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The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2005 VAC Supplement includes final regulations published through *Virginia Register* Volume 21, Issue 11, dated February 7, 2005). 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 4. Conservation and Natural Resources			
4 VAC 20-170-10 emer	Amended	21:16 VA.R. 2219	4/1/05-4/30/05
4 VAC 20-170-30 emer	Amended	21:16 VA.R. 2219	4/1/05-4/30/05
4 VAC 20-170-30	Amended	21:18 VA.R. 2372	5/1/05
4 VAC 20-252-50	Amended	21:13 VA.R. 1824	2/2/05
4 VAC 20-252-55	Amended	21:13 VA.R. 1824	2/2/05
4 VAC 20-252-130	Amended	21:13 VA.R. 1825	2/2/05
4 VAC 20-252-135 emer	Added	21:16 VA.R. 2219	4/1/05-4/30/05
4 VAC 20-252-135	Added	21:18 VA.R. 2372	5/1/05
4 VAC 20-252-150	Amended	21:13 VA.R. 1825	2/2/05
4 VAC 20-252-160	Amended	21:13 VA.R. 1826	2/2/05
4 VAC 20-320-20 emer	Amended	21:16 VA.R. 2220	4/1/05-4/30/05
4 VAC 20-320-20	Amended	21:18 VA.R. 2373	5/1/05
4 VAC 20-320-65 emer	Added	21:16 VA.R. 2220	4/1/05-4/30/05
4 VAC 20-320-65	Added	21:18 VA.R. 2373	5/1/05
4 VAC 20-430-10 emer	Amended	21:16 VA.R. 2220	4/1/05-4/30/05
4 VAC 20-430-10	Amended	21:18 VA.R. 2373	5/1/05
4 VAC 20-430-15 emer	Amended	21:16 VA.R. 2220	4/1/05-4/30/05
4 VAC 20-430-15	Amended	21:18 VA.R. 2373	5/1/05
4 VAC 20-430-65 emer	Added	21:16 VA.R. 2220	4/1/05-4/30/05
4 VAC 20-430-65	Added	21:18 VA.R. 2373	5/1/05
4 VAC 20-450-30	Amended	21:13 VA.R. 1827	2/2/05
4 VAC 20-620-40	Amended	21:14 VA.R. 1992	3/1/05
4 VAC 20-620-50	Amended	21:14 VA.R. 1993	3/1/05
4 VAC 20-620-60	Amended	21:14 VA.R. 1993	3/1/05
4 VAC 20-620-70	Amended	21:14 VA.R. 1994	3/1/05
4 VAC 20-720-10 emer	Amended	21:12 VA.R. 1563	2/1/05-2/28/05
4 VAC 20-720-20 emer	Amended	21:12 VA.R. 1563	2/1/05-2/28/05
4 VAC 20-720-20	Amended	21:14 VA.R. 1994	3/1/05
4 VAC 20-720-40 emer	Amended	21:12 VA.R. 1564	2/1/05-2/28/05
4 VAC 20-720-40	Amended	21:14 VA.R. 1995	3/1/05
4 VAC 20-720-49 emer	Added	21:14 VA.R. 2016	3/1/05-3/9/05
4 VAC 20-720-50 emer	Amended	21:12 VA.R. 1564	2/1/05-2/28/05
4 VAC 20-720-50	Amended	21:14 VA.R. 1995	3/1/05
4 VAC 20-720-60 emer	Amended	21:12 VA.R. 1565	2/1/05-2/28/05
4 VAC 20-720-110 emer	Amended	21:12 VA.R. 1565	2/1/05-2/28/05
4 VAC 20-910-45	Amended	21:13 VA.R. 1827	2/2/05
4 VAC 20-920-45	Added	21:8 VA.R. 914	12/1/04
4 VAC 20-950-45	Amended	21:16 VA.R. 2191	4/1/05
4 VAC 20-950-48	Amended	21:13 VA.R. 1828	2/2/05
4 VAC 20-1065-10 through 4 VAC 20-1065-40	Added	21:12 VA.R. 1523	2/1/05
4 VAC 20-1080-10 through 4 VAC 20-1080-50 emer	Added	21:16 VA.R. 2221	4/1/05-4/30/05
4 VAC 20-1080-10 through 4 VAC 20-1080-50	Added	21:18 VA.R. 2374	5/1/05
Title 6. Criminal Justice and Corrections			
6 VAC 20-130-60	Amended	21:16 VA.R. 2192	5/18/05

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
6 VAC 20-180-10 through 6 VAC 20-180-50	Amended	21:14 VA.R. 1996-1998	4/20/05
6 VAC 20-180-60	Added	21:14 VA.R. 1998	4/20/05
Title 8. Education			
8 VAC 20-21-580	Amended	21:15 VA.R. 2111	5/5/05
8 VAC 20-90-10	Amended	21:14 VA.R. 1999	5/2/05
8 VAC 20-90-30	Amended	21:14 VA.R. 2000	5/2/05
8 VAC 20-90-40	Amended	21:14 VA.R. 2003	5/2/05
8 VAC 20-90-70	Amended	21:14 VA.R. 2003	5/2/05
8 VAC 20-210-10	Erratum	21:13 VA.R. 1941	--
8 VAC 20-520-5 emer	Added	21:14 VA.R. 2016	3/1/05-2/28/06
8 VAC 20-520-10 emer	Repealed	21:14 VA.R. 2017	3/1/05-2/28/06
8 VAC 20-520-20 through 8 VAC 20-520-60 emer	Added	21:14 VA.R. 2017-2018	3/1/05-2/28/06
8 VAC 20-680-10	Added	21:12 VA.R. 1559	5/9/05
8 VAC 20-680-20	Added	21:12 VA.R. 1559	5/9/05
8 VAC 20-690-10 through 8 VAC 20-690-50	Added	21:12 VA.R. 1525	3/29/05
8 VAC 20-700-10 through 8 VAC 20-700-50 (emer)	Added	21:13 VA.R. 1928-1929	2/16/05-2/15/06
Title 9. Environment			
9 VAC 5-10-20	Amended	21:15 VA.R. 2112	5/4/05
9 VAC 5-20-204	Amended	21:15 VA.R. 2119	5/4/05
9 VAC 5-40-6620	Amended	21:15 VA.R. 2120	5/4/05
9 VAC 5-40-7260	Erratum	21:13 VA.R. 1941	--
9 VAC 5-40-7270	Erratum	21:13 VA.R. 1941	--
9 VAC 20-80 (Forms)	Amended	21:13 VA.R. 1930	--
9 VAC 20-130 (Forms)	Amended	21:13 VA.R. 1930	--
9 VAC 25-31-10	Erratum	21:13 VA.R. 1941	--
9 VAC 25-31-100	Erratum	21:14 VA.R. 2022	--
9 VAC 25-31-120	Erratum	21:13 VA.R. 1941	--
9 VAC 25-260-5	Amended	21:18 VA.R. 2375	*
9 VAC 25-260-10	Amended	21:18 VA.R. 2375	*
9 VAC 25-260-50	Amended	21:18 VA.R. 2377	*
9 VAC 25-260-185	Added	21:18 VA.R. 2377	*
9 VAC 25-260-186	Added	21:18 VA.R. 2379	*
9 VAC 25-260-350	Amended	21:18 VA.R. 2379	*
9 VAC 25-720-50	Amended	21:12 VA.R. 1526	3/23/05
9 VAC 25-720-60	Amended	21:17 VA.R. 2302	6/1/05
9 VAC 25-720-80	Amended	21:12 VA.R. 1527	3/23/05
9 VAC 25-720-80	Amended	21:17 VA.R. 2302	6/1/05
9 VAC 25-720-90	Amended	21:12 VA.R. 1527	3/23/05
9 VAC 25-720-100	Amended	21:17 VA.R. 2303	6/1/05
9 VAC 25-720-130	Amended	21:12 VA.R. 1528	3/23/05
9 VAC 25-720-130	Amended	21:17 VA.R. 2303	6/1/05
Title 11. Gaming			
11 VAC 10-180-10	Amended	21:16 VA.R. 2197	5/18/05
11 VAC 10-180-20	Amended	21:16 VA.R. 2193	3/31/03
11 VAC 10-180-20	Amended	21:16 VA.R. 2198	5/18/05
11 VAC 10-180-30	Repealed	21:16 VA.R. 2199	5/18/05
11 VAC 10-180-40	Repealed	21:16 VA.R. 2200	5/18/05
11 VAC 10-180-50	Repealed	21:16 VA.R. 2200	5/18/05
11 VAC 10-180-60	Amended	21:16 VA.R. 2194	3/31/03
11 VAC 10-180-60 through 11 VAC 10-180-90	Amended	21:16 VA.R. 2202-2207	5/18/05
11 VAC 10-180-80	Amended	21:16 VA.R. 2196	3/31/03
11 VAC 10-180-85	Added	21:16 VA.R. 2206	5/18/05
11 VAC 10-180-90	Amended	21:16 VA.R. 2197	3/31/03

* Upon filing a notice of EPA approval with the Registrar of Regulations.

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
11 VAC 10-180-100	Added	21:16 VA.R. 2207	5/18/05
11 VAC 10-180-110	Added	21:16 VA.R. 2207	5/18/05
Title 12. Health			
12 VAC 5-410-10	Amended	21:12 VA.R. 1561	5/9/05
12 VAC 5-590-10	Amended	21:13 VA.R. 1829	4/6/05
12 VAC 5-590-140	Amended	21:16 VA.R. 2209	5/18/05
12 VAC 5-590-150	Amended	21:16 VA.R. 2212	5/18/05
12 VAC 5-590-370	Amended	21:13 VA.R. 1835	4/6/05
12 VAC 5-590-410	Amended	21:13 VA.R. 1860	4/6/05
12 VAC 5-590-420	Amended	21:13 VA.R. 1863	4/6/05
12 VAC 5-590-500	Amended	21:13 VA.R. 1879	4/6/05
12 VAC 5-590-530	Amended	21:13 VA.R. 1880	4/6/05
12 VAC 5-590-540	Amended	21:13 VA.R. 1886	4/6/05
12 VAC 5-590-550	Amended	21:13 VA.R. 1890	4/6/05
12 VAC 5-590, Appendix L	Amended	21:13 VA.R. 1891	4/6/05
12 VAC 5-590, Appendix M	Amended	21:13 VA.R. 1897	4/6/05
12 VAC 5-590, Appendix O	Amended	21:13 VA.R. 1901	4/6/05
12 VAC 30-40-290	Amended	21:15 VA.R. 2128	6/20/05
12 VAC 30-40-300	Amended	21:15 VA.R. 2130	6/20/05
12 VAC 30-50-490 emer	Amended	21:12 VA.R. 1566	2/1/05-1/31/06
12 VAC 30-70-301	Amended	21:14 VA.R. 2014	6/6/05
12 VAC 30-80-40	Amended	21:15 VA.R. 2121	7/1/05
12 VAC 30-90-41	Amended	21:15 VA.R. 2136	7/1/05
12 VAC 30-120-10 through 12 VAC 30-120-60 emer	Repealed	21:12 VA.R. 1601	2/1/05-1/31/06
12 VAC 30-120-490 through 12 VAC 30-120-550 emer	Repealed	21:12 VA.R. 1601	2/1/05-1/31/06
12 VAC 30-120-700 emer	Amended	21:12 VA.R. 1568	2/1/05-1/31/06
12 VAC 30-120-710 emer	Amended	21:12 VA.R. 1572	2/1/05-1/31/06
12 VAC 30-120-720 emer	Amended	21:12 VA.R. 1572	2/1/05-1/31/06
12 VAC 30-120-730 emer	Amended	21:12 VA.R. 1576	2/1/05-1/31/06
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12 VAC 30-120-753 emer	Amended	21:12 VA.R. 1582	2/1/05-1/31/06
12 VAC 30-120-754 emer	Amended	21:12 VA.R. 1583	2/1/05-1/31/06
12 VAC 30-120-756 emer	Amended	21:12 VA.R. 1584	2/1/05-1/31/06
12 VAC 30-120-758 emer	Amended	21:12 VA.R. 1585	2/1/05-1/31/06
12 VAC 30-120-760 emer	Amended	21:12 VA.R. 1586	2/1/05-1/31/06
12 VAC 30-120-762 emer	Amended	21:12 VA.R. 1586	2/1/05-1/31/06
12 VAC 30-120-764 emer	Amended	21:12 VA.R. 1587	2/1/05-1/31/06
12 VAC 30-120-766 emer	Amended	21:12 VA.R. 1588	2/1/05-1/31/06
12 VAC 30-120-768 emer	Amended	21:12 VA.R. 1590	2/1/05-1/31/06
12 VAC 30-120-770 emer	Amended	21:12 VA.R. 1592	2/1/05-1/31/06
12 VAC 30-120-772 emer	Amended	21:12 VA.R. 1596	2/1/05-1/31/06
12 VAC 30-120-774 emer	Amended	21:12 VA.R. 1597	2/1/05-1/31/06
12 VAC 30-120-776 emer	Amended	21:12 VA.R. 1598	2/1/05-1/31/06
12 VAC 30-120-780 emer	Repealed	21:12 VA.R. 1600	2/1/05-1/31/06
12 VAC 30-120-790 emer	Repealed	21:12 VA.R. 1601	2/1/05-1/31/06
12 VAC 30-120-900 through 12 VAC 30-120-990 emer	Added	21:12 VA.R. 1601-1619	2/1/05-1/31/06
Title 13. Housing			
13 VAC 5-63-110	Erratum	21:14 VA.R. 2021	--
Title 15. Judicial			
15 VAC 5-50-10 through 15 VAC 5-50-210	Repealed	21:17 VA.R. 2304	4/13/05
15 VAC 5-60-10 through 15 VAC 5-60-240	Repealed	21:17 VA.R. 2304	4/13/05
Title 18. Professional and Occupational Licensing			
18 VAC 65-20-15	Added	21:18 VA.R. 2380	6/15/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 75-40-10	Added	21:16 VA.R. 2215	5/18/05
18 VAC 75-40-20	Added	21:16 VA.R. 2215	5/18/05
18 VAC 75-40-30	Added	21:16 VA.R. 2215	5/18/05
18 VAC 95-10-10	Amended	21:18 VA.R. 2380	7/1/05
18 VAC 95-10-20	Amended	21:18 VA.R. 2380	7/1/05
18 VAC 95-20-10	Amended	21:18 VA.R. 2381	7/1/05
18 VAC 105-20-41	Added	21:18 VA.R. 2382	6/15/05
18 VAC 110-20-15	Added	21:15 VA.R. 2122	5/4/05
Title 19. Public Safety			
19 VAC 30-70-210	Amended	21:18 VA.R. 2382	4/15/05
Title 20. Public Utilities and Telecommunications			
20 VAC 5-315-20	Amended	21:18 VA.R. 2387	4/26/05
20 VAC 5-315-30	Amended	21:18 VA.R. 2388	4/26/05
20 VAC 5-315-40	Amended	21:18 VA.R. 2388	4/26/05
20 VAC 5-315-90	Repealed	21:18 VA.R. 2389	4/26/05
Title 22. Social Services			
22 VAC 15-30-10	Amended	21:12 VA.R. 1528	6/1/05
22 VAC 15-30-30	Amended	21:12 VA.R. 1532	6/1/05
22 VAC 15-30-50	Amended	21:12 VA.R. 1532	6/1/05
22 VAC 15-30-70	Amended	21:12 VA.R. 1533	6/1/05
22 VAC 15-30-80	Amended	21:12 VA.R. 1533	6/1/05
22 VAC 15-30-90	Amended	21:12 VA.R. 1533	6/1/05
22 VAC 15-30-110	Amended	21:12 VA.R. 1534	6/1/05
22 VAC 15-30-140	Amended	21:12 VA.R. 1534	6/1/05
22 VAC 15-30-150	Amended	21:12 VA.R. 1534	6/1/05
22 VAC 15-30-160	Amended	21:12 VA.R. 1534	6/1/05
22 VAC 15-30-180	Amended	21:12 VA.R. 1535	6/1/05
22 VAC 15-30-190	Amended	21:12 VA.R. 1535	6/1/05
22 VAC 15-30-200	Amended	21:12 VA.R. 1536	6/1/05
22 VAC 15-30-200	Erratum	21:13 VA.R. 1941	--
22 VAC 15-30-230	Amended	21:12 VA.R. 1536	6/1/05
22 VAC 15-30-250	Amended	21:12 VA.R. 1537	6/1/05
22 VAC 15-30-260	Amended	21:12 VA.R. 1537	6/1/05
22 VAC 15-30-290	Amended	21:12 VA.R. 1538	6/1/05
22 VAC 15-30-310 through 22 VAC 15-30-390	Amended	21:12 VA.R. 1538-1542	6/1/05
22 VAC 15-30-410	Amended	21:12 VA.R. 1542	6/1/05
22 VAC 15-30-430	Amended	21:12 VA.R. 1543	6/1/05
22 VAC 15-30-440	Amended	21:12 VA.R. 1543	6/1/05
22 VAC 15-30-451	Amended	21:12 VA.R. 1545	6/1/05
22 VAC 15-30-461	Amended	21:12 VA.R. 1545	6/1/05
22 VAC 15-30-471	Amended	21:12 VA.R. 1545	6/1/05
22 VAC 15-30-490	Amended	21:12 VA.R. 1546	6/1/05
22 VAC 15-30-500	Amended	21:12 VA.R. 1547	6/1/05
22 VAC 15-30-510	Amended	21:12 VA.R. 1547	6/1/05
22 VAC 15-30-520	Amended	21:12 VA.R. 1548	6/1/05
22 VAC 15-30-540 through 22 VAC 15-30-670	Amended	21:12 VA.R. 1548-1556	6/1/05
22 VAC 15-30-575	Erratum	21:13 VA.R. 1941	--
22 VAC 15-30-585	Added	21:12 VA.R. 1550	6/1/05
22 VAC 30-40-10	Amended	21:16 VA.R. 2215	5/18/05
22 VAC 30-40-70	Amended	21:16 VA.R. 2217	5/18/05
22 VAC 30-40-130	Amended	21:16 VA.R. 2218	5/18/05
22 VAC 30-40-140	Amended	21:16 VA.R. 2218	5/18/05
22 VAC 30-40-150	Amended	21:16 VA.R. 2218	5/18/05
22 VAC 40-90-10 through 22 VAC 40-90-60	Amended	21:18 VA.R. 2393	7/1/05
22 VAC 40-90-70	Added	21:18 VA.R. 2395	7/1/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-191-40	Amended	21:18 VA.R. 2395	7/1/05
22 VAC 40-191-50	Amended	21:18 VA.R. 2399	7/1/05
22 VAC 40-191-90	Amended	21:18 VA.R. 2400	7/1/05
Title 24. Transportation and Motor Vehicles			
24 VAC 30-41-30	Amended	21:13 VA.R. 1911	4/6/05
24 VAC 30-41-50	Amended	21:13 VA.R. 1913	4/6/05
24 VAC 30-41-110	Amended	21:13 VA.R. 1913	4/6/05
24 VAC 30-41-190	Amended	21:13 VA.R. 1914	4/6/05
24 VAC 30-41-210	Amended	21:13 VA.R. 1915	4/6/05
24 VAC 30-41-220	Amended	21:13 VA.R. 1916	4/6/05
24 VAC 30-41-230	Amended	21:13 VA.R. 1916	4/6/05
24 VAC 30-41-250	Amended	21:13 VA.R. 1917	4/6/05
24 VAC 30-41-280	Amended	21:13 VA.R. 1917	4/6/05
24 VAC 30-41-290	Amended	21:13 VA.R. 1918	4/6/05
24 VAC 30-41-300	Amended	21:13 VA.R. 1918	4/6/05
24 VAC 30-41-310	Amended	21:13 VA.R. 1918	4/6/05
24 VAC 30-41-320	Amended	21:13 VA.R. 1919	4/6/05
24 VAC 30-41-350	Amended	21:13 VA.R. 1920	4/6/05
24 VAC 30-41-430	Amended	21:13 VA.R. 1920	4/6/05
24 VAC 30-41-500	Amended	21:13 VA.R. 1921	4/6/05
24 VAC 30-41-510	Amended	21:13 VA.R. 1921	4/6/05
24 VAC 30-41-520	Amended	21:13 VA.R. 1921	4/6/05
24 VAC 30-41-530	Amended	21:13 VA.R. 1922	4/6/05
24 VAC 30-41-580	Amended	21:13 VA.R. 1922	4/6/05
24 VAC 30-41-650	Amended	21:13 VA.R. 1923	4/6/05
24 VAC 30-41-660	Amended	21:13 VA.R. 1923	4/6/05
24 VAC 30-41-680	Amended	21:13 VA.R. 1923	4/6/05
24 VAC 30-91-10	Erratum	21:12 VA.R. 1776	--
24 VAC 30-91-110	Erratum	21:12 VA.R. 1776	--
24 VAC 30-91-130	Erratum	21:12 VA.R. 1776	--
24 VAC 30-620-10	Amended	21:15 VA.R. 2123	5/22/05
24 VAC 30-620-30	Amended	21:15 VA.R. 2123	5/22/05

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to consider promulgating regulations entitled **6 VAC 20-240, Regulations Relating to School Security Officers**. The purpose of the proposed action is to identify compulsory minimum standards for employment, entry-level and in-service training requirements and certification requirements for school security officers.

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

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public comments may be submitted until June 15, 2005.

Contact: Donna Bowman, Manager, Center for School Safety, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 371-6506, FAX (804) 371-8981 or e-mail donna.bowman@dcjs.virginia.gov.

VA.R. Doc. No. R05-188; Filed May 5, 2005, 10:04 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider adopting regulations entitled **9 VAC 25-820, General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia**. The purpose of the proposed action is to establish a general VPDES permit for annual maximum VPDES permitted point source discharge limitations for total nitrogen and total phosphorus to the Chesapeake Bay Watershed and a nutrient trading mechanism.

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

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

Public comments may be submitted until June 1, 2005.

Contact: Allan Brockenbrough, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4147, FAX (804) 698-4032 or e-mail abrockenbrough@deq.virginia.gov.

VA.R. Doc. No. R05-175; Filed April 14, 2005, 9:48 a.m.

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 amending regulations entitled **12 VAC 5-585, Biosolids Use Regulations**. The purpose of the proposed action is to provide regulations and standards for enforcement and land application site management practices, to ensure permit compliance, to address nutrient management concerns, and other related amendments.

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

Statutory Authority: §§ 32.1-164.6 and 32.1-164.7 of the Code of Virginia.

Public comments may be submitted until June 29, 2005.

Contact: Cal Sawyer, 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 e-mail cal.sawyer@vdh.virginia.gov.

VA.R. Doc. No. R05-190; Filed May 10, 2005, 2:53 p.m.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

TITLE 1. ADMINISTRATION

COMMISSION ON LOCAL GOVERNMENT

Title of Regulation: **1 VAC 50-10. Public Participation Guidelines (adding 1 VAC 50-10-60 through 1 VAC 50-10-150; repealing 1 VAC 50-10-10 through 1 VAC 50-10-50).**

Statutory Authority: §§ 2.2-4007 and 15.2-2903 of the Code of Virginia.

Public Hearing Date: July 18, 2005 - 10 a.m.

Public comments may be submitted until August 1, 2005.
(See Calendar of Events section for additional information)

Agency Contact: Ted McCormack, Associate Director for the Commission on Local Government, 501 N. 2nd Street, Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, or e-mail ted.mccormack@dhcd.virginia.gov.

Basis: Section 15.2-2903 of the Code of Virginia gives the Commission on Local Government the discretionary authority to "...make regulations, including rules of procedure for the conducting of hearings." The Commission on Local Government within the Department of Housing and Community Development is the promulgating entity.

Section 2.2-4007 requires agencies to develop, adopt and utilize public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations.

Purpose: The proposed regulations are not essential to protect the health, safety, or welfare of citizens.

The proposed action is to update the public participation guidelines of the Commission on Local Government. The commission's current guidelines were last revised in November 1984. Since that date, there have been several changes to the Administrative Process Act, as well as the creation of the Virginia Administrative Code (VAC), that are not reflected in the current public participation guidelines (e.g., Internet, electronic mail, etc.). In addition, there are some outdated provisions in the current guidelines that should be reviewed for possible revision. Further, when the Virginia Administrative Code was created in the early 1990s, the commission's regulations were integrated into the VAC without input from the commission or its staff. Moreover, when the original public participation guidelines were adopted, the commission had been active in the resolution of interlocal issues for only three years, whereas today, the commission has been in existence for over 20 years and some of the procedures may need to be revised to reflect changing times.

Substance: Out-of-date provisions adopted in 1984 are repealed. New provisions, such as purpose, definitions, creation of notification lists, notice of intent to revise

regulations, notification of actions, and advisory committees, are added.

Issues: There are no disadvantages to the Commonwealth. The primary advantage to the Commonwealth will be to enhance the public participation in the development of the commission's regulations in the future.

Unless private citizens or businesses are interested in the development of commission regulations in the future, the new provisions would have no impact on them.

The proposed regulatory action poses no disadvantage to the public, but will have a public benefit by modernizing the public participation guidelines.

There are no disadvantages to localities, but will benefit local governments by modernizing the public participation guidelines.

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 15.2-2903 of the Code of Virginia provides the Commission on Local Government the authority to develop regulations, including rules of procedure for conducting hearings.

The proposed regulation updates the public participation guidelines of the Commission on Local Government (the commission). It updates the regulation to reflect changes in the Administrative Process Act and the use of email and fax as routine forms of communication. It also removes outdated and obsolete provisions and language in the existing regulation.

Estimated economic impact. The proposed regulation repeals existing sections of the regulation and replaces them with new sections that reflect changes in the Administrative Process Act and in modes of communication since the regulation was last amended in 1984. The changes include updating the existing notification requirements by requiring the commission to establish and maintain a list of interested parties who are to be mailed documents (or notified as to where they may obtain the documents electronically) relevant to the promulgation, amendment, or repeal of a regulation at various stages of the

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regulatory process. The proposed regulation also updates the identification of interested parties and the management of the mailing list. Interested parties wishing to be put on the mailing list can notify the commission of their interest electronically or by writing to the commission. The commission can also add people to the list whose involvement it believes will serve to enhance public participation in the regulatory process. The commission is also allowed to delete inactive entries from the list when a letter sent to a postal address is returned as undeliverable or when a notice sent to an email or fax address is returned as undeliverable over two 24-hour periods at least one week apart.¹ The section in the existing regulation specifying the content of a notification of regulatory action has been replaced with the current requirements of the Administrative Process Act, i.e., that an agency provide the Registrar of Regulations with a Notice of Intended Regulatory Action that describes the subject matter and intent of the planned regulation, provide at least 30 days for public comment after publication of the Notice of Intended Regulatory Action, and file proposed regulations with the Registrar only after the public comment period on the Notice of Intended Regulatory Action has closed.

The proposed regulation includes additional language that reflects the requirements of the Code of Virginia. It includes a requirement that the commission periodically review the effectiveness and continued need for a regulation. It also includes provisions for the suspension of the regulatory process under certain conditions and for the appointment of an ad hoc advisory committee to ensure adequate participation in the formulation, promulgation, adoption, and review of regulations. The proposed regulation also requires public commenters be provided with a summary of all public comment at least five days prior to the adoption of a regulation. Finally, the proposed regulation allows citizens to petition the commission to promulgate new regulations or to amend existing regulations and requires the commission to consider and respond to each petition within 90 days of its receipt.

The proposed regulation deletes outdated and obsolete provisions and language in the existing regulation. The commission is no longer required to publish a notice in newspapers and periodicals or distribute press releases indicating the intent to amend a regulation. The requirement to hold a public hearing for the receipt of public comment on a proposed amendment has also been removed. Electronic means of communication have reduced the need for mandatory public hearings in order to receive public comment. Interested parties can email, fax, or write to the commission with their comments during the public comment period. However, the code provides an agency with the authority to hold public hearings when it deems them necessary.

The proposed regulation is not likely to have a significant economic impact. All the proposed changes are intended to make the regulation consistent with the Code of Virginia and

to allow for the use of electronic means of communication. There are not likely to be any significant costs or benefits arising out of the proposed changes. To the extent that the proposed changes enhance public participation and lead to improvements in the regulatory process, they could produce some economic benefits.

Businesses and entities affected. The proposed regulation updates and makes changes to the public participation guidelines of the commission. Thus, the proposed changes affect all businesses and entities regulated by, interested in, or otherwise affected by regulations promulgated by the commission. The number of such businesses and entities is not known.

Localities particularly affected. The proposed regulation applies to all localities in the Commonwealth.

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

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.

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

Summary:

The proposed amendments reflect changes in the Administrative Process Act and modern practice. The proposed amendments repeal obsolete provisions and add purpose, definitions, creation of notification lists, notice of intent to revise regulations, notification of actions, and advisory committees to enhance public participation in the commission's regulations in the future.

1 VAC 50-10-10. Notification of proposal to amend rules. (Repealed.)

~~Subsequent to any announcement of a proposal to amend its regulations as provided in 1 VAC 50-20-680 through 1 VAC 50-20-700, but prior to the development of any proposed amendments, the commission shall:~~

- ~~1. Publish notice of the proposal to amend its regulations in the Virginia Register of Regulations or in any successor publication;~~
- ~~2. Publish notice of the proposal to amend its regulation in a newspaper of general circulation in the City of Richmond area and in other newspapers or periodicals which the commission deems appropriate for the provision of suitable public notice;~~
- ~~3. Distribute press releases and announcements of the proposal to amend its regulations to other newspapers and media throughout the Commonwealth as the commission deems appropriate for the provision of suitable public notice;~~

¹ Currently, the proposed regulation allows the commission to delete names from the list of interested parties if electronic notifications are returned as undeliverable over more than one day. However, the agency has agreed to modify the proposed language to state that names can be deleted from the list of interested parties if electronic notifications are undeliverable over two 24-hour periods at least one week apart.

~~4. Notify by letter, mailed prior to the publication of notice provided for in subsection 1 herein, to each potentially interested party listed in 1 VAC 50-10-20.~~

1 VAC 50-10-20. Identification of potentially interested parties. (Repealed.)

~~The commission shall consider as potentially interested parties for purposes of its public participation process the following entities:~~

- ~~1. The Virginia Municipal League and the Virginia Association of Counties;~~
- ~~2. Any law firm, consulting entity, or other intermediary which is known by the commission to have represented or to have prepared data, exhibits, or testimony for any party previously appearing before it;~~
- ~~3. Any firm, group, association, or other entity which has advised the commission of interest in its work; and~~
- ~~4. Any other entity considered by the commission to be affected by the proposed amendments.~~

1 VAC 50-10-30. Content of notification. (Repealed.)

~~The notifications provided for in 1 VAC 50-10-10 shall advise of the commission's proposal to amend its regulations and shall state the scope and nature of the amendments to be considered. The notifications shall solicit comment, data, and views from all interested parties on the proposed amendments. The notifications shall also specify the date, place, and time at which the commission will begin to formulate proposed amendments and the latest date, which shall be not less than 60 days after the publication of notice provided for in 1 VAC 50-10-10, by which interested parties may submit materials to the commission for review with respect to the proposed amendments.~~

1 VAC 50-10-40. Public hearing. (Repealed.)

~~The commission shall hold one or more public hearings for the receipt of oral comment on proposed amendments from interested parties prior to their final adoption.~~

1 VAC 50-10-50. Extent of public participation. (Repealed.)

~~By the adoption of this regulation the commission intends to afford all interested parties an opportunity to participate to the fullest in the initial formation, promulgation, and adoption of all amendments to its regulations.~~

1 VAC 50-10-60. Purpose and authority.

This chapter establishes public participation guidelines for soliciting input from interested parties in the formation, development and revision of regulations by the Commission on Local Government. These guidelines are required under § 2.2-4007 of the Administrative Process Act. The guidelines do not apply to any regulations adopted on an emergency basis or to other regulations excluded from the operation of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

1 VAC 50-10-70. 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.

"Commission" means the Commission on Local Government.

"Person or persons" means an individual, a corporation, a partnership, an association, a government body, a municipal corporation, a political subdivision, or any other legal entity.

1 VAC 50-10-80. Initiation of regulation development procedures.

A. The commission may, by majority vote of its membership, announce a decision to propose amendments to its regulations at any regular or special meeting.

B. Any person may petition the commission to promulgate new regulations or to amend existing regulations subject to § 2.2-4007 A of the Code of Virginia. The commission shall consider and respond to the petition pursuant to § 2.2-4007 A of the Code of Virginia within 90 days of receipt. The commission shall have sole authority to dispose of the petition.

1 VAC 50-10-90. Notification lists.

A. The commission shall establish and maintain lists of persons who shall 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 final regulations have been adopted.*

B. Failure of a person to receive the documents or notification for any reason shall not affect the validity of any regulations otherwise properly adopted by the commission under the Administrative Process Act.

1 VAC 50-10-100. Placement on the notification list; deletion.

A. The notification list maintained by the commission shall include, as a minimum, the following:

- 1. The Virginia Municipal League and the Virginia Association of Counties;*
- 2. Any law firm, consulting entity, or other intermediary that is known by the commission to have represented or to have prepared data, exhibits, or testimony for any party previously appearing before it; and*
- 3. Any firm, group, association, or other entity that has advised the commission of interest in its work.*

B. Any other person wishing to be placed on the notification list may do so by electronic notification or by writing the commission. In addition, the commission at its discretion may add to the list any person it believes will serve the purpose of

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responsible participation in the formulation or promulgation of regulations. Each person on the list will be provided all information stated in 1 VAC 50-10-90. A person or persons may be requested periodically to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, the person will be deleted from the list. When electronic notifications are returned as undeliverable over more than one day, the person may be deleted from the list.

1 VAC 50-10-110. Notice of intent.

At least 30 days prior to filing the Notice of Comment Period and proposed regulations as required by § 2.2-4007 of the Code of Virginia, the commission will publish a Notice of Intended Regulatory Action. This notice will provide at least a 30-day comment period and shall state whether the commission intends to hold a public hearing. 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.

1 VAC 50-10-120. Informational proceedings or public hearings for existing regulations.

Within two years of the promulgation of a regulation, the commission shall evaluate it for effectiveness and continued need. The commission shall conduct an informal proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. 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 any other meeting of the commission.

1 VAC 50-10-130. Notice of formulation and adoption.

At any meeting of the commission where it is anticipated the formation or adoption of a regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If one or more changes have substantial impact on a regulation, then any person may petition the commission within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulation. If the commission receives requests from at least 25 persons for an opportunity to make oral or written comments, then the commission shall suspend the regulatory process for 30 days to solicit additional public comment, unless the commission 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 a proposed regulation, he may suspend the regulatory process for 30 days to require the commission to solicit further public comment on the changes to the regulation.

A draft of the commission'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.

1 VAC50-10-140. Advisory committees.

The commission may appoint an ad hoc advisory committee as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. 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 commission may use the lists of persons who have previously participated in public proceedings concerning this or a related issue.

1 VAC 50-10-150. Applicability.

1 VAC 50-10-80, 1 VAC 50-10-90, 1 VAC 50-10-100, 1 VAC 50-10-120, and 1 VAC 50-10-130 shall apply to all regulations promulgated and adopted in accordance with § 2.2-4012 of the Code of Virginia, except those regulations promulgated in accordance with §§ 2.2-4002, 2.2-4006, 2.2-4011, 2.2-4012.1, 2.2-4018, or 2.2-4025 of the Code of Virginia.

VA.R. Doc. No. R04-129; Filed May 9, 2005, 12:17 p.m.

