license shall remain in force for 45 days following the examination date. The examination date shall be the first test date after the applicant has successfully submitted an application to the board that an examination is offered to the applicant by the board.

C. Any person continuing to practice hair braiding services after a temporary license has expired may be prosecuted and fined by the Commonwealth under § 54.1-111 A 1 of the Code of Virginia.

D. No applicant for examination shall be issued more than one temporary license.

18 VAC 41-30-90. Salon license.

A. Any individual wishing to operate a hair braiding salon shall obtain a salon license in compliance with § 54.1-704.1 of the Code of Virginia.

B. A hair braiding salon license shall not be transferable and shall bear the same name and address of the business. Any changes in the name, address, or ownership of the salon shall be reported to the board in writing within 30 days of such changes. New owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes.

C. In the event of a closing of a hair braiding salon, the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned by the owners to the board.

18 VAC 41-30-100. School license.

A. Any individual wishing to operate a hair braiding school shall obtain a school license in compliance with § 54.1-704.2 of the Code of Virginia. All instruction and training of hair braiders shall be conducted under the direct supervision of a certified cosmetologist instructor, or licensed hair braider.

B. A hair braiding school license shall not be transferable and shall bear the same name and address as the school. Any changes in the name or address of the school shall be reported to the board in writing within 30 days of such change. The name of the school must indicate that it is an educational institution. All signs, or other advertisements, must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. In the event of a change of ownership of a school, the new owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes.

D. In the event of a school closing, the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned.

PART III.
FEES.

18 VAC 41-30-110. Fees.

The following fees apply:

FEE TYPE	*AMOUNT DUE*	*WHEN DUE*
Individuals:		
Application	*$55*	*With application*
License by Endorsement	*$55*	*With application*
Renewal	*$55*	*With renewal card prior to expiration date*
Reinstatement	*$55*	*With reinstatement application*
Salons:		
Application	*$90*	*With application*
Renewal	*$90*	*With renewal card prior to expiration date*
Reinstatement	*$90*	*With reinstatement application*
Schools:		
Application	*$120*	*With application*
Renewal	*$120*	*With renewal card prior to expiration date*
Reinstatement	*$120*	*With reinstatement application*

18 VAC 41-30-120. Refunds.

All fees are nonrefundable and shall not be prorated.

PART IV.
RENEWAL/REINSTATEMENT.

18 VAC 41-30-130. License renewal required.

All hair braider licenses, hair braiding salon licenses, and hair braiding school licenses shall expire two years from the last day of the month in which they were issued.

18 VAC 41-30-140. Notice of renewal.

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee outlining the procedures for renewal. Failure to receive this notice, however, shall not relieve the licensee of the obligation to renew. If the licensee fails to receive the renewal notice, a copy of the old license may be submitted as evidence of intent to renew, along with the required fee.

18 VAC 41-30-150. Failure to renew.

A. When a licensed individual or entity fails to renew its license within 30 days following its expiration date, the licensee shall apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application and renewal fee and reinstatement fee.

B. When a hair braider fails to renew his license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant, shall meet all current application requirements, and shall pass the Board's current examination. Individuals applying for licensure under this section shall be eligible to apply for a temporary license from the board under 18 VAC 41-30-80.

C. When a hair braiding salon fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.

D. The application for reinstatement for a hair braiding school shall provide the reasons for failing to renew prior to the expiration date, and a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license has expired. All of these materials shall be called the application package. Reinstatement will be considered by the board if the school consents to and satisfactorily passes an inspection of the school by the Department of Professional and Occupational Regulation and if the school's records are maintained in accordance with 18 VAC 41-30-210 and 18 VAC 41-30-220. Pursuant to 18 VAC 41-30-160, upon receipt of the reinstatement fee, application package, and inspection results, the board may reinstate the school's license or require requalification or both. If the reinstatement application package and reinstatement fee are not received by the board within six months following the expiration date of the school's license, the board will notify the testing service that prospective graduates of the unlicensed school are not acceptable candidates for the examination. Such notification will be sent to the school and must be displayed in a conspicuous manner by the school in an area that is accessible to the public. No student shall be disqualified from taking the examination because the school was not licensed for a portion of the time the student attended if the school license is reinstated by the board.

When a hair braiding school fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.

E. The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether the requirement for reinstatement of a license is applicable and an additional fee is required.

F. When a license is reinstated, the licensee shall have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

G. A licensee who reinstates his license shall be regarded as having been continuously licensed without interruption. Therefore, a licensee shall be subject to the authority of the board for activities performed prior to reinstatement.

H. A licensee who fails to reinstate his license shall be regarded as unlicensed from the expiration date of the license forward. Nothing in this chapter shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of time for which the individual was licensed.

PART V.
HAIR BRAIDING SCHOOLS.

18 VAC 41-30-160. Applicants for school license.

A. Any person, firm, or corporation desiring to operate a hair braiding school shall submit an application to the board at least 60 days prior to the date for which approval is sought.

B. Hair braiding schools under the Virginia Department of Education shall be exempted from licensure requirements.

18 VAC 41-30-170. General requirements.

A hair braiding school shall:

1. Hold a school license for each and every location.

2. Hold a salon license if the school receives compensation for services provided in its clinic.

3. Employ a staff of licensed and certified cosmetology instructors or licensed hair braiders.

4. Develop individuals for entry level competency in hair braiding.

5. Submit its curricula for board approval. Hair braider curricula shall be based on a minimum of 170 clock hours and shall include performances in accordance with 18 VAC 41-30-190.

6. Inform the public that all services are performed by students if the school receives compensation for services provided in its clinic by posting a notice in the reception area of the salon in plain view of the public.

7. Classroom instruction must be conducted in an area separate from the clinic area where practical instruction is conducted and services are provided.

18 VAC 41-30-180. Curriculum requirements.

1. Professional Requirements:

a. Virginia licensing requirements;

b. Professional ethics and conduct;

c. Human relations, retailing and salesmanship; and

d. Salon management.

2. Safety and Health:

a. Virginia laws and regulations;

b. Bacteriology, sanitation, and disinfection;

c. Diseases and disorders, recognition, transmission, and control; and

d. MSDS sheets, OSHA Rules and Regulations.

3. Hair and Scalp Disorders and Diseases:

a. Dandruff;

b. Alopecia;

c. Fungal infections;

d. Infestations; and

e. Infections.

4. Hair Analysis and Scalp Care:

a. Hair structure, composition, texture;

b. Hair growth patterns;

c. Effects of physical and chemical treatments on the hair;

d. Combing, brushing, detangling;

e. Shampoo products, composition and procedures;

f. Rinsing products, composition and procedures;

g. Conditioning products, composition and procedures;

h. Procedures for hair and scalp disorders;

i. Scalp manipulations; and

j. Braid removal and scalp care.

5. Client Preparation and Consultation:

a. Face and head shapes, facial features;

b. Client hair and scalp analysis; and

c. Client education, pre/post care, home care, follow-up services.

6. Hair Braiding, Locking, Weaving and Styling:

a. Basic styling knowledge, history;

b. Growth patterns, styles, textures, sectioning, partings;

c. Tools and equipment, types of combs, brushes, hooks, yarn, loops, hook needles, thread, coils;

d. Preparations for hair braiding, dryer equipment, decorations, beads, ribbons;

e. Types and patterns of braids, twists, knots, multiple strands, corn rows, hair locking;

f. Materials for extensions;

g. Hair braiding and cornrows with extensions;

h. Methods of hair weaving, glued, bonded, woven, sewn-in;

i. Artificial hair design and special effects;

j. Trimming of artificial hair, cutting of perimeter lines, braid ends; and

k. Braid removal and scalp care.

18 VAC 41-30-190. Hours of instruction and performances.

A. Curriculum and performance requirements for hair braiding shall be offered over minimum of 170 clock hours.

B. The curriculum requirements in 18 VAC 41-30-180(1) through 18 VAC 41-30-180(5) shall be offered over a minimum of 40 clock hours.

C. The curriculum for hair braiding shall include the following minimum performances:

Single braids	*5*
Single braid with extensions	*5*
Cornrows	*5*
Cornrows with extensions	*5*
Twists	*5*
Knots	*5*
Multiple strands	*5*
Hair locking	*5*
Weaving - glued	*5*
Weaving - bonded	*5*
Weaving - sewn-in	*5*
TOTAL	*55*

D. A licensed hair braiding school or cosmetology school with an approved hair braiding program may conduct an assessment of a student's competence in hair braiding and, based on the assessment, give a maximum of 130 hours of credit towards the requirements specified in 18 VAC 41-30-180.6 and 18 VAC 41-30-190. No credit shall be allowed for the 40 hour minimum curriculum requirements in 18 VAC 41-30-180(1) through 18 VAC 41-30-180(5).

18 VAC 41-30-200. School identification.

Each hair braiding school approved by the board shall identify itself to the public as a teaching institution.

18 VAC 41-30-210. Records.

A. Schools are required to keep upon graduation, termination or withdrawal, written records of hours and performances showing what instruction a student has received for a period of five years after the student terminates or completes the curriculum of the school. These records shall be available for inspection by the department. All records must be kept on the premises of each school.

B. For a period of five years after a student completes the curriculum, terminates or withdraws from the school, schools are required to provide documentation of hours and

performances completed by a student upon receipt of a written request from the student.

C. Prior to a school changing ownership or a school closing, the schools are required to provide

D. For a period of one year after a school changes ownership, schools are required to provide documentation of hours and performances completed by a current student upon receipt of a written request from the student.

18 VAC 41-30-220. Hours reported.

Within 30 days of the closing of a licensed hair braiding school, for any reason, the school shall provide a written report to the board on performances and hours of each of its students who have not completed the program.

PART VI.
STANDARDS OF PRACTICE.

18 VAC 41-30-230. Display of license.

A. Each salon owner or school owner shall ensure that all current licenses and temporary licenses issued by the board shall be displayed in the reception area of the salon or school in plain view of the public. Duplicate licenses or temporary licenses shall be posted in a like manner in every salon or school location where the regulant provides services.

B. Each salon owner or school owner shall ensure that no licensee or student performs any service beyond the scope of practice for the hair braider license.

C. All licensees and temporary license holders shall operate under the name in which the license or temporary license is issued.

18 VAC 41-30-240. Sanitation and safety standards for salons, and schools.

A. Sanitation and safety standards:

1. Any salon or school where hair braiding services are delivered to the public must be clean and sanitary at all times.

2. Compliance with these rules does not confer compliance with other requirements set forth by federal, state and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health.

3. Licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall insure that all employees likewise comply.

B. General sanitation and safety requirements:

1. All furniture, walls, floors, and windows shall be clean and in good repair;

2. The floor surface in the immediate work area must be of a washable surface other than carpet. The floor must be kept clean, free of hair, dropped articles, spills and electrical cords;

3. Walls and ceilings in the immediate work area must be in good repair, free of water seepage and dirt. Any mats shall be secured or shall lay flat;

4. A fully functional bathroom with a working toilet and sink must be available for clients. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. If there is a window, it must have a screen. There must be antibacterial soap and clean individual towels for the client's use. Laundering of towels is allowed, space permitting. The bathroom must not be used as a work area or for the open storage of chemicals;

5. General areas for client use must be neat and clean with a waste receptacle for common trash;

6. Electrical cords shall be placed to prevent entanglement by the client or licensee;

7. Electrical outlets shall be covered by plates;

8. The salon area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals, and to allow the free flow of air; and

9. Adequate lighting shall be provided.

C. Equipment sanitation:

1. Service chairs, wash basins, shampoo sinks and workstations shall be clean. Floors shall be kept free of hair, and other waste materials. Combs, brushes, towels, scissors, and other instruments shall be cleaned and sanitized after every use and stored free from contamination;

2. The top of workstands or back bars shall be kept clean;

3. The work area shall be free of clutter, trash, and any other items which may cause a hazard;

4. Heat producing appliances and equipment shall be placed so as to prevent any accidental injury to the client or licensee; and

5. Electrical appliances and equipment shall be in safe working order at all times.

D. Articles, tools and products:

1. Any multi-use article, tool or product which cannot be cleansed or sanitized is prohibited from use;

2. Soiled implements must be removed from the tops of work stations immediately after use;

3. Clean spatulas, other clean tools, or clean disposable gloves shall be used to remove bulk substances from containers;

4. A clean spatula shall be used to remove creams or ointments from jars. Sterile cotton shall be used to apply creams, lotions and powders. Cosmetic containers shall be recovered after each use;

5. All sharp tools, implements, and heat-producing appliances shall be safely stored;

6. Pre-sanitized tools and implements, linens and equipment shall be stored for use in a sanitary enclosed cabinet or covered receptacle;

7. Soiled towels, linens and implements shall be deposited in a container made of cleanable materials and separate from those that are clean or pre-sanitized;

8. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and

9. Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the salon or school in accordance with the guidelines of the Department of Health.

E. Chemical storage and emergency information:

1. Salons and schools shall have in the immediate working area a binder with all Material Safety Data Sheets (MSDS) provided by manufacturers for any chemical products used;

2. Salons and schools shall have a blood spill clean-up kit in the work area;

3. Flammable chemicals shall be stored in a non-flammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner (oxidizers, catalysts and solvents) shall be separated in storage.

F. Client health guidelines:

1. All employees providing client services shall cleanse their hands with an antibacterial product prior to providing services to each client;

2. No salon or school providing hair braiding services shall have on the premises hair braiding products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in hair braiding products;

3. No product shall be used in a manner that is disapproved by the FDA; and

4. Hair braiding salons must be in compliance with current building and zoning codes.

G. In addition to any requirements set forth in this section, all licensees and temporary license holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational and Safety Division of the Virginia Department of Labor and Industry.

H. All salons and schools shall immediately report the results of any inspection of the salon, or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

I. All salons and schools shall conduct a self-inspection on an annual basis and maintain a self-inspection form on file for five years, so that it may be requested and reviewed by the board at its discretion.

18 VAC 41-30-250. Grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.

A. The board may, in considering the totality of the circumstances, fine any licensee or temporary license holder, and to suspend or revoke or refuse to renew or reinstate any license or temporary license, or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board if the board finds that:

1. The licensee, temporary license holder or applicant is incompetent, or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a hair braider; or

2. The licensee, temporary license holder or applicant is convicted of fraud or deceit in the practice or teaching of hair braiding; or

3. The licensee, temporary license holder or applicant attempting to obtain, obtained, renewed or reinstated a license or temporary license by false or fraudulent representation; or

4. The licensee, temporary license holder or applicant violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any hair braider may practice or offer to practice; or

5. The licensee, temporary license holder or applicant fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with this chapter; or

6. A licensee or temporary license holder fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license or temporary license. The board shall not be responsible for the licensee's or temporary license holder's failure to receive notices, communications and correspondence caused by the licensee's or temporary license holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board; or

7. The licensee, temporary license holder or applicant publishes or causes to be published any advertisement that is false, deceptive, or misleading; or

8. The licensee, temporary license holder or applicant fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license or temporary license in connection with a disciplinary action in any other jurisdiction or of any license or temporary license which has been the subject of disciplinary action in any other jurisdiction; or

9. In accordance with § 54.1-204 of the Code of Virginia, the licensee or temporary license holder has been convicted in any jurisdiction of a misdemeanor or felony which directly relates to the profession of hair braiding or cosmetology. The board shall have the authority to determine, based upon all

the information available, including the regulant's record of prior convictions, if the regulant is unfit or unsuited to engage in the profession of hair braiding. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The regulant shall provide a certified copy of a final order, decree or case decision by a court with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the regulant to the board within 10 days after all appeal rights have expired.

B. In addition to Subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any school or impose a fine as permitted by law, or both, if the board finds that:

1. An instructor of the approved school fails to teach the curriculum as provided for in this chapter; or

2 The owner or director of the approved school permits or allows a person to teach in the school without a current cosmetology instructor certificate or hair braider license; or

3. The instructor, owner or director is guilty of fraud or deceit in the teaching of hair braiding.

C. In addition to Subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any hair braiding salon or impose a fine as permitted by law, or both, if the board finds that:

1. The owner or operator of the salon fails to comply with the sanitary requirements of hair braiding salons provided for in this chapter or in any local ordinances; or

2. The owner or operator allows a person who has not obtained a license or a temporary license to practice as a hair braider.

D. In addition to Subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practice of hair braiding.

/s/ Mark R. Warner
Governor
Date: July 1, 2004

NOTICE: The forms used in administering 18 VAC 41-30, Regulations: Hair Braiding, are listed and published below.

FORMS

Hair Braiding Endorsement Application, 12HBEND (eff. 7/04).

Salon, Shop & Parlor License Application, 1213SLSH (eff. 7/04).

Commonwealth of Virginia
Department of Professional and Occupational Regulation
3600 West Broad Street
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8509
www.dpor.virginia.gov

Virginia DPOR
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Virginia Board for Barbers and Cosmetology
HAIR BRAIDING ENDORSEMENT APPLICATION
Fee $ 55.00

A check or money order payable to the TREASURER OF VIRGINIA, *or* a completed credit card insert must be mailed with your application package.
APPLICATION FEES ARE NOT REFUNDABLE.

1. Name — Mr. ☐ Mrs. ☐ Ms. ☐ Miss ☐ _____ (First / Middle / Last / Generation (SR, JR, etc.))
2. Social Security Number * ☐☐☐ - ☐☐ - ☐☐☐☐
3. Date of Birth _____
4. Maiden name or former surname(s) _____
5. Street Address (PO Box not accepted) _____
   City, County, State, Zip Code _____
6. Mailing Address (PO Box accepted) _____
   City, State, Zip Code _____
7. E-mail Address _____
8. Telephone & Facsimile Numbers ( ) - _____ Telephone; ( ) - _____ Facsimile; ( ) - _____ Daytime Telephone
9. Were you previously licensed in Virginia as a cosmetologist or hair braider?
   No ☐
   Yes ☐ Virginia License Number _____ Expiration Date _____
10. Are you currently licensed to practice as a hair braider or cosmetologist (individual or instructor) in any other state or jurisdiction of the United States?
    No ☐ **If no, this application cannot be processed.**
    Yes ☐ ☞ Attach an original Certification of Licensure (dated within the last 60 days).
    Certification of Licensure must be:
    1. prepared by the state board or licensing body in which you are currently licensed; and
    2. mailed in an unopened envelope with the seal or signature of the state board overlaying the flap on the back of the envelope and addressed to the Virginia Board for Barbers and Cosmetology.
11. Have you ever been subject to a disciplinary action in any local, state (including Virginia) or national jurisdiction in connection with your practice as a cosmetologist or hair braider?
    No ☐
    Yes ☐ If yes, please provide a certified copy of the final order, decree, or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case decision.

OFFICE USE ONLY	DATE	FEE	CLASS OF FEE	LICENSE NUMBER	ISSUE DATE
				1 2	

12HBEND (07/01/04) Board for Barbers & Cosmetology/HAIR BRAIDER END APP

12. Have you ever been convicted in any jurisdiction of a misdemeanor or felony? *Any plea of nolo contendere shall be considered a conviction.*

No ☐

Yes ☐ If yes, list the misdemeanor and/or felony conviction(s). Attach your original criminal history record; a certified copy of the final order, decree, or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case decision; **and** any other information you wish to have considered with this application (i.e., information on the status of incarceration, parole or probation; reference letters; documentation of rehabilitation; etc.). If necessary, you may attach a separate sheet of paper.

Original criminal history records may be obtained by contacting the state police in the jurisdiction in which you were convicted. Virginia residents must complete a criminal history record request form in the presence of a notary public and mail it to the Department of State Police, Central Criminal Records Exchange, Post Office Box 27472, Midlothian, Virginia 23261-7472. *Certified copies of court records* may be obtained by writing to the Clerk of the Court in the jurisdiction in which you were convicted. The address is available from your local police department.

_____

_____

13. I, the undersigned, certify that the foregoing statements and answers are true, and I have not suppressed any information that might affect the decision to approve this application. I will notify the Department if I am subject to any disciplinary action or convicted of any felony or misdemeanor charges (in any jurisdiction) prior to receiving the requested license. I certify that I read, understand, and complied with all the laws of Virginia related to hair braiding licensure under the provisions of Title 54.1, Chapter 7 of the *Code of Virginia* and the *Virginia Board for Barbers and Cosmetology Hair Braiding Regulations*.

Signature _____ Date _____

* State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

Commonwealth of Virginia
Department of Professional and Occupational Regulation
3600 West Broad Street
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8509
www.dpor.virginia.gov

Virginia DPOR
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Board for Barbers & Cosmetology
SALON, SHOP & PARLOR LICENSE APPLICATION
Fee $90.00

A check or money order payable to the TREASURER OF VIRGINIA, *or* a completed credit card insert must be mailed with your application package.
APPLICATION FEES ARE NOT REFUNDABLE.

1. Type of license you are requesting. Please select only **one**.
   - Barber Shop (1304) ☐
   - Cosmetology Salon (1202) ☐
   - Nail Salon (1208) ☐
   - Waxing Salon (1218) ☐
   - Hair Braiding Salon (1223) ☐
   - Tattoo Parlor (1232) ☐
   - Body-Piercing Salon (1242) ☐
2. Name of Salon or Shop _____
3. Trade Name of Salon or Shop _____
4. Federal Employer Identification Number ☐☐ - ☐☐☐☐☐☐☐
5. Street Address (PO Box not accepted) _____
   City, State, Zip Code _____
6. Mailing Address (PO Box accepted) _____
   City, State, Zip Code _____
7. E-mail Address _____ Address where electronic communication from the Board can be sent (an owner/manager e-mail address is acceptable).
8. Telephone and Facsimile Numbers ( ) - _____ Telephone ( ) - _____ Facsimile
9. Type of business (select only **one**)
   - Sole Proprietorship ☐
   - General Partnership ☐
   - Corporation ✲ ☐
   - Association ☐
   - Limited Partnership ✲ ☐
   - Limited Liability Company ✲ ☐

   ✲ If your business is a Corporation, Limited Liability Company or Limited Partnership, your business/trade name(s) must be registered with the Virginia State Corporation Commission. For additional information, contact the SCC at (804) 371-9733.
10. Enter the name, address, birth date, and social security number of each owner or manager of the salon, shop or parlor (i.e., sole proprietor, general partners, association members). Corporate, Limited Partnership and Limited Liability Company names should be entered on line #2 above.

Last Name	First Name	MI	Address	Birth Date	Social Security No. ✲

OFFICE USE ONLY	DATE	FEE	CLASS OF FEE	LICENSE NUMBER	ISSUE DATE

1213SLSH (07/01/04)

Board for Barbers & Cosmetology/SALON & SHOP LIC APP

11. Has the salon/shop/parlor or any owner ever been subject to a disciplinary action taken by any (including Virginia) local, state or national regulatory body?

    No ☐
    Yes ☐ If yes, please provide a certified copy of the final order, decree or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case decision.

12. Has the salon/shop/parlor or any owner ever been convicted in any jurisdiction of a misdemeanor or felony? *Any plea of nolo contendere shall be considered a conviction.*

    No ☐
    Yes ☐ If yes, list the misdemeanor and/or felony conviction(s). Attach your original criminal history record; a certified copy of the final order, decree or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case decision; **and** any other information you wish to have considered with this application (i.e., information on the status of incarceration, parole or probation; reference letters; documentation of rehabilitation; etc.). If necessary, you may attach a separate sheet of paper.

    Original criminal history records may be obtained by contacting the state police in the jurisdiction in which you were convicted. Virginia residents must complete a criminal history record request form in the presence of a notary public and mail it to the Department of State Police, Central Criminal Records Exchange, Post Office Box 27472, Midlothian, Virginia 23261-7472. *Certified copies of court records* may be obtained by writing to the Clerk of the Court in the jurisdiction in which you were convicted. The address is available from your local police department.

_____

_____

_____

13. I, the undersigned, certify that the foregoing statements and answers are true, and I have not suppressed any information that might affect the Board's decision to approve this application. I will notify the Department if the salon/shop or any owner is subject to any disciplinary action or convicted of any felony or misdemeanor charges (in any jurisdiction) prior to receiving the requested license. I certify that the salon/shop has complied with all the laws of Virginia related to barber and cosmetology licensure under the provisions of Title 54.1, Chapter 7 of the *Code of Virginia* and the *Virginia Board for Barbers and Cosmetology Regulations, Wax Technician Regulations, Hair Braiding Regulations, Tattooing Regulations, or Body-Piercing Regulations.*

    Signature _____ Date _____

+ State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

VA.R. Doc. No. R04-221; Filed July 1, 2004, 3:55 p.m.

* * * * * * * *

Title of Regulation: **18 VAC 41-50. Regulations: Tattooing (adding 18 VAC 41-50-10 through 18 VAC 41-50-220).**

Statutory Authority: § 54.1-201 of the Code of Virginia; Chapter 869 of the 2002 Acts of Assembly.

Effective Dates: July 1, 2004, through June 30, 2005.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, or e-mail barbercosmo@dpor.virginia.gov.

Preamble:

Chapter 869 of the 2002 Acts of Assembly mandated a separate licensing category for tattooing under the Board for Barbers and Cosmetology. The legislation set forth that the provisions of this act shall become effective on July 1, 2004, except that § 54.1-702 shall become effective on July 1, 2002, and that regulations to implement the provisions of this act shall be effective by July 1, 2004. The regulations contain the requirements for obtaining a license and for safety and sanitation procedures and standards of professional conduct. Emergency action is justified in this case due to the "imminent threat to public health or safety" by § 2.2-4011 A of the Administrative Process Act, which would result from the failure of the board to have regulations in place on July 1, 2004.

After July 1, 2004, without regulations the board will be unable to process applications for licensure due to the inability to determine the eligibility of the applicants. The statutes require licensure for individuals (§§ 54.1-703 and 54.1-704) and parlors (§ 54.1-704.1). All of the qualifications for licensure for all licenses issued by the board are contained in regulations; therefore, eligibility cannot be determined without regulations.

The board does not have authority to take enforcement action including safety and sanitation procedures and standards of professional conduct until the regulations are effective.

This action is based on the mandate of the 2002 Session of the General Assembly that the health, safety and welfare of the public would be endangered without the issuance of licenses and enforcement of regulations of this occupation.

This action is a part of a previous regulatory action that began with a combined set of regulations for tattooing and body-piercing. On April 26, 2004, the board adopted separate tattooing and body-piercing emergency regulations in order to promulgate regulations that would pertain specifically to each professional service. The separate emergency regulations are intended to provide clarity and flexibility in the promulgation of regulations that would apply to each professional service.

The emergency regulatory action is necessary to ensure minimal competence of tattooing practitioners. This regulatory action will establish qualifications for licensure, standards of practice, requirements for maintaining licensure as a tattooer or tattoo parlor in the Commonwealth of Virginia and establish fees necessary to administer the licensure program.

As directed by the 2002 Session of the General Assembly, this regulatory action is required to protect the health, safety and welfare of citizens of the Commonwealth in that it will provide for and ensure that licensees have met qualifications that demonstrate competency that protects the health, safety and welfare of citizens of the Commonwealth and that health and sanitary standards and safety are adequate in parlors where tattooing services are being provided.

CHAPTER 50.
REGULATIONS: TATTOOING.

PART I.
GENERAL.

18 VAC 41-50-10. Definitions.

The following words and terms when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Apprenticeship program" means an approved tattooing training program conducted by an approved apprenticeship sponsor.

"Apprenticeship sponsor" means an individual approved to conduct tattooing apprenticeship training who meets the qualifications in 18 VAC 41-50-70.

"Aseptic technique" means a hygienic practice which prevents and hinders the direct transfer of microorganisms, regardless of pathogenicity, from one person or place to another person or place.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Gratuitous services" as used in § 54.1-701.5 of the Code Virginia means providing tattooing services without receiving compensation or reward, or obligation. Gratuitous services do not include services provided at no charge when goods are purchased.

"Licensee" means any person, partnership, association, limited liability company, or corporation holding a license issued by the Board for Barbers and Cosmetology, as defined in § 54.1-700 of the Code of Virginia.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Sterilization area" means a separate room or area separate from workstations with restricted client access in which tattooing instruments are cleaned, disinfected, and sterilized.

"Temporary location" means a fixed location at which tattooing is performed for a specified length of time of not

more than seven days in conjunction with a single event or celebration.

PART II.
ENTRY.

18 VAC 41-50-20. General requirements for tattooer.

A. In order to receive a license as a tattooer in compliance with § 54.1-703 of the Code of Virginia, an applicant must meet the following qualifications:

1. The applicant shall be required to provide documentation to the board that they have received the full series of Hepatitis B vaccine or provide proof of immunity by blood titer.

2. The applicant shall be in good standing as a tattooer in every jurisdiction where licensed, certified, or registered. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a tattooer. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as a tattooer.

3. The applicant shall disclose his physical address. A post office box is not acceptable.

4. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia tattooing license laws and the board's tattooing regulations.

5. In accordance with § 54.1-204 of the Code of Virginia, the applicant shall not have been convicted in any jurisdiction of a misdemeanor or felony which directly relates to the profession of tattooing. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of tattooing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.

6. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board approved examination, administered either by the board or by a designated testing service.

7. Persons who (i) make application between July 1, 2004, and July 1, 2005, and (ii) have completed five years of documented full-time work experience within the preceding eight years as a tattooer, and (iii) have completed health education to include but not limited to blood-borne disease, sterilization, and aseptic techniques related to tattooing and first aid and CPR that is acceptable to the board are not required to complete 18 VAC 41-50-20 A 6.

B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia. Any person completing an approved tattooing apprenticeship program in a Virginia licensed tattoo parlor shall be eligible to sit for the examination.

2. Training outside of the Commonwealth of Virginia, but within the United States and its territories. Any person completing a tattooing training or apprenticeship program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of training or apprenticeship to be eligible for examination.

18 VAC 41-50-30. License by endorsement.

Upon proper application to the board, any person currently licensed to practice as a tattooer in any other state or jurisdiction of the United States and who has completed a training or apprenticeship program and an examination that is substantially equivalent to that required by this chapter, may be issued a tattooer license without an examination. The applicant must also meet the requirements set forth in 18 VAC 41-50-20 A 1 through 18 VAC 41-50-20 A 5.

18 VAC 41-50-40. Examination requirements and fees.

A. Applicants for initial licensure shall pass an examination approved by the board. The examinations may be administered by the board or by a designated testing service.

B. Any candidate failing to appear as scheduled for examination shall forfeit the examination fee.

18 VAC 41-50-50. Reexamination requirements.

Any applicant who does not pass a reexamination within one year of the initial examination date shall be required to submit a new application and examination fee.

18 VAC 41-50-60. Examination administration.

A. The examinations may be administered by the board or the designated testing service.

B. The applicant shall follow all procedures established by the board with regard to conduct at the examination. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.

C. The fee for examination or re-examination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed $225 per candidate.

18 VAC 41-50-70. General requirements for a tattooing apprenticeship sponsor.

A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth

in this section may be eligible to sponsor a tattooing apprentice if the person:

1. Holds a current Virginia tattooer license;

2. Provides documentation of legally practicing tattooing for at least seven years; and

3. Provides documentation indicating that they are in good standing in all jurisdictions where the practice of tattooing is regulated.

B. Apprenticeship sponsors shall be required to maintain a tattooer license.

C. Apprenticeship sponsors shall ensure compliance with the 1500-hour Tattooing Apprenticeship Program and Tattooing Apprenticeship Standards.

18 VAC 41-50-80. Parlor license.

A. Any individual wishing to operate a tattoo parlor shall obtain a tattoo parlor license in compliance with § 54.1-704.1 of the Code of Virginia.

B. A tattoo parlor license shall not be transferable and shall bear the same name and address of the business. Any changes in the name, address, or ownership of the parlor shall be reported to the board in writing within 30 days of such changes. New owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes.

C. In the event of a closing of a tattoo parlor, the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned by the owners to the board.

D. Any individual wishing to operate a tattoo parlor in a temporary location must have a tattoo parlor license issued by the board.

PART III.
FEES.

18 VAC 41-50-90. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	$55	With application
License by Endorsement	$55	With application
Renewal	$55	With renewal card prior to expiration date
Reinstatement	$110* *includes $55 renewal fee and $55 reinstatement fee	With reinstatement application
Parlors:		
Application	$90	With application
Renewal	$90	With renewal card prior to expiration date
Reinstatement	$180* *includes $90 renewal fee and $90 reinstatement fee	With reinstatement application

18 VAC 41-50-100. Refunds.

All fees are nonrefundable and shall not be prorated.

PART IV.
RENEWAL/REINSTATEMENT.

18 VAC 41-50-110. License renewal required.

All tattooer licenses and tattoo parlor licenses shall expire two years from the last day of the month in which they were issued.

18 VAC 41-50-120. Continuing education requirement.

All licensed tattooers shall be required to satisfactorily complete a course in health education to include but not be limited to blood-borne disease, sterilization, and aseptic techniques related to tattooing, first aid and CPR during their licensed term. Documentation of training completion shall be provided at the time of renewal along with the required fee.

18 VAC 41-50-130. Notice of renewal.

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee outlining the procedures for renewal. Failure to receive this notice, however, shall not relieve the licensee of the obligation to renew. If the licensee fails to receive the renewal notice, a copy of the old license may be submitted as evidence of intent to renew, along with the required fee.

18 VAC 41-50-140. Failure to renew.

A. When a tattooer fails to renew their license within 30 days following its expiration date, the licensee shall meet the renewal requirements prescribed in 18 VAC 41-50-130, and apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application along with the required renewal and reinstatement fees.

B. When a tattooer fails to renew their license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant, shall meet all current application requirements, shall pass the board's current examination and shall receive a new license.

C. When a tattoo parlor fails to renew its license within 30 days following the expiration date, it shall be required to apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a

reinstatement application along with the required renewal and reinstatement fees.

D. When a tattoo parlor fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.

E. The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether the requirement for reinstatement of a license is applicable and an additional fee is required.