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Title of Regulation: **1 VAC 50-20. Organization and Regulations of Procedure** (amending 1 VAC 50-20-10, 1 VAC 50-20-40, 1 VAC 50-20-50, 1 VAC 50-20-110, 1 VAC 50-20-140, through 1 VAC 50-20-180, 1 VAC 50-20-230, 1 VAC 50-20-270, 1 VAC 50-20-310, 1 VAC 50-20-350, 1 VAC 50-20-390, 1 VAC 50-20-540 through 1 VAC 50-20-670; adding 1 VAC 50-20-1, 1 VAC 50-20-5, 1 VAC 50-20-142, 1 VAC 50-20-382, 1 VAC 50-20-384, 1 VAC 50-20-601, 1 VAC 50-20-605, 1 VAC 50-20-612, 1 VAC 50-20-614, 1 VAC 50-20-616; repealing 1 VAC 50-20-20, 1 VAC 50-20-30, 1 VAC 50-20-60 through 1 VAC 50-20-90, 1 VAC 50-20-120, 1 VAC 50-20-130, 1 VAC 50-20-190 through 1 VAC 50-20-220, 1 VAC 50-20-240, 1 VAC 50-20-250, 1 VAC 50-20-260, 1 VAC 50-20-280, 1 VAC 50-20-290, 1 VAC 50-20-300, 1 VAC 50-20-320, 1 VAC 50-20-330, 1 VAC 50-20-340, 1 VAC 50-20-360, 1 VAC 50-20-370, 1 VAC 50-20-380, 1 VAC 50-20-400 through 1 VAC 50-20-530, 1 VAC 50-20-680, 1 VAC 50-20-690, 1 VAC 50-20-700.)

Statutory Authority: § 15.2-2903 of the Code of Virginia.

Public Hearing Date: July 18, 2005 - 10 a.m.

Public comments may be submitted until August 1, 2005.

(See Calendar of Events section for additional information)

Agency Contact: Ted McCormack, Associate Director, Commission on Local Government, 501 N. 2nd Street, Richmond, VA 23219-1321, telephone (804) 786-6508, FAX (804) 371-7090, e-mail ted.mccormack@dhcd.virginia.gov.

Basis: Section 15.2-2903 of the Code of Virginia gives the Commission on Local Government the discretionary authority to "...make regulations, including rules of procedure for the conducting of hearings." The Commission on Local Government within the Department of Housing and Community Development is the promulgating entity.

Purpose: The commission's current regulations were last revised in November 1984. The proposed regulation amendments address legislative changes adopted by the General Assembly since that date. The proposed action updates the regulations that are used by the Commission on Local Government in their review of actions for municipal annexation, county immunity from city annexation, the transition of city to town status, the creation of a new independent city, and the establishment of an economic growth-sharing agreement, as well as certain other agreements between localities that settle interlocal issues. The regulations also address the powers of the chairman of the commission and the conduct of its meetings and its oral presentations and public hearings. Further, when the Virginia Administrative Code was created in the early 1990s, several important references to the Code of Virginia in the regulations were omitted by the editors of the VAC, chapter titles were unnecessarily truncated so as to make them useless and confusing, and some typographical errors were transferred wholesale from the old regulations to the VAC. Moreover, any remaining references to the Code of Virginia in the current regulations do not reflect 1997 recodification of Title 15.1, which requires users to have a cross-reference table at hand. The proposed regulations are not essential to protect the health, safety, or welfare of citizens.

Substance: The proposed regulations (i) define commonly used terms, repeal regulations duplicative of Code of Virginia provisions or administrative in nature, remove outdated or incorrect provisions, correct stylistic and heading problems, and correct typographical errors in the current regulations; (ii) add regulations to reflect additional responsibilities assigned by the General Assembly for property owner-initiated annexations, transition of city to town status, consolidations of localities that would create a new city, voluntary economic growth-sharing agreements, and determination of continued city status; (iii) give local governments additional options in complying with certain aspects of the commission's regulations; and (iv) give the commission more flexibility in the administration of its proceedings.

Issues: There are no disadvantages to the Commonwealth. The primary advantage to the Commonwealth will be increased efficiency in the operation and activities of the commission through the updating of the regulations.

Unless private citizens or businesses are petitioning for the annexation of their property to a municipality, the new or amended provisions will have no impact on them.

The proposed regulatory action poses no disadvantage to the public.

There are no disadvantages to localities. The proposed regulations will ease some of the administrative requirements and provide additional flexibility.

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 15.2-2903 of the Code of Virginia provides the Commission on Local Government (the commission) the authority to develop regulations, including rules of procedure for conducting hearings.

The proposed regulation also includes a number of changes intended to make the regulation consistent with the Code of Virginia. It establishes procedures and requirements for voter- or property owner-initiated annexation of territory, transition of a city from city to town status, county-city consolidations to create a new independent city, voluntary economic growth sharing agreements submitted to the commission for review, determination of a city's continued eligibility for city status, and definition of a town's future annexation rights. It also requires that proposals for annexation include analysis of the impact of the proposed annexation on agricultural operations located in the area and proposes additional public notice requirements for town-county agreements defining annexation rights. The proposed regulation also updates references to the Code of Virginia following the re-codification of Title 15.2 (Counties, Cities, and Towns) in 1997.

In addition to those discussed above, the proposed regulation makes a number of other changes. It allows for the prefilming of direct testimony to the commission from all affected parties with regard to a proposed action. It permits the commission to charge a fee for providing copies of minutes of public meetings. It includes new language that provides additional flexibility to the commission in the conduct of its proceedings. It updates the regulation to reflect changes in the modes of communication. It adds language intended to clarify aspects of the regulation, codify current practice, and improve understanding and implementation of the regulation. It also deletes language that is redundant, duplicative of the Code of Virginia, or administrative in nature.

Estimated economic impact. The proposed regulation includes a number of changes intended to make the regulation consistent with the Code of Virginia.

It establishes procedures and requirements for voter- or property owner-initiated annexation of territory. Section 15.2-2907 of the Code of Virginia requires all citizen petitions for annexation to be referred to the commission. According to DHCD, such petitions were dealt with on an ad hoc basis until a few years ago. The development of a guidance document to deal with citizen petitions for annexation began in 2002. The guidance document was completed and implemented a few years ago. The proposed procedures and requirements are based on the guidance document. According to DHCD, there have been five or six citizen-initiated proposals for annexation since 1983, when this responsibility was assigned to the commission.

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It establishes procedures and requirements for the transition of a city from city to town status. Chapter 881 of the 1988 Acts of Assembly amended § 15.2-4102 of the Code of Virginia such that all voter-initiated petitions for transition of a city from city to town status have to be referred to the commission. The proposed regulation requires that any city filing notice that it proposes to become a town or any other petition for transition from a city to a town submit data and information pertaining to topics listed in the regulation. According to DHCD, these requirements are based on an existing guidance document. There have been two proposals for transition from a city to a town. The first was successful and the second resulted in a voluntary settlement agreement that provided for the transition.

It establishes procedures and requirements for county-city consolidations to create a new independent city. Section 15.2-3531 requires that voter-initiated consolidation of local governments be referred to the commission. The new language establishing the requirements for city-county consolidations referred to the commission is similar to language used in other parts of the regulation. According to DHCD, the proposed requirements are based on the commission's experience in evaluating such proposals. The commission has reviewed approximately five county-city consolidations to date.

It establishes procedures and requirements for voluntary economic growth sharing agreements submitted to the commission for review. Chapter 713 of the 1996 Acts of Assembly amended § 15.2-1301 of the Code of Virginia such that all economic growth sharing agreements between a county, city, or town have to be submitted to the commission for review. Requirements to be met when submitting an economic growth sharing agreement to the commission for review are taken from an existing guidance document. The commission has not reviewed any economic growth sharing agreements to date.

It establishes procedures and requirements for the determination of a city's continued eligibility for city status. Chapter 587 of the 1997 Acts of Assembly amended § 15.2-4001 of the Code of Virginia such that if it appears from the most recent United States census that a city may not meet the requirements for city status, the commission is required to begin an investigation of the population, assets, liabilities, rights, and obligations of the city and certify the findings to the governing body. The proposed regulation implements this requirement. The specific procedures and requirements for making such a determination are based on the commission's experience in inter-governmental matters. According to DHCD, there have been no instances to date when the commission has had to make a determination regarding a city's status.

It establishes procedures and requirements for the definition of a town's future annexation rights. Section 15.2-3234 of the Code of Virginia allows towns unable to reach an agreement with their county over future annexation rights to petition the commission for an order establishing annexation rights. The proposed regulation specifies information, data, and other factors to be considered by the commission in determining future annexation rights. According to DHCD, the proposed

requirements track current practice. There has been one instance when a town petitioned the commission in this regard and, in that instance, the town was eventually able to reach a voluntary agreement with its county.

It also requires that proposals for annexation include analysis of the impact of the proposed annexation on agricultural operations located in the area. This requirement is based on Chapter 345 of the 1999 Acts of Assembly that amended § 15.2-3209 of the Code of Virginia to the effect that any proposal for annexation address the impact of the annexation on agricultural operations in the area.

It also proposes additional public notice requirements for town-county agreements defining annexation rights. Chapter 173 of the 2003 Acts of Assembly amended the Code of Virginia such that additional notification is required for such agreements. The proposed language is similar to language in § 15.2-3232 of the Code of Virginia.

The proposed regulation also updates references to the Code of Virginia following the re-codification of Title 15.2 (Counties, Cities, and Towns) in 1997.

The proposed changes listed above are not likely to have a significant economic impact. All the changes are required by the Code of Virginia and have been required for many years in most cases. Moreover, the specific procedures and requirements established in the regulation are either based on existing guidance documents, the commission's experience, or directly out of the code. According to DHCD, all the changes track current practice. Thus, the proposed changes are not likely to impose significant costs. To the extent that these changes make the regulation consistent with the Code of Virginia and improve its understanding and implementation, they are likely to produce some economic benefits.

In addition to the code-required changes discussed above, the proposed regulation also makes a number of other changes.

It allows for the pre-filing of direct testimony to the commission from all affected parties with regard to a proposed action. The commission can request parties initiating the change as well as parties affected by the proposed change to file testimony on or before the date established by the commission. The proposed change is intended to speed up the process. According to DHCD, pre-filing testimony could reduce the cost to parties initiating the change and parties affected by the change of hiring consultants and lawyers. Specifically, pre-filing could reduce the time spent by consultants and lawyers hired by all parties participating in the commission's proceedings. The State Corporation Commission regulations also allow for the pre-filing of testimony and the proposed language is similar to the language used in those regulations.

It permits the commission to charge a fee for providing copies of minutes of public meetings. Existing regulations allow the commission to charge a fee that covers the cost of providing copies of materials submitted to the commission and testimony presented to the commission during oral presentations and public hearings. According to DHCD, the agency has already been charging a fee for the more voluminous requests for copies of minutes of public meetings. The proposed change allows the agency to charge a fee for all such requests. According to DHCD, it has been agency

practice to charge five cents per page for providing copies of materials and testimony submitted or presented to the commission.

It includes new language that provides additional flexibility to the commission in the conduct of its proceedings. For example, the proposed regulation allows the commission to grant waivers and modifications to provisions in the regulation that are not required by law. The proposed regulation also provides the commission with the option of continuing or deferring its proceedings as a result of a statutory requirement or court order.

It updates the existing regulation to reflect changes in the modes of communication. The proposed regulation incorporates the use of email and fax for the purposes of notification and allows for the electronic filing of exhibits and materials.

It adds language intended to clarify aspects of the regulation, codify current practice, and improve understanding and implementation of the regulation. It also deletes language that is redundant, duplicative of the Code of Virginia, or administrative in nature.

The proposed changes listed above are not likely to have a significant economic impact. To the extent that the pre-filing provision reduces the time spent at the commission's proceedings, it could result in cost savings to parties initiating an action and parties affected by the action. However, by reducing the necessity of presenting testimony in person, the proposed change may reduce the effectiveness of the commission in carrying out its responsibilities. The provision allowing the commission to charge a fee to cover the costs of providing copies of minutes of public meetings will essentially transfer costs from the commission to the parties requesting the copies. Parties requesting the copies also have the option of electronically downloading the minutes from the Virginia Regulatory Town Hall website. The remaining changes are not likely to produce significant costs or benefits. Overall, to the extent that all these changes improve understanding and implementation of the regulation, they could produce some small economic benefits.

Businesses and entities affected. The proposed regulation affects all parties initiating actions that require referral to the commission as well as all parties affected by the action. The number of such entities is not known. However, there are 95 counties, 39 cities, and 189 towns in Virginia. The number of unincorporated communities in Virginia is not known.

Localities particularly affected. The proposed regulation applies to all localities in the Commonwealth.

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

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.

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

Summary:

The proposed amendments add language to reflect changes made to the Code of Virginia for property-owner initiated annexations, transition of city to town status, consolidations creating a new independent city, voluntary economic growth-sharing agreements, determination of city status, and additional public notice in the review of town-county agreements defining annexation rights. Provisions regarding the announcement and development of regulations are transferred to the public participation guidelines. Additional proposed changes (i) increase the commission's authority in the conduct of its proceedings, (ii) allow for the electronic filing of exhibits and materials, and (iii) allow for the pre-filing of direct testimony.

PART I.

COMMISSION ON LOCAL GOVERNMENT.

1 VAC 50-20-1. Applicability.

The Commission on Local Government's regulations are promulgated pursuant to the authority of § 15.2-2903 of the Code of Virginia and are applicable to the proceedings of the Commission on Local Government. When necessary to fulfill its statutory responsibilities, the commission may grant, upon its own initiative, a waiver or modification of any of the provisions of these regulations, except those required by law, under terms and conditions and to the extent it deems appropriate.

1 VAC 50-20-5. Definitions.

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

"Chairman" means the Chairman of the Commission on Local Government.

"Commission" means the Commission on Local Government.

"County or counties" means one or more than one county in the Commonwealth of Virginia.

"Local government or local governments" means one or more than one county, city, or town in the Commonwealth of Virginia.

"Locality or localities" means one or more than one county, city or town in the Commonwealth of Virginia.

"Municipality" means a city or town in the Commonwealth of Virginia.

"Party or parties" means a local government or local governments, voters or property owners initiating a proposed annexation, voters of any community requesting that their community be incorporated as a town, voters petitioning for the transition of a city to town status, or a committee appointed by the circuit court to act for and in lieu of a local government to perfect a consolidation agreement.

1 VAC 50-20-10. Principal duties.

The commission is charged with reviewing proposed annexations, other local boundary change issues, petitions for partial immunity, local government transitions, and various

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~~interlocal agreements developed, and with assisting other interlocal concerns for the purpose of maintaining the Commonwealth's political subdivisions local governments as viable communities in which their citizens can live.~~

1 VAC 50-20-20. Commission. (Repealed.)

~~The commission consists of five members appointed by the Governor and confirmed by the General Assembly. The members are appointed for five year staggered terms, with the term of one member expiring each year. Members are eligible for reappointment.~~

1 VAC 50-20-30. Qualifications. (Repealed.)

~~Members at the time of appointment and during their terms of office must be qualified voters under the Constitution and laws of the Commonwealth of Virginia and must be qualified by knowledge and experience in local government. Members of the commission may not hold any other elective or appointive public office.~~

1 VAC 50-20-40. Officers.

The commission shall elect from its membership at its regular January meeting, or as soon thereafter as possible, a chairman and a vice chairman, who shall serve terms of one year, or until their successors are elected. In the event of a vacancy occurring in the office of chairman or vice chairman, for any cause, the commission shall fill the same by election for the unexpired term. The chairman shall preside at all meetings, presentations, and public hearings held by the commission unless absent. In the absence of the chairman, the vice chairman shall preside at any meeting or other assembly of the commission and shall exercise all powers and duties of the chairman. In the event that neither the chairman nor vice chairman is present for a meeting *or other assembly of the commission*, the remaining members of the commission shall elect a temporary chairman who shall exercise all powers and duties of the chairman *for the duration of the meeting or assembly*.

1 VAC 50-20-50. Powers and duties of chairman.

In addition to any other powers or duties placed upon the chairman by law, ~~this chapter these regulations~~, or other action of the commission, the chairman shall be authorized to:

1. Request one or more members of the commission or its staff to represent the commission before local governing bodies, before state agencies and legislative committees, or before any other entity where the representation of the commission is requested or where the chairman deems ~~such~~ appropriate;
2. Select or change sites for oral presentations and public hearings;
3. Defer and reschedule issues the chairman deems appropriate upon consultation with the commission;
4. Act on behalf of the commission in efforts to resolve disputes between the parties to an issue relative to the production and sharing of data, or with respect to related concerns bearing on the commission's review of an issue; and

5. Establish upon consultation with the parties an equitable distribution of time for public presentations and to make other arrangements the chairman deems appropriate and consistent with the requirements of law and ~~this chapter these regulations~~ for the conduct of ~~such the commission's~~ oral presentations and public hearings.

1 VAC 50-20-60. Panels. (Repealed.)

~~The commission may appoint a panel of three members of the commission to conduct any hearing and investigation and to make any report required. Where panels are appointed under the authority of this chapter, any vote taken or report made with respect to the issue reviewed by the panel shall be restricted to the members of such panel. Any temporary absence of a panel member from a hearing shall not disqualify such member from voting on an issue nor from participating in the development of the report on the issue under review.~~

1 VAC 50-20-70. Meetings. (Repealed.)

~~The commission shall hold regular meetings at least once every two months. Special meetings may be called by any member and may be held when reasonably necessary to carry out the statutorily prescribed duties of the commission. The chairman shall cause to be mailed to all members, at least five days in advance of a special meeting, a written notice specifying the time, place, and purpose of such special meeting unless such special meeting was scheduled at a regular meeting of the commission or unless all commissioners file a written waiver of the notice.~~

1 VAC 50-20-80. Quorum; requisite vote for action. (Repealed.)

~~A majority of the members of the commission shall constitute a quorum. No action of the commission shall be valid unless authorized by a majority vote of those present.~~

1 VAC 50-20-90. Disqualification of commissioners. (Repealed.)

~~No member of the commission shall participate in the discussion, deliberation, drafting or approval of any report or finding required when any of the parties to the proceeding to which such report relates is a political subdivision in which such member presently or within the preceding five years has resided or has owned any interest in real property.~~

1 VAC 50-20-110. Staff.

The commission shall have a staff consisting of an executive director, who shall be appointed by the Governor and confirmed by the General Assembly, and ~~such~~ other employees as are needed and authorized by law.

PART II. GENERAL ADMINISTRATION.

1 VAC 50-20-120. Offices. (Repealed.)

~~The Commission's offices are located in Room 702, Eighth Street Office Building, Richmond, VA 23219. The telephone number is (804) 786-6508.~~

1 VAC 50-20-130. Communications with commission. (Repealed).

~~Communications with the commission shall be conducted through its Richmond offices. These offices shall be regularly staffed during normal working hours on weekdays. Telephone messages may be left with the commission at its Richmond office after normal working hours via recording.~~

1 VAC 50-20-140. Schedule for Regular meetings.

~~The commission's regular meetings shall be held on the second Tuesday in January, March, May, July, September, and November at its offices in Richmond. Changes in the schedule and location of the regular meetings may be made by the commission, but such the changes shall be duly announced in the Virginia Register of Regulations published by the Virginia Code Commission. All special public meetings of the commission shall also be announced in the Virginia Register of Regulations or by other appropriate means.~~

1 VAC 50-20-142. Special meetings.

Special meetings of the commission may be called by any member on such occasions as may be reasonably necessary to carry out the duties of the commission. Except in instances where a special meeting is scheduled at a regular meeting, the chairman shall cause to be mailed to all members, at least five days in advance of a special meeting, a written notice specifying the time, place and purpose of the special meeting. Written notice of special meetings shall not be required if all members of the commission file a written waiver of the notice requirement.

1 VAC 50-20-150. Minutes of meetings and hearings.

Minutes shall be recorded for each public meeting held by the commission. The minutes shall include a brief summary of comments on major issues under consideration and concise and specific statements of all action taken by the commission. The minutes shall be provided to each commission member for reading and editing prior to approval at a subsequent commission meeting. There need be no actual reading of the minutes at the meeting, but a vote shall be taken for the formal approval of the minutes as written or amended. Copies of the minutes of such public meetings shall be made available to any interested party at a price sufficient to cover the expense incurred.

1 VAC 50-20-160. Executive sessions or meetings.

The commission, its panels, or its members and staff may hold and conduct such executive sessions or meetings as may be necessary for mediation and negotiations, for deliberations, or for other appropriate purposes.

1 VAC 50-20-170. Confidentiality of proceedings and submissions.

All testimony, statements, exhibits, documents, or other evidence submitted to the commission by the parties in conjunction with its legally prescribed public meetings, presentations, or hearings shall be subject to disclosure by the commission under the provisions of the Virginia Freedom of Information Act. All other materials, including the testimony, statements, exhibits, documents, or other evidence submitted

to the commission pursuant to executive deliberations, negotiations, or mediation which the commission is authorized by law to conduct, shall be treated as confidential and shall not be subject to disclosure by the commission nor by the parties involved in such executive proceedings except by agreement of the commission and all parties to such the proceedings.

PART III.

MANDATORY COMMISSION REVIEWS.

1 VAC 50-20-180. Notice to commission of proposed action as required by § 15.2-2907 of the Code of Virginia.

A. Notice of a proposed action as required by § ~~45.1-945.7~~ 15.2-2907 of the Code of Virginia to the commission shall be accompanied by resolution of the governing body of the political subdivision locality providing such the notice evidencing its support of such action. Notice to the commission should indicate the name, title, address, and phone number and, where available, fax number and email address of the individual who shall serve as designated contact with the commission regarding the issue presented. All notices required to be given the commission under the provisions of § ~~45.1-945.7~~ 15.2-2907 of the Code of Virginia shall also indicate the other local governments given notice of the proposed action pursuant to ~~1 VAC 50-20-200~~ subsection C of this section.

1. Notice of a proposed annexation initiated by voters or property owners shall be accompanied by the original or certified petition signed by 51% of the voters of any territory adjacent to any municipality or 51% of the owners of real estate in number and land area in a designated area. Notice to the commission should indicate the name, title, address, and phone number and, where available, fax number and email address of the individual who shall serve as designated contact with the commission regarding the issue presented. All notices required to be given to the commission under the provisions of § 15.2-2907 of the Code of Virginia shall also indicate the other local governments given notice of the proposed action pursuant to subsection C of this section.

2. Notice of a petition for the proposed transition of a city to town status that has been referred to the commission pursuant to § 15.2-4102 of the Code of Virginia should indicate the name, title, address, phone number and, where available, fax number and email address of the individual who shall serve as designated contact with the commission regarding the issue referred. All notices required to be given the commission under the provisions of § 15.2-2907 of the Code of Virginia shall also indicate the other local governments given notice of the proposed action pursuant to subsection C of this section.

3. Notice to the commission by a committee of citizens that has been appointed by the circuit court to act for and in lieu of a governing body to perfect a consolidation agreement pursuant to § 15.2-3531 of the Code of Virginia should indicate the name, title, address, phone number and, where available, fax number and email address of the individual who shall serve as designated contact with the commission regarding the proposed consolidation. All notices required to

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be given to the commission under the provisions of § 15.2-2907 of the Code of Virginia shall also indicate the other local governments given notice of the proposed action pursuant to subsection C of this section.

~~1 VAC 50-20-190. Submission of supporting materials by initiating party.~~

B. Any party giving notice to the commission of a proposed action pursuant to § ~~15.1-945.7~~ 15.2-2907 of the Code of Virginia may submit with ~~such~~ the notice as much data, exhibits, documents, or other supporting materials as it deems appropriate; however, ~~such~~ the submissions should be fully responsive to all relevant elements of the applicable section of Part IV (1 VAC 50-20-540 et seq.) of this chapter.

~~1 VAC 50-20-200. Notice to affected local governments.~~

C. Any ~~local government party~~ giving notice to the commission of a proposed action as required by § ~~15.1-945.7~~ 15.2-2907 of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the local government proposing ~~such~~ the action. All ~~such~~ notices to the local governments shall include an annotated listing of all documents, exhibits, and other material submitted to the commission in support of the proposed action.

1. Any voters or property owners giving notice to the commission of a proposed annexation as required by § 15.2-2907 of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the municipality to which annexation is sought. All notices to the immediately affected local governments shall include copies of all documents, exhibits, and other material submitted to the commission in support of the proposed action, and notice to other localities may include, in lieu of copies of the submissions, an annotated listing of the material.

2. Any voters whose petition for the proposed transition of a city to town status that has been referred to the commission pursuant to § 15.2-4102 of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the city proposed for town status. All notices to the immediately affected local governments shall include copies of all documents, exhibits, and other material submitted to the commission in support of the proposed action, and notice to other localities may include, in lieu of copies of the submissions, an annotated listing of the material.

3. A committee of citizens that has been appointed by the circuit court to act for and in lieu of a governing body to perfect a consolidation agreement pursuant to § 15.2-3531 of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the local governments that are proposed to be consolidated. All notices to the immediately affected local governments shall include copies of all documents, exhibits, and other material submitted to the commission in support of the proposed action, and notice to other localities may include, in lieu of

copies of the submissions, an annotated listing of the material.

~~1 VAC 50-20-210. Submissions by other parties.~~

D. Any local government receiving notice pursuant to ~~1 VAC 50-20-200~~ subsection C of this section or any other affected party may submit ~~such~~ data, exhibits, documents, or other material for commission review and consideration as it deems appropriate. ~~Such~~ The submissions should, however, be responsive to all relevant elements of the applicable section of Part IV (1 VAC 50-20-540 et seq.) of this chapter. Any party submitting material to the commission for review pursuant to this section shall also designate an individual as principal contact for the commission and shall furnish the individual's title, address and , phone number and, where available, fax number and email address. An annotated listing of all documents, exhibits, or other material submitted to the commission pursuant to this section shall be provided to the party initiating the proceeding before the commission. The commission may establish a time by which all submissions by respondent parties must be received.

~~1 VAC 50-20-220. Commission scheduling of review.~~

E. Upon its receipt of notice of a proposed action pursuant to ~~1 VAC 50-20-180~~ subsection A of this section, the commission shall, subsequent to discussion with representatives of the party submitting ~~such~~ the notice and other appropriate parties, schedule a review of the proposed action. The commission shall also concurrently extend the services of its office to the parties in an endeavor to promote a negotiated settlement of the issue and, further, may designate, with the agreement of the parties, an independent mediator to assist in the negotiations.

The commission's review of a notice of a proposed annexation as required by § 15.2-2907 of the Code of Virginia filed by voters or property owners shall be terminated upon receipt of an ordinance, duly adopted by a majority of the elected members of the governing body of the affected city or town, rejecting the annexation proposed by the notice.

~~1 VAC 50-20-230. Referral to commission of proposed voluntary settlement agreements.~~

A. Referral of a proposed voluntary settlement agreement to the commission under the provisions of § ~~15.1-1167.4~~ 15.2-3400 of the Code of Virginia shall be accompanied by ~~resolution~~ resolutions, joint or separate, of the governing bodies of the ~~political subdivisions which~~ localities that are parties to the proposed agreement requesting the commission to review ~~such~~ the agreement. The resolution or resolutions shall also state the intention of the governing bodies to adopt ~~such~~ the agreement subsequent to the commission's review and ~~shall designate the individual (with~~ should indicate the name, title, address, and telephone number) and, where available, fax number and email address of the individual who shall serve as each locality's principal contact with the commission during the period of its review. Referrals to the commission pursuant to § ~~15.1-1167.4~~ 15.2-3400 of the Code of Virginia shall also be accompanied by a listing of local governments receiving notice of ~~such~~ the referral under ~~1 VAC 50-20-250~~ subsection C of this section.

~~1 VAC 50-20-240. Submission of supporting materials by parties making referral.~~

~~B. Any party or parties referring a proposed *voluntary settlement* agreement to the commission for review pursuant to § ~~15.1-1467.4~~ 15.2-3400 of the Code of Virginia may submit with ~~such the~~ proposed agreement as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, ~~such the~~ submissions should be fully responsive to all relevant elements of ~~the applicable section of Part IV (1 VAC 50-20-540 et seq.)~~ 1 VAC 50-20-610.~~

~~1 VAC 50-20-250. Notice to affected local governments.~~

~~C. Whenever a proposed *voluntary settlement* agreement is referred to the commission for review pursuant to ~~1 VAC 50-20-230 subsection A of this section~~, the parties to ~~such the~~ proposed agreement shall concurrently give notice of ~~such the~~ referral to each *Virginia* local government with which any of ~~such the~~ parties is contiguous, or with which any of ~~such the~~ parties shares any function, revenue, or tax source. All such notices of referral shall be accompanied by a copy of the proposed *voluntary settlement* agreement, or a descriptive summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission in support of the proposed agreement.~~

~~1 VAC 50-20-260. Submissions by other parties.~~

~~D. Any local government receiving notice of referral pursuant to ~~1 VAC 50-20-250 subsection C of this section~~, or any other party, may submit ~~such~~ data, exhibits, documents, or other supporting materials relevant to the commission's review as it deems appropriate; however, ~~such the~~ submissions should be responsive to all relevant elements of ~~the applicable section of Part IV (1 VAC 50-20-540 et seq.)~~ 1 VAC 50-20-610. Any party submitting materials to the commission pursuant to this chapter shall also designate an individual (~~with title, address, and phone number~~) who shall serve as principal contact with the commission during the period of its review *and shall furnish the individual's title, address, phone number and, where available, fax number and email address*. The commission may establish a time by which all submissions by respondent parties must be received. Any party submitting materials to the commission pursuant to this chapter shall also provide an annotated listing of ~~such the~~ material to the parties to the proposed *voluntary settlement* agreement.~~

1 VAC 50-20-270. Referral to commission of proposed town-county agreement defining annexation rights.

A. Referral to the commission of a proposed town-county agreement defining annexation rights *pursuant to § 15.2-3231 of the Code of Virginia* shall be accompanied by resolution, joint, or separate, of the governing bodies of the town and county requesting the commission to review ~~such the~~ agreement. The *resolution or resolutions* shall also state the intention of the governing bodies to adopt ~~such the~~ agreement subsequent to the commission's review and ~~shall designate the individual (with~~ *should indicate the name, title, address, and phone number and, where available, fax number and email address, of the individual* who shall serve as each locality's principal contact with the commission during the period of its review. Referrals to the commission pursuant to § ~~15.1-1058.2~~ 15.2-3231 of the Code of Virginia shall also be

accompanied by a listing of local governments receiving notice of such referral under ~~1 VAC 50-20-290 subsection C of this section~~.

~~1 VAC 50-20-280. Submission of supporting materials by parties making referral.~~

~~B. Any party or parties referring a proposed agreement to the commission for review pursuant to § ~~15.1-1058.2~~ 15.2-3231 of the Code of Virginia may submit with ~~such the~~ proposed agreement as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, ~~such~~ submissions should be fully responsive to all relevant elements of ~~the applicable section of Part IV (1 VAC 50-20-540 et seq.)~~ 1 VAC 50-20-560.~~

~~1 VAC 50-20-290. Notice to affected local governments.~~

~~C. Whenever a proposed agreement is referred to the commission for review pursuant to ~~1 VAC 50-20-270 subsection A of this section~~, the parties to ~~such the~~ proposed agreement shall concurrently give notice of ~~such the~~ referral to each local government with which either party is contiguous or with which either party shares any function, revenue, or tax source. All ~~such~~ notices of referral shall be accompanied by a copy of the proposed agreement, or a descriptive summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission in support of the proposed agreement.~~

~~1 VAC 50-20-300. Submissions by other parties.~~

~~D. Any ~~other~~ local government receiving notice of referral pursuant to ~~1 VAC 50-20-290 subsection C of this section~~, or any other party, may submit ~~such~~ data, exhibits, documents, or other supporting materials relevant to the commission's review as they deem appropriate; however, ~~such the~~ submissions should be responsive to all relevant elements of ~~the applicable section of Part IV (1 VAC 50-20-540 et seq.)~~ 1 VAC 50-20-560. Any party submitting materials to the commission pursuant to these regulations shall also designate an individual (~~with title, address, and phone number~~) who shall serve as principal contact with the commission during the period of its review, *and shall furnish the individual's title, address, phone number and, where available, fax number and email address*. The commission may establish a time by which all submissions by respondent parties must be received. Any party submitting materials to the commission pursuant to this chapter shall also provide an annotated listing of ~~such the~~ material to the parties to the proposed agreement.~~

1 VAC 50-20-310. Petition Referral to commission of town petition for order establishing annexation rights.

A. Any town unable to reach an agreement with its county as to future annexation rights may, pursuant to § ~~15.1-1058.4~~ 15.2-3234 of the Code of Virginia, adopt an ordinance petitioning the commission for an order establishing its rights to annex territory in such county. The petition to the commission shall include the terms of a proposed order establishing the town's annexation rights and ~~shall designate the individual (with~~ *should indicate the name, title, address, and phone number and, where available, fax number and email address of the individual* who shall serve as the town's principal contact with the commission. Petitions to the

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commission pursuant to ~~§ 45.1-1058.4~~ 15.2-3234 of the Code of Virginia shall also be accompanied by a copy of the ordinance and by a listing of all local governments being served or receiving notice of the town's petition pursuant to ~~4 VAC 50-20-330 subsection C of this section.~~

~~**1 VAC 50-20-320. Submission of supporting materials by town petitioning commission.**~~

~~B. Any town petitioning the commission under the authority of § 45.1-1058.4 15.2-3234 of the Code of Virginia may submit with such the petition as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, such the submissions should be fully responsive to all relevant elements of the applicable section of Part IV (1 VAC 50-20-540 et seq.) 1 VAC 50-20-616.~~

~~**1 VAC 50-20-330. Service or notice to affected local governments.**~~

~~C. Any town petitioning for an order establishing its annexation rights under the authority of § 45.1-1058.4 15.2-3234 of the Code of Virginia shall serve a copy of the petition and ordinance on the Commonwealth's attorney, or the county attorney if there be one, and on the chairman of the board of supervisors of the county whose territory would be affected by the town's proposed annexation order. The town shall also give notice of its petition to all other towns located within such the affected county and to each local government adjoining such county. The service in the county and the notice to other localities shall be accompanied by an annotated listing of all materials submitted to the commission pursuant to ~~4 VAC 50-20-320 subsection B of this section.~~~~

~~**1 VAC 50-20-340. Submissions by county and other parties.**~~

~~D. A county served with a copy of a town's petition pursuant to ~~4 VAC 50-20-330 subsection C of this section~~ shall file its response to such petition with the commission within 60 days after receipt of such service. Any other locality party receiving notice pursuant to ~~4 VAC 50-20-330, or other party subsection C of this section,~~ may also submit materials to the commission for consideration with respect to the town's petition within 60 days of their receipt of such notice. Responses and submissions to the commission pursuant to this chapter may include such data, exhibits, documents, or other materials as the submitting party deems appropriate; however, such responses and submissions should be responsive to all relevant elements of the applicable section of Part IV (~~1 VAC 50-50-540 et seq.~~) 1 VAC 50-20-616. Any party submitting materials to the commission for review pursuant to this chapter shall also designate an individual (~~with title, address, and phone number~~) who shall serve as principal contact with the commission, and shall furnish the individual's title, address, phone number and, where available, fax number and email address. Any party submitting materials to the commission pursuant to this chapter shall also provide an annotated listing of such material to the town petitioning the commission.~~

1 VAC 50-20-350. Referral to commission of minor adjustment of boundary lines.

A. Whenever a court refers a proposed boundary adjustment to the commission pursuant to § 45.1-1031.4 15.2-3109 of the Code of Virginia, the ~~jurisdictions~~ localities proposing the boundary line adjustment shall, upon receipt of notification of such the referral, provide the commission with a copy of their petition to the court and shall designate an individual for each ~~jurisdiction (with title, address, and phone number)~~ locality who shall serve as principal contact with the commission and shall furnish the individual's title, address, phone number and, where available, fax number and email address. The ~~jurisdictions~~ shall also advise the commission of those localities receiving notice of the proposed boundary adjustment pursuant to ~~1 VAC 50-20-370 Referrals to the commission pursuant to § 15.2-3109 of the Code of Virginia shall also be accompanied by a listing of local governments receiving notice of the referral under subsection C of this section.~~

~~**1 VAC 50-20-360. Submission of supporting materials by local governments proposing boundary adjustments.**~~

~~B. The two jurisdictions localities proposing a boundary line adjustment pursuant to § 45.1-1031.4 15.2-3109 of the Code of Virginia may, jointly or independently, submit to the commission with their petition as much data, exhibits, documents, or other supporting materials as they deem appropriate; however, such submissions should be fully responsive to all relevant elements of the applicable section of Part IV (1 VAC 50-20-540 et seq.) 1 VAC 50-20-600.~~

~~**1 VAC 50-20-370. Notice to affected local governments.**~~

~~C. Whenever a proposed boundary line adjustment, as authorized by § 15.1-1031.4 of the Code of Virginia, is referred to the commission for review pursuant to § 15.2-3109 of the Code of Virginia, the local governments localities proposing the adjustment shall concurrently give notice of the proposed adjustment as well as notice of the referral of the issue to the commission to each local government with which either party is contiguous and to any other locality local government deemed to be potentially affected by the proposed adjustment. Such notice shall include a copy of the petition requesting the boundary line adjustment, or an informative summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission for review pursuant to ~~4 VAC 50-20-360 subsection B of this section.~~~~

~~**1 VAC 50-20-380. Submissions by other parties.**~~

~~D. Any local government receiving notice of a proposed boundary adjustment pursuant to ~~4 VAC 50-20-370 subsection C of this section,~~ or any other party, may submit such data, exhibits, documents, or other supporting materials relevant to the commission's review as they deem appropriate; however, such submissions should be responsive to all relevant elements of the applicable section of Part IV (~~1 VAC 50-20-540 et seq.~~) 1 VAC 50-20-600. Any party submitting materials to the commission pursuant to this chapter shall also designate an individual (~~with title, address, and phone number~~) who shall serve as principal contact with the commission during the period of its review, and shall furnish~~

the individual's title, address, phone number and, where available, fax number and email address. The commission may establish a time by which all submissions by respondent parties must be received. Any party submitting materials to the commission pursuant to this chapter shall also provide an annotated listing of ~~such material~~ the materials to the local governments localities proposing the boundary line adjustment.

1 VAC 50-20-382. Referral to commission of proposed economic growth-sharing agreements.

A. Referral of a proposed economic growth-sharing agreement to the commission under the provisions of § 15.2-1301 of the Code of Virginia shall be accompanied by resolution, joint or separate, of the governing bodies of the localities that are parties to the proposed agreement requesting the commission to review the agreement. The resolution or resolutions shall also state the intention of the governing bodies to adopt the agreement subsequent to the commission's review and should indicate the name, title, address, phone number and, where available, fax number and email address of the individual who shall serve as each locality's principal contact with the commission during the period of its review. Referrals to the commission pursuant to § 15.2-1301 of the Code of Virginia shall also be accompanied by a listing of local governments receiving notice of the referral under subsection C of this section.

B. Any party or parties referring a proposed economic growth-sharing agreement to the commission for review pursuant to § 15.2-1301 of the Code of Virginia may submit with the proposed agreement as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, the submissions should be fully responsive to all relevant elements of 1 VAC 50-20-612.

C. Whenever a proposed economic growth-sharing agreement is referred to the commission for review pursuant to subsection A of this section, the parties to the proposed agreement shall concurrently give notice of the referral to each Virginia local government with which any of the parties is contiguous, or with which any of the parties shares any function, revenue, or tax source. All notices of referral shall be accompanied by a copy of the proposed agreement, or a descriptive summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission in support of the proposed agreement.

D. Any local government receiving notice of referral pursuant to subsection C of this section, or any other party, may submit data, exhibits, documents, or other supporting materials relevant to the commission's review as it deems appropriate; however, the submissions should be responsive to all relevant elements of 1 VAC 50-20-612. Any party submitting materials to the commission pursuant to this chapter shall also designate an individual who shall serve as principal contact with the commission during the period of its review, and shall furnish the individual's title, address, phone number and, where available, fax number and email address. Any party submitting materials to the commission pursuant to this chapter shall also provide an annotated listing of the material to the parties to the proposed agreement.

1 VAC 50-20-384. Determination of continued eligibility for city status.

A. The commission shall review each decennial census of population released by the United States Bureau of the Census to determine whether any city has failed to meet the criteria for city status established by Article VII, Section 1 of the Constitution of Virginia. In any instance where the census indicates that a city may not meet the constitutional criteria, the commission shall conduct an investigation of the city's population, assets, liabilities, rights and obligations and shall certify its findings to the governing body of such city.

B. In the conduct of its investigation, the commission shall request the assistance of the city in the provision of relevant data and information. The city may submit as much data, exhibits, documents or other material as it deems appropriate; however, the submissions should be responsive to all relevant elements of 1 VAC 50-20-614.

1 VAC 50-20-390. Counsel General provisions applicable to mandatory commission reviews.

A. Any local government or other party appearing before the commission relative to any mandatory review may be represented by counsel.

1 VAC 50-20-400. Order for consideration of issues.

B. The commission shall generally schedule for consideration issues in the order in which received; however, the commission reserves the right to consider issues in other sequence where it deems such appropriate. Where notices are received of related or competitive actions affecting the same political subdivision or subdivisions locality or localities, the commission may, where appropriate, consider such the issues and render such the reports or a consolidated report concurrently.

1 VAC 50-20-410. Scheduling of a commission review.

C. Subsequent to its receipt of an issue for a mandatory review the commission shall meet, or otherwise converse, with representatives of the principally affected localities parties for purposes of establishing a schedule for its review of the issue. Such The schedule shall include dates (i) for the submission of responsive materials from affected jurisdictions, (ii) for tours of affected areas and oral presentations, if any are desired by the commission, (iii) for a public hearing, and (iv) for the issuance of the commission's report.

1 VAC 50-20-420. Continuances and deferrals.

D. The commission may continue or defer its proceedings with respect to an issue at any time it deems such appropriate; however, no such continuance or deferral shall result in an extension of the commission's reporting deadline beyond any time limit imposed by law, except by agreement of the parties or in accordance with other statutory procedures. The commission shall also accept requests for continuances or deferrals from any party at any time during its proceedings but shall not grant or deny any such requests until all parties have had an opportunity to comment on such the requests. In any instance where the commission grants a continuance or a deferral, such the continuance or deferral may be conditioned

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upon an appropriate extension of the commission's reporting deadline with respect to the issue under review.

E. The commission may confront the necessity of continuing or deferring its proceedings as a result of statutory requirement or court order. In such instances, the commission shall reschedule its proceedings, upon consultation with the parties, in a manner that permits an expeditious conclusion of its review. The parties should anticipate, however, that the duration of the continuance or stay shall result in a commensurate delay in the issuance of the commission's report.

~~**1 VAC 50-20-430. Convening of other meetings with parties.**~~

F. In addition to any meeting, presentation, public hearing, or other gathering of the parties specified by this chapter, the commission may, where it deems such necessary for an analysis of material or for a discussion or clarification of the issues before it, schedule other meetings of appropriate parties.

~~**1 VAC 50-20-440. Restrictions on communications with commissioners.**~~

G. No party or parties to a proceeding before the commission for mandatory review shall communicate in any manner with any member of the commission with respect to the merits of the issue under review except as is authorized by this chapter, or as may be otherwise authorized by the commission or its chairman.

~~**1 VAC 50-20-450. Supplemental submissions.**~~

H. In addition to the submissions authorized by the preceding sections of Part III (1 VAC 50-20-180 et seq.) through 1 VAC 50-20-384, the commission may allow supplemental submissions where such are deemed necessary or appropriate by the commission for the provision of current and complete data. Where supplemental submissions are authorized pursuant to this chapter subsection, copies of all such submissions shall be provided by the submitting party to all principal parties. The commission shall endeavor to establish dates for the filing of all such supplemental submissions which will allow an opportunity for their review and critical analysis by other affected parties. However, the commission may accept supplemental submissions filed after any established dates if, in the commission's judgment, the submissions assist the commission in the discharge of its statutory responsibilities.

~~**1 VAC 50-20-460. Disclosure of submissions.**~~

I. Any material submitted to the commission by the parties in conjunction with or relative to any notice filed pursuant to any mandatory review covered by Part III (1 VAC 50-20-180 et seq.) through 1 VAC 50-20-384, except materials presented in the context of negotiations or mediation of a confidential nature as authorized by law, shall be considered public documents and made available by the submitting party for review by any other interested party or by the public. Any interested party or member of the public may request copies of any such material which shall be provided promptly by the party submitting such the material to the commission at a price sufficient to cover the cost of reproduction.

~~**1 VAC 50-20-470. Identification and nature of materials submitted.**~~

J. Each document, exhibit, or other material submitted to the commission shall bear a title, the date of preparation, a detailed citation of the sources from which all data are obtained, and the name of the entity which submitted such the document, exhibit, or other material. All material submitted to the commission by a local government shall be, as nearly as practicable, in the same form as such the material would subsequently be submitted to the courts. The commission may not refuse to accept for review and consideration any exhibit, document, or other material unless the person preparing it, or a representative of the entity responsible for its submission, shall be willing to appear before the commission for purposes of answering questions concerning such the material.

~~**1 VAC 50-20-480. Projections of data.**~~

K. Unless otherwise requested, wherever the regulations of the commission call for the projection of data, such the projections should be made for periods of time deemed appropriate and possible by the submitting party. In each instance where projections are given, the method and bases of such the projections should be indicated.

~~**1 VAC 50-20-490. Certification of submissions.**~~

L. All data, exhibits, documents, or other material submitted to the commission on the initiative of a party or pursuant to a request from the commission shall be certified by the submitting party (i) as to source and (ii) as to the fact that such the material is correct within the knowledge of the submitting party.

~~**1 VAC 50-20-500. Required copies of submissions.**~~

M. Any local government party or parties filing notice or making submissions to the commission shall provide at least eight copies of all submissions, unless the commission agrees that a lesser number would be sufficient for its review and analysis. The commission may make provisions for the electronic filing of submissions, including facsimile.

~~**1 VAC 50-20-510. Staff solicitation of data.**~~

N. At any time during the course of the commission's review of any issue, the commission's staff may solicit such additional data, documents, records, or other materials from the parties as is deemed necessary for proper analysis of such any issue. Where such materials are solicited from a party, the commission's staff, where practicable, shall make such the request in writing, with copies of such the request being provided to other principal parties. Copies of all materials submitted to the commission pursuant to this chapter shall concurrently be provided to each principal party, or shall be made available to such the parties in a manner acceptable to the commission. The commission shall be given written notification by the submitting party of each principal party provided a copy of such the material or of arrangements proposed for making such the material available to the principal parties.

~~1 VAC 50-20-520. Independent research by commission.~~

O. The commission shall not be limited in its analysis of any issue to the materials submitted by the parties but shall undertake ~~such~~ independent research as it deems appropriate in order to assure a full and complete investigation of each issue.

~~1 VAC 50-20-530. Cooperation among parties in provision of data.~~

P. The commission shall request all parties to cooperate fully in the development and timely sharing of data relative to the issue under review. The commission considers ~~such~~ the cooperation among parties vital to the discharge of its responsibilities.

Q. *The commission may allow the parties to correct the data, exhibits, documents, or other material submitted to the commission prior to the date established for the closing of the record pursuant to 1 VAC 50-20-640 B. Where corrections are authorized pursuant to this chapter, copies of all corrections shall be provided by the submitting party to all principal parties. If, in the commission's judgment, the corrections are of a substantive nature as to significantly alter the scope or character of the issue under review, the commission may delay its proceedings for an appropriate amount of time to provide an opportunity for other parties to respond to the corrected data, exhibits, documents, or other material.*

R. *Following the receipt of a notice, the commission may request the party initiating the proposed action to prepare and file testimony in support of the proposed action. The testimony of the party initiating the proposed action may refer to all data, exhibits, documents, or other material previously submitted to the commission or filed with the testimony. In all proceedings in which the initiating party files testimony, the affected party or parties shall be permitted and may be requested by the commission to file, on or before a date established by the commission, testimony in response to the proposed action. The testimony of the affected party or parties may refer to all data, exhibits, documents, or other material previously submitted to the commission or filed with the testimony. Any affected party or parties that chooses not to file testimony by the date established by the commission may not thereafter present testimony except by permission of the commission, but may otherwise fully participate in the proceeding and engage only in cross-examination of the testimony of other parties. Failure to comply with the directions of the commission, without good cause shown, may result in rejection of the testimony by the commission. The commission may permit the parties to correct or supplement any prepared testimony before or during the oral presentations as called for in 1 VAC 50-20-620. Eight copies of prepared testimony shall be filed unless otherwise specified by the commission.*

PART IV.

INFORMATION, DATA, AND FACTORS RELATIVE TO MANDATORY COMMISSION REVIEWS.

1 VAC 50-20-540. Annexation.

A. In developing its findings of fact and recommendations with respect to a proposed annexation, the commission shall consider the information, data, and factors listed in this

~~chapter section. Any city or town filing notice with the commission that it proposes to annex territory shall submit with ~~such~~ the notice data and other evidence responsive to each element listed ~~herein~~ which in this section that it deems relevant to ~~its case~~ the proposed annexation. Any voters or property owners filing notice pursuant to § 15.2-2907 of the Code of Virginia with the commission seeking annexation to a municipality shall submit with the notice data and other evidence responsive to each element listed in this section that it deems relevant to the proposed annexation, except that subdivision 1 of this section is required to be included in the notice filed with the commission.~~

1. A written metes and bounds description of the boundaries of the area proposed ~~city~~ for annexation having, as a minimum, sufficient certainty to enable a layman to identify the proposed new boundary. ~~Such~~ The description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.

2. A map or maps showing (i) the boundaries of the area proposed for annexation and their geographic relationship to existing political boundaries; (ii) identifiable unincorporated communities, (iii) major streets, highways, schools, and other major public facilities, (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the property within the area sought for annexation.

3. A ~~tabular compilation~~ land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the municipality, the county, and the area proposed for annexation.

4. The past, the estimated current, and the projected population of the municipality, the county affected by the proposed annexation, and the area of the county proposed for annexation.

5. The past, the estimated current, and the projected future number of public school students enrolled in the public schools and the number of school-age children living in the municipality, the county affected by the proposed annexation, and the area of the county proposed for annexation.

6. The assessed property values, by major classification ~~where a classification system is maintained~~, and if appropriate, the ratios of assessed values to true values for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the municipality, and the county affected by the proposed annexation, and similar data for the current year for the area of the county proposed for annexation.

7. The current local property and nonproperty tax rates and ~~such~~ the tax rates for the preceding 10 years, applicable within the municipality, the county affected by the proposed annexation, and the area of the county proposed for annexation.

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8. The estimated current local revenue collections and intergovernmental aid, ~~such the~~ collections and aid for the previous 10 years, and projections of ~~such the~~ collections and aid (including tax receipts from real property, personal property, machinery and tools, merchants' capital, business and professional license, consumer utility and sales taxes) within the municipality, and the county affected by the proposed annexation, and similar data for the past year for the area of the county proposed for annexation.

9. The amount of long term indebtedness and the purposes for which all ~~such~~ long-term debt has been incurred by the municipality and the county affected by the proposed annexation.

10. The need in the area proposed for annexation for urban services, including but not limited to those listed below, the level of ~~such~~ services provided by the municipality and by the county affected by the proposed annexation, and the ability of the municipality and the county to provide ~~such the~~ services in the area proposed for annexation:

- a. Sewage treatment;
- b. Water;
- c. Solid waste collection and disposal;
- d. Public planning;
- e. Subdivision regulation and zoning;
- f. Crime prevention and detection;
- g. Fire prevention and protection;
- h. Public recreational facilities;
- i. Library facilities;
- j. Curbs; , gutters; , and sidewalks;
- k. Storm drains;
- l. Street lighting;
- m. Snow removal;
- n. Street maintenance;
- o. Schools;
- p. Housing; and
- q. Public transportation.

11. Efforts made by the municipality and the county affected by the proposed annexation to comply with applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies promulgated by the General Assembly.

12. The community of interest which (i) may exist between the municipality and the area proposed for annexation and its citizens and which (ii) may exist between ~~such that~~ area and its citizens and the rest of the county; the term "community of interest" may include, but not be limited to, consideration of natural neighborhoods, natural and manmade boundaries, the similarity of service needs, and economic and social bonds.

13. Any arbitrary prior refusal to cooperate by the governing body of the municipality or of the county affected by the proposed annexation, if such has occurred, to enter into cooperative agreements providing for joint activities which would have benefited citizens of both ~~political subdivisions~~ *localities*.

14. The need for the municipality to expand its tax resources, including its real estate and personal property tax base.

15. The need of the municipality to obtain land for industrial, commercial, and residential development.

16. The adverse effect on the county affected by the proposed annexation resulting from the loss of areas suitable and developable for industrial, commercial, or residential use.

17. The adverse effect *on the county* of the loss of tax resources and public facilities ~~on the ability of the county~~ *necessary* to provide services to those persons in the remaining areas of the county after the proposed annexation.

18. *The adverse impact of the proposed annexation on agricultural operations located in the area proposed for annexation.*

19. The terms and conditions upon which the municipality proposes to annex, its plans for the improvement of the annexed territory during the 10-year period following annexation, including the extension of public utilities and other services, and the means by which the municipality shall finance the improvements and extension of services.

~~19- 20.~~ 20. Data pertinent to a determination of the appropriate financial settlement between the municipality and the affected county as required by § ~~15.1-1042~~ 15.2-3211 of the Code of Virginia and other applicable provisions of the Code of Virginia.

~~20- 21.~~ 21. The commission's staff shall endeavor to assist localities contemplating or involved in annexation proceedings by identifying additional data elements considered by the commission to be relevant in the disposition of annexation issues.

1 VAC 50-20-550. Partial county immunity.

In developing its findings of fact and recommendations with respect to a proposed petition for partial immunity, the commission shall consider the information, data, and factors listed in this ~~chapter~~ *section*. Any county filing notice with the commission that it proposes to seek immunity for a portion of its territory shall submit with ~~such the~~ notice data and other evidence responsive to each element listed ~~below which in this section that it deems relevant to its case; the proposed petition for partial immunity.~~

1. A written metes and bounds description of the area for which immunity is sought having, as a minimum, sufficient certainty to enable a layman to identify the proposed immunity areas. ~~Such~~ *The* description may make reference to readily identifiable monuments such as public roads,

rivers, streams, railroad rights of way, and similar discernible physical features.

2. A map or maps showing: (i) the boundaries of the area proposed for immunity and their geographic relationship to existing political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the property within the area for which immunity is sought.

3. A ~~tabular compilation~~ land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the county, the affected city, and the area proposed for immunity.

4. The estimated current and projected population and population density of the areas for which immunity is sought.

5. The urban services, including but not limited to those listed below, provided in the area for which immunity is sought and the type and level of ~~such~~ services in relation to those furnished by the city from which immunity is sought:

- a. Sewage treatment;
- b. Water;
- c. Solid waste collection and disposal;
- d. Public planning;
- e. Subdivision regulation ~~of~~ and zoning;
- f. Crime prevention and detection;
- g. Fire prevention and protection;
- h. Public recreational facilities;
- i. Library facilities;
- j. Curbs, gutters, sidewalks;
- k. Storm drains;
- l. Street lighting;
- m. Snow removal;
- n. Street maintenance;
- o. Schools;
- p. Housing; and
- q. Public transportation.

6. Efforts made by the county to comply with applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies promulgated by the General Assembly.

7. The community of interest ~~which~~ *that*: (i) may exist between the area for which immunity is sought and the remainder of the county; (ii) the community of interest which

may exist between ~~such~~ *that* area and the city from which immunity is sought; and (iii) the relative strength of ~~such~~ *the* community of interests.

8. Any instance in which either the county or the affected city has arbitrarily refused to cooperate in the joint provision of services.

9. Whether the proposed grant of immunity would substantially foreclose a city of 100,000 population or less from expanding its boundaries by annexation.

10. The commission's staff shall endeavor to assist localities contemplating or involved in partial immunity proceedings by identifying the additional data elements considered by the commission to be relevant in the disposition of partial immunity issues.

1 VAC 50-20-560. Town-county agreements defining annexation rights.

In developing its findings of fact and recommendations with respect to a proposed town-county annexation agreement, the commission shall consider the information, data, and factors listed in this ~~chapter~~ *section*. Any town or county presenting proposed annexation agreements to the commission under the provisions of ~~§ 15.1-1058.2 or § 15.1-1058.4~~ 15.2-3231 of the Code of Virginia shall submit with the proposed agreement data and other evidence responsive to each element listed ~~below which in this section that it deems relevant:~~ .

1. A written metes and bounds description of those areas of the county made eligible for annexation under the proposed agreement having as a minimum, sufficient certainty to enable a layman to identify ~~such~~ *those* areas. ~~Such~~ *The* description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.

2. A map or maps showing: (i) the boundaries of the various areas eligible for annexation under the proposed agreement and their relationship to existing political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial and agricultural; and (vi) information deemed relevant as to the possible future use of the property in the areas affected by the proposed agreement.

3. A ~~tabular compilation~~ (land-use table) showing both the acreage and percentage of land currently devoted to the 37 various categories of land use in the town, the county, and the areas of the county affected by the agreement.

4. The past, the estimated current, and the projected population of the town, the county, and those areas of the county affected by the proposed agreement.

5. The past, the estimated current, and the projected number of public school students enrolled in the public schools and the number of school-age children living in the town, the county, and those areas of the county affected by the proposed agreement.

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6. The assessed property values, by major classification ~~where a classification system is maintained~~, and, if appropriate, the ratios of assessed values to true values for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current and preceding 10 years for the town, and the county, and similar data for the current year in those areas of the county affected by the proposed agreement.

7. The need of the municipality to expand its tax resources, including its real estate and personal property tax base.

8. The need of the municipality to obtain land for industrial, commercial, and residential development.

9. The current and prospective need for additional urban services in the areas of its county subject to annexation under the agreement.

10. Plans for the immediate and future improvement of areas annexed under the terms of the agreement, including the extension of public utilities and other services.

11. The commission's staff shall endeavor to assist localities contemplating or involved in town-county agreements defining annexation rights by identifying additional data elements considered by the commission to be relevant in the disposition of ~~such the~~ issues.

1 VAC 50-20-570. Town incorporation.

In developing its findings of fact and recommendations with respect to a proposed town incorporation, the commission shall consider the information, data, and factors listed in this ~~chapter~~ *section*. Any party or parties filing notice with the commission that they propose to have a community incorporated as a town, or whose petition for incorporation has been referred to the commission by the court pursuant to § ~~15.1-966.4~~ 15.2-3601 of the Code of Virginia, shall submit with such notice or subsequent to ~~such the~~ court referral data and other evidence responsive to each element listed ~~below in this section~~ which they deem relevant to the ~~issue~~: *proposed incorporation*.

1. A petition signed by not less than 100 duly qualified voters residing within the boundaries of the proposed town supporting the proposed incorporation.

2. A written metes and bounds description of the area proposed for incorporation as a town having, as a minimum, sufficient certainty to enable a layman to identify the proposed town boundary. ~~Such~~ *The* description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.

3. A map or maps showing: (i) the boundaries of the proposed town and their relationship to existing political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; and (v) existing uses of the land, including residential, commercial, industrial and agricultural.

4. A ~~tabular compilation~~ (land-use table) showing both the acreage and percentage of land currently devoted to the various categories of land use in the area proposed for incorporation.

5. The estimated past, the estimated current, and the projected population of the area proposed for incorporation and the county within which the town would be situated.

6. Information indicating: (i) why the proposed incorporation is desired and in the interest of the inhabitants; (ii) how the general good of the community is served by ~~such the~~ incorporation; and (iii) why the services needed within the proposed town cannot be provided by the establishment of a sanitary district, through the extension of existing county services, or by other arrangements provided by law.

7. The commission shall endeavor to assist communities contemplating or involved in proposed town incorporations by identifying additional data elements considered by the commission to be relevant in the disposition of ~~such~~ incorporation issues.

1 VAC 50-20-580. Town-city transitions.

In developing its findings of fact and recommendations with respect to a proposed town to city transition, the commission shall consider the information, data, and factors listed in ~~these regulations~~ *this section*. Any town filing notice with the commission that it proposes to become a city shall submit with ~~such the~~ notice data and other evidence responsive to each element listed ~~below which in this section~~ that it deems relevant to ~~its case~~: *the proposed transition*.

1. A written metes and bounds description of the boundaries of the proposed city having, as a minimum, sufficient certainty to enable a layman to identify the proposed city boundary. ~~Such~~ *The* description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.

2. A map or maps showing: (i) the boundaries of the proposed city and their geographic relationship to existing political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the property within the proposed city.

3. A ~~tabular compilation~~ (land-use table) showing both the acreage and percentage of land currently devoted to the various categories of land use in the proposed city.

4. The past, the estimated current, and the projected population of the proposed city and the county affected by the proposed transition.

5. The past, the estimated current, and the projected future number of public school students enrolled in the public schools and the number of school-age children living in the proposed city and the county affected by the proposed transition.

6. The assessed values, by major classification ~~where a classification system is maintained~~, and, if appropriate, the ratios of assessed values to true values for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the county and within the proposed city.

7. The current local property and nonproperty tax rates, and ~~such the~~ tax rates for the preceding 10 years, applicable within the county and the proposed city.

8. The estimated current local revenue collections and intergovernmental aid, ~~such the~~ collections and aid for the previous 10 years, and projections of ~~such the~~ collections and aid, including tax receipts from real property, personal property, machinery and tools, merchants' capital, business and professional license, consumer utility and sales taxes, within the county and the proposed city.

9. The amount of long-term indebtedness and the purposes for which ~~all such that~~ long-term debt has been incurred by the municipality and the county affected by the proposed transition.

10. The current type and level of urban services provided by the town, the additional services to be provided and the additional costs to be borne by the proposed city, and the means by which the proposed city shall finance ~~such the~~ additional services and costs.

11. The fiscal capacity of the town to function as an independent city and to provide appropriate urban services.

12. The effect and impact of the proposed transition on the ability of the county to meet the service needs of its remaining population and the means by which any substantial impairment of the county's ability to meet ~~such those~~ needs shall be offset.

13. The effect of the proposed transition on compliance with and the promotion of applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies declared by the General Assembly.

14. Data pertinent to a determination of the appropriate financial settlement as required by § ~~45.1-0003~~ 15.2-3829 and other applicable provisions of the Code of Virginia.

15. The commission's staff shall endeavor to assist localities contemplating or involved in town-city transition proceedings by identifying additional data elements considered by the commission to be relevant in disposition of ~~such town to city~~ transition issues.

1 VAC 50-20-590. County-city transitions.

In developing its findings of fact and recommendations with respect to a proposed county to city transition, the commission shall consider the information, data, and factors listed in this ~~chapter~~ section. Any county filing notice with the commission that it proposes to become a city shall submit with ~~such the~~ notice data and other evidence responsive to each element listed ~~below which in this section that it deems relevant to its case: the proposed transition.~~

1. A map, or maps, showing: (i) the location of all towns situated within the county; (ii) all adjoining and adjacent ~~political subdivisions~~ localities; (iii) identifiable unincorporated communities within the county; (iv) the population density of the various areas of the county; (v) the areas of the county served by urban services; (vi) major streets, highways, schools and other major public facilities; (vii) significant geographic features, including mountains and bodies of water; (viii) existing uses of the land, including residential, commercial, industrial, and agricultural; and (ix) information deemed relevant as to the possible future use of the property within the county.

2. A ~~tabular compilation~~ (land-use table) showing both the acreage and percentage of land currently devoted to the various categories of land use in the county.

3. The past, the estimated current, and the projected future population of the county, each town within the county, and of the major densely populated unincorporated communities within the county.

4. The past, the estimated current, and the projected future number of public school students enrolled in the public schools and the number of school-age children living in the county and in each town therein.

5. The assessed values, by major classification ~~where a classification system is maintained~~, and if appropriate, the ratios of assessed values to true values for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the county and each town within the county.

6. The current local property and nonproperty tax rates, and ~~such the~~ rates for the preceding 10 years, within the county and all towns within the county.

7. The estimated current local revenue collections and intergovernmental aid, ~~such the~~ collections and aid for the previous 10 years, and projections of ~~such the~~ collections and aid (including tax receipts from real property, personal property, machinery and tools, merchants' capital, business and professional license, consumer utility and sales taxes) within the county and within each town within the county.

8. The amount of long-term indebtedness of the county and each town within the county and the amount and purpose for which ~~all such that~~ debt has been incurred.

9. Data regarding: (i) the urban-type services presently provided by the county; (ii) the level of ~~such those~~ services; (iii) the areas of the county served by ~~such those~~ services; (iv) the additional services to be provided and the additional cost to be borne by the proposed city; and (v) the means by which the proposed city shall finance ~~such the~~ additional services and costs.

10. The fiscal capacity of the county to function as an independent city and to provide appropriate services.

11. The impact of the proposed transition on compliance with and the promotion of applicable state policies with respect to environmental protection, public planning,

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education, public transportation, housing, and other state service policies declared by the General Assembly.

12. The commission's staff shall endeavor to assist localities contemplating or involved in proposed county-city transitions by identifying additional data elements considered by the commission to be relevant in the disposition of ~~such~~ county to city transition issues.

1 VAC 50-20-600. Minor adjustment of boundary lines.

In developing its findings of fact and recommendations with respect to a proposed boundary *line* adjustment, the commission shall consider the information, data, and factors listed in this section. The ~~local governments~~ localities petitioning for a boundary *line* adjustment under the provisions of § ~~15.1-1031.4~~ 15.2-3109 of the Code of Virginia shall, separately or jointly, at the time they initiate such petition to the court, submit to the commission data and other evidence responsive to each element listed ~~below~~ *in this section that is relevant to the case: boundary line adjustment.*

1. A written metes and bounds description of the precise segment of the boundary for which an adjustment is sought having, as a minimum, sufficient certainty to enable a layman to identify the boundary segment in question. ~~Such~~ The description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.

2. A map or maps showing: (i) the precise segment of the boundary ~~which~~ that the parties agree should be adjusted; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the land.

3. The estimated past, the estimated current, and the projected future population and population density of all areas adjacent to the segment of the boundary proposed for adjustment and of other areas possibly affected by the proposed boundary *line* adjustment.

4. A ~~tabular compilation~~ (land-use table) showing both the acreage and percentage of land currently devoted to the various categories of land use in all areas adjacent to the segment of the boundary proposed for adjustment and in other areas possibly affected by the proposed boundary *line* adjustment.

5. The past, the estimated current, and the projected future number of public school students enrolled in the public schools and the number of school-age children living in all areas adjacent to the segment of the boundary proposed for adjustment and in other areas possibly affected by the proposed *line* adjustment.

6. The assessed and true real property values, by major classification ~~where a classification system is maintained~~, of those areas adjacent to the segment of the boundary proposed for adjustment and of any other area possibly affected by the proposed adjustment and other fiscal data relative to the issue.

7. Maps indicating the principal alternative boundary *line* adjustments which have been considered by the parties and a brief statement as to how each alternative adjustment would promote the effective and efficient provision of public services.

8. Information as to why the proposed boundary *line* adjustment is sought by the parties.

9. The commission's staff shall endeavor to assist localities contemplating or involved in proposed boundary *line* adjustments by identifying additional data elements considered by the commission to be relevant in the disposition of boundary *line* adjustment issues.

1 VAC 50-20-601. City-town transitions.

In developing its findings of fact and recommendations with respect to a proposed transition of a city to town status, the commission shall consider the information, data, and factors listed in this section. Any city filing notice with the commission that it proposes to become a town or any petition for the transition of a city to town status that has been referred to the commission by the court pursuant to § 15.2-4104 of the Code of Virginia should be accompanied by data and other evidence responsive to each element listed in this section that the city deems relevant to the proposed transition.

1. Map or maps showing (i) the boundaries of the city proposed for transition and their geographic relationship to other political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land within the city, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the land within the city.

2. The past, the estimated current, and the projected future population and population of the city and the county affected by the proposed transition, and the estimated density of the city and the affected county.

3. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the city and the county affected by the proposed transition.

4. The past, the estimated current, and a five-year projection of the future number of public school students enrolled in the public schools and the number of school-age children living in the city and the county affected by the proposed transition.

5. The assessed values, by major classification for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the city and for the county affected by the proposed transition.

6. The current local property and nonproperty tax rates, and the rates for the preceding 10 years, applicable within the city and the county affected by the proposed transition.

7. The estimated current local revenue collections (including receipts from real property, personal property, machinery and tools, consumer utility, sales taxes, etc., and receipts from nontax sources) and intergovernmental aid, and the collections and aid for the preceding 10 years, for the city and the county affected by the proposed transition.

8. The identification of those services performed by the city that are proposed for assumption by the county as a result of the proposed transition, the number of customers or recipients of each service within the city that would be served by the county subsequent to the transition, and the aggregate annual cost to the county for the provision of services within the city.

9. The identification of those services that would be provided by the town subsequent to the proposed reversion, the number of recipients of each service within the municipality, and the aggregate annual cost to the proposed town for the provision of services.

10. The identification of those city-owned facilities that are proposed for transfer to the county, the identification of those that would be retained by the proposed town, and the current fair market value and the outstanding city debt attributable to each facility.

11. The current outstanding debt of the city, the applicable portion of debt stated as a percentage of the city's constitutional debt limit, and the current schedule for the retirement of all municipal debt.

12. The identification of that portion of the city's indebtedness that is proposed for transfer to the county and the purposes for which the debt has been incurred.

13. Estimates of the annual amount of tax and nontax revenues to be collected by the county within the municipality subsequent to the proposed transition.

14. Estimates of the annual additional amount of intergovernmental aid to be received by the county as a result of the proposed transition.

15. An estimate of the net aggregate fiscal impact of the proposed transition on the county during the initial year subsequent to the transition and during each of the ensuing five years.

16. An estimate of the adjustment required in the county's real property tax rate, assuming that the net aggregate fiscal impact on the county resulting from the transition is addressed solely by an adjustment in the rate.

17. An estimate of the net aggregate fiscal impact of the proposed transition on the city during the initial year subsequent to the transition and during each of the ensuing five years.

18. An estimate of the adjustment required in the municipality's real property tax rate, assuming that the net aggregate fiscal impact on the city resulting from the transition is addressed solely by an adjustment in the rate.

19. The effect of the proposed transition on compliance with and the promotion of applicable state policies with respect to environmental protection, public planning, education,

public transportation, housing, and other state service policies declared by the General Assembly.

20. Specification of the terms and conditions that should be established by the court to balance the equities between the city and the county; protect the best interests of the affected localities, their residents, and the Commonwealth; and ensure an orderly transition of the city to town status.

21. The commission's staff shall endeavor to assist the parties involved in proceedings for the transition of a city to town status by identifying additional data elements considered by the commission to be relevant in the disposition of city to town transition issues.

1 VAC 50-20-605. County-city consolidations.

In developing its findings of fact and recommendations with respect to a proposed consolidation of a county and a city that would establish an independent city, the commission shall consider the information, data, and factors listed in this section. Local governments filing notice proposing the consolidation of a city and a county to establish an independent city shall, separately or jointly, submit to the commission data and other evidence responsive to each element listed in this section that they deem relevant to the proposed consolidation.