F. When a license is reinstated, the licensee shall have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

G. A licensee who reinstates his license shall be regarded as having been continuously licensed without interruption. Therefore, a licensee shall be subject to the authority of the board for activities performed prior to reinstatement.

H. A licensee who fails to reinstate his license shall be regarded as unlicensed from the expiration date of the license forward. Nothing in this chapter shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of time for which the individual was licensed.

PART V.
APPRENTICESHIP PROGRAMS.

18 VAC 41-50-150. General requirements.

A. Any person desiring to enroll in the Tattooing Apprenticeship program shall be required to provide documentation of satisfactory completion of a course in health education to include but not be limited to blood-borne disease, sterilization, and aseptic techniques related to tattooing, first aid and CPR.

B. Any tattooer desiring approval to perform the duties of an apprenticeship sponsor and offer the board's tattooing apprenticeship program shall meet the requirements in 18 VAC 41-50-70 of this chapter.

18 VAC 41-50-160. Apprenticeship curriculum requirements.

1. Microbiology:

a. Microorganisms, viruses, bacteria, fungi;

b. Transmission cycle of infectious diseases; and

c. Characteristics of antimicrobial agents.

2. Immunization:

a. Types of immunizations;

b. Hepatitis A – G transmission and immunization;

c. HIV/AIDS;

d. Tetanus, streptococcal, zoonotic, tuberculosis, pneumococcal, and influenza;

e. Measles, mumps, and rubella;

f. Vaccines and immunization; and

g. General preventative measures to be taken to protect the tattooist and client.

3. Sanitation and Disinfection:

a. Definition of terms:

(1) Sterilization;

(2) Disinfection and disinfectant;

(3) Sterilizer or sterilant;

(4) Antiseptic;

(5) Germicide;

(6) Decontamination; and

(7) Sanitation.

b. The use of steam sterilization equipment and techniques;

c. The use of chemical agents, antiseptics, disinfectants, and fumigants;

d. The use of sanitation equipment;

e. Pre-service sanitation procedure; and

f. Post-service sanitation procedure.

4. Safety:

a. Proper needle handling and disposal;

b. How to avoid overexposure to chemicals;

c. The use of Material Safety Data Sheets;

d. Blood spill procedures;

e. Equipment and instrument storage; and

f. First aid and CPR.

5. Blood-Borne Pathogen Standards:

a. OSHA and CDC blood-borne pathogen standards;

b. Control Plan for blood-borne pathogens;

c. Exposure Control Plan for Tattooers;

d. Overview of compliance requirements; and

e. Disorders and when not to service a client.

6. Professional Standards:

a. History of tattooing;

b. Ethics;

c. Recordkeeping:

(1) Client health history;

(2) Consent forms; and

(3) HIPPA Standards.

d. Preparing station, making appointments, parlor ethics:

(1) Maintaining professional appearance, notifying clients of schedule changes; and

(2) Promoting services of the parlor and establishing clientele.

e. Parlor management:

(1) Licensing requirements; and

(2) Taxes.

7. Tattooing:

a. Client consultation;

b. Client health form;

c. Client disclosure form;

d. Client preparation;

e. Sanitation and safety precautions;

f. Implement selection and use;

g. Proper use of equipment; and

h. Material selection and use.

18 VAC 41-50-170. Hours of instruction and performances.

A. Curriculum requirements specified in 18 VAC 41-50-160 shall be taught over a minimum of 1500 hours as follows:

1. 350 hours shall be devoted to theory pertaining to 18 VAC 41-50-160.1, 18 VAC 41-50-160.2, 18 VAC 41-50-160.4, 18 VAC 41-50-160.5, and 18 VAC 41-50-160.6;

2. 150 hours shall be devoted to theory pertaining to 18 VAC 41-50-160.3; and

3. The remaining 1000 hours shall be devoted to practical training and a total of 100 performances pertaining to 18 VAC 41-50-160.7.

B. An approved Tattooing Apprenticeship Program may conduct an assessment of an apprentice's competence in the theory and practical requirements for tattooing and, based on the assessment, give a maximum of 700 hours of credit towards the requirements in 18 VAC 41-50-170 A 1 and 18 VAC 41-50-170 A 3. No credit shall be allowed for the 150 hours required in 18 VAC 41-50-170 A 2.

PART VI.
STANDARDS OF PRACTICE.

18 VAC 41-50-180. Display of license.

A. Each tattoo parlor owner shall ensure that all current licenses issued by the board shall be displayed in the reception area of the parlor or in plain view of the public. Duplicate licenses shall be posted in a like manner in every parlor or location where the licensee provides services.

B. Each parlor owner shall ensure that no licensee performs any service beyond the scope of practice for the applicable license.

C. All licensees shall operate under the name in which the license is issued.

18 VAC 41-50-190. Physical facilities.

A. A parlor must be in a permanent, building or portion of a building which must be in a location permissible under local zoning codes, if any. If applicable, the parlor or shall be separated from any living quarters by complete floor to ceiling partitioning and shall contain no access to living quarters.

B. The parlor or temporary location shall be maintained in a clean and orderly manner.

C. All facilities shall have a blood spill clean-up kit in the work area.

D. Work surfaces shall be cleaned with an EPA-registered, hospital grade disinfectant. Surfaces that come in contact with blood or other body fluids shall be immediately disinfected with an EPA-registered germicide solution. Appropriate personal protective equipment shall be worn during cleaning and disinfecting procedures.

E. Cabinets for the storage of instruments, dyes, pigments, single use articles, carbon stencils and other utensils shall be provided for each operator and shall be maintained in a sanitary manner.

F. Bulk single-use articles shall be commercially packaged and handled in such a way as to protect them from contamination.

G. All materials applied to the human skin shall be from single-use articles or transferred from bulk containers to single use containers and shall be disposed of after each use.

H. The walls, ceilings, and floors shall be kept in good repair. The tattooing area shall be constructed of smooth, hard, surfaces that are nonporous, free of open holes or cracks, light colored, and easily cleaned. New parlor shall not include any dark-colored surfaces in the tattooing area. Existing parlors with dark-colored surfaces in the tattooing area shall replace the dark-colored surfaces with light-colored surfaces whenever the facilities are extensively remodeled or upon relocation of the business.

I. Parlors and temporary locations shall have adequate lighting of at least 50 foot-candles of illumination in the tattooing and sterilization areas.

J. Adequate mechanical ventilation shall be provided in the parlor.

K. Each parlor or temporary location shall be equipped with hand-cleaning facilities for its personnel with unobstructed access to the tattooing area such that the tattooer can return to the tattooing area without having to touch anything with his hands. Hand-cleaning facilities shall be equipped either with hot and cold or tempered running water under pressure and liquid germicidal soap, or with a sanitizing solution to clean hands. Hand-cleaning facilities shall be equipped with single-use towels or mechanical hand drying devices; and a covered refuse container. Such facilities shall be kept clean and in good repair.

L. Animals are not permitted in the parlor or temporary location except for guide or service animals accompanying persons with disabilities, or nonmammalian animals in

enclosed glass containers such as fish aquariums, which shall be outside of the tattooing or sterilization areas. No animals are allowed in the tattooing or sterilization areas.

M. Use of tobacco products and consumption of alcoholic beverages shall be prohibited in the tattooing or sterilization areas.

N. No food or drink will be stored or consumed in the tattooing or sterilization areas except for client's use in order to sustain optimal physical condition; such food and drink must be individually packaged.

O. If tattooing is performed where cosmetology services are provided, it shall be performed in an area that is separate and enclosed.

18 VAC 41-50-200. Tattooer responsibilities.

A. All tattooers shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty.

B. All tattooers shall clean their hands thoroughly using hot or tempered water with a liquid germicidal soap or use sanitizing solution to clean hands before and after tattooing and as necessary to remove contaminants.

C. All tattooers must wear single-use examination gloves while assembling tattooing instruments and while tattooing.

D. Each time there is an interruption in the service, each time the gloves become torn or perforated, or whenever the ability of the gloves to function as a barrier is compromised:

1. Gloves should be removed and disposed of; and

2. Hands shall be cleaned and a fresh pair of gloves used.

E. Tattooers shall use standard precautions while tattooing. A tattooer diagnosed with a communicable disease shall provide to the department a written statement from a health care practitioner that the tattooer's condition no longer poses a threat to public health.

F. Tattooers with draining lesions on their hands or face will not be permitted to work until cleared by a health-care professional.

G. The area of the client's skin to be tattooed shall be cleaned with an approved germicidal soap according to label directions.

H. Tattooing inks and dyes shall be placed in a single-use disposable container for each client. Following the procedure, the unused contents and container will be properly disposed of.

I. If shaving is required, razors shall be single-use and disposed of in a puncture-resistant container.

J. Each tattooer performing any tattooing procedures in the parlor shall have the education, training and experience, or any combination thereof, to practice aseptic technique and prevent the transmission of blood-borne pathogens. All procedures shall be performed using aseptic technique.

K. A set of individual, sterilized needles shall be used for each client. Single use disposable instruments shall be disposed of in a puncture-resistant container.

L. Used, nondisposable instruments shall be kept in a separate, puncture-resistant container until brush scrubbed in hot water soap and then sterilized by autoclaving. Contaminated instruments shall be handled with disposable gloves.

M. Used instruments that are ultrasonically cleaned shall be rinsed under running hot water prior to being placed in the used instrument container;

N. Used instruments that are not ultrasonically cleaned prior to being placed in the used instrument container shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap and sterilized by autoclaving.

O. The ultrasonic unit shall be sanitized daily with a germicidal solution.

P. Nondisposable instruments shall be sterilized and shall be handled and stored in a manner to prevent contamination. Instruments to be sterilized shall be sealed in bags made specifically for the purpose of autoclave sterilization and shall include the date of sterilization. If nontransparent bags are utilized, the bag shall also list the contents.

Q. Autoclave sterilization bags with a color code indicator which changes color upon proper sterilization shall be utilized during the autoclave sterilization process.

R. Instruments shall be placed in the autoclave in a manner to allow live steam to circulate around them.

S. Contaminated disposable and single use items shall be disposed of in accordance with state regulations regarding disposal of biological hazardous materials.

18 VAC 41-50-210. Client qualifications, disclosures, and records.

A. Except as permitted in § 18.2-371.3 of the Code of Virginia, a client must be a minimum of 18 years of age and shall present at the time of the tattooing a valid, government-issued, positive identification card including, but not limited to, a driver's license, passport, or military identification. The identification must contain a photograph of the individual and a printed date of birth.

B. The tattooer shall verify and document in the permanent client record the client's age, date of birth, and the type of identification provided.

C. No person may be tattooed who appears to be under the influence of alcohol or drugs.

D. Tattooing shall not be performed on any skin surface which manifests any evidence of unhealthy conditions such as rashes, boils, infections, or abrasions.

E. Before receiving a tattoo, each client and client's parent or guardian, if applicable, shall be informed verbally and in writing, using the Client Disclosure Form prescribed by the board, about the possible risk and dangers associated with the application of each tattoo. Signatures of both the clien

and the tattooer shall be required on the Client Disclosure Form to acknowledge receipt of both the verbal and written disclosures.

F. The tattoo parlor or temporary location shall maintain proper records for each client. The information shall be permanently recorded and made available for examination by the department or authorized agent. Records shall be maintained at the tattoo parlor for at least two years following the date of the last entry. The temporary location client records shall be maintained by the license holder. The permanent records shall include the following:

1. The name, address, and telephone number of the client;

2. The date tattooing was performed;

3. The client's age, date of birth, and a copy of the positive identification provided to the tattooer;

4. The specific color or colors of the tattoo and, when available, the manufacturer's catalogue or identification number of each color used;

5. The location on the body where the tattooing was performed;

6. The name of the tattooer;

7. A statement that the client has received a copy of applicable written care instructions, and that the client has read and understands the instructions; and

8. The signature of the client and if applicable parent or guardian.

18 VAC 41-50-220. Grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.

A. The board may, in considering the totality of the circumstances, fine any licensee and suspend or revoke or refuse to renew or reinstate any license, or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board if the board finds that:

1. The licensee is incompetent, or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a tattooer; or

2. The licensee or applicant is convicted of fraud or deceit in the practice tattooing; or

3. The licensee or applicant obtained, renewed or reinstated a license by false or fraudulent representation; or

4. The licensee or applicant violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which tattooers may practice or offer to practice; or

5. The licensee or applicant fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with this chapter; or

6. A licensee fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board; or

7. The licensee or applicant publishes or causes to be published any advertisement that is false, deceptive, or misleading; or

8. The licensee or applicant fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license, certificate, or permit in connection with a disciplinary action in any other jurisdiction or of any license, certificate, or permit which has been the subject of disciplinary action in any other jurisdiction; or

9. In accordance with § 54.1-204 of the Code of Virginia, the licensee or applicant has been convicted in any jurisdiction of a misdemeanor or felony which directly relates to the profession of tattooing. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of tattooing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.

B. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any tattoo parlor or impose a fine as permitted by law, or both, if the board finds that:

1. The owner or operator of the tattoo parlor fails to comply with the facility requirements of tattoo parlors provided for in this chapter or in any local ordinances; or

2. The owner or operator allows a person who has not obtained a license to practice as a tattooer unless the person is duly enrolled as an apprentice.

C. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practice of tattooing.

/s/ Mark R. Warner
Governor
Date: July 1, 2004

NOTICE: The forms used in administering 18 VAC 41-50, Regulations: Tattooing, are listed and published below.

FORMS

Tattooing License Application, 1231LIC (eff. 7/04).

Salon, Shop & Parlor License Application, 1213SLSH (eff. 7/04)

Commonwealth of Virginia
Department of Professional and Occupational Regulation
3600 West Broad Street
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8509
www.dpor.virginia.gov

Virginia Board for Barbers and Cosmetology
TATTOOING LICENSE APPLICATION
Fee $55.00
July 1, 2004 through June 30, 2005

A check or money order payable to the TREASURER OF VIRGINIA, *or*
A completed credit card insert must be mailed with your application package.
APPLICATION FEES ARE NOT REFUNDABLE.

* Do you have documentation of receiving the full series of Hepatitis BN vaccine or proof of immunity by blood titer?
Yes ☐ This documentation must be submitted with your completed application.
No ☐ **If no, your application cannot be processed.**

1. Name Mr. ☐ Mrs. ☐ Ms. ☐ Miss ☐ _____ (First / Middle / Last / Generation (SR, JR, etc.))
2. Social Security Number * ☐☐☐ - ☐☐ - ☐☐☐☐
3. Date of Birth _____
4. Maiden name or former surname(s) _____
5. Street Address (PO Box not accepted) _____
   City, County, State, Zip Code _____
6. Mailing Address (PO Box accepted) _____
   City, State, Zip Code _____
7. E-mail Address _____
8. Telephone & Facsimile Numbers ( ) - _____ Telephone ( ) - _____ Facsimile ( ) - _____ Daytime Telephone
9. Are you currently licensed to practice as a tattooer in any other state or jurisdiction of the United States?
   No ☐
   Yes ☐ ☞ Please attach an original Certification of Licensure (dated within the last 60 days) and **skip to #11**. Certification of Licensure must be:
   1. prepared by the state board or licensing body in which you are currently licensed; and
   2. mailed in an unopened envelope with the seal or signature of the state board overlaying the flap on the back of the envelope and addressed to the Virginia Board for Barbers and Cosmetology.
10. Do you have 5 years of work experience as a tattooer within the last 8 years (documentation must be submitted with this completed application) and have you completed health education in blood borne diseases, sterilization, aseptic techniques related to tattooing, first aid, and CPR?
    No ☐ **If no, your application cannot be processed.**
    Yes ☐ If yes, please attach documentation of your experience and education.

OFFICE USE ONLY	DATE	FEE	CLASS OF FEE	LICENSE NUMBER	ISSUE DATE
				12	

1231LIC (07/01/04)

Board for Barbers & Cosmetology/TATTOOER LIC APP

Page 1 of 2

11. Are you applying to be a tattooing apprenticeship sponsor?
    No ☐
    Yes ☐ If yes, you must provide documentation of seven years of legal tattooing experience with this completed application.

12. Have you ever been subject to a disciplinary action taken by <u>any</u> (including Virginia) local, state or national regulatory body in connection with your practice as a tattooer?
    No ☐
    Yes ☐ If yes, please provide a certified copy of the final order, decree, or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case decision.

13. Have you ever been convicted in any jurisdiction of a misdemeanor or felony? *Any plea of nolo contendere shall be considered a conviction.*
    No ☐
    Yes ☐ If yes, list the misdemeanor and/or felony conviction(s). Attach your original criminal history record; a certified copy of the final order, decree, or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case decision; **and** any other information you wish to have considered with this application (i.e., information on the status of incarceration, parole or probation; reference letters; documentation of rehabilitation; etc.). If necessary, you may attach a separate sheet of paper.

    Original criminal history records may be obtained by contacting the state police in the jurisdiction in which you were convicted. Virginia residents must complete a criminal history record request form in the presence of a notary public and mail it to the Department of State Police, Central Criminal Records Exchange, Post Office Box 27472, Midlothian, Virginia 23261-7472. *Certified copies of court records* may be obtained by writing to the Clerk of the Court in the jurisdiction in which you were convicted. The address is available from your local police department.

_____

_____

14. I, the undersigned, certify that the foregoing statements and answers are true, and I have not suppressed any information that might affect the decision to approve this application. I will notify the Department if I am subject to any disciplinary action or convicted of any felony or misdemeanor charges (in any jurisdiction) prior to receiving the requested license. I certify that I have read, understand, and complied with all the laws of Virginia related to tattooing under the provisions of Title 54.1, Chapter 7 of the *Code of Virginia* and the *Virginia Board for Barbers and Cosmetology Tattooing Regulations.*

Signature _____ Date _____

* State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

Commonwealth of Virginia
Department of Professional and Occupational Regulation
3600 West Broad Street
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8509
www.dpor.virginia.gov

Virginia DPOR
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Board for Barbers & Cosmetology
SALON, SHOP & PARLOR LICENSE APPLICATION
Fee $90.00

A check or money order payable to the TREASURER OF VIRGINIA, *or* a completed credit card insert must be mailed with your application package.
APPLICATION FEES ARE NOT REFUNDABLE.

1. Type of license you are requesting. Please select only **one**.
   - Barber Shop (1304) ☐
   - Cosmetology Salon (1202) ☐
   - Nail Salon (1208) ☐
   - Waxing Salon (1218) ☐
   - Hair Braiding Salon (1223) ☐
   - Tattoo Parlor (1232) ☐
   - Body-Piercing Salon (1242) ☐
2. Name of Salon or Shop _____
3. Trade Name of Salon or Shop _____
4. Federal Employer Identification Number ☐☐ - ☐☐☐☐☐☐☐
5. Street Address (PO Box not accepted) _____
   City, State, Zip Code _____
6. Mailing Address (PO Box accepted) _____
   City, State, Zip Code _____
7. E-mail Address _____ Address where electronic communication from the Board can be sent (an owner/manager e-mail address is acceptable).
8. Telephone and Facsimile Numbers ( ) - _____ Telephone ( ) - _____ Facsimile
9. Type of business (select only **one**)
   - Sole Proprietorship ☐
   - General Partnership ☐
   - Corporation ✲ ☐
   - Association ☐
   - Limited Partnership ✲ ☐
   - Limited Liability Company ✲ ☐

   ✲ If your business is a Corporation, Limited Liability Company or Limited Partnership, your business/trade name(s) must be registered with the Virginia State Corporation Commission. For additional information, contact the SCC at (804) 371-9733.
10. Enter the name, address, birth date, and social security number of each owner or manager of the salon, shop or parlor (i.e., sole proprietor, general partners, association members). Corporate, Limited Partnership and Limited Liability Company names should be entered on line #2 above.

Last Name	First Name	MI	Address	Birth Date	Social Security No. ✲

OFFICE USE ONLY	DATE	FEE	CLASS OF FEE	LICENSE NUMBER	ISSUE DATE

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Board for Barbers & Cosmetology/SALON & SHOP LIC APP

11. Has the salon/shop/parlor or any owner ever been subject to a disciplinary action taken by any (including Virginia) local, state or national regulatory body?

    No ☐
    Yes ☐ If yes, please provide a certified copy of the final order, decree or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case decision.

12. Has the salon/shop/parlor or any owner ever been convicted in any jurisdiction of a misdemeanor or felony? *Any plea of nolo contendere shall be considered a conviction.*

    No ☐
    Yes ☐ If yes, list the misdemeanor and/or felony conviction(s). Attach your original criminal history record; a certified copy of the final order, decree or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case decision; **and** any other information you wish to have considered with this application (i.e., information on the status of incarceration, parole or probation; reference letters; documentation of rehabilitation; etc.). If necessary, you may attach a separate sheet of paper.

    Original criminal history records may be obtained by contacting the state police in the jurisdiction in which you were convicted. Virginia residents must complete a criminal history record request form in the presence of a notary public and mail it to the Department of State Police, Central Criminal Records Exchange, Post Office Box 27472, Midlothian, Virginia 23261-7472. *Certified copies of court records* may be obtained by writing to the Clerk of the Court in the jurisdiction in which you were convicted. The address is available from your local police department.

_____

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13. I, the undersigned, certify that the foregoing statements and answers are true, and I have not suppressed any information that might affect the Board's decision to approve this application. I will notify the Department if the salon/shop or any owner is subject to any disciplinary action or convicted of any felony or misdemeanor charges (in any jurisdiction) prior to receiving the requested license. I certify that the salon/shop has complied with all the laws of Virginia related to barber and cosmetology licensure under the provisions of Title 54.1, Chapter 7 of the *Code of Virginia* and the *Virginia Board for Barbers and Cosmetology Regulations, Wax Technician Regulations, Hair Braiding Regulations, Tattooing Regulations, or Body-Piercing Regulations.*

    Signature _____ Date _____

* State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

VA.R. Doc. No. R04-222; Filed July 1, 2004, 3:56 p.m.

BOARD OF DENTISTRY

Title of Regulation: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (adding 18 VAC 60-20-17).**

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

Effective Dates: August 25, 2004, through August 24, 2005.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Dentistry is required to comply with amendments to § 54.1-2400 (10) and the third enactment clause in Chapter 64 of the 2004 Acts of Assembly. Subdivision 10 establishes authority for health regulatory boards to appoint special conference committees and to delegate an informal fact-finding proceeding to an appropriately qualified agency subordinate. It further adds a mandate for the adoption of regulations, "Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

The third enactment clause of Chapter 64 of the 2004 Acts of Assembly, which states "That the health regulatory boards within the Department of Health Professions shall promulgate regulations to implement the provisions of this act relating to the delegation of fact-finding proceedings to an agency subordinate within 280 days of its enactment," requires the adoption of the regulation as an emergency in accordance with § 2.2-4011 of the Administrative Process Act, which states that an emergency situation is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Chapter 64 was enacted on March 10, 2004, the day HB 577 was signed by the Governor.

18 VAC 60-20-17 is added to Part I, General Provisions, in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.

18 VAC 60-20-17. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except as may be approved by a committee of the board, include the following:

1. Intentional or negligent conduct that causes serious injury to a patient;

2. Impairment with an inability to practice with skill and safety;

3. Sexual misconduct;

4. Indiscriminate prescribing or dispensing;

5. Medication error in administration or dispensing;

6. Unauthorized practice.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

/s/ Mark R. Warner
Governor
Date: June 25, 2004

VA.R. Doc. No. R04-201; Filed June 30, 2004, 11:36 a.m.

BOARD OF PHYSICAL THERAPY

Title of Regulation: **18 VAC 112-20. Regulations Governing the Practice of Physical Therapy (adding 18 VAC 112-20-26).**

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

Effective Dates: August 25, 2004, through August 24, 2005.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Physical Therapy is required to comply with amendments to § 54.1-2400 (10) of the Code of Virginia and the third enactment clause in Chapter 64 of the 2004 Acts of Assembly. Subdivision 10 establishes authority for health regulatory boards to appoint special conference committees and to delegate an informal fact-finding proceeding to an

appropriately qualified agency subordinate. It further adds a mandate for the adoption of regulations, "Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

The third enactment clause of Chapter 64 of the 2004 Acts of Assembly, which states "That the health regulatory boards within the Department of Health Professions shall promulgate regulations to implement the provisions of this act relating to the delegation of fact-finding proceedings to an agency subordinate within 280 days of its enactment" requires the adoption of the regulation as an emergency in accordance § 2.2-4011 of the Administrative Process Act, which states that an emergency situation is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Chapter 64 was enacted on March 10, 2004, the day HB 577 was signed by the Governor.

18 VAC 112-20-26 is added to Part I, General Provisions, in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.

18 VAC 112-20-26. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate include, but are not limited to, those that involve:

1. Intentional or negligent conduct that causes or is likely to cause injury to a patient;

2. Mandatory suspension resulting from action by another jurisdiction or a felony conviction;

3. Impairment with an inability to practice with skill and safety;

4. Sexual misconduct;

5. Unauthorized practice.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

/s/ Mark R. Warner
Governor
Date: June 25, 2004

VA.R. Doc. No. R04-203; Filed June 30, 2004, 11:38 a.m.

BOARD OF COUNSELING

Title of Regulation: **18 VAC 115-15. Regulations Governing Delegation to an Agency Subordinate (adding 18 VAC 115-15-10, 18 VAC 115-15-20 and 18 VAC 115-15-30).**

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

Effective Dates: August 25, 2004, through August 24, 2005.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Counseling is required to comply with amendments to § 54.1-2400 (10) and the third enactment clause in Chapter 64 of the 2004 Acts of Assembly. Subdivision 10 establishes authority for health regulatory boards to appoint special conference committees and to delegate an informal fact-finding proceeding to an appropriately qualified agency subordinate. It further adds a mandate for the adoption of regulations, "Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

The third enactment clause of Chapter 64 of the 2004 Acts of Assembly, which states "That the health regulatory boards within the Department of Health Professions shall promulgate regulations to implement the provisions of this act relating to the delegation of fact-finding proceedings to an agency subordinate within 280 days of its enactment," requires the adoption of the regulation as an emergency in accordance with § 2.2-4011 of the Administrative Process Act, which states that an emergency situation is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Chapter 64 was enacted on March 10, 2004, the day HB 577 was signed by the Governor.

In order to establish in regulation the criteria for delegation that will be applicable to all professions regulated by the

board, it has adopted a new chapter. Chapter 15 includes the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated except by approval of the probable cause committee and the board chair, and the individuals who may be designated as agency subordinates.

CHAPTER 15.
REGULATION GOVERNING DELEGATION TO AN AGENCY SUBORDINATE.

18 VAC 115-15-10. Decision to delegate.

In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

18 VAC 115-15-20. Criteria for delegation.

Cases that may not be delegated to an agency subordinate include violations of standards of practice as set forth in regulations governing each profession certified or licensed by the Board, except as may otherwise be determined by the probable cause committee in consultation with the Board chair.

18 VAC 115-15-30. Criteria for an agency subordinate.

A. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

B. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

C. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

/s/ Mark R. Warner
Governor
Date: June 25, 2004

VA.R. Doc. No. R04-205; Filed June 30, 2004, 11:39 a.m.

BOARD OF SOCIAL WORK

Title of Regulation: **18 VAC 140-20. Regulations Governing the Practice of Social Work (adding 18 VAC 140-20-171).**

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

Effective Dates: August 25, 2004, through August 24, 2005.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Social Work is required to comply with amendments to § 54.1-2400 (10) of the Code of Virginia and the third enactment clause in Chapter 64 of the 2004 Acts of Assembly. Subdivision 10 establishes authority for health regulatory boards to appoint special conference committees and to delegate an informal fact-finding proceeding to an appropriately qualified agency subordinate. It further adds a mandate for the adoption of regulations, "Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

The third enactment clause of Chapter 64 of the 2004 Acts of Assembly, which states "That the health regulatory boards within the Department of Health Professions shall promulgate regulations to implement the provisions of this act relating to the delegation of fact-finding proceedings to an agency subordinate within 280 days of its enactment" requires the adoption of the regulation as an emergency in accordance with § 2.2-4011 of the Administrative Process Act, which states that an emergency situation is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Chapter 64 was enacted on March 10, 2004, the day HB 577 was signed by the Governor.

18 VAC 140-20-171 is added to Part VI, Standards of Practice, in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.

18 VAC 140-20-171. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate include violations of standards of practice as set forth in 18 VAC 140-20-150, except as may otherwise be determined by the probable cause committee in consultation with the board chair.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

/s/ Mark R. Warner
Governor
Date: June 25, 2004

VA.R. Doc. No. R04-207; Filed June 30, 2004, 11:38 a.m.

BOARD OF VETERINARY MEDICINE

Title of Regulation: **18 VAC 150-20. Regulations Governing the Practice of Veterinary Medicine (adding 18 VAC 150-20-15).**

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

Effective Dates: August 25, 2004, through August 24, 2005.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Social Work is required to comply with amendments to § 54.1-2400 (10) and the third enactment clause in Chapter 64 of the 2004 Acts of Assembly. Subdivision 10 establishes authority for health regulatory boards to appoint special conference committees and to delegate an informal fact-finding proceeding to an appropriately qualified agency subordinate. It further adds a mandate for the adoption of regulations, "Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

The third enactment clause of Chapter 64 of the 2004 Acts of Assembly, which states "That the health regulatory boards within the Department of Health Professions shall promulgate regulations to implement the provisions of this act relating to the delegation of fact-finding proceedings to an agency subordinate within 280 days of its enactment," requires the adoption of the regulation as an emergency in accordance with § 2.2-4011 of the Administrative Process Act, which states that an emergency situation is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Chapter 64 was enacted on March 10, 2004, the day HB 577 was signed by the Governor.

18 VAC 150-20-15 is added to Part I, General Provisions, in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.

18 VAC 150-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may be delegated to an agency subordinate are those that only involve failure to satisfy continuing education requirements.

C. Criteria for an agency subordinate. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding shall include current board members deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

/s/ Mark R. Warner
Governor
Date: June 25, 2004

VA.R. Doc. No. R04-209; Filed June 30, 2004, 11:36 a.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Development of Freshwater Nutrient Criteria

The Department of Environmental Quality (DEQ) has scheduled a meeting for invited stakeholders and other interested public to provide a briefing on the efforts of agency staff and the Academic Advisory Committee on Freshwater Nutrient Criteria and to consult with the stakeholders on these efforts. The meeting will be August 18, 2004, in the training room of the DEQ Piedmont Regional 0ffice at 4949-A Cox Road, Glen Allen, Virginia, from 1 p.m. until 3 p.m.

The Commonwealth's "Plan for Nutrient Criteria Development," which recently received EPA concurrence, can be found on the DEQ web site at http://www.deq.virginia.gov/wqs/pdf/nutplan2.pdf. This plan states that during the criteria development phase, the Commonwealth will rely on technical advice/expert opinion from in-house technical staff and an academic advisory aommittee (AAC) and that a separate general stakeholders group composed of environmentalists, industrial, municipal wastewater and other interested parties will periodically meet with DEQ staff for briefings and opportunity for comment. Once the final version of the AAC report that will be discussed at the meeting is available, a copy will be placed on the DEQ website at http://www.deq.virginia.gov/wqs/rule.html#NUT2.

Any questions should be directed to Jean Gregory, DEQ Water Quality Standards Program, by e-mail at jwgregory@deq.virginia.gov, telephone (804) 698-4113 or toll free at 1-800-592-5842.

Total Maximum Daily Load (TMDL) Study for Callahan Creek in Wise County

The Virginia Department of Environmental Quality (DEQ), the Department of Mines, Minerals and Energy (DMME), and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the Total Maximum Daily Load (TMDL) Study for Callahan Creek in Wise County. This stream was identified on the 1998 303(d) Total Maximum Daily Load Priority List and Report as impaired due to violations of the state's water quality standards for the Aquatic Life Use - General Standard (benthic). In 2004, the stream was listed for the Recreational Use due to bacteria violations also.

The first public meeting on the development of the TMDL to address the benthic and bacteria impairments will be held on Tuesday, August 10, 2004, at the Appalachian Cultural Arts Center in Appalachia, Virginia. The purpose of the study is to identify sources and determine reductions of pollutants so that the stream can meet the water quality standards.

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.

Callahan Creek is in Wise County north of Appalachia, Virginia. The impairments include about 5.2 miles of stream. The lower two miles has both bacteria and benthic impairments and the upper three miles are listed for bacteria violations only. The upstream impairment ends just above Stonega at Possum Trot Hollow.

The public comment period will end on September 13, 2004. The fact sheets describing the impairments are available upon request or can be viewed at the DEQ website: http://www.deq.virginia.gov. Address questions or information requests to Nancy T. Norton, P. E. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nancy T. Norton, P. E., Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4807, FAX (276) 676-4899, or e-mail ntnorton@deq.virginia.gov.

Total Maximum Daily Load (TMDL) Study for Russell Prater Creek

The Virginia Department of Environmental Quality (DEQ), the Department of Mines, Minerals and Energy (DMME), and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the Total Maximum Daily Load (TMDL) Study for Russell Prater Creek near Haysi in Buchanan and Dickenson Counties, Virginia. This stream was identified on the 1998 303(d) Total Maximum Daily Load Priority List and Report as impaired due to violations of the state's water quality standard for the Aquatic Life Use - General Standard (benthic).

The first public meeting on the development of the Total Maximum Daily Loads to address the aquatic organism impairment on Russell Prater Creek will be held on Thursday, August 19, 2004, at 7 p.m. in the Haysi Town Hall in downtown Haysi, Virginia. The purpose of the study is to identify sources and determine reductions of pollutants so that the stream can meet the water quality standards.

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.

Russell Prater Creek is located in Buchanan and Dickenson Counties east of Haysi, Virginia. The impairment includes about 11 miles of Russell Prater Creek from its headwaters at Poplar Gap to its confluence with Russell Fork River in Haysi.

The public comment period will end on September 20, 2004. The fact sheets describing the impairments are available upon request or can be viewed at the DEQ website: http://www.deq.virginia.gov. Address questions or information requests to Nancy T. Norton, P. E. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nancy T. Norton, P. E., Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4807, FAX (276) 676-4899, or e-mail ntnorton@deq.virginia.gov.