1. Copy of the consolidation agreement.

2. A map or maps showing (i) the location of all municipalities situated within the proposed consolidated city; (ii) all adjoining and adjacent localities; (iii) identifiable unincorporated communities within the proposed consolidated city; (iv) major streets, highways, schools and other major public facilities; (v) significant geographic features, including mountains and bodies of water; (vi) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vii) information deemed relevant as to the possible future use of the property within the proposed consolidated city and as to its future viability.

3. The past, the estimated current, and the projected population of each locality proposing to consolidate.

4. The population density of the proposed consolidated city based on the most recent U.S. census or as estimated by the Weldon Cooper Center for Public Service at the University of Virginia.

5. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the proposed consolidated city.

6. The estimated current and a five-year projection of the future number of public school students enrolled in the public schools in each locality proposing to consolidate and the number of school-age children living in the proposed consolidated city.

7. The assessed values, by major classification for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the county and the city proposing to consolidate and the proposed consolidated city.

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8. *The estimated local property and nonproperty tax rates that will be applicable within the proposed consolidated city.*

9. *The estimated local revenue collections including, but not limited to, tax receipts from real property, personal property, machinery and tools, merchants' capital, business and professional license, consumer utility and sales taxes and intergovernmental aid, such collections and aid for the preceding 10 years, and projections of the collections and aid within each of the localities proposing to consolidate.*

10. *The amount of long-term indebtedness of each of the localities proposing to consolidate and the amount and purpose for which that debt has been incurred.*

11. *Data regarding: (i) the urban-type services presently provided by each of the localities proposing to consolidate, (ii) the level of those services to be provided in the proposed consolidated city, (iii) the additional services to be provided and the additional cost to be borne by the proposed consolidated city, and (iv) the means by which the proposed consolidated city shall finance the additional services and costs.*

12. *The fiscal capacity of the proposed consolidated city to function as an independent city and to provide appropriate services.*

13. *The impact of the proposed consolidation on compliance with and the promotion of applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies declared by the General Assembly.*

14. *The impact of the proposed consolidation on the interest of the Commonwealth in promoting strong and viable units of government in the area.*

15. *The commission's staff shall endeavor to assist the parties involved in proceedings for the consolidation of a county and a city that would establish an independent city by identifying additional data elements considered by the commission to be relevant in the disposition of city-county consolidation issues.*

1 VAC 50-20-610. ~~Interlocal~~ Voluntary settlement agreements.

In developing its findings of fact and recommendations with respect to a proposed agreement developed under the authority of § 15.2-3400 of the Code of Virginia, the commission shall consider the information, data, and factors listed in this ~~chapter~~ *section*. Local governments submitting such a proposed agreement for review shall, separately or jointly, submit to the commission data and other evidence responsive to each element listed ~~below~~ *in this section that they deem* relevant to the *proposed voluntary settlement agreement*:

1. If the agreement proposes a municipal boundary expansion, submissions should include data and evidence responsive to the relevant provisions of 1 VAC 50-20-540.

2. If the agreement proposes the immunization of areas of a county from annexation or the incorporation of new cities,

submissions should include data and evidence responsive to the relevant provisions of 1 VAC 50-20-550.

3. If the agreement proposes the incorporation of a town, submissions should include data and evidence responsive to the relevant provisions of 1 VAC 50-20-570.

4. If the agreement proposes the transition of a town to city status, submissions should include data and evidence responsive to the relevant provisions of 1 VAC 50-20-580.

5. If the agreement proposes the transition of a county to city status, submissions should include data and evidence responsive to the relevant provisions of 1 VAC 50-20-590.

6. *If the agreement proposes the transition of a city to town status, submissions should include data and evidence responsive to the relevant provisions of 1 VAC 50-20-601.*

7. If the agreement proposes an ~~economic growth~~ a revenue-sharing plan or similar arrangement by which jurisdictions will share the tax or revenue sources of an area, submissions should include:

a. A description of the plan;

b. Calculations indicating for each locality the projected future contributions to the plan for the next five-year period;

c. Each locality's projected net annual receipts or net annual contributions to the plan for the next five-year period;

d. Each locality's annual expenditures for the past five years and its projected annual expenditures for the next five years by general operating, school, and debt service categories;

e. Each locality's real estate and public service corporation property assessed values for the past five years and projected for the next five-year period;

f. Each locality's annual revenue for the past five years and projected for the next five-year period (exclusive of receipts from or payments to the economic growth sharing plan) by source and type;

g. Each locality's anticipated major capital needs for the next five-year period; and

h. Other information indicating the general equity of the proposed plan for each participating locality.

~~7.~~ 8. *The commission's staff shall endeavor to assist localities contemplating or involved in the development of ~~interlocal~~ voluntary settlement agreements under the authority of § ~~15.4-1167.4~~ 15.2-3400 of the Code of Virginia by identifying additional data elements considered by the commission to be relevant to the commission's review of such ~~agreement~~ agreements.*

1 VAC 50-20-612. Voluntary economic growth-sharing agreements.

In developing its findings of fact and recommendations with respect to a proposed voluntary economic growth-sharing agreement developed under the authority of § 15.2-1301 of

the Code of Virginia, the commission shall consider the information, data, and factors listed in this section. Local governments submitting such a proposed agreement for review shall, separately or jointly, submit to the commission data and other evidence responsive to each element listed in this section that they deem relevant to the proposed agreement.

1. A copy of the proposed agreement and a description of the economic growth-sharing plan.
2. A description of the financial investment or other contributions which each participating locality will make to the project(s) envisaged under the agreement.
3. Projections of each participating locality's net annual receipts or net annual contributions to the project(s) specified in the agreement for the next 10-year period, or for a lesser or greater period as deemed appropriate.
4. A description of any dedication or restriction on the use of funds generated by the project(s) specified in the agreement for the participating localities.
5. Calculations indicating the estimated impact of the project(s) proposed in the agreement on the annual operating expenditures of each participating jurisdiction for the next 10-year period, or for a lesser or greater period as deemed appropriate.
6. Calculations indicating the estimated impact of the project(s) proposed in the agreement on the current and prospective capital expenditures of each participating jurisdiction over the course of the next 10-year period, or over a lesser or greater period as deemed appropriate.
7. Calculations indicating the estimated impact of the project(s) proposed in the agreement on the debt and annual debt service of each participating jurisdiction over the course of the next ten 10-year period, or over the course of a lesser or greater period as deemed appropriate.
8. Information indicating the general equity of the proposed plan for each participating locality.
9. Other information which would assist the commission in analyzing the "probable effect on the people" in the participating jurisdictions of the proposed agreement.
10. The commission's staff shall endeavor to assist localities contemplating or involved in the development of voluntary economic growth-sharing agreements under the authority of § 15.2-1301 of the Code of Virginia by identifying additional data elements considered by the commission to be relevant to the commission's review of such agreements.

1 VAC 50-20-614. Determination of continued eligibility for city status.

In undertaking its investigation with respect to whether a city continues to meet the requirements for city status as prescribed by Article VII, Section 1 of the Constitution of Virginia, the commission shall consider the information and data listed in this section. Any city subject to investigation as prescribed by Chapter 40 (§ 15.2-4000 et seq.) of Title 15.2 of the Code of Virginia shall be requested to submit information

and data responsive to each element listed in this section and any other information and data as the city deems relevant to the continued eligibility for city status.

1. Any official correspondence with the United States Bureau of the Census regarding the accuracy of the most recent United States decennial census of the population of the city under investigation.
2. Any data or other evidence produced by the city under investigation or any other entity bearing on the accuracy of the most recent United States decennial census of the population of the city under investigation.
3. Any data or other evidence produced by the city under investigation or any other entity indicating the current population and projected future population of the city under investigation.
4. Contingent upon the commission's findings with respect to the population of the city under investigation, a listing of all of the city's assets, liabilities, rights and obligations.
5. The commission's staff shall endeavor to assist the city under investigation by identifying additional data elements considered by the commission to be relevant to the continued eligibility for city status.

1 VAC 50-20-616. Order defining a town's future annexation rights.

In developing its order defining the future annexation rights of a town pursuant to § 15.2-3234 of the Code of Virginia, the commission shall consider the information, data, and factors listed in this section. Any petition referred to the commission requesting an order establishing a town's future annexation rights should be accompanied by data and other evidence responsive to each element listed in this section that the town deems relevant to the issue.

1. Information regarding the inability of the town and the county to reach a voluntary agreement as to the future annexation rights of the town.
2. Terms and conditions of a proposed order establishing the town's future annexation rights.
3. Data and evidence responsive to the relevant provisions of 1 VAC 50-20-540.
4. The commission's staff shall endeavor to assist localities involved in proceedings concerning an order defining a town's future annexation rights by identifying additional data elements considered by the commission to be relevant in the disposition of such issues.

**PART V.
FORMAL COMMISSION REVIEWS.**

1 VAC 50-20-620. Oral presentations by parties.

A. In the course of its analysis of any issue the commission may schedule oral presentations for purposes of permitting the parties to amplify their submissions, to critique and to offer comment upon the submissions and evidence offered by other parties, and to respond to questions relative to the issue from the commission. Such The presentations, if scheduled, shall

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extend for ~~such~~ a period of time as the commission may ~~determine~~ deem appropriate.

B. If oral presentations are scheduled by the commission, the chairman shall select, subsequent to the receipt of recommendations from the parties, an appropriate site for ~~such~~ the presentations. Recommendations by the parties regarding ~~such~~ the sites should be based upon the adequacy of space for the display and movement of exhibits; the adequacy of seating arrangements for the commission, its staff, representatives of the parties, a court reporter, and the public; the adequacy of security at the site to permit materials to be left unattended ~~for periods of time~~ during the ~~presentations~~ recesses; and the adequacy of the acoustical characteristics of the site to facilitate communications or the availability of a public address system.

C. Local governments or other parties desiring to present exhibits or data requiring special equipment should be prepared to provide such.

D. The commission may, ~~at its discretion~~ where it deems appropriate, consolidate two or more interlocal issues before it for purpose of oral presentations.

E. The commission shall, within the requirements of law, conduct the oral presentations in the manner it considers best suited for reaching a decision in the best interest of the parties and in the best interest of the Commonwealth.

F. The chairman, or other member the commission designated to preside during any oral presentations, may allocate time to the various parties as the chairman or presiding member deems appropriate. ~~Such~~ The allocation of time shall be based upon the needs of the commission to review data, to examine witnesses, and to obtain an understanding of the relevant factors affecting the issue under review.

G. The sequence in which testimony will be received by the commission during any oral presentations shall be established by the chairman or presiding member but shall generally be as follows:

1. A brief opening statement by each party, if desired;
2. Presentation by the ~~jurisdiction~~ party initiating the issue before the commission;
3. Presentations by the local governments immediately affected by the action proposed by the initiating ~~jurisdiction~~ party, in an order established by the chairman or presiding member;
4. Presentations by other parties, in an order established by the chairman or presiding member;
5. Rebuttal where requested by a party and agreed to by the chairman or presiding member.

H. The chairman or presiding member may, to the extent he deems ~~such~~ appropriate, permit parties to question witnesses regarding submissions, their testimony, or other facts relevant to the issues before the commission. Where a party is represented by counsel, such questioning may be conducted by counsel.

Where the parties have prefiled testimony at the commission's request pursuant to 1 VAC 50-20-390 R, the questioning of individuals whose testimony has been prefiled shall be limited to a cross-examination of such testimony. The commission may accept additional oral testimony from individuals whose testimony has been prefiled during the presentations where good cause is shown. Where additional oral testimony is accepted by the commission, the commission shall provide an opportunity for other parties to respond to the testimony and to cross-examine the individual offering such testimony.

I. The chairman or presiding member may, during or at the conclusion of the oral presentations, permit or request oral argument on the issues before the commission.

J. The commission, and its staff, may question any witness or representative of any party during the oral presentations regarding any submission, testimony, or other fact which the commission considers relevant to the issues before it. The chairman or presiding member shall endeavor to call for commission questioning in a manner designed to expedite the presentations.

K. The commission may accept depositions from persons unable to attend an oral presentation. Depositions shall only be accepted under conditions deemed acceptable by the commission, including conditions assuring an opportunity for all affected local governments to be present and to examine adequately the witness during the taking of ~~such~~ deposition depositions.

L. The parties or their counsel shall be expected to confer in advance of the time and date set for presentations in order to inform one another of their prospective witnesses and the order of their anticipated appearance. All material, data, or exhibits proposed for presentation to the commission during the oral presentations and not previously made available to the other parties shall be exchanged or made available to ~~such~~ the parties prior to presentation to the commission, subject to the qualifications in subsection M of this section.

M. The commission desires that all materials, data, and exhibits be presented to it and made available to other parties in advance of the commencement of the oral presentations. The commission may accept additional materials, data, and exhibits during the presentations where good cause is shown for ~~such~~ late submission. Where ~~such~~ late submissions are accepted by the commission, the commission shall provide an opportunity for other parties to respond to ~~such~~ the filings.

N. The commission may record by mechanical device, unless other recording arrangements are made by the parties, all testimony given during the oral presentations but shall prepare a transcript of ~~such~~ testimony the recording only where it deems ~~such~~ when deemed appropriate. The commission shall provide, upon request, any party a duplicate copy of ~~such~~ the transcript or recording, if made, at a price sufficient to cover the expense incurred. In lieu of ~~such~~ recording by the commission, the parties may arrange to provide a court reporter at their expense if ~~such~~ is desired. Where a court reporter is utilized, the commission shall ~~request~~ receive one copy of the transcript.

1 VAC 50-20-630. Public hearing.

A. In all cases where it receives a notice or referral of an issue pursuant to Part III (1 VAC 50-20-180 et seq.) a public hearing is required by law, the commission shall conduct a the public hearing at which any interested person or party may testify. The commission shall generally schedule such the public hearing in conjunction with the oral presentations held, if any, with respect to such the issue; however, public hearings regarding proposed town incorporations required pursuant to § 15.1-966.1 15.2-3601 of the Code of Virginia shall be held no less sooner than 30 days after receipt of the court request for commission review.

B. Prior to holding such the public hearing the commission shall publish notice of the pending hearing ~~once a week for two successive weeks in a newspaper of general circulation in the affected jurisdictions as required by law. The second published notice shall appear not less than six nor more than 21 calendar days prior to the date of such hearing.~~

In addition to the notice of public hearing required by this subsection, a town that is a party to an agreement defining annexation rights negotiated pursuant to § 15.2-3231 of the Code of Virginia shall give written notice of the commission's hearing at least 10 days before the hearing to the owner, owners, or their agent of each parcel of land included in the area proposed for annexation under the terms of the agreement. One notice sent by first-class mail to the last known address of the owner, owners, or their agent as shown on the current county real estate tax assessment books or current county real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that the clerk of the town shall make an affidavit that the mailings have been made and file the affidavit with the commission.

C. The commission shall request the jurisdiction party initiating the issue before it and the other principally affected locality or localities parties to place on public display in or adjacent to the office of their the chief administrative officer of each principally affected local government copies of all materials which are available to them and which have been submitted to the commission for consideration with respect to the issue. Such The material should be made conveniently available to the public during normal working hours. The commission also encourages the parties to make available to the public other copies of such material at libraries, educational facilities, or other public places in order that the public might have ample opportunity to study such the material prior to the public hearing. The commission's advertisements published under subsection B of this section shall announce the availability of such the material at the offices of the administrators and at such other facilities as may be selected by the parties for display purposes.

D. The commission shall request the chief administrative officer (or other official) of the jurisdiction initiating the issue before it and the chief administrative officer (or other official) of the principally affected each jurisdiction or jurisdictions principally affected by the issue before the commission to make suitable arrangements in or adjacent to their offices for the registration of speakers at the public hearing. The commission shall furnish appropriate registration forms for

such that purpose. The commission's advertisements under subsection B of this section shall advise the public that registration to speak at the public hearing may be accomplished at the offices of the local administrators or, alternatively, through the offices of the commission in Richmond. The commission may also permit speakers to register at the site and at the time of the public hearing and shall request the assistance of the local administrative officers in making suitable arrangements for such registration.

E. The chairman or other member of the commission designated to preside over the proceedings shall select the site for the public hearing subsequent to the receipt of recommendations from the parties. Recommendations from the parties should be based upon a site's accessibility to residents of the areas and jurisdictions principally affected, its seating capacity, the adequacy of parking facilities, the availability of a public address system, and seating arrangements permitting the commission to have proper visual contact with the public.

F. The commission shall request the parties to cooperate in the preparation of the site for the public hearing and shall request that a minimum number of maps and exhibits be placed on display at the site in order that persons testifying may identify their residences, property, businesses, or other concerns in relation to the proposed issue.

G. The commission shall request the local jurisdiction within which the site for the public hearing is situated to make appropriate arrangements in order to assure the security and the orderliness of the proceedings.

H. The chairman or the presiding member shall determine the sequence of speakers at a public hearing, but such the sequence shall ordinarily conform to the sequence of their registration. The chairman or presiding member may, however, vary the sequence of speakers in order that persons from all affected jurisdictions and areas, and those representing different perspectives, might have equal opportunity for the timely presentation of their comments.

I. The commission shall endeavor to allow any person or party wishing to speak at a public hearing an opportunity to do so. The chairman or presiding member may establish time limits for the presentation of testimony as he or she deems appropriate. The chairman or presiding member may also rule testimony irrelevant, immaterial, or unduly repetitious. Proponents and opponents of a proposed action are encouraged to designate chief spokesman for economy of time and for the avoidance of repetitious comment.

J. Any person or party testifying before the commission at the public hearing may extend their remarks in written form for subsequent submission. During the course of the public hearing the commission shall establish a date by which such the extended written comment must be received for consideration.

K. The commission may record by mechanical device, unless other arrangements are made, all testimony given during the public hearing but shall prepare a transcript of such recording only when it deems such necessary appropriate. The commission shall provide any person or party with a copy of such the transcript or recording, if made, at a price sufficient to

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cover the expense incurred. The parties may arrange to provide a court reporter, at their expense, ~~if such is desired~~. Where a court reporter is utilized, the commission shall ~~request~~ receive one copy of the transcript.

L. The commission may, where it deems ~~such~~ appropriate, consolidate two or more interlocal issues for purposes of a public hearing.

1 VAC 50-20-640. Conclusion of mandatory reviews.

A. The commission may request or authorize the parties to an issue to submit, at a time established by the commission, a written concluding argument with proposed findings and recommendations.

B. The commission shall not accept for consideration or for inclusion in the record of a case any document, exhibit, or other material submitted after the date established by it for the close of the record. This regulation shall not preclude the commission's acceptance of data or information from any party at any time which has been solicited by the commission or its staff.

C. The commission shall prepare an official record of all proceedings before it of such a nature and in such a manner as it deems appropriate.

D. The commission shall submit a written report on the issues presented to it in the manner and at such time as provided by law. ~~Such~~ The reports shall set forth findings of fact and recommendations on both the merits of a proposed action and, where appropriate and feasible, the financial aspects thereof. Copies of reports shall be made available to the parties and to members of the public requesting such. The commission may charge a fee for copies of its reports in an amount sufficient to cover the cost of ~~providing such duplication, shipping, and handling~~.

E. Subsequent to its review of a petition submitted by a town under the authority of ~~§ 15.1-1058.4~~ 15.2-3234 of the Code of Virginia, and based upon the applicable statutory standards, the commission shall enter an order granting ~~such~~ town annexation rights. ~~Such~~ The order may grant the town annexation rights upon the terms proposed by the town in its petition or upon some other basis as the commission deems appropriate and consistent with law. ~~Such~~ The order shall in no event grant the town the right to annex county territory by ordinance more frequently than once every five years.

PART VI.

INVESTIGATIONS AND MEDIATION.

1 VAC 50-20-650. Statutorily invoked mediation in annexation immunity issues.

When any county, city, or town seeks to negotiate an agreement with one or more ~~political subdivisions~~ localities relative to annexation or partial immunity under the authority granted by ~~§ 15.1-945.7(E)~~ 15.2-2907 E of the Code of Virginia, it shall notify the commission, and copies of ~~such the~~ notice shall be served on all adjacent ~~political subdivisions~~ localities. ~~Such~~ The notice to the commission shall be accompanied by satisfactory evidence that the governing body of the locality giving notice supports ~~such the~~ negotiation. Local governments negotiating under the above referenced

provision of law shall keep the commission advised of progress in ~~such the~~ negotiations. If, after a hearing, the commission finds that none of the parties is willing to continue to negotiate, or if it finds that three months have elapsed with no substantial progress, it shall declare the negotiations to be terminated. Unless the parties agree otherwise, negotiations shall in any event terminate 12 months from the date notice was first given to the commission of the desire to negotiate. Once the commission has declared negotiations terminated, or upon the expiration of the 12 month negotiating term or any agreed extension thereof, no new notice to negotiate shall be filed by any party. Upon the request of the local governments negotiating under the authority of ~~§ 15.1-945.7(E)~~ 15.2-2907 E of the Code of Virginia, the commission, or its designee, may be requested to serve as mediator, and, in addition, the commission's staff and resources shall be available to assist the negotiating local governments. All expenses incurred by the commission and its staff in assisting with ~~such~~ negotiations shall be borne by the parties initiating the negotiations unless otherwise agreed.

1 VAC 50-20-660. Mediation of other interlocal issues.

The commission shall, at its discretion, accept for mediation interlocal issues presented to it by mutual agreement of the affected ~~political subdivisions~~ localities. Requests for commission mediation under this section should be made to the commission's offices in Richmond and should be accompanied by satisfactory evidence that the governing bodies of the affected ~~political subdivisions~~ localities agree to the request for mediation assistance. ~~Such~~ The requests should include a statement indicating the issue for which mediation is sought and ~~such any~~ other information as would enable the commission to determine whether its mediation effort would be timely and appropriate. Where ~~such the~~ requests for mediation are presented to the commission prior to the submission of formal notice of pending action as required by ~~§ 15.1-945.7~~ 15.2-2907 of the Code of Virginia, ~~such the~~ requests need not be accompanied by any of the statistical data or material required under Part IV (1 VAC 50-20-540 et seq.) of this chapter. However, if the commission agrees to mediate interlocal issues under this section, the local governments requesting ~~such the~~ mediation shall assist the commission by providing ~~such~~ data, material, and other information as ~~may be deemed the commission or the parties deem~~ necessary.

1 VAC 50-20-670. Requested investigations and analyses.

The commission may, if it deems ~~such~~ appropriate and within the capability of its resources, accept requests from local governments for the undertaking of investigations and analyses. Requests for ~~such~~ investigations and analyses should be addressed to the commission's offices in Richmond and should include satisfactory evidence that the governing body of the locality initiating the request supports the proposed study. The request should also include a detailed statement of the issue giving rise to the request for the study, a statement of the extent to which the issue is of general interest to local governments in Virginia, a statement concerning the prospective benefits of ~~such a~~ study, and ~~such~~ other information as would aid the commission in its determination as to whether or not to undertake the requested

study. Where the commission agrees to undertake a study under this section, the locality or localities requesting such the study shall assist the commission and provide, to the extent possible, the data and material deemed the commission or the parties deem necessary for such the study. The commission shall render reports on such studies at such a time and in such a manner as it deems appropriate.

PART VII.
AMENDMENT OF RULES.

~~1 VAC 50-20-680. Proposal of amendments. (Repealed.)~~

~~The commission may, by majority vote of its membership, announce a decision to propose amendments to its regulations of procedure at any regular or special meeting. The commission, however, shall develop and adopt amendments to its regulations only in accordance with the public participation process; 1 VAC 50-10-10 et seq.~~

~~1 VAC 50-20-690. Effective date of amendments. (Repealed.)~~

~~Amendments adopted to the commission's regulations shall have an effective date which shall be established in accordance with the requirements of law.~~

~~1 VAC 50-20-700. Emergency and nonsubstantive regulations. (Repealed.)~~

~~Notwithstanding any other provision of this chapter the commission may adopt emergency or nonsubstantive amendments in the manner provided by law.~~

TITLE 2. AGRICULTURE

PESTICIDE CONTROL BOARD

Notice of Additional Public Comment Period

Title of Regulation: **2 VAC 20-40. Rules and Regulations Governing Licensing of Pesticide Businesses by the Department of Agriculture and Consumer Services Operating Under Authority of the Virginia Pesticide Control Act (amending 2 VAC 20-40-10, 2 VAC 20-40-20, 2 VAC 20-40-40, 2 VAC 20-40-60 through 2 VAC 20-40-110; repeal 2 VAC 20-40-120).**

The Pesticide Control Board noticed a public comment period on the above-referenced proposed regulations (2 VAC 20-40) in the August 9, 2004, issue of the Virginia Register of Regulations (20:24 VA.R. 2717-2726 August 9, 2004).

The board is extending the deadline for receipt of public comment on the proposed regulation until September 15, 2005.

Agency Contact: W. Wayne Surles, Executive Secretary, Virginia Pesticide Control Board, P.O. Box 1163, Richmond, VA 232218, FAX (804) 371-8598 or e-mail wayne.surles@vdacs.virginia.gov.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF JUVENILE JUSTICE

Title of Regulation: **6 VAC 35-10. Public Participation Guidelines (amending 6 VAC 35-10-10 through 6 VAC 35-10-50 and 6 VAC 35-10-70 through 6 VAC 35-10-110; adding 6 VAC 35-10-105, 6 VAC 35-10-120 through 6 VAC 35-10-150; and repealing 6 VAC 35-10-60).**

Statutory Authority: §§ 2.2-4007, 66-3, and 66-10 of the Code of Virginia.

Public Hearing Date: November 9, 2005 - 10 a.m.

Public comments may be submitted until November 25, 2005.

(See Calendar of Events section for additional information)

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 don.carignan@djj.virginia.gov.

Basis: The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) sets out the procedures for promulgating regulations. Specifically, § 2.2-4007 D directs agencies of the Commonwealth to develop, adopt and use public participation guidelines for soliciting the input of interested parties in the formation and development of regulations.

Section 66-3 of the Code of Virginia requires that, when the department acquires real property for the purpose of operating a juvenile correctional facility or other residential or administrative facility, the department shall comply with standards set by the board to ensure adequate public notice and a local hearing.

Section 66-10 of the Code of Virginia empowers the Board of Juvenile Justice to make, adopt and promulgate rules and regulations.

Purpose: The Public Participation Guidelines provide a variety of means for interested parties and the general public to be made aware of and to offer their comments on regulations being considered, drafted or revised by the Board of Juvenile Justice. Many of the proposed revisions are intended to permit and encourage the use of new technologies in communicating about regulations.

Also, new provisions are added to address the statutory requirement of § 66-3 of the Code of Virginia that the board establish standards "to ensure adequate public notice and a local hearing" when the department acquires real property for the purpose of establishing a juvenile correctional facility.

Substance: Several amendments to the regulation update references to the Code of Virginia. References to "operating units" have been deleted, allowing the department flexibility to

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centralize or decentralize the internal processes for facilitating the steps of the Administrative Process Act as circumstances may warrant. Guidance is provided for identifying and soliciting input from interested parties. New provisions allow the public to petition for rulemaking and provide for adequate notice and public hearing when the department acquires real property for certain purposes.

Issues: The primary advantage to the public is the increased ability to participate in the regulatory process through e-mail, fax, and internet applications.

The primary advantage to the Commonwealth is the ability to communicate contemplated regulatory changes more efficiently and economically via e-mail, fax and internet applications.

There are no known 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. Section 2.2-4007 of the Code of Virginia requires each agency to develop, adopt, and utilize public participation guidelines for soliciting the input of interested parties in the formation and development of regulations. In addition, § 66-3 of the Code of Virginia requires that when the Department of Juvenile Justice (DJJ) acquires real property for new or existing juvenile correctional facilities or for administrative and other facilities necessary to the operations of the department, it comply with regulations promulgated by the Board of Juvenile Justice to ensure adequate public notice and local hearing. Section 66-10 of the Code of Virginia authorizes the Board of Juvenile Justice to promulgate regulations deemed necessary to carry out the provisions of Title 66 (Juvenile Justice) and other laws of the Commonwealth.

The proposed regulation (i) establishes requirements for maintaining, updating, and purging lists of interested parties; (ii) specifies the documents to be sent to persons or entities on the mailing list; and (iii) deletes existing requirements for advisory panels to have at least three members and to meet at least twice.

The proposed regulation includes changes that make it consistent with the Code of Virginia. It includes a new part establishing public notification requirements when DJJ acquires property. These requirements include informing the locality in which the property is located of the acquisition at least 30 days prior to purchase, conducting a public hearing

within 30 days of notifying the locality, and preparing and making available to the General Assembly, the Governor, and any executive branch agency that has a role in the review and approval of the purchase a summary of the comments made at the public hearing and any responses offered by DJJ. The proposed regulation also updates references to the Code of Virginia following the re-codification of the Administrative Process Act in 2001. It also updates the name of the department and the board from Youth and Family Services to Juvenile Justice.

The proposed regulation also adds language to clarify aspects of the regulation and to make it consistent with current practice, modifies existing language for the purposes of clarity, and deletes unnecessary and redundant language. It also makes a number of minor administrative changes. For example, references to operating units within DJJ are replaced with references to the department itself. This change is intended to provide the agency with additional flexibility to determine intra-departmental processes that facilitate the various steps required by the Administrative Process Act.

Estimated economic impact. (1) The proposed regulation establishes requirements for maintaining, updating, and purging lists of interested parties. It allows DJJ to add parties to the list that are likely to be regulated by, interested in, or otherwise affected by a proposed regulatory action or whose involvement will serve to enhance public participation in the regulatory process. Individuals and organizations can ask to be added to the list at any time via email, fax, or letter and the list is to be updated as additional interested parties are identified. DJJ is also allowed to delete inactive entries from the list when a letter sent to a postal address is returned as undeliverable or when a notice sent to an email or fax address are returned as undeliverable over two 24-hour periods at least one week apart.¹

There are no such requirements in the existing regulation. According to DJJ, the agency currently maintains a file containing the names and addresses of parties that have expressed an interest in or have offered comments on regulations and guidelines in the past. Parties are added to the file when they ask to be included and when the agency thinks that they might be interested in a regulation. Current practice regarding the removal of parties from the file is informal and based on the judgment of the agency.

The proposed change is not likely to have a significant economic impact. The requirements for the maintenance, update, and purge of the list of interested parties are not likely to impose any significant costs on DJJ. The proposed requirements formalize much of what is current practice. However, by formalizing current practice and standardizing the requirements relating to purging the list of interested parties, the proposed change could enhance public participation and produce some economic benefits.

¹ Currently, the proposed regulation allows DJJ to delete names from the list of interested parties if an email or fax is undeliverable for more than one day. However, DJJ has agreed to modify the proposed language to state that names can be deleted from the list of interested parties if the email or fax is undeliverable over two 24-hour periods at least one week apart.

(2) Based on the stage of the regulatory process, the proposed regulation specifies the documents to be mailed to persons or entities on the mailing list. These documents include a notice of intended regulatory action, a notice of comment period along with a copy of the proposed regulation, a copy of any final regulation adopted by DJJ, and a notice soliciting comment on the final regulation when the regulatory period has been extended. The existing regulation does not include such a requirement. However, according to DJJ, it is the agency's informal policy to try to mail these documents to parties on the mailing list at the appropriate stage in the regulatory process.

The proposed change is not likely to have a significant economic impact. Meeting the mailing requirements could impose some additional cost on DJJ. According to DJJ, any additional cost is to be covered by the agency's operating budget, including the director's fund set aside to support administrative functions on behalf of the Board of Juvenile Justice. Thus, the agency does not anticipate any increase in its budget in order to cover the cost of meeting the mailing requirement. The proposed requirements are also likely to produce economic benefits. By requiring DJJ to mail specified documents at various stages of the regulatory process, the proposed change is likely to encourage more public participation in the regulatory process. It is not possible to precisely estimate the net economic impact of the proposed change at this time. However, as neither the costs nor the benefits are likely to be very large, the net economic impact of the proposed change is not likely to be significant.

(3) The proposed regulation deletes existing requirements for advisory panels to have at least three members and to meet at least twice. Advisory panels are intended to assist the agency in the development of a new regulation or the modification of an existing regulation. According to DJJ, the requirements for advisory panels to have at least three members and to meet at least twice are arbitrary and not essential to the goal of ensuring public participation in the regulatory process. Regardless of these requirements, it has always been the agency's goal to involve as many constituent groups as necessary to ensure a fair discussion. Moreover, with the increasing use of email, the agency believes these requirements to be unnecessary. Email enables DJJ to involve many more individuals and organizations in ongoing reviews and discussions without having to have a certain minimum number of members on the advisory panel and having the advisory panel meet a certain minimum number of times.

The proposed change is not likely to have a significant economic impact. It does not appear that the deletion of these requirements will significantly affect DJJ's ability to solicit input from interested parties when developing a new regulation or modifying an existing one. Thus, there is not likely to be a significant cost to the state in terms of reduced public participation in the regulatory process arising out of the proposed change. On the other hand, to the extent that the proposed change eliminates unnecessary requirements and streamlines the process for developing and modifying regulations, it could produce some economic benefits.

Code required changes: In addition to the changes discussed above, the proposed regulation includes changes intended to make the regulation consistent with the Code of Virginia. Of these changes, the most significant is the establishment of public notification requirements when DJJ acquires property. These requirements include informing the locality in which the property is located of the acquisition at least 30 days prior to acquiring the property, conducting a public hearing within 30 days of notifying the locality, and preparing and making available to the General Assembly, the Governor, and any executive branch agency that has a role in the review and approval of the purchase a summary of the comments made at the public hearing and any responses offered by DJJ.

Chapter 701 of the 1995 Acts of Assembly amended the Code of Virginia to require DJJ, pursuant to regulations promulgated by the Board of Juvenile Justice, to ensure adequate public notice and local hearing in instances when the agency acquires property. The change was intended to allow local governments and citizens the opportunity to comment on the record about the construction of a proposed facility. The proposed change establishes the public notice and hearing requirements. According to DJJ, there have been no instances of the agency acquiring property since the code was amended.

The proposed change is likely to impose costs and benefits. The additional notification requirements are likely to impose additional costs on DJJ. According to DJJ, localities are to be informed about the acquisition of property through a letter sent to the locality's chief administrator. DJJ estimates the cost of producing and sending the letter to be \$35, including staff time, postage, and materials. The cost of holding a public hearing is estimated at \$500, mostly in staff time and materials. A public hearing will be held by DJJ only if the locality does not hold a public hearing or the agency decides that to hold a public hearing in addition to that held by the locality. Finally, the cost of assembling all the comments is estimated at \$800, mostly in staff time and materials. Thus, the maximum additional cost to the state of the proposed change is \$1,335 for each instance when DJJ acquires property. The agency anticipates meeting the additional cost out of its operating budget, including the director's fund set aside to support administrative functions on behalf of the Board of Juvenile Justice. The proposed change is also likely to produce economic benefits. By providing for additional public hearing and local notification requirements, the proposed change will increase public participation and ensure better awareness of local concerns over the construction of a DJJ facility in that locality. A precise estimate of the net economic impact of the proposed change is not possible at this time. However, given that neither the costs nor the benefits associated with the proposed change are very large, the net economic impact is not likely to be large.

All other changes: All remaining changes are not expected to have a significant economic impact. Language is added to clarify aspects of the regulation and to make it consistent with current practice, existing language is modified for the purposes of clarity, and unnecessary and redundant language is deleted. The proposed regulation also makes a number of minor administrative changes. For example, references to operating units within DJJ are replaced with references to the

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department itself. This change is intended to provide the agency with additional flexibility to determine intra-departmental processes that facilitate the various steps required by the Administrative Process Act. To the extent that these changes improve understanding and implementation of the regulation, they could produce some small economic benefits.

Businesses and entities affected. The proposed regulation updates and makes changes to the public participation guidelines of the Board of Juvenile Justice. Thus, the proposed changes affect all businesses and entities regulated by, interested in, or otherwise affected by regulations promulgated by the Board of Juvenile Justice. The number of such businesses and entities is not known.

Localities particularly affected. The new public notice and hearing requirements when DJJ acquires property will have a positive effect on localities in the Commonwealth where DJJ acquires property. These requirements will provide localities with the opportunity to voice their opinion on the acquisition of property and ensure better awareness of local concerns over the construction of a DJJ facility within a locality.

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

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. To the extent that the addition of new public notice and hearing requirements ensure that local government and local citizen views are considered when DJJ acquires property or constructs a facility, the proposed regulation could result in a positive effect on property values.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Juvenile Justice concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget concerning proposed amendments to 6 VAC 35-10, Public Participation Guidelines.

Summary:

The proposed amendments (i) establish requirements for maintaining, updating, and purging lists of interested parties in the formation, development and promulgation of regulations; (ii) specify the documents to be sent to persons or entities on the mailing list; and (iii) delete existing requirements for advisory panels to have at least three members and to meet at least twice. Other proposed amendments include updating references to the Code of Virginia, deleting references to "operating units," and providing for notice and public hearing when the department acquires real property for certain purposes.

CHAPTER 10. PUBLIC PARTICIPATION GUIDELINES.

PART I. GENERAL PROVISIONS.

6 VAC 35-10-10. Definitions.

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

~~"Agency" means any authority, instrumentality, officers of the Virginia Department of Youth and Family Services, and members of the Virginia Board of Youth and Family Services, or other unit of the state government empowered by the basic laws to make regulations or decide cases.~~

~~"Agency regulatory coordinator" means the individual appointed by the director to provide technical assistance to the operating units and to coordinate regulations.~~

~~"Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing an agency to make regulations or decide cases or containing procedural requirements thereof.~~

~~"Board" means the State Board of Youth and Family Services Juvenile Justice.~~

~~"Department" means the Department of Youth and Family Services Juvenile Justice.~~

~~"Director" means the Director of the Department of Youth and Family Services.~~

~~"Operating unit" means the offices of the director, deputy directors, administrators or other offices within the department that will develop or draft a regulation. Only the board may promulgate a regulation.~~

~~"Rule or regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws. Exemptions to this requirement are those listed in § 9-6-14:4.1 of the Code of Virginia as determined by the Attorney General's Office.~~

6 VAC 35-10-20. Authority.

~~Chapter 1.1:1 of Title 9 A. The Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia deals with the promulgation of rules and sets out the procedures for promulgating regulations. Specifically, § 9-6-14:7.1 2.2-4007 D of the Code of Virginia directs agencies of the Commonwealth to develop, adopt and use public participation guidelines for soliciting the input of interested parties in the formation and development of regulations. Section 66-10 of the Code of Virginia empowers the Board of Youth and Family Services Juvenile Justice to make, adopt and promulgate rules and regulations.~~

B. Section 2.2-4007 D of the Code of Virginia specifically directs that "[t]he guidelines shall set out any methods for the identification and notification of interested parties, and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice

of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation."

C. Section 66-3 of the Code of Virginia requires that when the department acquires real property for the purpose of operating a juvenile correctional facility the department shall comply with standards set by the board to ensure adequate public notice and local hearing.

6 VAC 35-10-30. Purpose.

~~These~~ This regulation provides guidelines ~~are designed to provide consistent, written procedures that will ensure input from~~ for informing the public of, and involving interested parties during in, the development, periodic review and final stages of the regulatory process amendment of regulations promulgated by the Board of Juvenile Justice and provides guidelines for public notice and local hearing as required by § 66-3 of the Code of Virginia.

6 VAC 35-10-40. Administration.

A. The board has the responsibility for promulgating regulations pertaining to public input in the regulatory process.

B. The director is the chief executive officer of the Department of ~~Youth and Family Services~~ Juvenile Justice and is responsible for implementing the standards and goals of the board. *The department, through designated staff, acts as agent of the board in the development and review of regulations as prescribed by the Administrative Process Act and Executive Orders of the Governor.*

6 VAC 35-10-50. Application of regulations.

A. ~~These regulations have general application throughout the Commonwealth~~ Public Participation Guidelines apply to all regulations adopted, amended or repealed by the Board of Juvenile Justice, except those regulations that are exempted or excluded from the provisions of the Administrative Process Act by § 2.2-4002 or § 2.2-4006 of the Code of Virginia.

B. *Nothing in these Public Participation Guidelines shall prevent the board or the department from taking supplemental actions to provide additional opportunity for public comment in the process of drafting, revising or repealing regulations.*

6 VAC 35-10-60. Effective date. (Repealed.)

~~Effective date: January 31, 1991.~~

6 VAC 35-10-70. Application of the Administrative Process Act.

~~The provisions of board and the department shall follow the policies and procedures established by the Virginia Administrative Process Act, which is codified as Chapter 1.1-1 of Title 9 (§ 2.2-4000 et seq. of the Code of Virginia, shall govern the adoption, amendment, modification, and revision of these regulations, and the conduct of all proceedings and appeals) and applicable Executive Orders of the Governor in developing, amending or repealing regulations. All hearings~~

on such regulations shall be conducted as public meetings in accordance with § ~~9-6-14:7.1~~ 2.2-3707 of the Code of Virginia.

PART II.
PUBLIC PARTICIPATION IN RULEMAKING.

6 VAC 35-10-80. Identification of interested parties.

~~Each operating unit within~~ A. The department ~~which is responsible for rule making~~ shall develop and maintain a one or more current list lists of those persons, organizations, and agencies that have demonstrated an interest in the regulatory activities of the department and the board or who have expressed interest in specific program regulations in the past, through written comments or attendance at public hearings regulatory issues or proposals.

B. The department may add to the list any party likely to be interested in, regulated by, or otherwise affected by a proposed regulatory action or any party whose involvement will serve the purpose of increasing participation in the regulatory process.

C. Individuals and organizations may ask to be added to the list of interested parties at any time via letter, fax or e-mail. The lists will be updated as additional interested parties are identified.

D. The department may purge inactive entries from the list of interested parties when a notice that has been sent to the postal address on file is returned as undeliverable or when a notice that has been sent to an e-mail or fax address on file is undeliverable for more than one day. In addition, the department may periodically ask those on the list of interested parties to indicate whether they wish to be continued on the list.

6 VAC 35-10-90. Notification of interested parties.

A. Individual mailings. When ~~an operating unit~~ of the department determines that specific regulations need to be developed or substantially modified, the ~~operating unit~~ department shall so notify ~~by mail~~ the individuals, organizations, and agencies identified as interested parties in 6 VAC 35-10-80. This notice ~~may be via the U.S. mail, fax, or e-mail, and~~ shall invite those interested in providing input to notify the agency of their interest. The notice shall include the title of the regulation to be developed or modified; the ~~operating unit~~ contact person *at the department*, mailing address, and telephone number; and the date by which a notice of a desire to comment must be received. In addition, known parties having interest and expertise will be advised, ~~through a special mailing via mail, fax, or e-mail,~~ of the agency's desire to develop a regulation and will be invited to assist the operating unit in developing the regulation or in providing input.

B. *The department shall also post notice of the intended regulatory action on the department's web page and on the Regulatory Town Hall web page maintained by the Department of Planning and Budget, in accordance with instructions from the Governor on the regulatory process.*

~~B. C.~~ Notice of intent. When ~~an operating unit~~ of the department determines that specific regulations that are covered by the Administrative Process Act need to be

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developed or substantially modified, the ~~operating unit department~~ shall, *consistent with policies issued by the Governor*, publish a Notice of Intent in the Virginia Register of Regulations. This notice will invite those interested in providing input to notify the ~~operating unit department~~ of their interest. The notice will include the title of the regulation to be developed or modified; the ~~operating unit~~ contact person, mailing address, *e-mail address, fax number and telephone number*; and the date by which a notice of a desire to comment must be received. ~~All notices shall be coordinated through the agency regulatory coordinator who will forward them for publication.~~

6 VAC 35-10-100. Solicitation of input from interested parties.

A. In developing any regulation, the department shall afford interested individuals and entities an opportunity to submit data, views, and arguments, whether in person, by regular mail, e-mail, or facsimile, to the department or its designated representative. Prior to or during any such opportunity the department may, at its discretion, begin drafting the proposed regulation.

~~A. B. Advisory panels. Whenever an operating unit proposes to develop or substantially modify a regulation, it~~ The department may create an advisory panel to assist in ~~this~~ the development of a new regulation or the modification of an existing regulation. Advisory panels shall be established on an ad hoc basis *and shall consist of persons representative of those who have registered an interest in the subject of the regulation or persons who have an expertise in a specific regulatory matter.*

1. Members of advisory panels shall consist of a balanced representation of individuals and representatives of organizations and agencies identified in 6 VAC 35-10-80 as interested and who have expressed a desire to comment on new or modified regulations in the developmental process. ~~Each panel shall consist of no less than three members.~~

2. Individual panels shall establish their own operating procedure, ~~but in no case will a panel meet less than twice.~~ All comments on proposed regulations shall be documented ~~by the operating unit~~ and a response developed for each comment.

~~B. C. Other comments. All persons, organizations, and agencies that respond to the individual mailings, e-mail or fax notice and the Notice of Intent shall be provided an opportunity to examine regulations in their developmental stage and to provide written comments on these regulations to the operating unit department. The operating unit department shall document the receipt of these comments and respond to each commentor.~~

~~D. The operating unit department shall consider all input received, as a result of including but not limited to responses to notifications mailed to interested parties as listed in 6 VAC 35-10-90, in formulating and drafting proposed regulations.~~

~~E. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulations otherwise adopted in accordance with this chapter.~~

6 VAC 35-10-105. Documents to be sent to persons or entities on the mailing list.

Persons or entities on the mailing list described in 6 VAC 35-10-80 shall be mailed the following documents at the appropriate stage of the regulatory process:

1. A Notice of Intended Regulatory Action.
2. A Notice of Comment Period along with, at the proposed stage, a copy of the proposed regulation.
3. A copy of any final regulation adopted by the department.
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

6 VAC 35-10-110. Administrative Process Act procedures.

~~After regulations have been~~ Regulations shall be developed according to these guidelines, ~~they shall be submitted for public comment under § 9-6-14-7.4, revised and repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The board intends to include one or more public hearings as part of the public comment period for all regulations and whenever practicable will schedule at least one such hearing in conjunction with a meeting of the board so that the board members may hear first hand from persons who have an interest in the regulation.~~

6 VAC 35-10-120. Petition for rulemaking.

As provided by § 2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or to revise an existing regulation. The board and the department will follow the procedures set out in § 2.2-4007 in responding to any such petition.

PART III.

PUBLIC NOTICE WHEN THE DEPARTMENT ACQUIRES PROPERTY.

6 VAC 35-10-130. Notice to local governing authority.

When the department acquires real property for the purpose of operating a juvenile correctional center or other residential or administrative facility, it shall provide notice to the governing body of the locality in which the property is located. The department may give such notice as soon as it has reason to believe it may acquire a specific property, but must give notice at least 30 days prior to entering into a contract to purchase or accepting a deed or other instrument of conveyance for the property.

6 VAC 35-10-140. Public hearing.

The department shall conduct a public hearing within 30 days from the date it notified the locality. If, however, the locality elects to conduct its own hearing within the same 30 days, the department may dispense with its hearing.

6 VAC 35-10-150. Comments made at public hearing.

Department staff shall attend the local hearing and shall prepare a summary of the public comments made and any responses offered by the department. The department shall include a summary of the public comments and its responses in any report to the General Assembly or to the Governor and any executive

branch agency that has a role in reviewing and approving the proposed development of the juvenile correctional facility on the property that was the subject of the local hearing.

VA.R. Doc. No. R04-229; Filed May 10, 2005, 10:45 a.m.

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TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Withdrawal of Proposed Regulation

Title of Regulation: 10 VAC 5-20. Banking and Savings Institutions (adding 10 VAC 5-20-50).

The State Corporation Commission has WITHDRAWN the proposed regulation relating to exemption from loan-to-value limitation for interest-only equity lines (BFI 2004-00108; 10 VAC 5-20-50), which was published in 21:1 VA.R. 20-21 September 20, 2004. Chapter 263 of the 2005 Acts of Assembly completely eliminates the 50% loan-to-value limitation in § 6.1-63 A of the Code of Virginia. The legislation is effective July 1, 2005. The Dismissal Order on the proposed regulation was published in 21:17 VA.R. 2305 May 2, 2005.

Agency Contact: E. J. Face, Jr., Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or e-mail jface@scc.virginia.gov.

VA.R. Doc. No. R05-12; Filed April 12, 2005, 4:03 p.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 10-20-240).

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public Hearing Date: June 15, 2005 - 9:30 a.m.

Public comments may be submitted until July 29, 2005.
(See Calendar of Events section for additional information)

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.

Basis: The Virginia Racing Commission derives its statutory authority to promulgate regulations from the provisions of § 59.1-369 of the Code of Virginia. The code states, in part, in subdivision 3, "The Commission shall promulgate regulations

and conditions under which horse racing with pari-mutuel wagering shall be conducted in the Commonwealth, and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter."

Purpose: The purpose of the proposed action is to specify certain procedures for the transfer or acquisition of an interest in an existing owner's, owner-operator's or operator's license. It is in the interest of horse racing and breeding within the Commonwealth that licensed racetracks are operated with the highest quality. This has provided for the safe conduct of the sport within Virginia and has ensured the facilities are safe for the patrons who attend the races.

Substance: The amendments specify certain procedures for the transfer or acquisition of an interest in an existing license. The changes are:

1. On the transfer of a race meet or meetings, the commission shall act within 60 days of receiving the request;
2. Any person acquiring actual control of an existing license shall apply to the commission for approval;
3. The commission may demand such information of the applicant and shall approve or deny the request within 60 days;
4. For person acquiring actual control of an existing license, the applicant shall provide the following:
 - a. A proposal for the future operation of the license;
 - b. Additional information as the applicant desires (see 11 VAC 10-20-240 D); and
 - c. Information to ensure that the applicant has the experience, expertise, financial responsibility and commitments to meet the requirements of the Act, regulations, contracts with horsemen, and any proposal submitted by the commission.
5. For those applicants who have not sought commission approval, it may take actions against the existing licensee.

Issues: The advantage of the amendments to this regulation is that it gives the Virginia Racing Commission control over who holds an owner's, owner-operator's or operator's license in the event of a change in the ownership or interest of the original licensee. It is very important and in the best interest of horse racing and breeding within the Commonwealth that licensed racetracks are operated by the highest quality licensees. This in turn helps to provide for the safe conduct of horse racing and ensures the racetrack facilities are as safe as possible for the patrons who attend them.

The amendments to 11 VAC 10-20-240 will pose 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

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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 in § 59.1-369 of the Code of Virginia mandates that the Virginia Racing Commission (VRC) promulgate regulations and conditions under which horse racing with pari-mutuel wagering be conducted in the Commonwealth.

The proposed regulation establishes additional notification requirements for applicants seeking VRC approval for their acquisition of control of a licensee authorized to conduct race meeting(s) with pari-mutuel privileges in Virginia. If the acquisition of control is done without prior approval from VRC, the agency is authorized to revoke the license, order compliance with the requirements of the regulation, or take any other action deemed appropriate. In addition, the proposed regulation requires that VRC approve or deny an application to become a partner, member, or principle shareholder of a licensee within 60 days of its receipt. The proposed changes are intended to bring the regulation into compliance with the Code of Virginia. Section 59.1-386 of the Code of Virginia (acquisition of interest in licensee) was amended to this effect by Chapter 705 of the 2003 Acts of Assembly. The proposed regulation also makes a number of other changes intended to clarify the existing regulation, correct inaccuracies in it, and make it consistent with the Code of Virginia.

An emergency regulation identical to the proposed regulation has been in effect since July 2004.

Estimated economic impact. The proposed regulation establishes additional notification requirements for applicants seeking VRC approval for their acquisition of control (direct or indirect, individual or in concert with others) of a licensee authorized to conduct race meeting(s) with pari-mutuel privileges.¹ These requirements include submitting a proposal for the future operation of an existing racetrack, a planned racetrack, or a satellite facility owned or operated by the licensee. Applicants are also required to submit any information required to assure VRC that they have the experience, expertise, financial responsibility, and commitment to comply with (i) the relevant provisions of the Code of Virginia, (ii) VRC regulations and orders, (iii) requirements for the continued operation of the licensee in accordance with the requisite terms and conditions, (iv) any existing contract with a recognized majority horsemen's group, and (v) any proposal submitted to VRC by the applicant. Applicants are also allowed to submit any additional information relevant to the application. In the event that approval is not obtained prior to acquisition of control, VRC is authorized to revoke the license, order compliance with the requirements of the regulation, or take any other action deemed appropriate. The proposed change brings the

regulation into compliance with the Code of Virginia. Section 59.1-386 of the Code of Virginia (Acquisition of interest in licensee) was amended to this effect by Chapter 705 of the 2003 Acts of Assembly.

According to VRC, the proposed change is in response to a need for greater notification in the event of a change in the form or legal status of the entity holding the license, such as between being a partnership, a privately owned company, and a publicly held company. The agency believes that these requirements will help in ensuring that racing and wagering in Virginia is of the highest quality and conducted in a manner that is free of any corrupt, incompetent, dishonest, or unprincipled practices, as required by the Code of Virginia. The proposed requirement is intended to provide information regarding the financial stability of the person acquiring the interest, future plans as to the operation of any facility owned and/or operated by the licensee, and the ability of the person acquiring the interest to meet existing obligations and requirements.

The proposed change is not likely to have a significant economic impact. The existing regulation requires a person seeking to become a partner, member, or principle shareholder of a licensee to apply to VRC for approval. In order to approve or deny an application, § 59.1-386 of the Code of Virginia allows VRC to demand any such information from the applicant that the agency deems necessary. Thus, under existing laws, VRC could require applicants seeking to acquire control of a licensee to submit documentation similar to that being proposed. By specifying the documentation to be submitted, the proposed regulation clarifies the requirements for acquiring control of a licensee. The proposed change is not likely to impose significant economic costs. According to VRC, applicants are already likely to have the documentation required for submission under the proposed regulation. Moreover, the agency does not intend to charge a fee for review of these applications. Thus, to the extent that the proposed change clarifies aspects of the regulation and improves its understanding and implementation, it is likely to produce some small economic benefits.

The proposed regulation also includes a number of other changes. It requires that VRC approve or deny an application to become a partner, member, or principle shareholder of a licensee within 60 days of receipt of the application. It also makes changes intended to clarify the existing regulation, correct inaccuracies in it, and make it consistent with the Code of Virginia. These changes are not likely to have a significant economic impact. No additional costs are likely to be imposed by the proposed changes. In fact, to the extent that they streamline the approval process and lead to better understanding and implementation of the regulation, they are likely to produce some small economic benefits.

Businesses and entities affected. The proposed regulation will affect owners, operators, and owner-operators licensed under a limited or an unlimited license to conduct race meeting(s) with pari-mutuel privileges in Virginia and individuals seeking to acquire a controlling interest in them. Currently, there are two entities likely to be affected by the

¹ The proposed change applies to limited and unlimited licenses.

proposed regulation, Colonial Downs and the Maryland Virginia Racing Circuit.

Localities particularly affected. The proposed regulation applies to 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 significant impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Racing Commission is in general agreement with the Department of Planning and Budget's economic impact analysis.

Summary:

The amendments specify certain procedures for the transfer or acquisition of an interest in an existing owner's, owner-operator's or operator's license. In those cases where the applicant has not sought the approval of the commission, it may take actions against the holder of the existing license.

11 VAC 10-20-240. Transfer or acquisition of interest in owner's, owner-operator's or operator's license.

A. Generally. A licensee already holding a limited or unlimited owner's, owner-operator's or operator's license may apply to the commission to transfer its race meet or meetings to that of another horse racing facility already licensed by the commission.

B. Requirements for transfer of racing days. The licensee shall apply to the commission in writing requesting the transfer of its racing days to that of another licensee stating:

1. The reason for the transfer;
2. Why the transfer will provide for the promotion, sustenance, and growth of horse racing and breeding, in a manner consistent with the health, safety, and welfare of the Commonwealth of Virginia;
3. Why the transfer will maintain horse racing in the Commonwealth of the highest quality, and free of any corrupt, incompetent, dishonest, or unprincipled practices and maintain complete honesty and integrity;
4. Why the transfer will not adversely affect the operation of any other horse racing facility licensed by the commission;
5. That the transfer has been expressly consented to by the licensee to which the transfer is to be made;
6. That all licensees agree to be bound by the regulations and requirements placed upon it by the commission before the application for the transfer was submitted; and
7. That all licensees to whom racing days are to be transferred, have paid all and any applicable license fees for the conduct of horse racing, with pari-mutuel wagering privileges, at the particular facility or place for holding races on which the racing is to be conducted.

C. Consideration by commission. The commission will take into account the statement submitted by the licensee and any

other testimony or documentation that it deems material before approving or denying the request for transfer of a ~~license race meet or meetings~~. The commission shall act on the application within 60 days of receipt.

D. Acquiring an interest *in a licensee*. Any person desiring to become a partner, member or principal stockholder of any licensee, *or to acquire actual control of a licensee, whether direct or indirect, individually or in concert with others*, shall apply to the commission for approval ~~of acquiring an interest in the license~~.

~~1. The applicant shall meet all of the requirements imposed. The commission may demand such information of the applicant as it finds it necessary to consider and act on the application. The application shall include all applicable disclosures required by the commission for licensure as owners or operators, as specified in 11 VAC 10-20-20 through 11 VAC 10-20-180 of this chapter. 2. The commission shall consider the application and if the commission finds that forthwith and shall approve or deny the application within 60 days of receipt. The commission shall deny any application if in its judgment the acquisition would be detrimental to the public interest, or to the honesty and, integrity of , and reputation of racing of its reputation, the application shall be denied.~~

~~3. The commission shall act on the application within 60 days of receipt.~~

2. The commission shall approve an application to become a partner, member or principal stockholder if the application meets the criteria set forth in the Act and subdivision 1 of this subsection.

3. The commission shall approve an application to acquire actual control of a licensee only if it finds that the applicant meets the criteria set forth in the Act, the criteria set forth in subdivision 1 of this subsection for a partner, member or principal stockholder, and the criteria set forth in this subdivision.

a. If an applicant proposes to acquire actual control of a licensee, such person shall submit to the commission:

(1) The applicant's proposal for the future operation of any existing or planned racetrack, or satellite facility owned or operated by the licensee;

(2) Such additional information as the applicant desires; and

(3) Such information as may be required by the commission to assure the commission that the licensee, under the actual control of such person, will have the experience, expertise, financial responsibility and commitment to comply with:

(a) The provisions of the Act;

(b) Commission regulations and orders;

(c) The requirements for the continued operation of the licensee pursuant to the terms and conditions in effect on the date of the application of all licenses held by the licensee;

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(d) Any existing contract with a recognized majority horsemen's group; and

(e) Any proposal submitted to the commission by such person.

b. Any such acquisition of control without prior approval of the commission shall be voidable by the commission and, in such instance, the commission may revoke any license it has issued to such licensee, order compliance with this subsection, or take such other action as may be appropriate within the authority of the commission.

VA.R. Doc. No. R04-270; Filed May 9, 2005, 3:05 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Regulations: **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.

Public Hearing Date: N/A -- Public comments may be submitted until July 29, 2005.

(See Calendar of Events section for additional information)

Agency Contact: Catherine Hancock, Project Manager, 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.

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. Item 325 QQQ of the 2003 Appropriation Act requires DMAS to add community-based residential services as covered Medicaid services.

Purpose: This regulatory action provides for Medicaid coverage of new community-based residential services for children and adolescents. Until the promulgation of an emergency regulation covering these same services, these services were 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.

Substance: The current regulations that are the subject of this action are: Amount, Duration and Scope of Medical and Remedial Care Services (12 VAC 30-50-130), Standards Established and Methods Used to Assure High Quality Care (12 VAC 30-60-61), and Amount, Duration and Scope of Selected Services (12 VAC 30-130-860, 12 VAC 30-130-870, 12 VAC 30-130-880, and 12 VAC 30-130-890). Each of these sections is being amended to implement the new covered services. 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.

Issues: This regulatory change will provide greater financial resources for the Commonwealth to address those with mental health needs and enhance access to mental health services. No disadvantages to the public have been identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change.

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 QQQ of the 2003 Appropriation Act, the proposed regulations add community-based residential services as covered Medicaid services.

Estimated economic impact. Under the proposed regulations, Virginia's Medicaid program will permanently cover community-based residential services as mandated by Item 325 QQQ of the 2003 Appropriation Act. The proposed coverage has been in effect since July 2004 under emergency regulations. The community based-residential services provide therapeutic supervision, structure for daily activities, psychoeducation, and access to psychotherapy to ensure that therapeutic mental goals are attained.

Currently, the state pays 67% of the cost of these services while the rest is paid by the localities. Under the expanded Medicaid coverage, the federal government pays for one half of the total cost, thus reducing the state and local expenditures by one half. In other words, the state's participation is reduced to approximately 33.5% of the total cost and localities' participation is reduced to approximately 17%. According to most recent estimates, the combined savings to the state and localities is about \$2.7 million in FY 2005 (\$1.8 million in state savings and \$0.9 million in local

government savings) and about \$4.6 million in FY 2006 (\$3.1 million in state savings and \$1.5 million in local government savings).

State and localities could choose to use these savings either to reduce tax burden or increase spending on other programs. Given the relatively small size of the savings, they are more likely to be channeled into other programs. Under either circumstance, the additional \$2.7 million federal funds in FY 2005 and \$4.6 million in FY 2006 could be considered as net injections of money into the state economy. Unlike other sources, federal matching funds do not have an offsetting effect elsewhere in Virginia's economy. The additional funds would initially result in increased demand for goods and services, which would in turn increase total state income. The higher income would trigger other, but less pronounced, increases in demand. Once the economic multiplier process concludes, the increase in total state income would be a multiple of the initial injection of \$2.7 million and \$4.6 million into the state's economy. The estimated magnitude of the spending multiplier for the first few years for the U.S. economy is usually between 2 to 3 times the initial injection. This means that the \$2.7 million injection in FY 2005 could increase Virginia's income (or output) over the next several years by between \$5.4 million and \$8.1 million and the \$4.6 million injection in FY 2006 could increase Virginia's income (or output) over the next several years by between \$9.3 million and \$14 million.

In addition, the proposed regulations split the new covered services into two levels of care, Level A and Level B. Level A services are medically less demanding than Level B services, and therefore cheaper. Currently, DMAS pays \$119 for a Level A service claim and \$158 for a Level B service claim. Provided the determination of a service into two different levels does not introduce significant administrative costs to the providers or to DMAS, paying rates commensurate with the medical intensity involved in providing the service is likely to improve the allocation of resources. If the reimbursement rate were the same for all services regardless of their intensity, it may cause more than optimal supply of less intensive services and less than optimal supply of more intensive services. However, this does not mean that creating additional levels of care would indefinitely improve the efficiency in allocation of resources. Administrative costs of creating additional layers of service would eventually exceed the efficiency gains.

Also, based on an interpretation of the federal law (42 CFR 435.1008 and 42 CFR 435.1009) by the Centers for Medicare and Medicaid Services, Virginia's Medicaid program is not allowed to make payments for community-based residential services to providers with a capacity of more than 16 beds. Because localities have an incentive to reduce their share of the cost of providing services and because they can influence the referral decision, providers with a bed capacity of less than 16 beds are likely to get more referrals than larger providers. Thus, an increase in revenues of small facilities and a corresponding decrease in revenues of large facilities may occur. However, the extent to which localities may actually take action to increase referrals to facilities with a bed capacity of less than 16 beds is not known.

Finally, the proposed regulations establish provider standards. These include staffing ratios and personnel qualifications. According to DMAS, most of the proposed provider standards do not significantly differ from those required under the Interdepartmental Regulation of Residential Care Standards for Level A services and the Department of Mental Health, Mental Retardation and Substance Abuse standards for Level B services, or providers already meet the proposed standards. Thus, providing these services through the Medicaid program should not significantly increase provider costs.

Businesses and entities affected. The proposed regulations apply to approximately 50 providers with less than 16 bed capacity. The proposed regulations may also indirectly affect about 75 providers with more than 16 bed capacity.

Localities particularly affected. No locality is likely to be affected by the proposed regulations more than others.

Projected impact on employment. The proposed financing of one half the expenditures for community-based residential services from federal government is likely to increase Virginia's income (or output). This, in turn, is likely to increase total employment in Virginia. By not being able to reimburse large providers for services, the proposed regulations could also decrease employment at large providers and increase employment at small providers.

Effects on the use and value of private property. The proposed regulations are not likely to have a significant effect on the value and use of real property. The asset value of some private businesses involved in providing community-based residential services may be affected. The increase in total spending is likely to have a positive impact on businesses receiving the additional money. However, total spending is likely to be too dispersed to have a significant effect on any individual business. Also, the asset values of small providers will be subject to a positive effect while the asset values of large providers will be subject to a negative effect due to shifting of some revenues from large to small facilities.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the Economic Impact Analysis prepared by the Department of Planning and Budget regarding the regulations concerning 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; and 12 VAC 30-130, Amount, Duration and Scope of Selected Services -- Add Community-Based Residential Services as Covered Medicaid Services. The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments implement coverage of new community-based, residential mental health services as mandated by Item 325 QQQ of the 2003 Appropriation Act. Amendments differentiate service intensity into two separate levels of service (A and B) and designate the highest intensity level of residential treatment programs as Level C. This regulation also describes provider

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requirements for the various levels of service and adds the requirement that a physician sign and date the plan of care.

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 that 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 that 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:

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- 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 to 10 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 in 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, that results in significant functional impairments in major life activities.

~~C.~~ 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~~.

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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 made by an independent certifying team that:

- a. Includes a licensed physician; *who*:
 - ~~b.~~ (1) Has competence in diagnosis and treatment of pediatric mental illness; and
 - ~~e.~~ (2) Has knowledge of the recipient's mental health history and current situation.

b. Be 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.

~~D. 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 (§ 9-6-14:4.4 2.2-4000 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. Authorization for services shall be based upon the medical necessity criteria described in 12 VAC 30-50-130. The authorized length of stay must not exceed six months and may be re-authorized. The provider shall be responsible for documenting the need for a continued stay and providing supporting documentation.

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.

1. Reimbursement shall not be made for this level of care if either of the following applies:

a. 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

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b. 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 (22 VAC 42-10).

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. Signature and date 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 (CIPOC) 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 CIPOC 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 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 CIPOC 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; and

3. Determinations regarding whether the services being provided continue to be required.

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.

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Medicaid Nursing Home Manual, Department of Medical Assistance Services.

Virginia Medicaid Rehabilitation Manual, Department of Medical Assistance Services.

Virginia Medicaid Hospice Manual, Department of Medical Assistance Services.

Virginia Medicaid School Division Manual, Department of Medical Assistance Services.

ASAM Patient Placement Criteria for the Treatment of Substance-Related Disorders, ASAM PPC-2R, Second Edition, revised 2001, American Society of Addiction Medicine.

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Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, DSM-IV, October 1996, American Psychiatric Association.

VA.R. Doc. No. R04-194; Filed May 10, 2005, 4:44 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Title of Regulation: 18 VAC 50-22. Board for Contractors Regulations (amending 18 VAC 50-22-10, 18 VAC 50-22-20, 18 VAC 50-22-30, 18 VAC 50-22-50, 18 VAC 50-22-60, 18 VAC 50-22-100, 18 VAC 50-22-140, 18 VAC 50-22-170, 18 VAC 50-22-250, and 18 VAC 50-22-260; repealing 18 VAC 50-22-270).

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Hearing Dates:

June 14, 2005 - 1 p.m. (Richmond)

July 13, 2005 - 7 p.m. (Abingdon)

July 14, 2005 - 7 p.m. (Chesapeake)

An additional hearing will be scheduled in Prince William or Fairfax.

Public comments may be submitted until July 29, 2005.

(See Calendar of Events section for additional information)

Agency Contact: Eric Olson, Executive Director, Board for Contractors, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, or e-mail eric.olson@dpor.virginia.gov.

Basis: Section 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. 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.

Purpose: The purpose of amending these regulations is to (i) remove the definition of the alarm/security systems contracting specialty that has been specifically exempted by statute of the requirement to hold a contractor license; (ii) amend the definition of highway/heavy contractor to include the function of steel erection in response to changes in the industry; (iii) amend the definition of equipment/machinery contracting to include boilers regulated by the Department of Labor and Industry that would not come under the expertise of contractors holding a license with the HVAC specialty; (iv) remove "bricks" from the list of activities that do not have their own specialty, as the masonry specialty was added to the regulations with the 1999 amendments; (v) correct the definitions of liquefied petroleum gas contracting and natural gas fitting provider contracting that were promulgated in 2001 that, as currently written, have led to confusion at numerous localities regarding the scope of practice permitted by licensees holding the gas fitting contractor specialty; (vi) add

the definitions of helper/laborer, supervisor and supervision to the definitions in conjunction with the addition of a provision that requires a licensed contractor to ensure that supervision is provided to all helpers and laborers assisting licensed tradesmen; (vii) increase the reinstatement period in order to conform with the tradesman licensing requirements; (viii) amend the requirement that a designated employee be either a full-time employee or a member of responsible management to bring it into agreement with the statutory requirement that the designated employee must be a full-time employee; and (ix) remove the returned check fee from the regulations, which is actually an administrative fee assigned by the Department of Professional and Occupational Regulation, not controlled by the Board for Contractors and, as such, should not be included in the regulations.

Originally, proposed regulations were submitted for Executive Branch Review in August of 2003, however, during that review period, the Board for Contractors reconsidered the public comment received during the NOIRA comment period. That reconsideration resulted in the addition of the definitions and requirements described in number six.

The amendments to the definitions will serve multiple purposes related to the health, safety and welfare of the public. First, the General Assembly determined that the most prudent and efficient way to protect consumers who utilize the services of electronic security alarm contractors was to house the program exclusively at the Department of Criminal Justice Services, hence the removal of the program from under the authority of the Board for Contractors. Other amendments to the definitions protect the public by making sure the regulations are clear in the definition of the scope of practice allowed for each specialty classification, ensuring that only those contractors who are qualified, complete specific contracting work.

Substance: The primary substantive changes to the definitions of the permitted scope of practice defined in 18 VAC 50-22-20 involve amending the definition of the liquid petroleum gas (LPG) and natural gas fitting (NGF) specialties in order to clarify that a contractor holding the gas-fitter (GFC) specialty is also permitted to perform that work and to remove the alarm/security systems specialty classification from the regulations as that practice is now statutorily exempt from licensure.

Other changes to the scope of practice descriptions were made as a result of changes in the industry involving boilers regulated by the Department of Labor and Industry and the licensing of firms involved in steel erection.

As a result of public comment received during the NOIRA comment period a substantive change is being proposed jointly to the definitions and the prohibited acts. This change adds the definition of helpers/laborers, supervision and supervisor and, in conjunction with the proposed change to the prohibited acts, requiring supervision of helpers and laborers assisting licensed tradesmen.

Additional changes involve the regulatory eligibility requirements for the designated employee of a licensee, amended to conform with those inferred in the statutes, the extension of the license reinstatement period from six months

to one year, and the removal of an administrative fee charged by the Department of Professional and Occupational Regulation.

Issues: In amending these regulations, the Board for Contractors is continuing to provide necessary public protection tasked to them through existing statutes. These proposed amendments will, without compromising that protection, clarify existing requirements, essentially providing an advantage to certain contractors by allowing them to complete work they are qualified to complete and trained to perform without the added burden of obtaining additional licenses or interpretations from the board. Further protection will be afforded the public by ensuring that trade-related work completed by nonlicensed tradesman be periodically inspected by licensed tradesman to ensure that the work is performed properly and to the standards required by the trade and other applicable statutes, regulations and standards. Additionally, the extension of the reinstatement period from six months to one year will decrease the burden (both financial and administrative) of those contractors subject to that section of the regulations.