Total Maximum Daily Load (TMDL) Study for Straight Creek and tributaries; Stone Creek, Ely Creek, Puckett Creek, Lick Branch, Baileys Trace and Gin Creek in Lee County

The Virginia Department of Environmental Quality (DEQ), the Department of Mines, Minerals and Energy (DMME), and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the Total Maximum Daily Load (TMDL) Study for Straight Creek and tributaries; Stone Creek, Ely Creek, Puckett Creek, Lick Branch, Baileys Trace and Gin Creek in Lee County. These streams were identified on the 1998 303(d) Total Maximum Daily Load Priority List and Report as impaired due to violations of the state's water quality standards for the Aquatic Life Use - General Standard (benthic) and Recreational Use - Bacteria.

The first public meeting on the development of the Total Maximum Daily Loads to address the benthic and bacteria impairments on Straight Creek and tributaries will be held on Wednesday, August 11, 2004, at 7 p.m. at the Municipal Bldg. in Pennington Gap, Virginia. The cream two-story municipal building has a green roof and is located on Constitution Road in Pennington Gap. From Alternate Route 58, traveling from Big Stone Gap, turn left onto Herrel Street and turn left again onto Constitution Road. The purpose of the study is to identify sources and determine reductions of pollutants so that the stream can meet the water quality standards.

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.

Straight Creek and its tributary streams are located in Lee County northwest of Pennington Gap, Virginia. The impairments include about 38 miles of streams in the Straight Creek watershed. Straight Creek flows through St. Charles. The entire length of Straight Creek from its headwaters to confluence with North Fork Powell River is included. Stone Creek follows Route 421 west towards the Kentucky/Virginia state line.

The public comment period will end on September 13, 2004. The fact sheets describing the impairments are available upon request or can be viewed at the DEQ website: http://www.deq.virginia.gov. Address questions or information requests to Nancy T. Norton, P. E. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nancy T. Norton, P. E., Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4807, FAX (276) 676-4899, or e-mail ntnorton@deq.virginia.gov.

STATE CORPORATION COMMISSION

Business Entity Names as of October 1, 2004

New Statutory Provisions

Effective October 1, 2004, the entity name provisions of the Virginia business entity statutes administered by the State Corporation Commission will be substantially amended. The amended provisions, which apply prospectively, prohibit the use of a corporate, limited liability company, limited partnership or business trust name that is not distinguishable on the records of the Commission from (i) the name of any corporation, limited liability company, limited partnership and business trust of record in the Clerk's Office of the Commission as an active business entity and (ii) any name reserved or registered under a business entity statute. As a result, and by way of example, on and after October 1, the proposed name "XYZ Limited Liability Company" will not be acceptable if the Commission's business entity records include either an active corporation with the name "XYZ, Inc." or an active reservation or registration of the name "XYZ, Inc."

Reserved Business Entity Names

The legislation establishing the new, across-entity-lines name distinguishability test will also affect corporate, limited liability company, limited partnership and business trust name reservations that expire on or after October 1, 2004. If any such reserved name, because of the cross-entity test, is not available for use in Virginia as of October 1, the reservation cannot be utilized. For example, an application to reserve the name "XYZ Limited Liability Company" submitted on August 1, 2004, will be accepted if the name is distinguishable from other limited liability company names of record on that date. However, the reserved limited liability company name will not be usable in Virginia as of October 1 if there is then of record an active corporation with the name "XYZ, Inc." Beginning October 1, the Clerk's Office can accept only reservation applications (or renewal applications) for entity names that meet the new distinguishability standard.

Registered Corporate Names

A foreign corporation that registers a corporate name pursuant to § 13.1-632 or § 13.1-831 of the Code of Virginia before October 1, 2004, will not be allowed to obtain a certificate of authority to transact business in Virginia under that name on and after October 1 unless the registered name meets the new name distinguishability standard. Beginning October 1, the Clerk's Office can accept only registration applications (or renewal applications) for corporate names that meet the new distinguishability criteria.

Conflicting Reserved or Registered Names on and after October 1

In a case where two or more entity names reserved or registered before October 1, 2004, become indistinguishable from one another because of the new standard, the first entity to form or register to transact business pursuant to a Virginia business entity statute under its reserved or registered name will gain exclusive use of that name. For example, if the corporate name "XYZ, Inc." is reserved or registered on September 1, 2004, the name "XYZ Limited Liability

Company" is reserved two weeks later, and on or after October 1 XYZ Limited Liability Company is the first to organize or register to transact business, the reserved or registered name "XYZ, Inc." becomes unusable in Virginia.

If you have any questions concerning this matter, please contact the Clerk's Office at (804) 371-9733 or toll-free in Virginia at (866) 722-2551.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on July 1, 2004. 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.

Final Rules for Game Operation:

Director's Order Number Twenty-Two (04)
Virginia's Instant Game Lottery 610; "$25,000 Cash Reward," (effective 6/18/04)

Director's Order Number Twenty-Four (04)
Virginia's Instant Game Lottery 615; "Rag Top Riches," (effective 6/28/04)

Retailer Incentive Program Rules:

Director's Order Number Seventy (03)
Virginia Lottery Retailer Incentive Program Rules, "15 Grand Years," (effective 6/25/03)

Director's Order Number Seventy-One (03)
Virginia Lottery Retailer Incentive Program Rules, "Pick 3, Earn 7," (effective 10/08/03)

Director's Order Number Twenty-One (04)
Virginia Lottery Retailer Incentive Program Rules, "Activate & Earn," (effective 5/05/04)

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Director's Order Number Twenty-Three (04)
Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B (15) and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on June 25, 2004:

Game 248	Reel Cash
Game 321	$100,000 Bingo
Game 322	Bingo Blast
Game 527	Money Talks
Game 532	Blazin' Eights
Game 551	$25,000 Diamonds
Game 555	Deal Me In
Game 558	Money Tree$
Game 560	Rainbow Riches
Game 563	Lucky Loot
Game 573	Turkey Tripler

The last day for lottery retailers to return for credit unsold tickets from any of these games will be July 30, 2004. The last day to redeem winning tickets for any of these games will be December 22, 2004, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of December 22, 2004, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to: Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle, Executive Director
June 22, 2004

STATE WATER CONTROL BOARD

Proposed Consent Special Order for Alexandria Sanitation Authority

The State Water Control Board (board) proposes to issue a consent special order to Alexandria Sanitation Authority (ASA) regarding ASA's Advanced Wastewater Treatment Plant (STP) located in Alexandria, Virginia.

The STP is subject to VPDES Permit No. VA0025160. The order requires that ASA complete the final phases of the upgrades to the STP for the purpose of ensuring compliance with final permit effluent limits. The order also provides interim effluent limits until the upgrades are completed.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive comments relating to the order through August 25, 2004. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193. Please address comments sent via e-mail to eacrosier@deq.virginia.gov. In order to be considered, comments provided by e-mail must include the commenter's name, address, and telephone number. A copy of the proposed order is posted on the DEQ website at www.deq.virginia.gov or please write or visit the Woodbridge address, or call (703) 583-3886, for a copy of the order.

Proposed Consent Special Order for Anderson Oil Company

The State Water Control Board proposes to enter into a consent special order with Anderson Oil Company (Anderson). The parties have agreed to the terms of a consent special order for settlement of violations of State Water Control Law at an underground storage tank (UST) facility.

Anderson owns a UST facility located at 315 Main Street in Scottsville, Virginia, and stores petroleum in these USTs under the requirements of the state underground storage tank regulation. Based on an inspection of the facility and review of submitted documentation, DEQ found Anderson to be in violation of the regulation. The proposed order will require Anderson to perform testing on the USTs, submit release detection records for the USTs; perform remedial action for petroleum contamination found at the facility and will assess a civil charge in settlement of the violations.

The board will receive written comments relating to the proposed order for 30 days from the date of publication of this notice. Comments should be addressed to David C. Robinett, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, and should refer to the order. The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA. A copy of the order may be obtained in person or by mail from the DEQ office.

Comments may also be submitted via electronic mail to dcrobinett@deq.virginia.gov. In order to be considered, electronic comments must be received prior to the close of the comment period and must include the name, address and telephone number of the person making the comment.

Proposed Consent Special Orders for Atlantic Wood Industries, Inc., U.S. Department of the Army (Fort Eustis), and TCS Materials, Inc.

The State Water Control Board proposes to enter into a consent special order with Atlantic Wood Industries, Inc. in settlement of a civil enforcement action under the State Water Control Law, regarding a facility located in Portsmouth, Virginia.

The State Water Control Board proposes to enter into a consent special order with the U.S. Department of the Army regarding Fort Eustis located in Newport News, Virginia.

The State Water Control Board proposes to enter into a consent special order with TCS Materials, Inc. in settlement of a civil enforcement action under the State Water Control Law, regarding facilities located in Hampton and Newport News, Virginia.

The Department of Environmental Quality will receive written comments relating to the board's proposed consent special orders from July 26, 2004, through August 25, 2004. Comments should be addressed to David S. Gussman, Department of Environmental Quality - Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462 and should refer to an order specified above. Comments may also be submitted by e-mail to dsgussman@deq.virginia.gov. In order for email comments to be considered they must include the sender's name, address and phone number. The order is available at www.deq.virginia.gov/enforcement/notices.html and at the above office during regular business hours. You may also request a copy from David S. Gussman at the address above or by calling (757) 518-2179.

Proposed Special Order for Bristow Manor Limited Partnership for the Bristow Manor Golf Club Wastewater Treatment Plant and Spray Irrigation System (VPA00012)

The State Water Control Board (board) proposes to issue a consent special order to Bristow Manor Limited Partnership (permittee) regarding the Bristow Manor Golf Club Wastewater Treatment Plant and Spray Irrigation System (WWTP) located in Prince William County, Virginia.

The WWTP is subject to Virginia Pollution Abatement (VPA) Permit No. VA00012. The order requires, among other things, that the permittee maintain the WWTP and spray irrigation system and perform sampling and reporting as required by the permit. The permittee has agreed to payment of a civil charge.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through August 25, 2004. Please address comments to Susan A. Oakes, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193. Please address comments sent via e-mail to saoakes@deq.virginia.gov. In order to be considered, comments provided by e-mail must include the commenter's name, address, and telephone number. In order to examine or to obtain a copy of the order, visit the DEQ website at www.deq.virginia.gov. In addition you may also write, visit the Woodbridge address, or call (703) 583-3863 to obtain a copy of the order.

Proposed Consent Special Order for Gary L. Holsinger, d.b.a. Holsinger Brothers Partnership

The State Water Control Board proposes to enter into a consent special order with Gary L. Holsinger, d.b.a. Holsinger Brothers Partnership (Holsinger). The parties have agreed to the terms of a consent special order for settlement of violations of State Water Control Law at an underground storage tank (UST) facility.

Holsinger owns a UST facility located at 124 Massanutten Street in Strasburg, Virginia, and stores petroleum in these USTs under the requirements of the state underground storage tank regulation. Based on an inspection of the facility and review of submitted documentation, DEQ found Holsinger to be in violation of the regulation. While the facility has been brought into compliance with the regulation, the proposed order will assess a civil charge against Holsinger in settlement of the past violations.

The board will receive written comments relating to the proposed order for 30 days from the date of publication of this notice. Comments should be addressed to David C. Robinett, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, and should refer to the order. The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA. A copy of the order may be obtained in person or by mail from the DEQ office.

Comments may also be submitted via electronic mail to dcrobinett@deq.virginia.gov. In order to be considered,

electronic comments must be received prior to the close of the comment period and must include the name, address and telephone number of the person making the comment.

Proposed Consent Special Order for J&F Ekman, Inc.

The State Water Control Board proposes to enter into a consent special order with J&F Ekman, Inc. (Ekman). The parties have agreed to the terms of a consent special order for settlement of violations of State Water Control Law at Ekman's facility.

For a period of approximately 10 years prior to 2001, Ekman owned and operated an underground storage tank (UST) facility, known as The Trading Post, for the commercial sale of petroleum products in North Garden, Albemarle County. In December 1998, construction activity at the facility caused a release of petroleum product. Virginia's UST regulations require a release of petroleum to be reported to DEQ within 24 hours of its discovery. Ekman did not report the release to DEQ until October 2002. The proposed order would assess a civil charge against Ekman for failure to report a release of petroleum in accordance with the UST regulations.

The board will receive written comments relating to the proposed order for 30 days from the date of publication of this notice. Comments should be addressed to Edward A. Liggett, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, and should refer to the order. The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA. A copy of the order may be obtained in person or by mail from the DEQ office.

Comments may also be submitted via electronic mail to ealiggett@deq.virginia.gov. In order to be considered, electronic comments must be received prior to the close of the comment period and must include the name, address and telephone number of the person making the comment.

Proposed Consent Special Order Amendment for Massanutten Public Service Corporation

The State Water Control Board proposes to enter into a consent special order amendment with Massanutten Public Service Corporation (MPSC) to resolve violations of the State Water Control Law and regulations at MPSC's sewage treatment plant in Rockingham County. The facility discharges treated wastewater to the Quail Run in the Shenandoah River subbasin, Potomac River basin.

MPSC was unable to complete all construction of the new STP by the date required by the original order. The STP has experienced BOD and ammonia effluent limitation violations, primarily, during the construction of the new plant. The collection system and the STP have also experienced periodic problems handling the quantity of wastewater due to an inflow and infiltration (I&I) problem in its collection system.

The proposed consent special order amendment settles the outstanding Notices of Violation and incorporates a schedule of compliance to complete the STP, close out the old lagoon treatment plant and conduct I&I work on the collection system to return the facility to complete compliance with the permit.

The board will receive written comments relating to the proposed consent special order for 30 days from the date of publication of this notice. Comments should be addressed to Steven W. Hetrick, Department of Environmental Quality, Post Office Box 3000, Harrisonburg, VA 22801, and should refer to the consent special order.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801. A copy of the order may be obtained in person or by mail from this office.

Proposed Consent Special Order for New Kent County

The State Water Control Board proposes to issue a consent special order to the New Kent County to resolve certain alleged violations of environmental laws and regulations occurring at their Chickahominy facility in New Kent County, Virginia. The proposed order requires the county to execute corrective action and pay a $3,400 civil charge.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive for 30 days from the date of publication of this notice written comments related to the proposed consent special order. Comments should be addressed to Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060-6295; or sent to the e-mail address of felupini@deq.virginia.gov. All comments received by email must include your name, address and phone number. A copy of the order may be obtained in person or by mail from the above office.

Proposed Consent Special Order for Norfolk Shipbuilding and Drydock Corporation

The State Water Control Board proposes to enter into a consent special order with the Norfolk Shipbuilding and Drydock Corporation located in Norfolk, Virginia.

The Department of Environmental Quality will receive written comments relating to the board's proposed consent special order from July 26, 2004, through August 25, 2004. Comments should be addressed to David S. Gussman, Department of Environmental Quality - Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462 and should refer to the order specified above. Comments may also be submitted by email to dsgussman@deq.virginia.gov. In order for e-mail comments to be considered, they must include the sender's name, address and phone number. The order is available at www.deq.virginia.gov/enforcement/notices.html and at the above office during regular business hours. You may also request a copy from David S. Gussman at the address above or by calling (757) 518-2179.

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://register.state.va.us.

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
RESPONSE TO PETITION FOR RULEMAKING-RR13
FAST-TRACK RULEMAKING ACTION-RR14

CALENDAR OF EVENTS

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 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

August 3, 2004 - 10 a.m. -- Open Meeting
Holiday Inn-Richmond, 6531 West Broad Street, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to discuss general business matters including complaint cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation and change of meeting time. Any person desiring to attend the meeting and requiring special accommodations or interpretative services should contact the board at (804) 367-8505 or (804) 367-9753/TTY at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the American with Disabilities Act.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY ☎, e-mail boa@boa.virginia.gov.

VIRGINIA AGRICULTURAL COUNCIL

† August 30, 2004 - 8:30 a.m. -- Open Meeting
Holiday Inn, 2864 Prudin Boulevard, Suffolk, Virginia.♿

The council's annual meeting will be held for two days, August 30, 2004, and resuming at 8 a.m. on August 31, 2004, to review grant projects as to progress and results, the financial status of the council for the current fiscal year, and plans for the coming year. The council will visit the sites of projects in the Suffolk area approved by council action. The council will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Thomas Yates at least five days before the meeting date so that suitable arrangements can be made.

Contact: Thomas R. Yates, Executive Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 509, Richmond, VA 23219, telephone (804) 786-6060, FAX (804) 371-8372, (800) 828-1120/TTY ☎, e-mail tyates@vdacs.state.va.us.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Horse Industry Board

September 7, 2004 - 10 a.m. -- Open Meeting
Marion duPont Scott Equine Medical Center, 17690 Old Waterford Road, Library, Leesburg, Virginia ♿

The board will review the minutes of the last meeting, the end of the fiscal year financial report, and the status of marketing projects. The board will also discuss grant guidelines. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., 9th Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 786-3122, e-mail aheid@vdacs.state.va.us.

Virginia Soybean Board

August 5, 2004 - 3 p.m. -- Open Meeting
Mobjack Farms, Route 14, Port Haywood, Virginia.♿

A meeting of the board to discuss checkoff revenues and the financial status of the board following the end of the fiscal year ending June 30, 2004, and to hear and approve the minutes of the March 11, 2004, meeting. Also, reports will be heard from the chairman, United Soybean Board representatives, and from other committees. The board will entertain public comment at the conclusion of all other

business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 906, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, or e-mail phickman@vdacs.state.va.us.

ALCOHOLIC BEVERAGE CONTROL BOARD

August 2, 2004 - 9 a.m. -- Open Meeting
August 16, 2004 - 9 a.m. -- Open Meeting
August 30, 2004 - 9 a.m. -- Open Meeting
September 13, 2004 - 9 a.m. -- Open Meeting
September 27, 2004 - 9 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia.

A meeting to receive and discuss reports and activities from staff members and to discuss other matters not yet determined.

Contact: W. Curtis Coleburn, III, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY ☎, e-mail wccolen@abc.state.va.us.

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† September 27, 2004 - 11 a.m. -- Public Hearing
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia.

† September 27, 2004 - 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 Alcoholic Beverage Control Board intends to amend regulations entitled **3 VAC 5-40, Requirements for Product Approval.** The purpose of the proposed action is to remove certification and chemical analysis requirements for new beer and wine products proposed for sale in Virginia and allow the use of resealable "growlers" for the sale of beer in all on- and off-premises beer retail establishments.

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

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

† September 7, 2004 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia.

A quarterly meeting.

Contact: Janet L. Honeycutt, Director of Grant Operations, Alzheimer's Disease and Related Disorders Commission, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-9333, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, e-mail janet.honeycutt@vda.virginia.gov.

ART AND ARCHITECTURAL REVIEW BOARD

August 6, 2004 - 10 a.m. -- Open Meeting
September 3, 2004 - 10 a.m. -- Open Meeting
October 1, 2004 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia.

A monthly meeting to review projects submitted by state agencies. Art and Architectural Review Board submittal forms and submittal instructions can be downloaded by visiting the DGS forms at www.dgs.state.va.us. Request Submittal Form #DGS-30-905 or DGS Submittal Instructions Form #DGS-30-906.

Contact: Richard L. Ford, AIA Chairman, 101 Shockoe Slip, 3rd Floor, Richmond, VA 23219, telephone (804) 648-5040, FAX (804) 225-0329, toll free (804) 786-6152, or e-mail rford@comarchs.com.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

August 19, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business.

Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail alhi@dpor.virginia.gov.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

August 19, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond Virginia. (Interpreter for the deaf provided upon request)

A quarterly business meeting to include regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

† August 19, 2004 - Noon -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to hear possible violations of the laws and regulations governing the practice of audiology and speech language pathology.

Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

September 27, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting to consider regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. 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: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail barberscosmo@dpor.virginia.gov.

CHARITABLE GAMING BOARD

September 14, 2004 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Discovery Room, Richmond, Virginia.

A general meeting. An agenda will be posted on the agency website.

Contact: Frances C. Jones, Office Manager, Department of Charitable Gaming, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-3014, FAX (804) 786-1079, e-mail Frances.Jones@dcg.virginia.gov.

STATE BOARD FOR COMMUNITY COLLEGES

July 28, 2004 - 1:30 p.m. -- Open Meeting
September 8, 2004 - 1:30 p.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

Meetings of the Academic, Student Affairs and Workforce Committee, the Audit Committee, and the Budget and Finance Committee. The Facilities Committee and the Personnel Committee will meet at 3 p.m. The Executive Committee will meet at 4:30 p.m.

Contact: D. Susan Hayden, Director of Public Affairs, State Board for Community Colleges, VCCS, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY

July 29, 2004 - 9 a.m. -- Open Meeting
September 9, 2004 - 9 a.m. -- Open Meeting
James Monroe Building, 101 N. 14th St., Godwin-Hamel Board Room, 15th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the full board. Public comment may be received at the beginning of the meeting upon notification at least five working days prior to the meeting.

Contact: D. Susan Hayden, Director of Public Affairs, State Board for Community Colleges, Virginia Community College System, 15th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

COMPENSATION BOARD

† August 18, 2004 - 11 a.m. -- Open Meeting
Compensation Board, 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 cindy.waddell@scb.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

July 27, 2004 - 6:30 p.m. -- Open Meeting
Williamsburg Regional Library, 7770 Croaker Road, Community Room, Williamsburg, Virginia.

A meeting of the York River State Park Master Plan Advisory Committee to continue work on development of a new park master plan.

Contact: Robert Munson, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail rsmunson@dcr.state.va.us.

July 28, 2004 - 4 p.m. -- Open Meeting
August 11, 2004 - 7 p.m. -- Open Meeting
August 25, 2004 - 4 p.m. -- Open Meeting
September 15, 2004 - 7 p.m. -- Open Meeting
Appomattox County Community Center, 220 Community Lane, Appomattox, Virginia.

A meeting of the Holliday Lake State Park Master Plan Advisory Committee to continue the development of a new park master plan.

Contact: Scott Bedwell, Environmental Planner, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 371-2594, FAX (804) 371-7899, e-mail sbedwell@dcr.state.va.us.

August 4, 2004 - 7 p.m. -- Open Meeting
Westmoreland State Park, Conference Center, 1650 State Park Road, Montross, Virginia.

The Westmoreland State Park master planning process will be explained, and public input will be received on the draft park mission statement and draft goals and objectives.

Contact: Bill Conkle, Park Planner, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-5492, FAX (804) 371-7899, e-mail bconkle@dcr.state.va.us.

BOARD FOR CONTRACTORS

July 27, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Informal fact-finding conferences.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.virginia.gov.

August 11, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting of the Tradesman and Education Committee to conduct committee business. The department fully complies with the Americans with Disabilities Act.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.virginia.gov.

August 24, 2004 - 9 a.m. -- Open Meeting
† October 19, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A regular scheduled meeting to address policy and procedural issues, review and render decisions on applications for contractors' licenses, and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be conducted in closed session. The department fully complies with the Americans with Disabilities Act.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.virginia.gov.

BOARD OF COUNSELING

August 26, 2004 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Board Room 1, Richmond, Virginia.

A meeting of the Credential Review Committee to review applicants' credentials for licensure.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

August 27, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia.

A business meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

CRIMINAL JUSTICE SERVICES BOARD

September 9, 2004 - 9 a.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

September 10, 2004 - 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 Criminal Justice Services intends to amend regulations entitled **6 VAC 20-180, Crime Prevention Specialists.** The purpose of the proposed action is to expand the program to allow the chief executive of any local, state or federal government agency to designate staff who serve in law-enforcement, crime prevention or criminal justice capacities to become certified as crime prevention specialists. The current law restricts certification to staff from local and state law-enforcement agencies.

Statutory Authority: §§ 9.1-102 and 9.1-161 of the Code of Virginia.

Contact: Tami Wyrick, Program Analyst and Grants Coordinator, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-5664, FAX (804) 692-0948 or e-mail twyrick@dcjs.state.va.us.

September 9, 2004 - 11 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A general business meeting.

Contact: Judith Kirkendall, Regulatory 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.

BOARD OF DENTISTRY

July 30, 2004 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

The board will meet to hold a formal hearing. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail Cheri.Emma-Leigh@dhp.virginia.gov.

July 30, 2004 - 9 a.m. -- Open Meeting
September 10, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia.

A meeting to discuss regular board business. There will be a public comment period at the start of the meeting.

Contact: Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail sandra.reen@dhp.virginia.gov.

August 13, 2004 - 9 a.m. -- Open Meeting
August 20, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A Special Conference Committee will meet to hold informal conferences. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail Cheri.Emma-Leigh@dhp.virginia.gov.

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

August 19, 2004 - 11 a.m. -- Open Meeting
September 16, 2004 - 11 a.m. -- Open Meeting
† October 21, 2004 - 11 a.m. -- Open Meeting
Department of General Services, Eighth Street Office Building, 3rd Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting to review requests submitted by localities to use design-build or construction-management-type contracts. Contact the Division of Engineering and Building to confirm the meeting.

Contact: Rhonda M. Bishton, Administrative Assistant, Department of General Services, 805 E. Broad Street, Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/☎, or e-mail rbishton@dgs.state.va.us.

BOARD OF EDUCATION

July 28, 2004 - 9 a.m. -- Open Meeting
September 22, 2004 - 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. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at http://www.pen.k12.va.us/VDOE/meetings.html. This site will contain the latest information on the meeting arrangements and will note any last-minute changes in time or location. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency at least 72 hours 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 22, 2004 - 11 a.m. -- Public Hearing
James Monroe Building, 101 North 14th Street, Conference Rooms C and D, Richmond, Virginia.

† September 25, 2004 - 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 Education intends to adopt regulations entitled **8 VAC 20-690, Regulations for Scoliosis Screening Program.** The purpose of the proposed action is to implement § 22.1-273.1 of the Code of Virginia, which directs the Board of Education to promulgate regulations for the implementation of scoliosis screenings for pupils in grades five through 10 or a parent informational program for such parents. The regulation (i) requires training for school personnel and volunteers who conduct the screenings; (ii) provides procedures for the notification of parents when evidence of scoliosis is detected; and (iii) mandates a parent education program describing the purpose and need for scoliosis screening.

Statutory Authority: § 22.1-273.1 of the Code of Virginia.

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.

STATE EMERGENCY MEDICAL SERVICES ADVISORY BOARD

August 6, 2004 - 1 p.m. -- Open Meeting
The Place at Innsbrook, 4036 Cox Road, Glen Allen, Virginia.

A quarterly meeting.

Contact: Gary R. Brown, Director, State Emergency Medical Services Advisory Board, 109 Governor St., Suite UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX (804) 864-7580, toll-free (800) 523-6019, e-mail gary.brown@vdh.virginia.gov.

VIRGINIA FIRE SERVICES BOARD

† August 20, 2004 - 1 p.m. -- Open Meeting
Clarion Hotel Roanoke Airport, 3315 Ordway Drive, NW, Classroom 3, Roanoke, Virginia. (Interpreter for the deaf provided upon request)

Meetings of the Fire Education and Training Committee at 1 p.m.; Fire Prevention and Control Committee at 2:30 p.m.; and Administration, Policy and Finance Committee at 3:30 p.m.

Contact: Christy King, Policy, Planning and Legislative Affairs Manager, 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.

† August 21, 2004 - 9 a.m. -- Open Meeting
Clarion Hotel Roanoke Airport, 3315 Ordway Drive, NW, Classroom 3, Roanoke, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the full board.

Contact: Christy King, Policy, Planning and Legislative Affairs Manager, 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

July 27, 2004 - 7 p.m. -- Open Meeting
Chesapeake Conference Center, 900 Greenbrier Circle, Chesapeake, Virginia. (Interpreter for the deaf provided upon request)

July 28, 2004 - 7 p.m. -- Open Meeting
Dorey Recreation Center, 7200 Dorey Park Drive, Varina, Virginia. (Interpreter for the deaf provided upon request)

July 29, 2004 - 7 p.m. -- Open Meeting
Department of Forestry Central Office, 900 Natural Resources Drive, Charlottesville, Virginia. (Interpreter for the deaf provided upon request)f

An information-gathering session to discuss Senate Joint Resolution 75. The discussion will address landowners' concerns and recommendations regarding forest preservation incentives.

Contact: Donna S. Hoy, Administrative Staff Specialist, Department of Forestry, 900 Natural Resources Dr., Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, (434) 977-6555/TTY ☎, e-mail hoyd@dof.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

July 27, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

An informal conference to 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, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

September 7, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A quarterly business meeting to include regulatory and disciplinary matters as may be presented 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, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

October 5, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting of the Task Force on Inspection Process to review current inspection procedures for funeral homes.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

BOARD OF GAME AND INLAND FISHERIES

† August 19, 2004 - 9 a.m. -- Public Hearing
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will meet and receive staff's recommendations for migratory waterfowl (ducks and coots, geese and brant, swan, gallinules and moorhens) and falconry seasons and bag limits based on frameworks provided by the U.S. Fish and Wildlife Service. It will then solicit and hear comments from the public in a public hearing, at which time any interested citizen present shall be heard, and adopt 2004-

2005 seasons and bag limits for those species. The board intends to consider for final adoption regulation amendments proposed on June 25, 2004, to (i) establish an annual hunting stamp required to hunt on private lands managed by the department through a lease agreement or similar memorandum of understanding and (ii) define waterfowl blinds. A public comment period on the proposed regulation amendments opened June 25 and will close August 19, 2004; to ensure the board has adequate opportunity to review written comments, however, they should be received by the Department of Game and Inland Fisheries no later than August 12, 2004. At the August 19, 2004, meeting, the board will solicit comments from the public in a public hearing, at which time any interested citizen present shall be heard; it will receive staff's recommendations regarding final adoption of amendments; and it then will determine whether the amendments proposed on June 25 will be adopted as final regulations. The board reserves the right to adopt final amendments that may be more liberal than, or more stringent than, the regulations currently in effect or the regulation amendments proposed at the June 25, 2004, meeting, as necessary for the proper management of wildlife resources. The board may also: review possible proposals for legislation for the 2005 Session of the General Assembly; discuss general and administrative issues; hold a closed session at some time during the meeting; and elect to hold a dinner Wednesday evening, August 18, or after the meeting on Thursday, August 19, at a location and time to be determined.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4016 W. Broad St., Richmond VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail regcomments@dgif.state.va.us.

BOARD FOR GEOLOGY

† October 13, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business.

Contact: David E. Dick, Executive Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail geology@dpor.state.va.us.

DEPARTMENT OF HEALTH

† July 26, 2004 - 6 p.m. -- Open Meeting
Danville Community College, Oliver Hall in the Temple Building, Danville, Virginia.

† July 28, 2004 - 6 p.m. -- Open Meeting
J. Sargeant Reynolds Community College, North Run Campus Auditorium, Richmond, Virginia.

One of several Town Hall meetings held across the Commonwealth this summer. The goal is to hear recommendations from the medical community and citizens on how to promote sufficient access to obstetrical services in furtherance of Governor Warner's Executive Directive on this critical issue. Directions to the meeting place can be obtained at www.dcc.vccs.edu/AboutDCC/directions.htm

Contact: Joe Hilbert, Deputy Commissioner, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7001, FAX (804) 864-7022, e-mail joe.hilbert@vdh.virginia.gov.

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† August 17, 2004 - 7 p.m. -- Public Hearing
Warrenton Community Center, 430 East Shirley Avenue, Warrenton, Virginia.

† August 18, 2004 - 7 p.m. -- Public Hearing
Henrico Training Center, 7701 East Parham Road, Room 2032, Richmond, Virginia.

† August 19, 2004 - 7 p.m. -- Public Hearing
Prince Edward County Courthouse, 124 North Main Street, Farmville, Virginia.

† September 24, 2004 - 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 5-585, Biosolids Use Regulations.** The purpose of the proposed action is to provide requirements for (i) posting of information signs at land application sites; (ii) evidence of land applier financial responsibility; (iii) notifying local government of operation schedules; (iv) spill prevention and response plans; and (v) communicating information on complaints about land application of biosolids.

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

Contact: C.M. Sawyer, P.E., Director, Division of Wastewater Engineering, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7463, FAX (804) 864-7475 or email cal.sawyer@vdh.virginia.gov.

† October 21, 2004 - 9 a.m. -- Open Meeting
† October 22, 2004 - 9 a.m. -- Open Meeting
Richmond, Virginia.

A two-day quarterly board meeting.

Contact: Margot Fritts, VDH/Office of Health Policy and Planning, Department of Health, 109 Governor St., 10th Floor, Richmond, VA 23219, telephone (804) 864-7428, FAX (804) 864-7440, e-mail margot.fritts@vdh.virginia.gov.

BOARD OF HEALTH PROFESSIONS

August 13, 2004 - 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 Health Professions intends to adopt regulations entitled **18 VAC 75-40, Regulations Governing the Criteria for Certification of Dialysis Technicians.** The purpose of the proposed action

is to establish the criteria for certification as a dialysis technician.

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

Public comments may be submitted until August 13, 2004, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email Elaine.yeatts@dhp.virginia.gov.

DEPARTMENT OF HEALTH PROFESSIONS

August 20, 2004 - 9 a.m. -- Open Meeting
October 8, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, Alcoa Building, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

A meeting of the Intervention Program Committee for the Health Practitioners' Intervention Program (HPIP).

Contact: Donna P. Whitney, Intervention Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9424, FAX (804) 662-7358, e-mail donna.whitney@dhp.virginia.gov.

September 8, 2004 - 11 a.m. -- Open Meeting
Virginia State Forensic Science Building, 6600 Northside High School Road, Roanoke, Virginia.

A working meeting of the Advisory Committee Prescription Monitoring Program for the purpose of reviewing data collected for the Program Evaluation Workplan and planning for a fall conference. Public comments will be received during this meeting.

Contact: Ralph Orr, Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9129, FAX (804) 662-9240.