The amendment of these regulations will be advantageous to the agency by decreasing the contact required with the regulant population to provide technical assistance and to process applications for licensure or amendments to existing licenses. This will increase the amount of time staff can dedicate to application processing, subsequently reducing the current waiting time experienced by all applicants. Currently the board's staff spends a considerable amount of time processing applications and providing guidance to both the regulant population and the general public in those areas impacted by these proposed amendments.

The amendment of the definitions in these proposed regulations will provide needed clarification to the building officials of the various localities throughout the Commonwealth who are tasked with issuing permits to those contractors who are appropriately licensed. Permitting staff at localities utilize the definitions of the scope of practice to determine if the work listed on the application for a building permit falls into the classification or specialty shown on the license of the contractor applying for the permit.

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 (i) remove alarm/security systems specialty classification from the regulations, (ii) require tradesmen to

supervise helpers and laborers, (iii) increase the license reinstatement period from six months to one year, (iv) remove the requirement that contracts include the expiration date of the contractor's license, and (v) clarify the language in a number of places regarding the definition or the scope of several specialties and the fee schedule.

Estimated economic impact. An amendment to § 54.1-1103 E of the Code of Virginia in 2002 removed the licensure requirements under these regulations for private security businesses offering installation, maintenance, and design services. Prior to this statutory change, alarm/security systems specialty was regulated by the Board of Contractors as well as by the Department of Criminal Justice Services. With the proposed changes, these contractors will no longer be regulated by the Board of Contractors (the board). According to the Department of Professional and Occupational Regulation (the department), there were 600 contractors with an alarms systems contracting license. Of these, only 100 individuals did not have any other license while the remaining 500 had a license in other specialties. Of the 100, 25 later obtained a license from the board in a related area. Thus, the net annual revenue loss to the board is approximately \$5,000 for 75 regulants, which is inconsequential for the board. According to the department, no significant effect on health and safety is expected, as these contractors will continue to be regulated by the Department of Criminal Justice Services.

Also, the board proposes a requirement for supervision of helpers or laborers by a licensed tradesman. According to the department, about 32,000 tradesmen are currently licensed and approximately 23,000 businesses provide services in related service areas such as plumbing, gas fitting, and HVAC. However, there is no available information on the number of helpers and laborers assisting licensed tradesmen. Although we do not know the number of laborers and helpers, roughly about 20% of them are believed to perform tasks without the proposed supervision requirement because many companies already have incentives to perform a good service for consumer satisfaction. These companies that do not currently provide the proposed supervision are most likely to be affected by this change.

Another factor that compounds the difficulty of assessing the economic effects is the uncertainty about the actual enforcement of the supervision requirement. With this requirement, a tradesman will be required to be accessible to the helper or laborer and will be required to periodically observe and evaluate the performance of the task or procedure. Because "being accessible" is case specific, the proposed regulations do not contain any specific language on how this requirement could be satisfied, but leaves it to the board's interpretation in the event a determination must be made. For example, a plumbing tradesman may be considered accessible by a cellular phone, or by time while a gas-fitting tradesman may be considered accessible only by physical presence at the work site.

In short, we do not know exactly how many companies will be actually affected and how they will comply with this requirement making it impossible to determine if significant economic effects should be expected. The following discussion is based on the assumption that the proposed

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supervision requirement will introduce nonnegligible costs for a nonnegligible number of firms.

The proposed requirement will increase the number of tradesman required to supervise the same number of helpers or laborers at the aggregate. The optimal individual company response to this change is hiring additional tradesmen while laying off some of the laborers or helpers and reducing service production due to increased compliance costs. Thus, the initial effects of this change at the aggregate are an increase in demand for skilled tradesmen and a decrease in demand for laborers and helpers. However, increased compliance costs would force some individual firms to reduce production reducing the market demand for both skilled and unskilled labor. When all the effects are realized, the demand for tradesmen may be higher even though significant compliance costs may result in a net reduction while the demand for helpers and laborers would be certainly lower.

The companies that do not already provide the proposed level of supervision will have to reduce the supply of services a tradesman must supervise because the same service will be completed at a higher cost. These costs include increased skilled labor costs and other compliance costs such as expenses for communication equipment, for gas, for vehicles, for lodging, etc. A reduction in the supply of services will eventually result in higher prices. Thus, we expect to see an initial increase in service prices and a reduced volume of these services purchased by the consumers.

The proposed supervision requirement could also affect consumer perception and choice about the tradesmen services. Some consumers may associate increased supervision with better quality and increase their willingness to pay for the same services. Thus, a further upward pressure on the prices of services offered and an increase in the volume of services consumed could result which would balance the initial negative effect on the volume traded. However, the higher prices could cause some others who do not associate more supervision with high quality to reduce the volume of services they are willing to purchase. The net market effects are likely to be higher prices than the current prices and a lower volume of services consumed than the current level.

In summary, however significant they may be, the likely economic effects in the market are an increase or possibly a decrease in demand for skilled tradesmen and a decrease in demand for laborers and helpers. This could cause an increase or possibly a decrease in tradesman wages while reducing wages for unskilled labor. Also, we expect to see higher service prices than the current level and a lower volume of services consumed than the current level.

Moreover, the fact that the compliance with "being accessible" is case specific and open to interpretation may create some additional costs. Risk-averse firms facing uncertainty as to how to make tradesmen accessible to helpers and laborers may over invest in their compliance efforts in the fear of being found out of compliance. Some firms may also disagree with the adverse determinations of the board and incur some litigation costs in order to determine whether their tradesmen were accessible. These costs arising from uncertainty involved in determining what is "being accessible" would introduce some economic inefficiencies.

On the other hand, the expected benefits of the proposed supervision requirement may include a decreased likelihood for health and safety risks that would otherwise be present. For instance, it is possible that there may be a reduced number of gas explosions from improperly installed gas equipment, a reduced number of electrical fires, a reduced number of plumbing malfunctions, etc. However, we do not know whether any of these expected reduction in the potential health and safety risks would actually materialize as a result of the proposed supervision requirement.

Another proposed change will extend the licensure reinstatement period from six months to one year to conform to tradesman licensing regulations. The department estimates that about 200 licensees apply for reinstatement annually. The reinstatement is accomplished simply by paying the reinstatement fee. The main benefit of this change is allowing contractors more time to reinstate their licensure status. According to the department, during the reinstatement period and until the fee is paid, a contractor is legally neither licensed nor unlicensed. Since contractors are not deemed unlicensed, existing or new customers will be able to resume or start a normal business relationship with a contractor for an additional six months. Also, customers will be afforded the board's protection for an additional six months because contractors are subject to these regulations during the reinstatement period.

Another proposed change will remove the requirement that a contractor list the expiration date of his license on the contract. Thus, contractors using printed contracts will not have to reprint their contracts every two years and save some printing expenses. This information is accessible through the department's website or through telephone confirmation with the licensing staff.

The board also proposes to clarify some of the current language. These include (i) clarifying that equipment/machinery contracting specialty includes installation or removal of boilers exempted by the Virginia Uniform Statewide Building Code, but regulated by the Department of Labor and Industry, (ii) clarifying that heating/ventilating/air-conditioning contractors may perform incidental lead abatement work, (iii) clarifying that gas fitting contractors may perform liquefied petroleum gas contracting and natural gas contracting, (iv) clarifying that being a member of responsible management of a firm is not sufficient to be a designated employee under the Code of Virginia, (v) removing bricks from the definition of work that does not have a specialty as there is a specialty for masonry contracting, (vi) removing the dishonored check fee from the regulations because this administrative fee is not under the authority of the board, but rather under the authority of the department, and (vii) adding steel erection to the list of functions may be performed by highway/heavy contractors.

All of these proposed changes for clarification purposes are consistent with the board's policy currently enforced in practice. So, no significant change in practice is anticipated to result from these clarifications. However, the current language has been creating some confusion among the regulants and the building officials. Thus, the proposed clarifications are

expected to reduce the potential for confusion and consequently save some staff time for the affected entities.

Businesses and entities affected. There are approximately 83,440 businesses and individuals with licenses from the board of contractors.

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

Projected impact on employment. The proposed supervision requirement is expected to cause an increase or a possible decrease in the demand for tradesman positions and a reduction in the demand for unskilled laborer and helper positions. However, the likely sizes of these impacts are not known.

Effects on the use and value of private property. The proposed supervision requirement would increase costs for some businesses providing tradesmen services. Increased costs would reduce future profit streams and decrease the value of these businesses. On the other hand, reduced risks to property from gas explosions, electrical fires, or plumbing malfunctions would have a positive effect on property values at the aggregate. However, we do not know whether any of these effects would be significant.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board for Contractors concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 50-22, Board for Contractors Regulations.

Summary:

The proposed amendments (i) remove the alarm/security systems specialty classification from the regulations; (ii) require tradesmen to supervise helpers and laborers; (iii) increase the license reinstatement period from six months to one year; (iv) remove the requirement that contracts include the expiration date of the contractor's license; and (v) clarify the language in a number of places regarding the definition or the scope of several specialties and the fee schedule.

18 VAC 50-22-10. General definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Controlling financial interest" means the direct or indirect ownership or control of more than 50% ownership of a firm.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, military, correspondence schools or other similar training organizations.

"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed contracting business.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in 18 VAC 50-30-10.

"Licensee" means a firm holding a license issued by the Board for Contractors to act as a contractor, as defined in § 54.1-1100 of the Code of Virginia.

"Net worth" means assets minus liabilities. For purposes of this chapter, assets shall not include any property owned as tenants by the entirety.

"Reciprocity" means an arrangement by which the licensees of two states are allowed to practice within each other's boundaries by mutual agreement.

"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.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Supervision" means providing guidance or direction of a delegated task or procedure by a tradesman licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, being accessible to the helper or laborer, and periodically observing and evaluating the performance of the task or procedure.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code and provides supervision to helpers and laborers as defined in this chapter.

"Tenants by the entirety" means a tenancy which is created between a husband and wife and by which together they hold

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title to the whole with right of survivorship so that, upon death of either, the other takes whole to exclusion of the deceased's remaining heirs.

18 VAC 50-22-20. Definitions of license classifications.

The following words and terms, when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Building contractors" (Abbr: BLD) means those individuals whose contracts include construction on real property owned, controlled or leased by another person of commercial, industrial, institutional, governmental, residential (single-family, two-family or multifamily) and accessory use buildings or structures. This classification also provides for remodeling, repair, improvement or demolition of these buildings and structures. A holder of this license can do general contracting.

If the BLD contractor performs specialty services, all required specialty designations shall be obtained. The building classification includes but is not limited to the functions carried out by the following specialties:

- Billboard/sign contracting
- Commercial improvement contracting
- Farm improvement contracting
- Home improvement contracting
- Landscape service contracting
- Marine facility contracting
- Modular manufactured building contracting
- Recreational facility contracting

"Electrical contractors" (Abbr: ELE) means those individuals whose contracts include the construction, repair, maintenance, alteration, or removal of electrical systems under the National Electrical Code. This classification provides for all work covered by the National Electrical Code including electrical work covered by the alarm/security systems contracting (ALS), electronic/communication service contracting (ESC) and fire alarm systems contracting (FAS) specialties. A firm holding an electrical license is responsible for meeting all applicable tradesman licensing standards.

"Highway/heavy contractors" (Abbr: H/H) means those individuals whose contracts include construction, repair, improvement, or demolition of the following:

- Bridges
- Dams
- Drainage systems
- Foundations
- Parking lots
- Public transit systems
- Rail roads
- Roads
- Runways
- Streets
- Structural signs & lights
- Tanks

The functions carried out by these contractors include but are not limited to the following:

- Building demolition
- Clearing

- Concrete work
- Excavating
- Grading
- Nonwater well drilling
- Paving
- Pile driving
- Road marking
- Steel erection

These contractors also install, maintain, or dismantle the following:

1. Power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter;
2. Pumping stations and treatment plants;
3. Telephone, telegraph, or signal systems for public utilities; and
4. Water, gas, and sewer connections to residential, commercial, and industrial sites, subject to local ordinances.

This classification may also install backflow prevention devices incidental to work in this classification when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"HVAC contractors" (Abbr: HVA) means those individuals whose work includes the installation, alteration, repair, or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heaters, heating systems, boilers, process piping, and mechanical refrigeration systems, including tanks incidental to the system. This classification does not provide for fire suppression installations, sprinkler system installations, or gas piping. A firm holding a HVAC license is responsible for meeting all applicable tradesman licensure standards. This classification may install backflow prevention devices incidental to work in this classification.

"Plumbing contractors" (Abbr: PLB) means those individuals whose contracts include the installation, maintenance, extension, or alteration, or removal of all piping, fixtures, appliances, and appurtenances in connection with any of the following:

- Backflow prevention devices
- Boilers
- Hot water baseboard ~~heating~~ heating systems
- Hot water heaters
- Hydronic systems
- Limited area sprinklers (as defined by BOCA)
- Process piping
- Public/private water supply systems within or adjacent to any building, structure or conveyance
- Sanitary or storm drainage facilities
- Steam heating systems
- Storage tanks incidental to the installation of related systems
- Venting systems related to plumbing

These contractors also install, maintain, extend or alter the following:

Liquid waste systems
Sewerage systems
Storm water systems
Water supply systems

This classification does not provide for gas piping or the function of fire sprinkler contracting as noted above. A firm holding a plumbing license is responsible for meeting all applicable tradesman licensure standards.

"Specialty contractors" means those individuals whose contracts are for specialty services which do not generally fall within the scope of any other classification within this chapter.

18 VAC 50-22-30. Definitions of specialty services.

The following words and terms, when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

~~"Alarm/security systems contracting" (Abbr: ALS) means that service which provides for the installation, repair, improvement, or removal of alarm systems or security systems annexed to real property. This classification covers only burglar and security alarm installations. A firm holding an ALS license is responsible for meeting all applicable rules and regulations adopted by each locality. The ELE classification also provides for this function.~~

"Alternative energy system contracting" (Abbr: AES) means that service which provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Asbestos contracting" (Abbr: ASB) means that service which provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means that service which provides for the installation of asphalt paving and/or sealcoating on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means that service which provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and BLD are the only other classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

"Blast/explosive contracting" (Abbr: BEC) means that service which provides for the use of explosive charges for the repair,

improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means that service which provides for repair or improvement to nonresidential property and multifamily property as defined in the Virginia Uniform Statewide Building Code. The BLD classification also provides for this function. The CIC classification does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means that service which provides for all work in connection with the processing, proportioning, batching, mixing, conveying and placing of concrete composed of materials common to the concrete industry. This includes but is not limited to finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing and waterproofing. Construction and assembling of forms, molds, slipforms, pans, centering, and the use of rebar is also included. The BLD and H/H classifications also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means that service which provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means that service which provides for the installation, repair, improvement or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable tradesman licensure standards. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means that service which provides for the construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means that service which provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means that service which provides for the installation or removal of equipment or machinery including but not limited to conveyors or heavy machinery. *Boilers exempted by the Virginia Uniform Statewide Building Code but regulated by the Department of Labor and Industry are also included in this specialty.* This specialty does not provide for any electrical, plumbing, process piping or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means that service which provides for the installation, repair or improvement of a nonresidential farm building or structure, or

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nonresidential farm accessory-use structure, or additions thereto. The BLD classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Fire alarm systems contracting" (Abbr: FAS) means that service which provides for the installation, repair, or improvement of fire alarm systems which operate at 50 volts or less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

"Fire sprinkler contracting" (Abbr: SPR) means that service which provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of limited area sprinklers as defined by BOCA. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and sprinkler system when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Fire suppression contracting" (Abbr: FSP) means that service which provides for the installation, repair, improvement, or removal of fire suppression systems including but not limited to halon and other gas systems; dry chemical systems; and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Gas fitting contracting" (Abbr: GFC) means that service which provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm with a GFC license is responsible for meeting all applicable tradesman licensure standards.

"Home improvement contracting" (Abbr: HIC) means that service which provides for repairs or improvements to one-family and two-family residential buildings or structures annexed to real property. The BLD classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include high rise buildings, buildings with more than two dwelling units, or new construction functions beyond the existing building structure other than decks, patios, driveways and utility out buildings.

"Landscape irrigation contracting" (Abbr: ISC) means that service which provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. This specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means that service which provides for the alteration or improvement of a land area not related to any other classification or service

activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. The BLD classification also provides for this function.

"Lead abatement contracting" (Abbr: LAC) means that service which provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function, except that the PLB classification and HVA classifications may provide this service incidental to work in ~~that classification~~ *those classifications*.

"Liquefied petroleum gas contracting" (Abbr: LPG) means that service which includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require a HVA or PLB license. ~~No other classification or specialty service~~ *The GFC specialty* also provides for this function. A firm holding a LPG license is responsible for meeting all applicable tradesman licensure standards.

"Marine facility contracting" (Abbr: MCC) means that service which provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The BLD and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC or plumbing functions.

"Masonry contracting" (Abbr: BRK) means that service which includes the installation of brick, concrete block, stone, marble, slate or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging and cleaning and welding of reinforcement steel related to masonry construction. The BLD classification and HIC and CIC specialties also provide for this function.

"Modular/manufactured building contracting" (Abbr: MBC) means that service which provides for the installation or removal of a modular or manufactured building manufactured under ANSI standards. This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie ins of plumbing, gas and electrical or HVAC equipment. It does not allow for installing additional plumbing, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The H/H and BLD classifications also provide for this function.

"Natural gas fitting provider contracting" (Abbr: NGF) means that service which provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment which requires a HVA or PLB license. ~~No other classification or specialty service~~ *The GFC specialty* also provides for this function. A firm holding a NGF

license is responsible for meeting all applicable tradesman licensure standards.

"Painting and wallcovering contracting" (Abbr: PTC) means that service which provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The BLD classification and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means that service which provides for additions, repairs or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. This function can only be performed by a firm holding the BLD classification or CIC (for other than one-family and two-family dwellings), FIC (for nonresidential farm buildings) or HIC (for one-family and two-family dwellings) specialty services. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means that service which provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The BLD classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means that service which provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room equipment, and similar hermetic refrigeration equipment. The HVAC classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means that service which provides for the installation, repair, removal or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The BLD classification and the HIC and CIC specialties also provide for this function.

"Sewage disposal systems contracting" (Abbr: SDS) means that service which provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other on-site sewage disposal systems annexed to real property.

"Swimming pool construction contracting" (Abbr: POL) means that service which provides for the construction, repair, improvement or removal of in-ground swimming pools. The BLD classification and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow or HVAC work is included in this specialty.

"Vessel construction contracting" (Abbr: VCC) means that service which provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means that service which provides for the installation of a water well system, which includes construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude PLB, ELE or HVAC from installation of pumps and tanks.

Note: Specialty contractors engaging in construction which involves the following activities or items or similar activities or items may fall under the CIC, HIC and/or FIC specialty services, or they may fall under the BLD classification.

Appliances	Fiberglass	Rigging
Awnings	Fireplaces	Rubber linings
Blinds	Fireproofing	Sandblasting
Bricks	Fixtures	Scaffolding
Bulkheads	Floor coverings	Screens
Cabinetry	Flooring	Sheet metal
Carpentry	Floors	Shutters
Carpeting	Glass	Siding
Casework	Glazing	Skylights
Ceilings	Grouting	Storage bins and lockers
Chimneys	Grubbing	Stucco
Chutes	Guttering	Temperature controls
Conduit rodding	Insulation	Terrazzo
Curtains	Interior decorating	Tile
Curtain walls	Lubrication	Vaults
Decks	Metal work	Vinyl flooring
Doors	Millwrighting	Wall panels
Drapes	Mirrors	Wall tile
Drywall	Miscellaneous iron	Waterproofing
Epoxy	Ornamental iron	Weatherstripping
Exterior decoration	Partitions	Welding
Facings	Protective coatings	Windows
Fences	Railings	Wood floors

18 VAC 50-22-50. Requirements for a Class B license.

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;
2. Is a full-time employee of the firm as defined in this chapter, ~~or is a member of responsible management as defined in this chapter;~~
3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and
4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to

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conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of three years experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;
4. Where appropriate, has passed the trade-related examination or has completed an education and training program approved by the board and required for the classifications and specialties listed below:

Blast/explosive contracting
Electrical
Fire sprinkler
Gas fitting
HVAC
Plumbing
Radon mitigation
Water well drilling

5. Has obtained, pursuant to the tradesman regulations, a master tradesman license as required for those classifications and specialties listed in 18 VAC 50-22-20 and 18 VAC 50-22-30.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of \$15,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, qualified individual or individuals, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated or

surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

18 VAC 50-22-60. Requirements for a Class A license.

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;
2. Is a full-time employee of the firm as defined in this chapter ~~or is a member of the responsible management of the firm as defined in this chapter;~~
3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and
4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this chapter or is a member of the responsible management of the firm;
4. Where appropriate, has passed the trade-related examination or has completed an education and training program approved by the board and required for the classifications and specialties listed below:

Blast/explosive contracting
Electrical
Fire sprinkler
Gas fitting

HVAC
 Plumbing
 Radon mitigation
 Water well drilling

5. Has obtained, pursuant to the tradesman regulations, a master tradesman license as required for those classifications and specialties listed in 18 VAC 50-22-20 and 18 VAC 50-22-30.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of \$45,000.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, qualified individual or individuals, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to, any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, the designated employee and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

18 VAC 50-22-100. Fees.

Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution

named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus ~~the an~~ an additional processing charge ~~specified below~~ set by the department.

Fee Type	When Due	Amount Due
Class c Initial License	with license application	\$125
Class b Initial License	with license application	\$150
Class a Initial License	with license application	\$175
Declaration of Designated Employee	with license application	\$30
Qualified Individual Exam Fee	with exam application	\$20
Class b Exam Fee	with exam application (\$20 per section)	\$40
Class a Exam Fee	with exam application (\$20 per section)	\$60
Water Well Exam	with exam application	\$40
Dishonored Check Fee	With replacement check	\$25

Note: A \$25 Recovery Fund assessment is also required with each initial license application. If the applicant does not meet all requirements and does not become licensed, this assessment will be refunded. The examination fees approved by the board but administered by another governmental agency or organization shall be determined by that agency or organization.

18 VAC 50-22-140. Renewal fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable.

In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus ~~the an~~ an additional processing charge ~~specified below~~: set by the department.

Fee Type	When Due	Amount Due
Class c Renewal	with renewal application	\$100
Class b Renewal	with renewal application	\$135
Class a Renewal	with renewal application	\$150
Dishonored Check Fee	with replacement check	\$25

The date on which the renewal fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for renewal or must apply for reinstatement.

18 VAC 50-22-170. Reinstatement fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus ~~the an~~ an additional processing charge ~~specified below~~ set by the department :

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Fee Type	When Due	Amount Due
Class c Reinstatement	with reinstatement application	\$225*
Class b Reinstatement	with reinstatement application	\$285*
Class a Reinstatement	with reinstatement application	\$325*
Dishonored Check Fee	with replacement check	\$ 25

* Includes renewal fee listed in 18 VAC 50-22-140.

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the entry requirements in place at the time of that application. In order to ensure that licensees are qualified to practice as contractors, no reinstatement will be permitted once ~~six months~~ **one year** from the expiration date of the license has passed.

18 VAC 50-22-250. Fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus ~~the an~~ **an** additional processing charge ~~specified below set by the department~~.

Fee Type	When Due	Amount Due
Change of Designated employee	with change form	\$30
Change of Qualified Individual	with change form	\$30
Addition of Classification or specialty	with addition application	\$30
Dishonored Check Fee	with replacement check	\$25

18 VAC 50-22-260. Filing of charges; prohibited acts.

A. All complaints against contractors may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.
3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.
4. Publishing or causing to be published any advertisement relating to contracting which contains an assertion,

representation, or statement of fact that is false, deceptive, or misleading.

5. Negligence and/or incompetence in the practice of contracting.

6. Misconduct in the practice of contracting.

7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction.

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

- a. When work is to begin and the estimated completion date;
- b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
- c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
- d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
- e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
- f. Disclosure of the cancellation rights of the parties;
- g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;
- h. Contractor's name, address, license number, ~~expiration date~~, class of license, and classifications or specialty services; and
- i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including, but not limited to, the contract and any addenda or change orders.

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

14. Abandonment defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as

defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.

25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.

26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

28. Failure to satisfy any judgments.

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

30. Failure to honor the terms and conditions of a warranty.

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

32. *Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.*

18 VAC 50-22-270. Accountability of licensee. (Repealed.)

~~Whenever a licensee offers or performs any services in Virginia related to his profession, regardless of the necessity to hold a license to perform that service, he shall be subject to the provisions of this chapter.~~

VA.R. Doc. No. R03-118; Filed May 10, 2005, 3:27 p.m.

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners (amending 18 VAC 85-40-66).

Statutory Authority: §§ 54.1-103, 54.1-2400, and 54.1-2912.1 of the Code of Virginia.

Public Hearing Date: July 14, 2005 - 8 a.m.

Public comments may be submitted until July 29, 2005.
(See Calendar of Events section
for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Proposed Regulations

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. The Board of Medicine has a specific statutory mandate to promulgate regulations to ensure practitioner competence with requirements such as continuing education. In addition, the board is also authorized by § 54.1-103 to specify additional training for licensees seeking renewal of licenses.

Purpose: The Board of Medicine is responding to a petition for rulemaking from a respiratory care practitioner requesting regulations be amended to accept Category 1 CME approved by the American Medical Association to meet the required hours for renewal of licensure as a respiratory care practitioner. The goal is to expand the approved CE courses available for this profession to include those directed to the practice of respiratory care and offered by another recognized provider.

As the scope of practice for respiratory care practitioners expands beyond its traditional therapies, it is logical to expand the subject matter and availability of courses in continuing education to prepare licensees to assume increasing responsibilities for patient care. Respiratory care practitioners are seeking legislative authority to expand their authority to administer all schedules of medication by any route. In addition, hospital-based respiratory care already involves practice well beyond the traditional inhalation therapy. Respiratory care practitioners may be better prepared to practice in a manner that protects the health and safety of patients if they can use courses offered for continuing medical education for CE credit.

Substance: The proposed action would allow courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit to meet the 20-hour per biennium CE requirement for renewal of a license as a respiratory care practitioner.

Issues: Advantages and disadvantages to the public. There are no disadvantages to the public. The public may be better served by allowing greater opportunity for continuing education, improving flexibility for practitioners in obtaining courses pertinent to their practice and expanding the knowledge basis and resources available through the American Medical Association.

Advantages and disadvantages to the agency or the Commonwealth. There are no advantages or disadvantages to the agency; the amended regulation does not impose a new responsibility on the board and does not involve additional cost or staff time.

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 of Medicine (board) proposes to permit "courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit" to qualify towards the continuing education that respiratory care practitioners are required to complete for license renewal.

Estimated economic impact. The current regulations state that "On and after January 1, 2005, in order to renew an active license as a respiratory care practitioner, a licensee shall attest to having completed 20 hours of continuing respiratory care education as approved and documented by a sponsor of the AARC¹" during the preceding two years. The board estimates that such continuing education would cost from \$0 to \$20 per hour. In response to a petition for rulemaking, the board proposes to permit hours in "courses directly related to the practice of respiratory care as approved by the American Medical Association (AMA) for Category 1 CME credit" to qualify towards the required 20 hours of continuing respiratory care education.

According to the Department of Health Professions, most respiratory care practitioners work for hospitals and are often offered free AMA-approved training onsite. In contrast, AARC courses are not typically onsite and free courses are not often available. The board determined that AMA-approved courses provide as much benefit as AARC courses.² Thus, allowing respiratory care practitioners to obtain their continuing education credits through AMA-approved respiratory care courses will enable licensees to save on fees and time and travel costs. To the extent that AMA-approved courses maintain and improve respiratory care practitioners' knowledge and skills as well as AARC continuing education, the proposed amendment will produce net benefits.

Businesses and entities affected. The proposed regulations affect the 3,183 persons licensed as respiratory care practitioners in Virginia,³ their patients, and providers of continuing education.

Localities particularly affected. The proposed regulations potentially affect all Virginia localities.

Projected impact on employment. The proposal to permit AMA-approved courses directly related to the practice of respiratory care to qualify for continuing education credits required for respiratory care practitioner license renewal will likely increase the demand for these courses and reduce demand for AARC courses. Consequently, AARC course provider employment may be reduced, while AMA-approved course instructor employment may increase.

Effects on the use and value of private property. The proposed amendment will likely increase participation in AMA-

¹ AARC: American Association of Respiratory Care

² Source: Department of Health Professions

³ Source: Department of Health Professions

approved courses directly related to the practice of respiratory care and reduce demand for AARC courses.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 85-40, Regulations Governing the Practice of Respiratory Care, relating to acceptance of AMA Category 1 continuing education in respiratory care.

Summary:

The proposed amendment recognizes courses directly related to the practice of respiratory care that are approved by the American Medical Association for Category 1 CME credit as meeting the required hours for renewal of licensure as a respiratory care practitioner.

18 VAC 85-40-66. Continuing education requirements.

A. On and after January 1, 2005, in order to renew an active license as a respiratory care practitioner, a licensee shall attest to having completed 20 hours of continuing respiratory care education as approved and documented by a sponsor recognized by the AARC *or in courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit* within the last biennium.

B. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active license.

D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

NOTICE: The forms used in administering 18 VAC 85-40, Regulations Governing the Practice of Respiratory Care Practitioners, 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 a Respiratory Care Practitioner Application (rev. ~~4/02~~ 6/04).

Application for a License to Practice as a Respiratory Care Practitioner (rev. ~~4/02~~ 6/04).

Instructions for Completing Reinstatement Application for Respiratory Care Practitioner License (~~eff. 10/04~~ rev. 4/05).

Application for Reinstatement ~~as a Respiratory Care Practitioner~~ of License to Practice Respiratory Care (~~eff. 3/03~~ rev. 11/04).

Form A, Claims History Sheet (rev. ~~4/02~~ 6/04).

Form B, Activity Questionnaire (rev. ~~4/02~~ 6/04).

Form C, Clearance from Other State Boards (rev. ~~4/02~~ 3/03).

Form L, Certificate of Professional Education (rev. ~~4/02~~ 9/04).

Verification of Certification Request Form (~~NBRTC~~ NBRC) (rev. ~~4/02~~ 6/04).

Renewal Notice and Application, 0117 Respiratory Care (rev. 2/03).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).

VA.R. Doc. No. R04-144; Filed May 4, 2005, 9:48 a.m.

BOARD OF NURSING

Title of Regulation: **18 VAC 90-25. Regulations Governing Certified Nurse Aides (amending 18 VAC 90-25-80).**

Statutory Authority: § 54.1-2400 and Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: July 19, 2005 - 1:30 p.m.

Public comments may be submitted until July 29, 2005.

(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the board with a duty to levy and collect fees and provides the authority to promulgate regulations to administer the regulatory system.

The federal mandate for a nurse aide registry is found in the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), which sets out certain requirements for long-term care that must be met in order to receive Medicare and Medicaid funding.

Purpose: One of the tenets of public safety is the societal interest in assuring that vulnerable persons are safe. Vulnerability is the hallmark of persons in long-term nursing

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and assisted living facilities and those in need of daily care in the home. They are the most vulnerable of patients. Yet, it is these persons who are every day left in the care and supervision of the lowest paid and least trained health care providers - nurse aides. Actions taken to discipline nurse aides are analogous to the prosecution of criminals who abuse, assault, or rob citizens. Therefore, it is in the public's interest to ensure that sufficient funding is available to protect the chronically feeble and infirm through the investigation and adjudication of certified nurse aides.

The Board of Nursing has struggled with funding for the nurse aide programs for a number of years. While the disciplinary caseload has continued to grow, funding provided from the Department of Medical Assistance Services (DMAS) through Medicaid for the Certified Nurse Aide (CNA) program has been reduced over the past few years. Beginning in FY'05, if no action is taken, it is projected that the program would incur a deficit of approximately \$400,000. By FY 2009-2010 the effect of the reduction in Medicaid funding and inaction by the board would be a cumulative shortfall in the Nurse Aide budget of approximately \$3 million.

As a special fund agency, the Board of Nursing is mandated to levy fees sufficient to cover all expenses for the administration and operation of the board and the Department of Health Professions. Therefore, action must be taken to address the current and projected shortfall in the Nurse Aide budget.

Substance: The board is proposing an increase in the biennial renewal fee for certified nurse aides from \$45 to \$50.

Issues: The primary advantage to the public of implementing the amended provisions is the availability of sufficient funding to continue the investigation and adjudication of disciplinary cases involving abuse, neglect, or misappropriation of property by certified nurse aides. Without funding for the nurse aide program, complaints may not be fully investigated and disciplinary actions taken against nurse aides who may prey on elderly or disabled persons. At the same time, the very modest increase in the biennial renewal fee should not decrease the number of persons who are willing to seek certification or who are working in long-term care. There are no disadvantages to the public.

The primary advantage to the agency is an increase in revenue to apply toward the deficit in funding for the nurse aide program. There are no disadvantages, since the combination of nursing and nurse aide budgets can be accomplished while continuing to identify separate revenue and expenditure streams.

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 of Nursing (board) proposes to increase the biennial renewal fee for certified nurse aides (CNAs) from \$45 to \$50.

Estimated economic impact. The Department of Health Professions (department) projects that the certified nurse aide program will incur a deficit of approximately \$400,000 in fiscal year 2005 if no action is taken to increase revenue. The department reports that by fiscal year 2009-2010 the effect of reduction in Medicaid funding and inaction by the board would be a cumulative shortfall in the CNA budget of approximately \$3 million.

Under the current regulations, certified nurse aides pay \$45 every two years to remain certified. The board proposes to raise this fee to \$50. The higher fee will not be sufficient to cover the shortfalls in revenues compared to the costs of regulating CNAs. According to the department, without any supplemental funding, the biennial renewal fee would have to be increased to approximately \$90 by the end of fiscal year 2004-2005. The board believes that such a large increase would cause a major reduction in the number of nurse aides willing to renew their certificates, particularly at a time when there is an acknowledged shortage in the nursing field. Thus, the board proposes to raise the fee to \$50 every two years, rather than the \$90 that would be needed to cover the costs of the CNA program that are not covered with other funds such as Medicaid.

In order to make up the difference, the board plans to subsidize the regulation of CNAs via fees collected from the other professions regulated by the board – principally registered nurses (RNs) and licensed practical nurses (LPNs). Current department projections indicate that recent fee increases for RNs and LPNs will be sufficient over the next three biennia to provide supplemental funding for the CNA program. According to the department, CNA renewal fees could be increased by \$5 per biennium and the board would still be able to balance its budget through fiscal year 2009-2010.

The proposed \$5 fee increase will reduce CNAs' net worth commensurately. Plus, subsidizing the regulation of CNAs by use of fees paid by RNs and LPNs indicates that RNs and LPNs could be regulated with those professionals paying lower fees than they are currently required to pay. On the other hand, regulating nurse aides does produce public benefits. Nurse aides typically care for vulnerable people in long-term nursing and assisted living facilities and those in need of daily care in the home. Board disciplinary actions against abusive CNAs can help prevent future abuse of vulnerable patients.

Businesses and entities affected. The proposed amendments affect the approximately 40,000 certified nurse aides¹ in Virginia, as well their employers, patients, and nurses.

¹ Figure source: Department of Health Professions

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed fee increase of \$5 over two years will likely not significantly affect employment levels.

Effects on the use and value of private property. The proposed \$5 fee increase will reduce CNAs' net worth commensurately.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget for a proposed amendment to 18 VAC 90-25 to increase the biennial renewal fee from \$45 to \$50.