BOARD FOR HEARING AID SPECIALISTS

† September 24, 2004 - 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 80-10, Public Participation Guidelines.** The purpose of the proposed action is to update the Public Participation Guidelines, which provide the process through which the public has access to the regulatory review process. The amendments further increase the agency's efficiency in seeking public input into the regulatory process.

Statutory Authority: §§ 2.2-4007 and 54.1-201 of the Code of Virginia.

Contact: Karen W. O'Neal, Deputy Director for Regulatory Programs, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or e-mail Karen.O'Neal@dpor.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

August 27, 2004 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia.

A regular business meeting of the board.

Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY ☎, e-mail steve.calhoun@dhcd.virginia.gov.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

July 28, 2004 - 9 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

The annual meeting of the Board of Commissioners to elect a Chairman and Vice Chairman and to review and, if appropriate, approve the minutes from the prior meeting. The board may consider for approval and ratification mortgage loan commitments under its various programs; will review the authority's operations for prior months; and may consider such other matters and take such other actions as deemed appropriate. Various committees of the Board of Commissioners, including the Programs Committee, the Audit/Operations Committee, the Executive Committee and the Committee of the Whole, may also meet during the day preceding the meeting and before or after the meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. The annual meeting of the shareholders and board of directors of Housing for Virginia, Inc., a corporation wholly owned by the authority, will be held following the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY ☎

VIRGINIA INTERAGENCY COORDINATING COUNCIL

September 8, 2004 - 9:30 a.m. -- Open Meeting
Henrico Area Mental Health, 10299 Woodman Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting to advise and assist the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, as lead agency for Part C (of IDEA), early intervention for infants and toddlers with disabilities and their families. Discussion focuses on issues related to Virginia's implementation of the Part C program.

Contact: LaKeisha White, Part C Office Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 9th Floor, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3710, FAX (804) 371-7959.

JAMESTOWN-YORKTOWN FOUNDATION

August 4, 2004 - 2 p.m. -- Open Meeting
McGuireWoods, One James Center, 901 East Cary Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the Executive Committee of the Jamestown 2007 Steering Committee.

Contact: Stacy Ruckman, Administrative Office Manager, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4253, FAX (757) 253-5299, (757) 253-5110/TTY ☎, e-mail sruckman@jyf.state.va.us.

October 6, 2004 - Noon -- Open Meeting
The Library of Virginia, 800 East Broad Street, Conference Rooms A and B, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the Jamestown 2007 Steering Committee.

Contact: Stacy Ruckman, Administrative Office Manager, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4253, FAX (757) 253-5299, (757) 253-5110/TTY ☎, e-mail sruckman@jyf.state.va.us.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Migrant and Seasonal Farmworkers Board

July 28, 2004 - 10 a.m. -- Open Meeting
State Capitol, House Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular quarterly meeting.

Contact: Betty B. Jenkins, Board Administrator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2391, FAX (804) 371-6524, (804) 786-2376/TTY ☎, e-mail bbj@doli.state.va.us.

VIRGINIA MANUFACTURED HOUSING BOARD

August 19, 2004 - 10 a.m. -- Open Meeting
The Jackson Center, 501 North 2nd Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting to receive and address complaints against manufactured housing licensees, review claims to the Transaction Recovery Fund, and carry out administration of the Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis L. McIver, State Building Code Administrator, Virginia Manufactured Housing Board, 501 N. 2nd Street, Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY ☎, e-mail Curtis.McIver@dhcd.virginia.gov.

BOARD OF MEDICAL ASSISTANCE SERVICES

September 14, 2004 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia.

A quarterly meeting.

Contact: Nancy Malczewski, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8096, FAX (804) 371-4981, (800) 343-0634/TTY ☎, e-mail nancy.malczewski@dmas.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

August 17, 2004 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia.

A meeting of the Pharmacy Liaison Committee to discuss current pharmacy issues and programs.

Contact: Javier Menendez, RPh, Pharmacy Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300 Richmond, VA 23219, telephone (804) 786-2196, (800) 343-0634/TTY ☎, e-mail javier.menendez@dmas.virginia.gov.

August 23, 2004 - 9 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Board Room, 13th Floor, Richmond, Virginia.

A meeting of the Pharmacy and Therapeutics Committee to conduct the annual review of Phase I PDL drug classes.

Contact: Adrienne Fegans, Program Operations Administrator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-4112, FAX (804) 371-4981, (800) 343-0634/TTY ☎, e-mail adrienne.fegans@dmas.virginia.gov.

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August 27, 2004 - 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 purpose of the proposed action is to conform the Medallion II regulations to the Balanced Budget Act of 1997, and to update these regulations with respect to the Medallion waiver and current program practices.

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

Public comments may be submitted until August 27, 2004, to Tammy Driscoll, Health Care Services Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

Contact: Brian McCormick, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680 or e-mail Brian.McCormick@dmas.virginia.gov.

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August 27, 2004 - 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 purpose of the proposed action is to conform the Medallion regulations to the Balanced Budget Act of 1997, and to update these regulations with respect to the Medallion waiver and current program practices.

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

Public comments may be submitted until August 27, 2004, to Alissa Nashwinter, Health Care Services Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

Contact: Brian McCormick, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680 or e-mail Brian.McCormick@dmas.virginia.gov.

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September 10, 2004 - 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 30-40, Eligibility Conditions and Requirements.** The purpose of the proposed action is to (i) eliminate the resource test for Low-Income Families with Children and for Individuals Under Age 21 for whom a public agency is assuming full or partial financial responsibility; (ii) eliminate the counting of all earned income of a child younger than age 19 who is a student; and (iii) eliminate the counting of all in-kind support and maintenance received by members of the family and children's covered groups.

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

Contact: Pat Sykes, Eligibility Manager, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680 or e-mail Patricia.sykes@dmas.virginia.gov.

September 15, 2004 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia.

A meeting of the Medicaid Transportation Advisory Committee to discuss issues and concerns about Medicaid transportation with the committee and the community.

Contact: Donna Garrett, Administrative Assistant, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0194, FAX (804) 786-5799, (800) 343-0634/TTY ☎, e-mail donna.garrett@dmas.virginia.gov.

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† September 24, 2004 - 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 30-10, State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions,** and **12 VAC 30-130, Amount, Duration and Scope of Selected Services.** The purpose of the proposed action is to modify the prospective drug utilization review provisions in order to better protect recipients from harmful drug interactions and potential prescription overdoses.

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

Public comments may be submitted until September 24, 2004, to Javier Menendez, R.Ph., Manager, Pharmacy Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov.

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† September 24, 2004 - 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 **12 VAC 30-50, Amount, Duration, and Scope of Medical and Remedial Care Services**. The purpose of the proposed action is to expand Medicaid covered services in the schools for children in special education.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Item 325 XX and EEE of Chapter 1042 of the 2003 Acts of Assembly.

Public comments may be submitted until September 24, 2004, to Adrienne Fegans, Program Ops Administrator, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov.

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† September 24, 2004 - 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 **12 VAC 30-50, Amount, Duration, and Scope of Medical and Remedial Care Services, 12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care; and 12 VAC 30-130, Amount, Duration and Scope of Selected Services**. The purpose of the proposed action is to promulgate permanent regulations to provide for the Preferred Drug List, Pharmacy and Therapeutics Committee, State Supplemental Rebates for drugs, and Utilization Review of High Drug Thresholds.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Item 325 ZZ of Chapter 1042 of the 2003 Acts of Assembly.

Public comments may be submitted until September 24, 2004, to Adrienne Fegans, Program Ops Administrator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov.

Drug Utilization Review Board

August 5, 2004 - 2 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia.

A quarterly meeting to review new drugs on the market and discuss current drug utilization policy.

Contact: Javier Menendez, Pharmacy Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-2196, (800) 343-0634/TTY ☎, e-mail javier.menendez@dmas.virginia.gov.

BOARD OF MEDICINE

July 28, 2004 - 9 a.m. -- Open Meeting
† August 25, 2004 - 9 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

† August 4, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

† August 11, 2004 - 9 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

† August 17, 2004 - 9 a.m. -- Open Meeting
Clarion Hotel, 3315 Ordway Drive, Roanoke, Virginia.

An informal conference committee 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. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixson, Staff, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail peggy.sadler@dhp.virginia.gov.

August 13, 2004 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

The Executive Committee will consider regulatory and disciplinary matters 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, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

† August 13, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

The full board or panel of the board will convene a formal administrative hearing to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. Further, the board may review cases with staff for case disposition including consideration of consent orders for settlement. The board will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler, Renee Dixson, Staff, Board of Medicine, 6603 West Broad Street, Richmond, VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail peggy.sadler@dhp.virginia.gov.

† October 14, 2004 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

A meeting to consider 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: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.state.va.us.

† October 14, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

The Credentials Committee will meet to consider applicants for licensure and other matters of the board. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.state.va.us.

† October 14, 2004 - 1 p.m. -- Open Meeting
† October 15, 2004 - 8 a.m. -- Open Meeting
† October 16, 2004 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Richmond, Virginia.

Formal hearings and informal conferences 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 board may review cases with other staff members for case disposition including consideration of consent orders for settlement. The board will convene into open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler/Renee Dixson, Staff, Board of Medicine, Alcoa Bldg., Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail peggy.sadler@dhp.virginia.gov.

Advisory Board on Acupuncture

September 22, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of acupuncture. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Athletic Training

September 23, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of athletic training. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Physician Assistants

September 23, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of physician assistants. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board of Occupational Therapy

September 21, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of occupational therapy. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Radiologic Technology

September 22, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of radiologic technology. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Respiratory Care

September 21, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of respiratory care. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

August 24, 2004 - 10 a.m. -- Public Hearing
Jefferson Building, 1220 Bank Street, 9th Floor Conference Room, Richmond, Virginia.

A public hearing to receive comments on the Virginia Community Mental Health Services Performance Partnership Block Grant Application for federal fiscal year 2005. Copies of the application are available for review at the Office of Mental Health Services, Jefferson Building, 10th Floor, Richmond, VA 23219, and at each community services board office. Comments may be made at the hearing or in writing by no later than August 24, 2004, to the Office of the Commissioner, DMHMRSAS, P.O. Box 1797, Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact William T. Ferriss, LCSW. Copies of oral presentations should be filed at the time of the hearing.

Contact: William T. Ferriss, LCSW, Office of Mental Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-4837, FAX (804) 371-0091, (804) 371-8977/TTY ☎.

August 24, 2004 - 1 p.m. -- Open Meeting
September 24, 2004 - 9 a.m. -- Open Meeting
† October 26, 2004 - 1 p.m. -- Open Meeting
Virginia Housing and Development Authority, 601 Belvidere Street, Richmond, Virginia.

A meeting of the Olmstead Community Integration Implementation Team.

Contact: Viktoria Glenn, Administrative Assistant, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288, telephone (804) 662-7069, FAX (804) 662-7662, e-mail glennvh@drs.state.va.us.

† September 8, 2004 - 11 a.m. -- Open Meeting
† September 9, 2004 - 9 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 Belvidere Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Olmstead Community Integration Oversight Advisory Committee.

Contact: Viktoria Glenn, Admin. Asst., Department of Mental Health, Mental Retardation and Substance Abuse Services, 8004 Franklin Farms Dr., P.O. Box K300, Richmond, VA 23288, telephone (804) 662-7069, e-mail glennvh@drs.state.va.us.

STATE MILK COMMISSION

August 25, 2004 - 10:30 a.m. -- Open Meeting
Department of Forestry, Office Building, 900 Natural Resources Drive, Room 2063, Charlottesville, Virginia

A regular meeting to consider industry issues, distributor licensing, base transfers, and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify the agency meeting contact at least five working days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Washington Bldg., 1100 Bank St., Suite 1019, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.

DEPARTMENT OF MINES, MINERALS AND ENERGY

† September 26, 2004 - 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 amend regulations entitled **4 VAC 25-130, Coal Surface Mining Reclamation Regulations.** The purpose of the proposed action is to amend alternative bond release procedures to be consistent with performance bond procedures.

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Public comments may be submitted until September 26, 2004, to Butch Lambert, Reclamation Specialist, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, Drawer 900, Big Stone Gap, VA 24219, telephone (276) 523-8286.

Contact: Stephen Walz, Regulatory Coordinator, 202 N. 9th St., 8th Floor, Richmond, VA 23219, telephone (804) 692-3211, FAX (804) 692-3237 or e-mail Stephen.Walz@dmme.virginia.gov.

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

August 11, 2004 - 8 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting.

Contact: Jacquelin Branche, R. N., Division Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond VA 23269-0001, telephone (804) 497-7188, FAX (804) 367-1604, toll-free (800) 435-5137, (804) 272-9268/TTY ☎, e-mail dmvj3b@dmv.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

September 9, 2004 - 8 a.m. -- Open Meeting
October 5, 2004 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, Main Lobby Conference Room, 200 North Boulevard, Richmond, Virginia.

A 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, 200 N. Boulevard, Richmond, VA 23220-4007, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

September 21, 2004 - 1 p.m. -- Open Meeting
Virginia Museum of Fine Arts, CEO Parlor, 200 North Boulevard, Richmond, Virginia.

A meeting for staff to orient new trustees. Public comment will not be heard.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220-4007, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

BOARD OF NURSING

August 4, 2004 - 9 a.m. -- Open Meeting
August 17, 2004 - 9 a.m. -- Open Meeting
August 24, 2004 - 9 a.m. -- Open Meeting
August 30, 2004 - 9 a.m. -- Open Meeting
September 2, 2004 - 9 a.m. -- Open Meeting
October 4, 2004 - 9 a.m. -- Open Meeting
October 12, 2004 - 9 a.m. -- Open Meeting
† October 13, 2004 - 9 a.m. -- Open Meeting
† October 19, 2004 - 9 a.m. -- Open Meeting
† October 26, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

August 31, 2004 - 9 a.m. -- Open Meeting
† October 14, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A Special Conference Committee comprised of two or three members of the Virginia Board of Nursing will conduct informal conferences with licensees and certificate holders. Public comment will not be received.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.virginia.gov.

September 9, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting of the Nursing Practice Advisory Committee to discuss nursing practice issues.

Contact: Jay P. Douglas, Executive Director, Board of Nursing, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, e-mail nursebd@dhp.virginia.gov.

September 20, 2004 - 9 a.m. -- Open Meeting
September 22, 2004 - 9 a.m. -- Open Meeting
September 23, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 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: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.virginia.gov.

September 21, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

A general business meeting including committee reports, consideration of regulatory action, and disciplinary case decisions as presented on the agenda. Public comment will be received at 11 a.m.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail jay.douglas@dhp.virginia.gov.

JOINT BOARDS OF NURSING AND MEDICINE

August 25, 2004 - 9 a.m. -- Open Meeting
† October 20, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting of the Joint Boards of Nursing and Medicine.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, e-mail nursebd@dhp.virginia.gov.

BOARD OF NURSING HOME ADMINISTRATORS

† July 26, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

The Credentials Committee will meet to hold informal conferences. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Board of Nursing Home Administrators, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-7457, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail Cheri.Emma-Leigh@dhp.virginia.gov.

BOARD FOR OPTICIANS

July 30, 2004 - 9:30 a.m. -- Open Meeting
October 8, 2004 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

The board will conduct a general business meeting to consider regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. 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. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, executive Director, Board for Opticians, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY☎, or e-mail opticians@dpor.virginia.gov.

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† September 24, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

† September 24, 2004 - 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 Opticians intends to amend regulations entitled **18 VAC 100-20, Board for Opticians Regulations.** The purpose of the proposed action is to amend regulations for registration for voluntary practice by out-of-state licensees in accordance with § 54.1-1701.5 of the Code of Virginia.

Statutory Authority: § 54.1-201 of the Code of Virginia and Chapter 740 of the 2002 Acts of Assembly.

Contact: William H. Ferguson, II, executive Director, Board for Opticians, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8310, FAX (804) 367-6295, (804) 367-9753/TTY☎, or e-mail opticians@dpor.virginia.gov.

BOARD OF PHARMACY

July 27, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

A Special Conference Committee will discuss disciplinary matters. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.

BOARD OF PHYSICAL THERAPY

† October 15, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A quarterly business meeting to include regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 West Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

POLYGRAPH EXAMINERS ADVISORY BOARD

September 2, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business. The board fully complies with the Americans with Disabilities Act.

Contact: Eric Olson, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail eric.olson@dpor.virginia.gov.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

September 20, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Conference Room 5W, Richmond, Virginia.

A quarterly meeting.

Contact: Judy Spiller, Executive Secretary, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519, FAX (804) 367-9537, (804) 367-9753/TTY ☎, e-mail judy.spiller@dpor.virginia.gov.

BOARD OF PSYCHOLOGY

October 12, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A business meeting to include reports from standing committees and any other disciplinary or regulatory 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 Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

September 23, 2004 - 10 a.m. -- Open Meeting
1610 Forest Avenue, Suite 100, Richmond, Virginia.

A quarterly meeting.

Contact: Terry Raney, Guardianship Coordinator, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, e-mail traney@vda.virginia.gov.