Summary:

The proposed amendments increase the biennial renewal fee for certified nurse aides from \$45 to \$50.

18 VAC 90-25-80. Renewal or reinstatement of certification.

A. Renewal of certification.

1. No less than 30 days prior to the expiration date of the current certification, a notice for renewal shall be mailed by the board to the last known address of each currently registered certified nurse aide.
2. The certified nurse aide shall submit a completed application with the required fee of ~~\$45~~ \$50 and verification of performance of nursing-related activities for compensation within the two years immediately preceding the expiration date.
3. Failure to receive the application for renewal shall not relieve the certificate holder of the responsibility for renewing the certification by the expiration date.
4. A certified nurse aide who has not performed nursing-related activities for compensation during the two years preceding the expiration date of the certification shall repeat and pass the nurse aide competency evaluation prior to applying for recertification.
5. The board shall also charge a fee of \$25 for a returned check.

B. Reinstatement of certification.

1. An individual whose certification has lapsed for more than 90 days shall file the required application and renewal fee and provide:
 - a. Verification of performance of nursing-related activities for compensation in the two years prior to the expiration date of the certificate and within the preceding two years; or
 - b. When nursing activities have not been performed during the preceding two years, evidence of having repeated and passed the nurse aide competency evaluation.
2. An individual who has previously had a finding of abuse, neglect or misappropriation of property is not eligible for

reinstatement of his certification, except as provided in subsection C of this section.

C. If a finding of neglect was made against a certificate holder based on a single occurrence, an individual may petition for removal of the finding of neglect provided:

1. A period of at least one year has passed since the finding was made; and
2. The individual seeking reinstatement demonstrates sufficient evidence that employment and personal history do not reflect a pattern of abusive behavior or neglect.

NOTICE: The forms used in administering 18 VAC 90-25, Regulations Governing Certified Nurse Aides, are not being published; however, the name of the forms are 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 Application for Nurse Aide Certification by Endorsement (rev. 12/02).
- Application for Nurse Aide Certification by Endorsement (rev. 12/02).
- Nurse Aide Certification Verification Form (rev. 12/02).
- Instructions for Applicant for Advanced Certified Nurse Aide Registration (eff. 2/03).
- Application for Certification as Advanced Certified Nurse Aide (eff. 2/03).
- Instructions for Application for Reinstatement of Nurse Aide Certification (rev. 12/02).
- Application for Reinstatement of Nurse Aide Certification (rev. 12/02).
- Instructions for Application for Reinstatement of Advanced Nurse Aide Certification (eff. 2/03).
- Application for Reinstatement of Advanced Nurse Aide Certification (eff. 2/03).
- Application to Establish Nurse Aide Education Program (rev. 12/02).
- Application to Establish an Advanced Certification Nurse Aide Education Program (eff. 12/02).
- Nurse Aide Education Program Evaluation Report (rev. 11/02).
- Nurse Aide Education Program-On-site Review Report (rev. 11/02).
- Advanced Certification Nurse Aide Education Program-On-site Review Report (eff. 12/02).
- Evaluation of On-Site Visitor (rev. 12/02).
- Request for Statistical Information (rev. 12/02).

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Renewal Notice (eff. 4/05).

Renewal Notice and Application, 1401, Certified Nurse Aide (rev. 12/02).

Renewal Notice and Application, Advanced Certified Nurse Aide (eff. 12/02).

VA.R. Doc. No. R05-09; Filed May 4, 2005, 9:53 a.m.

BOARD OF OPTOMETRY

Titles of Regulations: **18 VAC 105-20. Regulations Governing the Practice of Optometry (amending 18 VAC 105-20-10, 18 VAC 105-20-15, 18 VAC 105-20-20, 18 VAC 105-20-70; adding 18 VAC 105-20-5, 18 VAC 105-20-16).**

18 VAC 105-30. Regulations for Certification of Optometrists to Use Therapeutic Pharmaceutical Agents (repealing 18 VAC 105-30-10 through 18 VAC 105-30-120).

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Public Hearing Date: June 8, 2005 - 11 a.m.

Public comments may be submitted until July 29, 2005.
(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Board of Optometry, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system.

Chapter 744 of the 2004 Acts of Assembly mandates the promulgation of regulations for optometrists newly licensed in Virginia to be TPA certified.

Section 54.1-3223 of the Code of Virginia requires the board to promulgate regulations governing the treatment of diseases and abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents (TPA) by TPA-certified optometrists.

Purpose: The purpose of the regulatory action is to implement provisions of Chapter 744 of the 2004 Acts of Assembly, which requires that all persons newly licensed to practice optometry after June 30, 2004, must meet the qualifications for a TPA-certified optometrist. Therefore, the general regulations for the practice of optometry are being amended to incorporate the qualifications for TPA certification that are currently found in a separate chapter of the Virginia Administrative Code (18 VAC 105-30). Since TPA qualification is now a prerequisite for licensure, the board has amended examination requirements to allow entry into Virginia for optometrists who may have been TPA-qualified by an examination other than the NBOE examination including TMOD. The goal of the regulation is to maintain the standard for TPA certification but reduce the cost and allow for some flexibility in applying the requirements for evidence of minimal competency.

Substance: Amendments are proposed to incorporate the requirement for certification in therapeutic pharmaceutical agents into the qualifications for initial licensure in optometry, as mandated by Chapter 744 of the 2004 Acts of Assembly. Modifications to the current rules for TPA will allow the board the flexibility to (i) accept examinations other than the TMOD portion of the national examination, which is the current standard for licensure and (ii) order some type of remediation for someone who has failed the TMOD three times rather than require a postgraduate educational program for such a candidate. Fees for general licensure and TPA certification are combined and the total amount reduced for optometrists who hold both credentials.

Since a separate set of regulations has been in effect for certification of TPA and that is now a requirement for initial licensure, 18 VAC 105-30 is repealed.

Issues: There are no advantages or disadvantages to the public. Requirements for TPA certification have not been changed by this action; they are being moved from a separate set of regulations into the general regulations for optometry in 18 VAC 105-20.

There are no specific advantages or disadvantages to the agency or the Commonwealth. More specificity in the rules for optometry may alleviate questions and misunderstandings from applicants.

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 Chapter 744 of the 2004 Acts of Assembly, the Board of Optometry (board) proposes to require that all initial applicants for optometrist licensure meet Therapeutic Pharmaceutical Agent (TPA) certification requirements. Additionally, the board proposes to repeal 18 VAC 105-30 – Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents, and to incorporate TPA certification requirements into 18 VAC 105-20 – Regulations Governing the Practice of Optometry. The board also proposes to amend fees for licensure.

Estimated economic impact. Under current board regulations, it is optional for a licensed optometrist to become TPA certified. A licensed optometrist may become a TPA-certified optometrist if he meets the requirements set out in 18 VAC 105-30, Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents. In 2002, 940 out of 1,300 optometrists licensed in the Commonwealth were TPA

certified. Chapter 744, 2004 Acts of Assembly, amended the Code of Virginia to require that, after June 30, 2004, every person initially licensed to practice optometry must meet the qualifications for a TPA certified optometrist, i.e., be trained to prescribe therapeutic pharmaceutical agents for treatment of diseases of the human eye and its adnexa. Since the Code of Virginia now requires that all newly licensed optometrists meet the qualifications for a TPA-certified optometrist, the board proposes to repeal 18 VAC 105-30 and incorporate most of its provisions into the board's main regulation under 18 VAC 105-20. Currently licensed optometrists who do not have TPA certification will be able to continue practicing without meeting the qualifications for a TPA-certified optometrist.

According to the Department of Health Professions, all approved optometric educational programs have incorporated didactic and clinical training in TPA use since 1988. Also, in recent years over 99% of successful licensure applicants have also obtained TPA certification. Thus, other than payment of fees, the proposed requirement will have little impact.

The application fee is currently \$245 for an optometric license and \$200 for TPA certification. Under the proposed regulations the application fee is \$300 for the license and certification. Thus, applicants will save \$145.¹ There are approximately 50 persons who apply for licensure each year. The current annual renewal fees for licensure and certification are \$150 and \$75, respectively. The proposed annual renewal fee for combined licensure and certification is \$200, representing a saving of \$25 per year.² Annual licensure renewal without TPA certification will be unchanged at \$150.

Businesses and entities affected. The proposed regulations affect the 1,340 persons licensed as optometrists, as well as individuals who intend to apply for licensure in the future.³

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed regulations reduce fees for initial licensure and certification applicants by \$145, and annual licensure and certification renewal fees by \$25. The value of individual optometric practices will increase commensurately.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 105-20, Regulations Governing the Practice of Optometry, to incorporate requirements for certification in therapeutic pharmaceutical agents.

Summary:

The proposed amendments incorporate the requirements for initial licensure with therapeutic pharmaceutical agents (TPA) certification, fees for applications and renewals, and the continuing education requirement for TPA-certified

¹ (\$245 + \$200) - \$300 = \$145

² (\$150 + \$75) - \$200 = \$25

³ Source: Department of Health Professions

optometrists into 18 VAC 105-20, Regulations Governing the Practice of Optometry. This action will replace the emergency regulations that have been in effect since December 8, 2004.

The board is also repealing 18 VAC 105-30, Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents.

18 VAC 105-20-5. Definitions.

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

"Board" means the Virginia Board of Optometry.

"TPA" means therapeutic pharmaceutical agents.

"TPA certification" means authorization by the Virginia Board of Optometry for an optometrist to treat diseases and abnormal conditions of the human eye and its adnexa and to prescribe and administer certain therapeutic pharmaceutical agents.

18 VAC 105-20-10. Licensure by examination.

A. The applicant, in order to be eligible for licensure by examination to practice optometry in the Commonwealth, shall meet the requirements for TPA certification in 18 VAC 105-20-16 and shall:

1. Be a graduate of a school of optometry accredited by the Council on Optometric Education; have an official transcript verifying graduation sent to the board;
2. Request submission of an official report from the National Board of Examiners in Optometry of a score received on each required part of the examination of the National Board of Examiners in Optometry or other board-approved examination; and
3. Submit a completed application and the prescribed fee.

B. Applicants who passed the National Board Examination prior to May 1985 shall apply for licensure by endorsement as provided for in 18 VAC 105-20-15.

C. Required examinations.

1. For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the examination of the National Board of Examiners in Optometry as its written examination for licensure. After July 1, 1997, the board shall require passage as determined by the board of Parts I, II, and III of the National Board Examination.

2. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.

18 VAC 105-20-15. Licensure by endorsement.

A. An applicant for licensure by endorsement shall meet the requirements for TPA certification in 18 VAC 105-20-16, pay the fee as prescribed in 18 VAC 105-20-20 and file a completed application that certifies the following:

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1. The applicant has successfully completed a licensing examination or certification in optometry in any jurisdiction of the United States that is approximately comparable to the Virginia examination at the time of initial licensure.
2. The applicant has been engaged in active clinical practice for at least 36 months out of the last 60 months immediately preceding application.
3. The applicant is not a respondent in a pending or unresolved malpractice claim.
4. Each jurisdiction in which the applicant is currently licensed has verified that:
 - a. The license is full and unrestricted, and all continuing education requirements have been completed, if applicable;
 - b. The applicant is not a respondent in any pending or unresolved board action;
 - c. The applicant has not committed any act which would constitute a violation of § 54.1-3204 or § 54.1- 3215 of the Code of Virginia; and
 - d. The applicant has graduated from an accredited school or college of optometry.

B. The applicant shall also provide proof of competency in the use of diagnostic pharmaceutical agents (DPAs) which shall consist of a report from the national board of passing scores on all sections of Parts I and II of the National Board Examination taken in May 1985 or thereafter. If the applicant does not qualify through examination, he shall provide other proof of meeting the requirements for the use of DPA as provided in §§ 54.1-3220 and 54.1-3221 of the Code of Virginia.

C. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.

D. In the case of a federal service optometrist, the commanding officer shall also verify that the applicant is in good standing and provide proof of credentialing and quality assurance review to satisfy compliance with applicable requirements of subsection A of this section.

E. In the event the examinations for initial licensure are determined not comparable, the board may require the applicant to take and pass a regional or national practical examination.

F. An optometrist previously licensed in Virginia is not eligible for licensure by endorsement but may apply for reinstatement of licensure under 18 VAC 105-20-60.

18 VAC 105-20-16. Requirements for TPA certification.

A. An applicant for licensure shall meet the following requirements for TPA certification:

1. Complete a full-time, postgraduate or equivalent graduate-level optometric training program that is approved by the board and that shall include a minimum of 20 hours of clinical supervision by an ophthalmologist; and

2. Take and pass the TPA certification examination, which shall be Treatment and Management of Ocular Disease (TMOD) of the National Board of Optometric Examiners (NBOE) or, if TPA-certified by a state examination, provide evidence of comparability to the NBOE examination that is satisfactory to the board.

B. A candidate for certification by the board who fails the examination as required in subdivision A 2 of this section, following three attempts, shall complete additional postgraduate training as determined by the board to be eligible for TPA certification.

18 VAC 105-20-20. Fees.

A. Required fees.

Initial application and licensure (including TPA certification)	\$245
Endorsement of certification to use diagnostic pharmaceutical agents	\$300
Annual licensure renewal without TPA certification	\$100
Annual licensure renewal with tpa certification	\$150
Late renewal without TPA certification	\$200
Late renewal with TPA certification	\$50
Returned check	\$65
Professional designation application	\$25
Annual professional designation renewal (per location)	\$100
Late renewal of professional designation	\$50
Reinstatement application fee (including renewal and late fees)	\$20
Reinstatement application after disciplinary action	\$450
Duplicate wall certificate	\$500
Duplicate license	\$25
Licensure verification	\$10
	\$10

B. Unless otherwise specified, all fees are nonrefundable.

18 VAC 105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 16 hours of continuing education taken by the applicant during the previous license period.

1. Fourteen of the 16 hours shall pertain directly to the care of the patient. The 16 hours may include up to two hours of recordkeeping for patient care and up to two hours of training in cardiopulmonary resuscitation (CPR). *Optometrists with TPA certification shall complete at least two hours annually of continuing education directly related to the prescribing and administration of TPAs.*

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least two of the required continuing education hours shall be directly related to the prescribing and administration of such drugs.

3. Courses that are solely designed to promote the sale of specific instruments or products and courses offering instruction on augmenting income are excluded and will not receive credit by the board.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to December 31

unless an extension or waiver has been granted by the Continuing Education Committee.

C. All continuing education courses shall be offered by an approved sponsor listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored or approved by one of the following:

1. The American Optometric Association and its constituent organizations.
2. Regional optometric organizations.
3. State optometric associations and their affiliate local societies.
4. Accredited colleges and universities providing optometric or medical courses.
5. The American Academy of Optometry and its affiliate organizations.
6. The American Academy of Ophthalmology and its affiliate organizations.
7. The Virginia Academy of Optometry.
8. Council on Optometric Practitioner Education (C.O.P.E.).
9. State or federal governmental agencies.
10. College of Optometrists in Vision Development.
11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 or Category 2 credit.
12. Providers of training in cardiopulmonary resuscitation (CPR).
13. Optometric Extension Program.

BOARD OF PHARMACY

Title of Regulation: 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-320).

Statutory Authority: Chapters 24 (§ 54.1-2400 et seq.) and 33 (§ 54.1-3300 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: June 7, 2005 - 9 a.m.

Public comments may be submitted until July 29, 2005.

(See Calendar of Events section for additional information)

Agency Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, or e-mail elizabeth.russell@dhp.virginia.gov.

Basis: Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act. The specific statutory authority for the Board of Pharmacy to regulate the practice of pharmacy including the dispensing of controlled substances is found in § 54.1-3307 of the Code of Virginia.

Purpose: The board is amending regulations because the current rule is in conflict with the policy of all third-party insurance companies that require prescriptions to be renewed annually in order to be reimbursed and with the rules of all surrounding states. Approximately 85% of all prescriptions are covered by Medicaid or some other third-party payer. The disparity in requirements causes confusion on the part of patients who believe they have refills remaining, but the pharmacy cannot refill the prescription if third-party reimbursement is involved.

In addition, the pharmacist has no assurance that a prescription written more than one year ago continues to be valid based on a bona fide practitioner-patient-pharmacist relationship as required in § 54.1-3303 of the Code of Virginia. Continuity of care is necessary for patient health and safety, including at least a yearly reexamination of the prescription options for treatment of a particular disease or condition.

Pharmacists attempting to verify with the prescriber that the prescription is still valid after a year or more often find an invalid practitioner-patient relationship due to relocations, changes in primary care physicians and other reasons. Transfers of prescriptions from state to state are also confusing since Virginia's rule is inconsistent with many other states.

The amended regulation would provide that the "default" limit would be one year if a prescriber indicates PRN on the prescription. However, if, in the judgment of a prescriber, a prescription could safely be written for a period longer than one year, he can indicate the number of refills to cover a time not to exceed a two-year limitation for dispensing or refilling.

Proposed Regulations

Substance: The proposed amendment changes the limit of time for dispensing or refilling Schedule VI drugs from two years from the date of issuance to one year from date of issuance, unless the prescriber specifies a longer period, not exceeding two years.

Issues: The primary advantage to the public is consistency in the refill requirements so prescriptions can be filled and dispensed without undue confusion and delay. As private businesses, pharmacies may have fewer prescriptions that exceed the one year for refilling and necessitate contact with the prescriber who may not have seen the patient in recent months and be reluctant to grant a refill request over the phone.

For consumers that do not have prescription coverage by a third-party payer, the additional amendment proposed by the board will allow a prescription to continue to be valid for two years if a prescriber does not believe it is necessary for a patient to be seen during that period for the disease or condition being treated by the drug. While the pharmacy can usually get authorization to refill an expired prescription without the patient being seen by the prescriber, some are reluctant to continue a patient on a medication without a reevaluation of the condition for which the prescription was written.

There are no disadvantages to the agency. There may be a slight advantage in having a regulation that is consistent with the vast majority of other states and all third-party payers in that there would be less confusion.

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 of Pharmacy (board) proposes to prohibit dispensing and refilling of Schedule VI drugs more than one year after the date on which the prescription was issued, unless the prescriber specifically authorizes dispensing or refilling for a longer period of time not to exceed two years.

Estimated economic impact. The current regulations limit the dispensing and refilling of Schedule VI prescriptions to not more than two years after the date on which the prescription was issued. The board proposes to reduce the time limit to not more than one year after the date on which the prescription was issued unless the prescriber specifically authorizes dispensing or refilling for a longer period not to exceed two years.

Approximately 85% of all prescriptions are covered by Medicaid or some other third-party payer.¹ All or most third-party insurance payers require prescriptions to be renewed annually in order to be reimbursed.² If the possessors of such third-party insurance try to fill or refill a prescription that was issued more than one year ago, the pharmacist will inform the patient that his insurance will not pay for the fill or refill. In most cases the pharmacist will then call the prescriber and request a new prescription.³

In practice, confusion can arise for patients, particularly concerning refills. For example, a physician may write out a prescription with enough doses per bottle to last a month, along with the notation PRN. PRN (pro renata) effectively indicates that the prescription may be repeatedly refilled as long as the law allows.⁴ Under the current regulations, this prescription in the example could potentially be refilled 24 times (once a month over two years). The standard software currently commonly used by pharmacists will then indicate on the prescription label that the prescription may be refilled 24 times.⁵ As indicated above, all or most third-party health insurance will only pay for refills of prescriptions that were issued within the previous 12 months. Thus, it is common for patients to believe that they may refill their prescription because the label indicates that refills remain, when their insurance will not pay for any more refills on that prescription. The board has indicated that it is time consuming for pharmacists to explain the situation to confused patients, and that at times animosity occurs due to the confusion.

If the proposed amendment becomes law, then the prescription with the notation of PRN in the example could only potentially be refilled 12 times (once a month over one year). The standard pharmacist software will then indicate on the prescription label that the prescription may be refilled 12 times. If the patient requests refills once a month, then there will be no occasion for the patient to request a refill that will not be covered by insurance.⁶ On the other hand, if the patient takes more than a month at some point to request a refill, less than the 12 refills mentioned on the label will be eligible for insurance coverage. Nevertheless, there will be fewer incidences of patients believing that they may refill their prescription because the label indicates that refills remain, when their insurance will not pay for any more refills on that prescription. Fewer incidences of confusion will result in less time spent by pharmacists and their staff explaining the situation to patients, and fewer cases of developing animosity. This is clearly beneficial for pharmacists. Reduced wasted time will benefit affected patients as well.

Prior to the current proposal, the board proposed to limit the dispensing and refilling of Schedule VI prescriptions to not more than one year after the date on which the prescription was issued, but did not propose to allow the dispensing of Schedule VI prescriptions for up to two years if specified by

¹ Source: Department of Health Professions

² Ibid

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ This of course assumes that no situation unrelated to the issue at hand that jeopardizes insurance coverage (for example, expiration of health insurance) occurs.

the prescriber. This earlier proposal was costly to the patients with the approximate 15% of prescriptions that are not covered by a third-party payer. For these patients the end of insurance coverage not coinciding with the end of refills legally permitted is not relevant. Some of these patients may have physicians or other prescribers who prefer that their patients be able to refill prescriptions over one year after the initial prescription. This is particular true for patients with conditions that will not go away with time. The Board of Medicine indicated by memorandum that it opposed the proposed amendment. In the memorandum the executive director of the Board of Medicine stated that "Many patients who require refills of prescriptions are on maintenance drugs and under the continuous care of a physician. To require that a prescription be re-written once a year is an inconvenience to patients ..."

The current proposed regulations do permit the dispensing of Schedule VI prescriptions for up to two years if specified by the prescriber. Thus, unlike the earlier proposal, the current proposed regulations are not costly to patients who have physicians or other prescribers who prefer that their patients be able to refill prescriptions over one year after the initial prescription. Since the proposed amendment produces benefits and no significant costs, the proposal produces a net benefit.

Businesses and entities affected. The proposed amendment affects the 7,675 actively licensed pharmacists, 1,517 permitted pharmacies, and their patients. Additionally, the amendment affects the 29,106 doctors of medicine, 1,085 doctors of osteopathic medicine, podiatrists, 2,750 interns and residents, 885 physician assistants, 4,825 nurse practitioners, 5,320 dentists, and 2,185 veterinarians that write prescriptions.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendment will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendment will reduce the time that pharmacists and their staff spend explaining to confused patients that their insurance does not cover requested Schedule VI prescription fills or refills more than one year after the date on which it was originally issued by their prescriber. Reduced time spent on this activity will allow pharmacists and their staff to use their time more productively.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, relating to the limitation of the time for dispensing or refilling a Schedule VI prescription.

Summary:

The amendment limits the time for dispensing or refilling Schedule VI drugs to one year from date of issuance unless the prescriber specifies a longer period, not to exceed two years.

18 VAC 110-20-320. Refilling of Schedule III through VI prescriptions.

A. A prescription for a drug listed in Schedule III, IV, or V shall not be dispensed or refilled more than six months after the date on which such prescription was issued, and no such prescription authorized to be filled may be refilled more than five times.

1. Each refilling of a prescription shall be entered on the back of the prescription or on another record in accordance with § 54.1-3412 and 18 VAC 110-20-255, initialed and dated by the pharmacist as of the date of dispensing. If the pharmacist merely initials and dates the prescription, it shall be presumed that the entire quantity ordered was dispensed.

2. The partial dispensing of a prescription for a drug listed in Schedule III, IV, or V is permissible, provided that:

- a. Each partial dispensing is recorded in the same manner as a refilling;
- b. The total quantity of drug dispensed in all partial dispensing does not exceed the total quantity prescribed; and
- c. No dispensing occurs after six months after the date on which the prescription order was issued.

B. A prescription for a drug listed in Schedule VI shall be refilled only as expressly authorized by the practitioner. If no such authorization is given, the prescription shall not be refilled, except as provided in § 54.1-3410 C or subdivision 4 of § 54.1-3411 of the Code of Virginia.

A prescription for a Schedule VI drug or device shall not be dispensed or refilled more than ~~two years~~ *one year* after the date on which it was issued *unless the prescriber specifically authorizes dispensing or refilling for a longer period of time not to exceed two years.*

C. As an alternative to all manual recordkeeping requirements provided for in subsections A and B of this section, an automated data processing system as provided in 18 VAC 110-20-250 may be used for the storage and retrieval of all or part of dispensing information for prescription drugs dispensed.

D. Authorized refills of all prescription drugs may only be dispensed in reasonable conformity with the directions for use as indicated by the practitioner; if directions have not been provided, then any authorized refills may only be dispensed in reasonable conformity with the recommended dosage and with the exercise of sound professional judgment.

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.

Proposed Regulations

FORMS

Application for Registration as a Pharmacy Intern (rev. 6/04).

Affidavit of Practical Experience, Pharmacy Intern (rev. 12/02).

Application for Licensure as a Pharmacist by Examination (rev. 10/02).

Instructions for Reinstating or Reactivating a Pharmacist License (rev. 4/05).

Application to *Reinstate or Reactivate a Pharmacist License* (rev. ~~10/02~~ 4/05).

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~~ 8/04).

Application for a Pharmacy Permit (rev. ~~11/02~~ 8/04).

Application for a Nonresident Pharmacy Registration (rev. ~~10/02~~ 8/04).

Application for a Permit as a Medical Equipment Supplier (rev. ~~10/02~~ 8/04).

Application for a Permit as a Restricted Manufacturer (rev. ~~10/02~~ 8/04).

Application for a Permit as a Nonrestricted Manufacturer (rev. ~~10/02~~ 8/04).

Application for a Permit as a Warehouseman (rev. ~~10/02~~ 8/04).

Application for a License as a Wholesale Distributor (rev. ~~10/02~~ 8/04).

Application for a Nonresident Wholesale Distributor Registration (rev. ~~10/02~~ 8/04).

Application for a Controlled Substances Registration Certificate (rev. ~~10/02~~ 8/04).

Renewal Notice (rev. 4/05).

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 Warehouseman (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~~ 8/04).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 6/04).

Closing of a Pharmacy (rev. 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~~ 8/04).

Application for Registration as a Pharmacy Technician (~~12/02~~ 6/04).

Instructions for Reinstating a Pharmacy Technician Registration (rev. 4/05).

Application to Reinstate a Pharmacy Technician Registration (rev. 4/05).

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).

VA.R. Doc. No. R04-3; Filed May 4, 2005, 9:50 a.m.

BOARD OF COUNSELING

Titles of Regulations: **18 VAC 115-20. Regulations Governing the Practice of Professional Counseling (amending 18 VAC 115-20-130, 18 VAC 115-20-140, and 18 VAC 115-20-150).**

18 VAC 115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18 VAC 115-50-110, 18 VAC 115-50-120, and 18 VAC 115-50-130).

18 VAC 115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18 VAC 115-60-130, 18 VAC 115-60-140, and 18 VAC 115-60-150)

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Hearing Date: June 2, 2005 - 9 a.m.

Public comments may be submitted until July 29, 2005.

(See Calendar of Events section for additional information)

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9133, FAX (804) 662-9943, or e-mail evelyn.brown@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Counseling (board) to establish necessary qualifications for registration, certification, or licensure; ensure the competence and integrity of regulated practitioners; examine applicants; establish renewal schedules; administer fees to cover the administrative expenses of the regulatory program; take disciplinary action for violations of law and regulations; and establish requirements for an inactive licensure status.

Section 54.1-3505 of the Code of Virginia authorizes the board to regulate the practice of counseling, substance abuse treatment, and marriage and family therapy.

Purpose: Amended rules will provide standards relating to ethical behavior in the care and treatment of clients, maintenance and disclosure of records, and in the responsibility of a practitioner for delegation of services to subordinates under their supervision. Throughout the substance of these rules, there are measures that will benefit client health and safety.

The Board of Counseling (board) provides separate regulations for licensed professional counselors, licensed marriage and family therapists, and licensed substance abuse treatment practitioners. Currently, 18 VAC 115-20, Regulations Governing the Practice of Professional Counseling, contain 18 specific standards to which counselors shall abide. Likewise, 18 VAC 115-50, Regulations Governing the Practice of Marriage and Family Therapy, contain 12 standards, and 18 VAC 115-60, Regulations Governing the Practice of Substance Abuse Treatment Practitioners, contain 23 standards.

The board has always attempted to mirror established regulations for a licensed profession in the development of new regulations for another licensed profession where possible; however, regulatory processes progress along at different timelines. Improvements identified during one review might not meet the initial purpose of another review and therefore the inconsistencies have been perpetuated. To address these inconsistencies among its regulations, the board has compared all of its chapters section by section and identified areas that could be made uniform. This proposed regulatory action will provide a more consistent basis for disciplinary action across all categories of licensure that will better protect the public health, safety, and welfare.

Although the existing standards of practice cover many of the same areas of professional conduct in all chapters, the board determined that greater standardization was needed to provide more fair and consistent bases for disciplinary action. In cases where the respondent is dually licensed under this board the regulations can be problematic when there are discrepancies. Likewise, the board would like to establish

conformities among its regulations in the grounds for disciplinary action and rules for reinstatement following disciplinary action.

While the vast majority of practitioners conduct their practices ethically, there are those who have not followed professional standards for communicating with and informing patients, for maintaining accurate and legible records, for providing records in a timely manner, or for sexual contact with clients. With adoption of these rules, the board's intent is to not only protect the health, welfare and safety of the public against inappropriate and unethical actions by licensees but also to give regulatory guidance for practice in a professional manner.

Substance: Amendments are proposed to update and provide consistency of these standards of practice with those of other agency behavioral science boards as well as the standards of practice of counseling organizations such as the American Association of State Counseling Boards and the National Board of Certified Counselors.

Amendments are proposed to apply these standards regardless of the method of delivery of services.

Amendments are also proposed that will clarify language throughout to make the standards easier to understand by practitioners and the general public.

A new section was created on "dual relationships" that mirrors a new regulation promulgated within the last year by the Board of Social Work. The proposed regulation will add clarity to the types of relationships that should be avoided, specifically addresses sexual intimacy, and includes guidance on dual relationship issues concerning supervisees.

Amendments are proposed to bring these standards in line with current practices as well as changes to regulation and law. For example, in sections on "Grounds for revocation, suspension, probation, etc." the board adds the language "or take other disciplinary action." This will allow the board to take violation specific corrective disciplinary action such as supervised practice or taking specific coursework.

Amendments are also proposed that will add "violating or abetting" another person in the violation of any provision of any statute applicable to the practice of counseling or any part or portion of this chapter.

Issues: The primary advantages to the public of implementing the new or amended provisions will be clarification in areas where unnecessary or outdated language needs to be rescinded and where new language is needed for improved consistency within the regulation.

There are no disadvantages to the public or to individual businesses, which are not affected by these regulations.

Many practitioners hold multiple licenses under the Board of Counseling, as well as the Board of Psychology and the Board of Social Work. Inconsistencies in the ethical standards of these boards sometime result in discrepancies in the level of disciplinary action taken for the same offenses. In the interest of consistency, the board is recommending language that will allow for more equitable disciplinary action by the agency on behalf of the Commonwealth among the behavioral science boards.

Proposed Regulations

There are no disadvantages to the agency or the Commonwealth. The fee structure set in regulation is intended to ensure that costs related to specific activities are borne by the applicants or certificate holders.

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 changes will clarify, update, and make consistent the standards of conduct that apply to professional counselors, marriage and family therapists, and substance abuse treatment practitioners. The proposed changes will not alter the substance of the three regulations in any significant way.

Estimated economic impact. The Board of Counseling (the board) has three regulations governing ethical standards of conduct, maintenance and disclosure of records, and delegation of services to subordinates under supervision in three professions: professional counselors (18 VAC 115-20), marriage and family therapists (18 VAC 115-50), and substance abuse treatment practitioners (18 VAC 115-60). All of these regulations cover the same standards of conduct, even though they contain slightly different language. The board believes that more similar language is needed for a more fair and consistent basis for disciplinary action, particularly among those who are dually licensed.

The proposed changes will improve the consistency among the three sets of regulations by using similar language to address the standards of conduct, by using more clear language, and by updating language to reflect changes in the Code of Virginia. None of the proposed changes appears to have the potential to create any significant economic effects, other than reducing the potential for confusion and, consequently, the potential for disciplinary action and providing some small time and cost savings to regulants and the department. In fiscal year 2002, the board received a total of 36 formal complaints.

Businesses and entities affected. The proposed regulations apply to approximately 2,739 professional counselors, 867 marriage and family therapists, and 162 substance abuse treatment practitioners. Of these, about 844 are dually licensed.

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

Projected impact on employment. No significant effect is expected on employment.

Effects on the use and value of private property. No significant effect is expected on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Counseling concurs with the Economic Impact Analysis of the Department of Planning and Budget for 18 VAC 115-20, 18 VAC 115-50 and 18 VAC 115-60, relating to regulations governing the standards of practice for licensed counselors, marriage and family therapists and licensed substance abuse treatment practitioners.

Summary:

The proposed changes clarify, update, and make consistent the standards of conduct that apply to professional counselors, marriage and family therapists, and substance abuse treatment practitioners.

18 VAC 115-20-130. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. *Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of counseling.*

B. Persons licensed by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare-;

2. Practice only within the ~~competency areas for which they are qualified by training or boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience- and represent their education, training, and experience accurately to clients;~~

~~3. Be aware of the areas of competence of related professions and make full use of other professional, technical and administrative resources to secure for clients the most appropriate services-~~

~~4. Strive to~~ 3. Stay abreast of new developments *counseling information, concepts, applications and practices which that are important necessary to providing appropriate, effective professional services-;*

~~5. 4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes and attempt to terminate a private service or consulting relationship when it becomes clear that the consumer is not benefiting from the relationship-;~~

5. *Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;*

~~6. Not engage in offering services to a client who is receiving services from another mental health professional without attempting to inform such other professionals in order to avoid confusion and conflict for the consumer.~~

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients-;

8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services-;

~~9. Inform clients of (i) the purposes of an interview, testing or evaluation session and (ii) the ways in which information obtained in such sessions will be used before asking the client to reveal personal information or allowing such information to be divulged. the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;~~

~~10. Consider the validity, reliability and appropriateness of tests selected for use with clients. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals from groups not represented in standardized norms-;~~

~~11. Represent accurately their competence, education, training and experience.~~

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional credentials degrees or titles that have been earned at a college or university accredited by a regional accrediting agency recognized by the United States Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature. These credentials include the title "doctor" as well as academic and professional certification designations following one's name, such as M.Ed., Ph.D., N.C.C. ; and

13. Not engage in improper direct solicitation of clients and announce Advertise professional services fairly and accurately in a manner which will aid the public in forming their own informed judgments, opinions and choices and which avoids fraud and misrepresentation through sensationalism, exaggeration or superficiality that is not false, misleading or deceptive.