VIRGINIA RACING COMMISSION

August 13, 2004 - 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 Racing Commission intends to promulgate regulations entitled **11 VAC 10-45, Advance Deposit Account Wagering.** The purpose of the proposed action is to establish licensure requirements for individuals and entities conducting advance deposit account wagering in Virginia, including the application and license renewal procedures.

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

Contact: Nick A. Christner, Regulatory Coordinator, Virginia Racing Commission, P.O. Box 208, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7408, FAX (804) 966-7422, e-mail christner@vrc.state.va.us.

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September 10, 2004 - 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 Racing Commission intends to promulgate regulations entitled **11 VAC 10-45, Advance Deposit Account Wagering.** The purpose of the proposed action is to establish licensure requirements for individuals and entities conducting advance deposit account wagering in Virginia, including the application and license renewal procedures.

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

Contact: David S. Lermond, Regulatory Coordinator, Virginia Racing Commission, P.O. Box 208, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7422, e-mail David.Lermond@vrc.state.va.us.

REAL ESTATE APPRAISER BOARD

August 17, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail Karen.O'Neal@dpor.virginia.gov.

VIRGINIA RESOURCES AUTHORITY

August 10, 2004 - 9 a.m. -- Open Meeting
September 21, 2004 - 9 a.m. -- Open Meeting
Eighth and Main Building, 707 East Main Street, 2nd Floor, 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., 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

August 11, 2004 - 10 a.m. -- Open Meeting
September 15, 2004 - 10 a.m. -- Open Meeting
† October 20, 2004 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.

A meeting to hear appeals of health department denials of septic tank permits.

Contact: Susan Sherertz, Secretary to the Board, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7464, FAX (804) 864-7475, e-mail susan.sherertz@vdh.virginia.gov.

DEPARTMENT OF TAXATION

State Land Evaluation Advisory Council

August 3, 2004 - 11 a.m. -- Open Meeting
September 7, 2004 - 11 a.m. -- Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia.

A meeting of the State Land Evaluation Advisory Council to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager, Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020, FAX (804) 367-8662, e-mail kmawyer@tax.state.va.us.

TREASURY BOARD

August 18, 2004 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Room, Richmond, Virginia.

A regular meeting.

Contact: Melissa Mayes, Treasury Board Secretary, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011, FAX (804) 225-3187, e-mail melissa.mayes@trs.state.va.us.

STATE WATER CONTROL BOARD

August 3, 2004 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

A meeting of the advisory committee assisting in the development of amendments to the State Water Control Board Nutrient Enriched Waters Policy.

Contact: John M. Kennedy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4312, FAX (804) 698-4116, e-mail jmkennedy@deq.virginia.gov.

August 11, 2004 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia.

A meeting of the technical advisory committee assisting the department in the reissuance of the general VPDES permit for domestic sewage discharges of less than or equal to 1,000 gallons per day.

Contact: Lily Choi, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4054, FAX (804) 698-4032, e-mail ychoi@deq.virginia.gov.

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August 11, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

August 12, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

August 16, 2004 - 7 p.m. -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk, Virginia.

September 10, 2004 - 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.** The purpose of the proposed action is to amend the antidegradation policy of the Water Quality Standards by designating a section of Ragged Island Creek as an exceptional water.

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC § 1251 et seq.) and 40 CFR Part 131.

Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522 or e-mail jwgregory@deq.virginia.gov.

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August 11, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

August 12, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

August 16, 2004 - 7 p.m. -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk, Virginia.

September 10, 2004 - 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.** The purpose of the proposed action is to amend the antidegradation policy of the Water Quality Standards by designating a section of Little Stony Creek as an exceptional water.

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC § 1251 et seq.) and 40 CFR Part 131.

Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522 or e-mail jwgregory@deq.virginia.gov.

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August 11, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

August 12, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

August 16, 2004 - 7 p.m. -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk, Virginia.

September 10, 2004 - 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.** The purpose of the proposed action is to amend the antidegradation policy of the Water Quality Standards by designating a section of Bottom Creek as an exceptional water.

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC § 1251 et seq.) and 40 CFR Part 131.

Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522 or e-mail jwgregory@deq.virginia.gov.

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August 11, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

August 12, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

August 16, 2004 - 7 p.m. -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk, Virginia.

September 10, 2004 - 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.** The purpose of the proposed action is to amend the antidegradation policy of the Water Quality Standards by designating Lake Drummond and portions of Brown Mountain Creek, Laurel Fork, North Fork of the Buffalo River, Pedlar River, Ramseys Draft and Whitetop Laurel Creek as exceptional waters.

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC § 1251 et seq.) and 40 CFR Part 131.

Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522 or e-mail jwgregory@deq.virginia.gov.

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August 13, 2004 - 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 25-191, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations.** The purpose of the proposed action is to develop and adopt a general permit regulation to comply with the requirements set forth in 40 CFR Parts 9, 122, 123, and 412, as published in the Federal Register, Volume 68, No. 29, dated February 12, 2003. This general permit regulation will govern the authorization to manage pollutants from concentrated animal feeding operations, including storage and land application of animal waste.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1 of the Code of Virginia.

Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvansoest@deq.virginia.gov.

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August 13, 2004 - 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 25-192, Virginia Pollutant Abatement (VPA) General Permit Regulation for Animal Feeding Operations.** The purpose of the proposed action is to reissue the existing Virginia Pollution Abatement General Permit for Confined Animal Feeding Operations that governs the authorization to manage pollutants from confined animal feeding operations, including storage and land application of animal waste. This action is not related to implementation of the federal CAFO rule.

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

Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvansoest@deq.virginia.gov.

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August 13, 2004 - 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 25-630, Virginia Pollutant Abatement General Permit for Poultry Waste Management.** The purpose of the proposed action is to amend the VPA general permit for poultry waste management, where applicable, to reflect changes to 40 CFR Parts 9, 122, 123, and 412, as published in the Federal Register on February 12, 2003.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA

23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvansoest@deq.virginia.gov.

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August 26, 2004 - 3 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

September 10, 2004 - 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 25-660, Virginia Water Protection General Permit for Impacts Less than One-Half of an Acre.** The purpose of the proposed action is to correct several administrative procedures, clarify application and permitting requirements and allow for a more efficient application review process.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.virginia.gov.

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August 26, 2004 - 3 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

September 10, 2004 - 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 25-670, Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities.** The purpose of the proposed action is to allow for revisions to the general permit regulation to correct several administrative procedures, clarify application and permitting requirements, and allow for a more efficient application review process.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.virginia.gov.

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August 26, 2004 - 3 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

September 10, 2004 - 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 25-680, Virginia Water Protection General Permit for Linear Transportation Projects.** The purpose of the proposed action is to allow for revisions to the general permit regulation to correct several administrative procedures, clarify application and permitting requirements and allow for a more efficient application review process.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.virginia.gov.

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August 26, 2004 - 3 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

September 10, 2004 - 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 25-690, Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities.** The purpose of the proposed action is to correct several administrative procedures, clarify application and permitting requirements and allow for a more efficient application review process.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.virginia.gov.

August 31, 2004 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.

A regular board meeting.

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.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

September 14, 2004 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business.

Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail waterwasteoper@dpor.virginia.gov.

INDEPENDENT

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

† July 29, 2004 - 10 a.m. -- Open Meeting
Virginia Office for Protection and Advocacy, 1910 Byrd Avenue, Suite 5, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Disabilities Advisory Council. Public comment is welcome and will be received at the beginning of the meeting. For those needing interpreter services or other accommodations, please contact Dee Vance.

Contact: Delicia (Dee) Vance, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, Virginia 23230, telephone (804) 662-7099, FAX (804) 662-7057, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail vancedm@vopa.state.va.us.

VIRGINIA RETIREMENT SYSTEM

August 17, 2004 - Noon -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia.

A regular meeting of the Optional Retirement Plan Advisory Committee. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, 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 lking@vrs.state.va.us

August 18, 2004 - 9 a.m. -- Open Meeting
August 19, 2004 - 9 a.m. -- Open Meeting
Location to be determined.

Please note that the location of the Board of Trustees Annual Retreat will be determined at a later date.

Contact: LaShaunda B. King, Executive Assistant, 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 lking@vrs.state.va.us.

August 18, 2004 - 11 a.m. -- Open Meeting
Virginia Retirement System Investment Department, Bank of America Building, 1111 East Main Street, Richmond, Virginia.

The following committees will meet:

11 a.m. - Investment Advisory Committee
2:30 p.m. - Benefits and Actuarial Committee
4 p.m. - Administration and Personnel Committee
4 p.m. - Audit and Compliance Committee

Contact: Phyllis Henderson, Administrative Assistant, Virginia Retirement System, 1111 E. Main St., Richmond, VA 23219, telephone (804) 697-6675, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail phenderson@vrs.state.va.us.

October 6, 2004 - 2:30 p.m. -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia.

A regular meeting of the Benefits and Actuarial Committee. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3124/TTY ☎, e-mail lking@vrs.state.va.us.

October 7, 2004 - 9 a.m. -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 E. Main Street, Richmond, Virginia.

A regular meeting of the Board of Trustees. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main Street, Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY☎, or e-mail lking@vrs.state.va.us.

LEGISLATIVE

VIRGINIA CODE COMMISSION

August 18, 2004 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Street, 6th Floor, Speaker's Conference Room, Richmond, Virginia.

A meeting to continue with the revisions of Titles 1, 3.1 and 37.1 and to conduct any other business that may come before the commission. A brief public comment period is scheduled at the end of the meeting.

Contact: Jane Chaffin, Registrar of Regulations, Virginia Code Commission, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

September 16, 2004 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 2nd Floor, Room 250, Richmond, Virginia.

FOIA and Geographic Information System Subcommittee meeting.

Contact: Lynda Waddill, Administrative Assistant, or Lisa Wallmeyer, Assistant Director, Virginia Freedom of Information Advisory Council, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail foiacouncil@leg.state.va.us.

September 16, 2004 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A regular meeting.

Contact: Lynda Waddill, Administrative Assistant, or Lisa Wallmeyer, Assistant Director, Virginia Freedom of Information Advisory Council, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail foiacouncil@leg.state.va.us.

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

August 3, 2004 - 9:30 a.m. -- Canceled - to be rescheduled
† August 10, 2004 - 9:30 a.m. -- Open Meeting
September 21, 2004 - 9:30 a.m. -- Open Meeting
† October 19, 2004 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A meeting of the JCOTS Computer Crimes Advisory Committee.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

August 4, 2004 - 1:30 p.m. -- Open Meeting
September 22, 2004 - 1:30 p.m. -- Open Meeting
† October 20, 2004 - 1:30 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A meeting of the JCOTS Nanotechnology Advisory Committee.

Contact: Eric Link, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

August 17, 2004 - 9:30 a.m. -- Open Meeting
October 5, 2004 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A meeting of the JCOTS's Integrated Government Advisory Committee.

Contact: Eric Link, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

August 18, 2004 - 1:30 p.m. -- Open Meeting
October 6, 2004 - 1:30 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A meeting of the JCOT's Privacy Advisory Committee.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

September 8, 2004 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A full commission meeting to discuss computer security.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

July 26
† Health, Department of
† Nursing Home Administrators, Board of
July 27
Conservation and Recreation, Department of
Contractors, Board for
Forestry, Board of
Funeral Directors and Embalmers, Board of
Pharmacy, Board of
July 28
Community Colleges, State Board for
Conservation and Recreation, Department of
Education, Board of
Forestry, Board of
† Health, Department of
Housing Development Authority, Virginia
Labor and Industry, Department of
- Virginia Migrant and Seasonal Farmworkers Board
Medicine, Board of
July 29
Community Colleges, State Board for
Forestry, Board of
† Protection and Advocacy, Virginia Office for
July 30
Dentistry, Board of
Opticians, Board for
August 2
Alcoholic Beverage Control Board

August 3
Accountancy, Board of
Taxation, Department of
- State Land Evaluation Advisory Council
Water Control Board, State

August 4
Conservation and Recreation, Department of
Jamestown-Yorktown Foundation
† Medicine, Board of
Nursing, Board of
Technology and Science, Joint Commission on

August 5
Agriculture and Consumer Services, Department of
- Virginia Soybean Board
Medical Assistance Services, Department of
- Drug Utilization Review Board

August 6
Art and Architectural Review Board
Emergency Medical Services Advisory Board, State

August 10
Resources Authority, Virginia
† Technology and Science, Joint Commission on

August 11
Conservation and Recreation, Department of
Contractors, Board for
† Medicine, Board of
Motor Vehicles, Department of
- Medical Advisory Board
Sewage Handling and Disposal Appeal Review Board
Water Control Board, State

August 13
Dentistry, Board of
Medicine, Board of

August 16
Alcoholic Beverage Control Board

August 17
Medical Assistance Services, Department of
- Pharmacy Liaison Committee
† Medicine, Board of
Nursing, Board of
Real Estate Appraiser Board
Retirement System, Virginia
Technology and Science, Joint Commission on

August 18
Code Commission, Virginia
† Compensation Board
Retirement System, Virginia
Technology and Science, Joint Commission on
Treasury Board

August 19
Asbestos, Lead, and Home Inspectors, Virginia Board for
† Audiology and Speech-Language Pathology, Board of
Design-Build/Construction Management Review Board
Manufactured Housing Board, Virginia
Retirement System, Virginia

August 20
Dentistry, Board of
† Fire Services Board, Virginia
Health Professions, Department of

August 21
† Fire Services Board, Virginia

August 23
Medical Assistance Services, Department of
- Pharmacy and Therapeutics Committee

August 24
Contractors, Board for
Mental Health, Mental Retardation and Substance Abuse Services, Department of
Nursing, Board of

August 25
Conservation and Recreation, Department of
† Medicine, Board of
Milk Commission, State
Nursing and Medicine, Joint Boards of

August 26
Counseling, Board of

August 27
Counseling, Board of
Housing and Community Development, Board of

August 30
† Agricultural Council, Virginia
Alcoholic Beverage Control Board
Nursing, Board of

August 31
Nursing, Board of
Water Control Board, State

September 2
Nursing, Board of
Polygraph Examiners Advisory Board

September 3
Art and Architectural Review Board

September 7
Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
† Alzheimer's Disease and Related Disorders Commission
Funeral Directors and Embalmers, Board of
Taxation, Department of
- State Land Evaluation Advisory Council

September 8
Community Colleges, State Board for
Health Professions, Department of
Interagency Coordinating Council, Virginia
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
Technology and Science, Joint Commission on

September 9
Community Colleges, State Board for
Criminal Justice Services Board
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
Museum of Fine Arts, Virginia
Nursing, Board of

September 10
Dentistry, Board of

September 13
Alcoholic Beverage Control Board

September 14
Charitable Gaming Board
Medical Assistance Services, Board of
Waterworks and Wastewater Works Operators, Board for

September 15
Conservation and Recreation, Department of
Medical Assistance Services, Department of

- Medicaid Transportation Advisory Committee
Sewage Handling and Disposal Appeal Review Board
September 16
Design-Build/Construction Management Review Board
Freedom of Information Advisory Council, Virginia
September 20
Nursing, Board of
Professional and Occupational Regulation, Board for
September 21
Medicine, Board of
- Advisory Board of Occupational Therapy
- Advisory Board on Respiratory Care
Museum of Fine Arts, Virginia
Nursing, Board of
Resources Authority, Virginia
Technology and Science, Joint Commission on
September 22
Education, Board of
Medicine, Board of
- Advisory Board of Acupuncture
- Advisory Board on Radiologic Technology
Nursing, Board of
Technology and Science, Joint Commission on
September 23
Medicine, Board of
- Advisory Board on Athletic Training
- Advisory Board on Physician Assistants
Nursing, Board of
Public Guardian and Conservator Advisory Board
September 24
† Hearing Aid Specialists, Board for
Mental Health, Mental Retardation and Substance Abuse Services, Department of
† Opticians, Board for
September 27
Alcoholic Beverage Control Board
Barbers and Cosmetology, Board for
October 1
Art and Architectural Review Board
October 4
Nursing, Board of
October 5
Funeral Directors and Embalmers, Board of
Museum of Fine Arts, Virginia
Technology and Science, Joint Commission on
October 6
Jamestown-Yorktown Foundation
Retirement System, Virginia
Technology and Science, Joint Commission on
October 7
Retirement System, Virginia
October 8
Health Professions, Department of
Opticians, Board for
October 12
Nursing, Board of
Psychology, Board of
October 13
† Geology, Board for
† Nursing, Board of
October 14
† Medicine, Board of
† Nursing, Board of
October 15
† Medicine, Board of
† Physical Therapy, Board of
October 16
† Medicine, Board of
October 19
† Contractors, Board for
† Nursing, Board of
† Technology and Science, Joint Commission on
October 20
† Nursing and Medicine, Joint Boards of
† Sewage Handling and Disposal Appeal Review Board
† Technology and Science, Joint Commission on
October 21
† Design-Build/Construction Management Review Board
† Health, Department of
October 22
† Health, Department of
October 26
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
† Nursing, Board of

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† Health, Department of
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† Game and Inland Fisheries, Board of
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† Education, Board of
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† Alcoholic Beverage Control Board