~~14. Provide clients with accurate information of what to expect in the way of tests, reports, billing, therapeutic regime and schedules before rendering services.~~

C. In regard to patient records, persons licensed by the board shall:

~~1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;~~

~~15. 2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records which that are no longer useful- in a manner that ensures client confidentiality;~~

~~Client records shall be disclosed~~ 3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative as mandated by law. in accordance with § 32.1-127.1:03 of the Code of Virginia;

client 4. Ensure confidentiality in the usage of client records and clinical materials shall be ensured by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations-; and

5. Maintain client records shall be kept for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions-:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

~~16. Not engage in dual relationships with clients, former clients, residents, supervisees, and supervisors that compromise the client's or resident's well being, impair the counselor's or supervisor's objectivity and professional judgment or increase the risk of client or resident exploitation. This includes, but is not limited to, such activities as counseling close friends, former sexual partners, employees or relatives, and engaging in business relationships with clients. Engaging in sexual intimacies with current clients or residents is strictly prohibited. For at least five years after cessation or termination of professional services, licensees shall not engage in sexual intimacies with a therapy client or those included in collateral therapeutic services. Since sexual or romantic relationships are potentially exploitative, licensees shall bear the burden~~

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~~of demonstrating that there has been no exploitation. A patient's consent to, initiation of or participation in sexual behavior or involvement with a practitioner does not change the nature of the conduct nor lift the regulatory prohibition.~~

1. *Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;*

2. *Not engage in any type of sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a sexual relationship. Counselors shall not engage in sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Counselors who engage in such relationship after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a counselor does not change the nature of the conduct nor lift the regulatory prohibition;*

3. *Not engage in any sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee. Counselors shall avoid any nonsexual dual relationship with a supervisee in which there is a risk of exploitation or potential harm to the supervisee or the potential for interference with the supervisor's professional judgment; and*

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

~~18. Report E. Persons licensed by the board shall report to the board known or suspected violations of the laws and regulations governing the practice of licensed or certified mental health service providers as defined in § 54.1-2400.1 of the Code of Virginia Department of Health Professions any information of which he may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.~~

18 VAC 115-20-140. Grounds for revocation, suspension, probation, reprimand, censure, or denial of renewal of license.

A. Action by the board to revoke, suspend or ~~decline to renew~~, deny issuance or renewal of a license, or take disciplinary action may be taken in ~~accordance~~ accordance with the following:

1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of professional counseling, or any provision of this chapter-;

2. ~~Procuring~~ Procurement of a license by fraud or misrepresentation-;

3. Conducting one's practice in such a manner as to make it a danger to the health and welfare of one's clients or to the public, or if one is unable to practice counseling with reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs, narcotics, chemicals, or other type of material or result of any mental or physical condition-;

4. ~~Negligence in professional conduct or nonconformance with the Standards of Practice (18 VAC 115-20-130 B).~~ Intentional or negligent conduct that causes or is likely to cause injury to a client or clients;

5. Performance of functions outside the demonstrable areas of competency-;

6. Failure to comply with the continued competency requirements set forth in this chapter-; or

7. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of counseling, or any part or portion of this chapter.

B. Following the revocation or suspension of a license, the licensee may petition the board for reinstatement upon good cause shown or as a result of substantial new evidence having been obtained that would alter the determination reached.

18 VAC 115-20-150. Reinstatement following disciplinary action.

A. Any person whose license has been ~~revoked~~, suspended or *who has been denied renewal reinstatement* by the board under the provisions of 18 VAC 115-20-140 order, having met the terms of the order, may, two years subsequent to such board action, submit a new application and fee for reinstatement of licensure.

B. The board in its discretion may, after a hearing an administrative proceeding, grant the reinstatement sought in subsection A of this section.

~~C. The applicant for such reinstatement, if approved, shall be licensed upon payment of the appropriate fee applicable at the time of reinstatement.~~

18 VAC 115-50-110. Standards of practice.

A. The protection of the public's health, safety and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all ~~marriage and family therapists licensed persons whose activities are regulated~~ by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of marriage and family therapy.

B. Persons licensed as marriage and family therapists by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

~~1. Represent accurately their competence, education, training, experience and credentials, and 2. Practice only within the competency areas for which they are qualified by training or experience boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education, training, and experience accurately to clients;~~

3. Stay abreast of new marriage and family therapy information, concepts, applications and practices that are necessary to providing appropriate, effective professional services;

~~2.~~ 4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes and make appropriate referrals when it becomes clear that the client is not benefiting from the relationship;

~~3. Not abandon or neglect clients in treatment without making reasonable arrangements for the continuation of such treatment;~~

~~4. When aware that the client is in a professional relationship with another mental health professional, in order to avoid confusion and conflict for the client, request a written release from the client to inform the other professional of the coexistent clinical relationship;~~

5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

~~5.~~ 7. Disclose to clients all experimental methods of treatment, and inform client of the risks and benefits of any such treatment, and . Ensure that the welfare of the client is not compromised in any ~~experiment~~ experimentation or research involving those clients;

~~6.~~ 8. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services;

~~7. Inform clients of the fees and billing arrangements, goals, techniques, procedures, limitations, potential risks and benefits of services to be performed;~~

~~8. Inform clients of the limits of confidentiality at the onset of the therapeutic relationship;~~

~~9. Not solicit clients, advertise or represent services to the public in a manner that is false, misleading, deceptive or fraudulent;~~

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the United States Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

~~10.~~(i) 2. Maintain client records securely, and inform all employees of the requirements of confidentiality requirements; and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

(ii) 3. Disclose or release client records to others only with clients' expressed written consent or as mandated by law that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia; and

(iii) 4. Ensure client confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before ~~(a)~~ (i) videotaping, ~~(b)~~ (ii) audio recording, ~~(c)~~ (iii) permitting third party observation, or ~~(d)~~ (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations.; and

5. Maintain client records shall be kept for a minimum of five years or as otherwise required by law from the date of termination of the clinical counseling relationship; with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of

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majority (18) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

~~11. 1. Avoid dual relationships with clients, former clients, residents, and supervisors and supervisees that could compromise the well being or increase the risk of exploitation of clients or residents, or impair the resident's or supervisor's objectivity and professional judgment. This includes, but is not limited to, such activities as providing therapy to close friends, former sexual partners, employees or relatives, and engaging in business relationships with clients. Engaging in sexual intimacies with clients, former clients or current residents is strictly prohibited; and that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;~~

2. Not engage in any type of sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a sexual relationship. Marriage and family therapists shall not engage in sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Marriage and family therapists who engage in such relationship after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a marriage and family therapist does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee. Marriage and family therapists shall avoid any nonsexual dual relationship with a supervisee in which there is a risk of exploitation or potential harm to the supervisee or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

~~12. Report~~ E. Persons licensed by the board shall report to the board known or suspected violations of the laws and

~~regulations governing the practices of mental health professionals~~ Department of Health Professions any information of which he may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

18 VAC 115-50-120. Disciplinary action.

~~In accordance with § 54.1-2400 of the Code of Virginia, A. Action by the board may, after a hearing, to revoke, suspend or decline to issue or renew , deny issuance or removal of a license, or impose a fine take other disciplinary action may be taken in accordance with the following:~~

1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of marriage and family therapy, or any provision of this chapter;

2. Procurement of a license, certificate or registration by fraud or misrepresentation;

3. Conducting one's practice in such a manner as to make it a danger to the health and welfare of one's clients or the general public or if one is unable to practice marriage and family therapy with reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs, narcotics, chemicals, or other type of material or result of any mental or physical condition;

~~4. Practicing marriage and family therapy without reasonable skill and safety to clients by virtue of physical or emotional illness, abusive use of alcohol, drugs, narcotics, chemicals or any other hazardous substance or material;~~

4. Intentional or negligent conduct that causes or is likely to cause injury to a client or clients;

5. Providing or offering services Performance of functions outside the demonstrable areas of competency;

6. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of marriage and family therapy, or any part or portion of this chapter; or

7. Failure to comply with the continued competency requirements set forth in this chapter.

B. Following the revocation or suspension of a license, the licensee may petition the board for reinstatement upon good cause shown or as a result of substantial new evidence having been obtained that would alter the determination reached.

18 VAC 115-50-130. Reinstatement following disciplinary action.

A. Any person whose license has been ~~revoked~~, suspended or who has been denied ~~renewal~~ reinstatement by the board under the provisions of 18 VAC 115-20-140 order, having met

~~the terms of the order, may, two years subsequent to such board action, submit a new application and fee for reinstatement of licensure.~~

B. The board in its discretion may, after ~~a hearing an administrative proceeding~~, grant the reinstatement sought in subsection A of this section.

C. ~~The applicant for such reinstatement, if approved, shall be licensed upon payment of the appropriate fee applicable at the time of reinstatement.~~

18 VAC 115-60-130. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. *Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of substance abuse treatment.*

B. Persons licensed by the board shall:

1. Practice in a manner that *is in the best interest of the public* and does not endanger the public health, safety, or welfare;

2. Practice only within the ~~competency areas for which they are qualified by training or boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience~~ and represent their education, training and experience accurately to clients;

~~3. Be aware of competencies of practitioners in other fields of practice and make referrals for services when appropriate.~~

4. ~~3. Stay abreast of new developments substance abuse treatment information, concepts, application and practices which that are important necessary to providing appropriate, effective professional services;~~

5. ~~Terminate a service or consulting relationship when it is apparent that the client is not benefiting from the relationship.~~

6. ~~Provide to clients only those services which are related to 4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic goals. purposes;~~

5. *Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;*

6. *Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;*

7. ~~Not offer services to a client who is receiving services from other mental health professionals without attempting to inform such other professionals of the planned provision of services.~~

~~8. Inform 7. Disclose to clients all experimental methods of treatment and inform clients fully of the risks and benefits of services and any such treatment and obtain informed consent to all such services and treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;~~

9. ~~Ensure that the welfare of clients is not compromised by experimentation or research involving those clients and conform practice involving research or experimental treatment to the requirements of Chapter 5.1 (§ 32.1 162.16 et seq.) of Title 32.1 of the Code of Virginia.~~

~~40. 8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;~~

44. 9. Inform clients of (i) ~~the purposes of an interview, testing or evaluation session and (ii) the ways in which information obtained in such sessions will be used before asking the client to reveal personal information: the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;~~

~~12. Consider the validity, reliability and appropriateness of assessments selected for use with clients 10. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals from groups not represented in standardized norms;~~

11. *Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;*

~~13. Represent accurately their competence, education, training and experience.~~

14. ~~In connection with practice as a substance abuse treatment practitioner, represent to the public 12. Use only in connection with one's practice as a mental health professional those educational and professional credentials as are related to such practice. degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the United States Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and~~

15. ~~Not use the title "Doctor" or the abbreviation "Dr." in writing or in advertising in connection with practice without including simultaneously a clarifying title, initials, abbreviation or designation or language that identifies the basis for use of the title, such as M.D., Ph.D., D.Min.~~

16. ~~Announce 13. Advertise professional services fairly and accurately in a manner which will aid the public in forming their own informed judgments, opinions and choices and~~

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which avoids fraud and misrepresentation that is not false, misleading or deceptive.

C. In regard to patient records, persons licensed by the board shall:

~~1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;~~

~~17- 2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the disposal destruction of records that are no longer useful in a manner consistent with professional requirements. that ensures client confidentiality;~~

~~18- 3. Disclose client or release records to others in accordance with state and federal statutes and regulations including, but not limited to, §§ 32.1-127.1:03 (Patient Health Records Privacy Act), 2.2-3704, (Virginia Freedom of Information Act) and 54.1-2400.1 (Mental Health Service Providers; Duty to Protect Third Parties; Immunity) of the Code of Virginia; 42 USC § 290dd 2 (Confidentiality of Drug and Alcohol Treatment Records); and 42 CFR Part 2 (Alcohol and Drug Abuse Patient Records and Regulations); only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;~~

~~19- 4. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the substance abuse treatment relationship, or as otherwise required by employer, hospital or insurance carrier. with the following exceptions:~~

~~a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18) or 10 years following termination, whichever comes later;~~

~~b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or~~

~~c. Records that have transferred to another mental health service provider or given to the client; and~~

~~20. Obtain informed consent from clients~~ 5. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations.

D. In regard to dual relationships, persons licensed by the board shall:

~~21. Not engage in dual relationships with clients, former clients, residents, supervisees, and supervisors that compromise the client's or resident's well being, impair the practitioner's or supervisor's objectivity and professional judgment or increase the risk of client or resident exploitation. This includes, but is not limited to, such activities as treating close friends, former sexual partners,~~

~~employees or relatives, and engaging in business relationships with clients.~~

~~Engaging in sexual intimacies with current clients or residents is strictly prohibited. For at least five years after cessation or termination of professional services, licensees shall not engage in sexual intimacies with a therapy client or those included in collateral therapeutic services. Since sexual or romantic relationships are potentially exploitative, licensees shall bear the burden of demonstrating that there has been no exploitation. A patient's consent to, initiation of or participation in sexual behavior or involvement with a practitioner does not change the nature of the conduct nor lift the regulatory prohibition.~~

~~1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;~~

~~2. Not engage in any type of sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a sexual relationship. Licensed substance abuse treatment practitioners shall not engage in sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Licensed substance abuse treatment practitioners who engage in such relationship after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a licensed substance abuse treatment practitioner does not change the nature of the conduct nor lift the regulatory prohibition;~~

~~3. Not engage in any sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee. Licensed substance abuse treatment practitioners shall avoid any nonsexual dual relationship with a supervisee in which there is a risk of exploitation or potential harm to the supervisee or the potential for interference with the supervisor's professional judgment; and~~

~~22. Recognize conflicts of interest and inform all parties of obligations, responsibilities and loyalties to third parties.~~

~~4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.~~

~~23- E. Persons licensed by the board shall report to the board known or suspected violations of the laws and regulations governing the practice of licensed or certified health care practitioners Department of Health Professions any information of which he may become aware in his professional capacity indicating that there is a reasonable probability that a~~

person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

18 VAC 115-60-140. Grounds for revocation, suspension, probation, reprimand, censure, or denial of renewal of license.

A. Action by the board to revoke, suspend or ~~decline to renew, deny issuance or renewal of a license, or take other disciplinary action~~ may be taken in accord with the following:

1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of substance abuse treatment, or any provision of this chapter-;
2. ~~Procuring~~ Procurement of a license by fraud or misrepresentation.
3. Conducting one's practice in such a manner as to make it a danger to the health and welfare of one's clients or to the public, or if one is unable to practice substance abuse treatment with reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs, narcotics, chemicals, or other type of material or result of any mental or physical condition-;
4. ~~Negligence in professional conduct or nonconformance with the Standards of Practice (18 VAC 115-60-130). Intentional or negligent conduct that causes or is likely to cause injury to a client;~~
5. Performance of functions outside the demonstrable areas of competency-;
6. Failure to comply with the continued competency requirements set forth in this chapter-; or
7. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of licensed substance abuse therapy, or any part or portion of this chapter.

B. ~~Petition for rehearing.~~ Following the revocation or suspension of a license the licensee may petition the board for ~~rehearing~~ reinstatement upon good cause shown or as a result of substantial new evidence having been obtained that would alter the determination reached.

18 VAC 115-60-150. Reinstatement following disciplinary action.

A. Any person whose license has been ~~revoked, suspended or who has been denied renewal~~ reinstatement by the board under the provisions of 18 VAC 115-60-140 order, having met the terms of the order, may, ~~two years subsequent to such board action,~~ submit a new application and fee to the board for reinstatement of licensure.

B. The board in its discretion may, after ~~a hearing an administrative proceeding,~~ grant the reinstatement sought in subsection A of this section.

~~C. The applicant for such reinstatement, if approved, shall be licensed upon payment of the appropriate fee applicable at the time of reinstatement.~~

VA.R. Doc. No. R04-28, R04-29, R04-30; Filed May 4, 2005, 9:41 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-901. Community Services Block Grant Program (amending 22 VAC 40-901-10; adding 22 VAC 40-901-40 through 22 VAC 40-901-90).**

Statutory Authority: §§ 2.2-5402 and 63.2-217 of the Code of Virginia and 42 USC § 9909.

Public Hearing Date: N/A -- Public comments may be submitted until July 29, 2005.

(See Calendar of Events section for additional information)

Agency Contact: J. Mark Grigsby, Director, Office of Community Services, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7922, FAX (804) 726-7946, or e-mail james.grigsby@dss.virginia.gov.

Basis: Pursuant to § 2.2-5401 of the Code of Virginia, the Department of Social Services has been designated as the agency to administer the Community Action Act and to work with community action agencies and community action statewide organizations to develop social and economic opportunities for low-income persons. Section 2.2-5402 of the Code of Virginia authorizes the designated agency to fund community action agencies and community action statewide organizations and to adopt regulations. Section 63.2-217 of the Code of Virginia provides general rulemaking authority to the Board of Social Services. Regulations dealing with allocation of Community Services Block Grant funds are mandatory. The sections of the regulations that describe the process for designating a new community action agency or expanding the service area of an existing agency are discretionary. While discretionary, these sections provide a fair and consistent process to help ensure that the best qualified organizations are designated to provide services.

Purpose: The purpose of this regulatory action is to provide guidelines for the Virginia Department of Social Services (VDSS) to use in evaluating organizations for designation as a community action agency. The guidelines will be used by the VDSS in making its recommendations to the Governor for designation and funding of new community action agencies.

Most of Virginia's community action agencies have been in existence since the late 1960s and were "grandfathered" in when their funding was block granted to the states in 1982. The current network consists of 26 local community action agencies and three statewide community action organizations. Virginia is one of only a few states without statewide coverage. Currently, there are 43 jurisdictions in Virginia that are not served by a community action agency. Individuals and

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groups from a few unserved localities have expressed interest in identifying an organization to be designated as a community action agency. The goal of this proposal is to provide guidance to ensure that the process used in designating any additional community action agencies in Virginia is consistent with federal and state requirements, takes advantage of the experience and lessons learned over the past 20 years, mitigates the impact on existing services to low-income communities, and supports the goals of the Community Services Block Grant Act. Those goals include: reducing poverty, revitalizing low-income communities, and empowering low-income families to become fully self-sufficient.

This proposal will protect the health, safety and welfare of citizens by developing a process for finding the best qualified organizations to provide community action services in areas not currently receiving those services.

Substance: This proposal will add the following provisions to this regulation:

Three new definitions were added to 22 VAC 40-901-10.

22 VAC 40-901-40 establishes the preferences indicated in federal law in selecting an organization to provide services to a locality currently not receiving services funded by the Community Services Block Grant.

22 VAC 40-901-50 describes the process to be used when an existing community action agency expands its provision of services into a new locality.

22 VAC 40-901-60 describes the process to be used by a community organization to request designation as a community action agency.

22 VAC 40-901-70 describes the process to be used by a locality or group of localities to request designation as a community action agency.

22 VAC 40-901-80 describes the process to be used by VDSS to evaluate requests from a community organization or a locality or group of localities and make recommendations to the Governor.

22 VAC 40-901-90 addresses the method to be used to determine funding for new or expanded community action agencies.

Issues: Virginia is one of only a few states without statewide coverage by community action agencies. Currently, 43 jurisdictions in Virginia are not served by a community action agency. Individuals and groups from a few unserved localities have expressed interest in identifying an organization to be designated as a community action agency.

Lack of new funding for potential expansion of community action throughout the Commonwealth will be an issue of concern to existing and potential community action agencies. These funding issues exist on the federal, state and local levels.

This proposed regulatory action deals with the criteria to be used in recommendations for designating an organization as a community action agency in an area unserved by community action. Designating new community action agencies would

expand the community action network and result in the redistribution of existing funding. Although this could cause a reduction of services provided by existing community action agencies, this reduction should be offset by the potential for new and increased services to low-income families provided by the new agencies.

This regulation would not have a negative impact on the provision of services by other human service organizations. It poses no disadvantage to the public or 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. The proposed regulations establish criteria for the designation of new community action agencies.

Estimated economic impact. Community action agencies provide services to low-income people that help them deal with the underlying causes of poverty and improve their quality of life. Currently, there are 26 community action agencies in Virginia providing services to approximately 123,000 individuals annually. These programs provide help with a variety of issues including childcare, education, emergencies, employment, energy, health, housing, nutrition, self-reliance, transportation, water, and wastewater. In fiscal year 2003, available resources from the federal government, the state government, local governments, and private donations for community action activities were approximately \$110 million. Of this amount, the federal government provided about \$9.1 million and the state government provided about \$4.3 million through the community services block grant.

The proposed regulations incorporate federal preferences to be considered when expanding the service area of an existing community action agency and when designating a new community action agency into areas of the Commonwealth not currently served by a community action agency. The proposed changes establish that the first priority be given to an existing community action agency expanding into new service areas. The second priority is to be given to designating a new community action agency to serve in new areas. The last priority is to be given to local governments wishing to provide services in new areas. In other words, expansion of an existing community action agency is to be considered first, designation of a new community action agency is to be considered second, and provision of these services by local governments is to be considered last.

The proposed regulations also include language explaining the procedures to be followed for an application for expansion of an existing community action agency, designation of a new agency, and designation of a locality as a community action agency. For example, the language clarifies that the applicant provide a plan for services, the board of the organization applying for expansion or designation comply with federal and state laws, and the organization applying for expansion or designation be financially viable. The proposed regulations also set out the procedures for the Department of Social Services to follow when evaluating an application. Finally, the proposed regulations explain how state and federal funds are to be redistributed when the service area is expanded.

None of the proposed changes are expected to have a significant economic impact. The proposed language merely incorporates in the regulation procedures that would normally be followed anyway. Thus, the proposed changes will not affect current practice and, consequently, are not expected to produce any significant economic effects. To the extent that the proposed language informs community action agencies and the public about the application and evaluation procedures, some small economic benefits may result.

Businesses and entities affected. The proposed regulations apply to existing and prospective community action agencies. Currently, there are 26 community action agencies in the Commonwealth. In addition, the Department of Social Services anticipates receiving an application for a designation of a new community action agency in the near future.

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

Projected impact on employment. No significant effect on employment is expected.

Effects on the use and value of private property. No significant effect on the use and value of private property is expected.

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

Summary:

The proposed amendments establish the process for providing community action agency services to low-income individuals and families in areas of the Commonwealth that do not currently receive those services.

The amendments lay out the preferences stated in federal law for expansion of community action agencies into unserved areas of the Commonwealth. The amendments address the process for expanding the services area of an existing community action agency and designation of a new community action agency. In addition, amendments address funding for new community action agencies and those who have expanded their service area.

22 VAC 40-901-10. Definitions.

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

"Community action agency" means a local subdivision of the Commonwealth, a combination of political subdivisions, a separate public agency or a private, nonprofit agency that has the authority under its applicable charter or laws to receive funds to support community action activities and other appropriate measures designed to identify and deal with the causes of poverty in the Commonwealth, and that is designated as a community action agency by federal law, federal regulations or the Governor.

"Community action statewide organization" means community action programs, organized on a statewide basis, to enhance the capability of community action agencies.

"Community organization" means a private nonprofit organization, including faith-based organizations.

"Department" means the Department of Social Services.

"Local share" means cash or in-kind goods and services donated to community action agencies or community action statewide organizations to carry out their responsibilities.

"Locality" means a county or city in the Commonwealth.

22 VAC 40-901-40. Preferences for provision of services in unserved localities.

The federal Community Services Block Grant Act (42 USC § 9909) and the state Community Action Act (§ 2.2-5400 et seq., of the Code of Virginia) provide for localities not currently being served by community action agencies to be served through the expansion of existing community action agencies or the designation of a new community action agency. The following is the preference for providing services to an unserved locality:

- 1. Expansion of the service area of an existing community action agency.*
- 2. Designation of a community organization as a community action agency.*
- 3. Designation of a local government or a combination of local governments as a community action agency.*

22 VAC 40-901-50. Expansion of community action agency service area.

A locality may reach an agreement with an existing community action agency for the provision of services. The locality and the community action agency may submit a proposal to the department that includes plans for the expansion of services into the locality and a provision describing how the locality will be represented on the board of the community action agency. Upon department approval of the proposal, the governing body of the locality may adopt a resolution designating the community action agency as their community action agency and forward this resolution to the Department of Social Services. In adopting the resolution, the governing body must have allowed the opportunity for public comment. Upon

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receipt of the resolution, the locality will be included in the community action agency's service area.

22 VAC 40-901-60. Designation of a community organization as a community action agency.

A. To be designated as a community action agency, a community organization's purpose shall include working for the reduction of poverty and the revitalization of low-income communities through the identification of local needs and the provision of a broad range of services to meet those needs. The organization must have the recommendation of the governing body of the localities to be served, must be financially viable, and must meet administrative standards, financial management standards, and other requirements established by federal and state laws and regulations. In order for the department to support the designation of a community organization to become a community action agency, the following conditions should exist:

1. The organization's governing board must meet, or be in the process of changing to meet, the requirements of federal and state law related to community action agency boards.
2. Each locality in the proposed service area must have approved a resolution recommending the designation of the organization as a community action agency. In adopting the resolution, the governing body must have allowed the opportunity for public comment.
3. The organization and its management should have a history of successfully providing a variety of services to low-income individuals. Examples would include operating four or more programs aimed at various segments of the low-income population. This can include community and economic development. Services currently being provided by the community organization should not be limited to a single segment of the population.
4. The low-income population in the proposed designated service area should be large enough to justify funding a variety of programs.
5. The organization should be financially stable. This would include funding from a variety of federal and/or state sources as well as private and/or local government funding. The organization should have a sufficient reserve of unrestricted funds to avoid cash flow problems; for example, a reserve equal to or exceeding three months' operating expenses.
6. The organization must have financial procedures in place to meet Generally Accepted Accounting Principles (GAAP). This would normally be supported by a review of prior independent audits.
7. The organization must have developed a plan for providing Community Services Block Grant funded services within the proposed service area. This plan must have been developed with input from a variety of sources including the low-income population of the proposed service area.

B. A community organization wishing to be designated as a community action agency must submit a written request to the

department. The request must include documentation verifying that all of the criteria listed in this section are met. Any community organization wishing to become a community action agency is strongly encouraged to contact the department and request technical assistance in this process.

22 VAC 40-901-70. Designation of a locality or group of localities as a community action agency.

If no existing community action agency or other community organization is willing and able to provide services, a locality or group of localities can request that the department designate one or more localities as a community action agency. Any locality or group of localities wishing to become a community action agency are strongly encouraged to contact the department and request technical assistance in this process. This request must include the following documentation:

1. A description of the efforts made to obtain services through an existing community action agency or a community organization that could have been designated as a community action agency.
2. A resolution adopted by the locality or each of a group of localities requesting that it be designated as a community action agency. In adopting the resolution, the governing body or bodies must have allowed the opportunity for public comment.
3. A resolution adopted by the locality or each of a group of localities establishing a community action board that meets the requirements of federal and state law related to public community action agencies.
4. A plan for providing CSBG-funded services within the proposed service area. This plan must have been developed with input from a variety of sources including the low-income population of the proposed service area.

22 VAC 40-901-80. Evaluation of requests for designation as a new community action agency.

The department is responsible for evaluating and making recommendations to the Governor on any request for the designation of a new community action agency. This evaluation can include onsite monitoring and requests for additional information and documentation. Upon completion of this evaluation, the department will forward to the Secretary of Health and Human Resources a recommendation on what action the Governor should take regarding designation of the community organization or locality as a community action agency. If the Governor designates the community organization or locality as a community action agency, the department will issue a Community Services Block Grant contract with the organization or localities that will be effective the July 1 following the designation.

22 VAC 40-901-90. Funding for expanded or new community action agencies.

A. As a basis for determining funding for new or expanded community action agencies, the department will use the total number of low-income persons, localities, and square miles that are included in the service area of Virginia's network of existing, expanded, and new community action agencies. The

number of low-income persons will be based on the most recent census data. An allocation of funds for new or expanded community action agencies will be developed based on the following formula:

1. 75% based on the number of low-income persons living in the service area compared to the total number of low-income persons in the network;
2. 20% based on the number of localities in the service area compared to the total number of localities in the network; and
3. 5.0% percent based on the number of square miles contained in the service area compared to the total square miles in the network.

B. When an existing community action agency has expanded its service area, the agency's new allocation will be the greater of their current allocation or their allocation based on the formula in subsection A of this section.

C. When a new community action agency is designated, the allocation will be based on the formula in subsection A of this section.

VA.R. Doc. No. R04-250; Filed May 5, 2005, 12:21 p.m.



FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

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

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulation: **3 VAC 5-30. Tied-House (amending 3 VAC 5-30-10, 3 VAC 5-30-30, 3 VAC 5-30-60 and 3 VAC 5-30-70; ~~repealing 3 VAC 5-30-40~~).**

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

Effective Date: June 29, 2005.

Agency Contact: W. Curtis Coleburn, III, Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Road, Post Office Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411, or e-mail curtis.coleburn@abc.virginia.gov.

Summary:

This action implements several recommendations arising out of the periodic review process. The tied-house regulations place limitations on gifts or free services that may be provided by alcoholic beverage wholesalers and manufacturers to retailers of their products, in order to maintain the "reasonable separation" of retailer interests from those of manufacturers and wholesalers required by §§ 4.1-111 and 4.1-216 of the Code of Virginia. The amendments to the current regulations will lessen some of the restrictions on manufacturers' and wholesalers' merchandising and promotional activities aimed at their retail customers. Public comment received following publication of the proposed regulations indicated that wine and beer are stocked and marketed in different manners, and wine was not subject to retail stock outages that necessitate Sunday merchandising activities. Therefore, the proposed amendment to 3 VAC 5-30-10 A, removing the current prohibition against Sunday merchandising activities for both wine and beer wholesalers, was amended before final adoption to allow such activities on Sunday for beer wholesalers, while retaining the prohibition for wine wholesalers. Further public comment received on the proposal to repeal 3 VAC 5-30-40 indicated that kegs and tapping equipment are expensive items. Allowing wholesalers to deliver these to retailers without requiring deposit for return would in essence permit wholesalers to make large gifts to retailers. Wholesale deposits on returnable bottles help fight litter problems and promote recycling. Therefore, the repeal of this section was not included in the final action.

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.

3 VAC 5-30-10. Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts.

A. Permitted acts. For the purpose of maintaining the freshness of the stock and the integrity of the products sold by him, a [*wine*] wholesaler may perform, except on Sundays [, and a *beer wholesaler may perform, except on Sundays*] in jurisdictions where local ordinances restrict Sunday sales of alcoholic beverages, the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack and rearrange wine or beer in a display (shelves, coolers, cold boxes, and the like, and floor displays in a sales area);
2. Restock wine and beer;
3. Rotate, repack, rearrange and add to his own stocks of wine or beer in a storeroom space assigned to him by the retailer;
4. Transfer wine and beer between storerooms, between displays, and between storerooms and displays; and
5. Create or build original displays using wine or beer products only.

B. Prohibited acts. A wholesaler may not:

1. Alter or disturb in any way the merchandise sold by another wholesaler, whether in a display, sales area or storeroom except in the following cases:
 - a. When the products of one wholesaler have been erroneously placed in the area previously assigned by the retailer to another wholesaler; or
 - b. When a floor display area previously assigned by a retailer to one wholesaler has been reassigned by the retailer to another wholesaler;
2. Mark or affix retail prices to products; or
3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:
 - a. Products defective at the time of delivery may be replaced;
 - b. Products erroneously delivered may be replaced or money refunded;
 - c. Products that a manufacturer discontinues nationally may be returned and money refunded;
 - d. Resalable draft beer may be returned and money refunded;

e. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board;

f. Products which have been condemned and are not permitted to be sold in this Commonwealth may be replaced or money refunded upon permit issued by the board; or

g. Wine or beer may be exchanged on an identical quantity, ~~and brand and package~~ basis for quality control purposes. Any such exchange shall be documented by the word "exchange" on the proper invoice.

3 VAC 5-30-30. Certain transactions to be for cash; "cash" defined; checks and money orders; electronic fund transfers; records and reports by sellers; payments to the board.

A. Sales of wine or beer between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, except where payment is to be made by electronic fund transfer as hereinafter provided. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.

B. "Cash," as used in this section, shall include (i) legal tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in the Commonwealth (iii) a valid check drawn upon a bank account in the name of the licensee or permittee or in the trade name of the licensee or permittee making the purchase, or (iv) an electronic fund transfer, initiated by a wholesaler pursuant to subsection D of this section, from a bank account in the name, or trade name, of the retail licensee making a purchase from a wholesaler or the board.

C. If a check, money order or electronic fund transfer is used, the following provisions apply:

1. If only alcoholic beverage merchandise is being sold, the amount of the checks, money orders or electronic fund transfers shall be no larger than the purchase price of the alcoholic beverages; and

2. If nonalcoholic merchandise is also sold to the retailer, the check, money order or electronic fund transfer may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. ~~If a separate invoice shall be is used for the nonalcoholic merchandise—and, a copy of it shall be attached to the copies of the alcoholic beverage invoices which are retained in the records of the wholesaler and the retailer. If a single invoice is used for both the alcoholic beverages and nonalcoholic beverage merchandise, the alcoholic beverage items shall be separately identified and totaled.~~

D. If an electronic fund transfer is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the board, the following provisions shall apply:

1. Prior to an electronic fund transfer, the retail licensee shall enter into a written agreement with the wholesaler

specifying the terms and conditions for an electronic fund transfer in payment for the delivery of wine or beer to that retail licensee. The electronic fund transfer shall be initiated by the wholesaler no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic fund transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank;

2. The wholesaler must generate an invoice covering the sale of wine or beer, and shall specify that payment is to be made by electronic fund transfer. Each invoice must be signed by the purchaser at the time of delivery; and

3. Nothing in this subsection shall be construed to require that any licensee must accept payment by electronic fund transfer.

E. Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine or beer, as well as any stop payment order, insufficient fund report or any other incomplete electronic fund transfer reported by the retailer's bank in response to a wholesaler initiated electronic fund transfer from the retailer's bank account. Further, wholesalers shall report to the board any invalid checks or incomplete electronic fund transfer reports received in payment of wine or beer when either (i) any such invalid check or incomplete electronic fund transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic fund transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one incomplete electronic fund transfer report from the bank of any single retail licensee, or any combination of the two, within a period of 180 days. Such reports shall be upon a form provided by the board and in accordance with the instructions set forth in such form.

F. Payments to the board for the following items shall be for cash, as defined in subsection B:

1. State license taxes and application fees;

2. Purchases of alcoholic beverages from the board by mixed beverage licensees;

3. Wine taxes and excise taxes on beer and wine coolers;

4. Solicitors' permit fees and temporary permit fees;

5. Registration and certification fees, and the markup or profit on cider, collected pursuant to these regulations;

6. Civil penalties or charges and costs imposed on licensees and permittees by the board; and

7. Forms provided to licensees and permittees at cost by the board.

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REGISTRAR'S NOTICE: The proposed repeal of 3 VAC 5-30-40 in 20:25 VA.R. 3045 August 23, 2004 was not adopted by the board; therefore, the section is retained without change.

3 VAC 5-30-60. Inducements to retailers; beer and wine tapping equipment; bottle or can openers; spirits back-bar pedestals; banquet licensees; paper, cardboard or plastic advertising materials; clip-ons and table tents; sanctions and penalties.

A. Any manufacturer, bottler or wholesaler may sell, rent, lend, buy for or give to any retailer, without regard to the value thereof, the following:

1. Draft beer knobs, containing advertising matter which shall include the brand name and may further include only trademarks, housemarks and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer; and
2. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet, excluding the following:
 - a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;
 - b. Gas pressure gauges (may be sold at cost);
 - c. Draft arms or standards;
 - d. Draft boxes; and
 - e. Refrigeration equipment or components thereof.

Further, a manufacturer, bottler or wholesaler may sell, rent or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container.

B. Any manufacturer, bottler or wholesaler may sell to any retailer and install in the retailer's establishment tapping accessories such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves, if the tapping accessories are sold at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

Wine tapping equipment shall not include the following:

1. Draft wine knobs, which may be given to a retailer;
2. Carbonic acid gas, nitrogen gas, or compressed air in containers, except that such gases may be sold in accordance with the reasonable open market prices in the locality where sold and if the price is collected within 30 days of the date of the sales; or
3. Mechanical refrigeration equipment.

C. Any beer tapping equipment may be converted for wine tapping by the beer wholesaler who originally placed the equipment on the premises of the retail licensee, provided that such beer wholesaler is also a wine wholesaler licensee. Moreover, at the time such equipment is converted for wine tapping, it shall be sold, or have previously been sold, to the retail licensee at a price not less than the initial purchase price paid by such wholesaler.

D. Any manufacturer, bottler or wholesaler of wine or beer may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the wholesale value of any such openers given to a retailer by any individual manufacturer, bottler or wholesaler does not exceed ~~\$5.00~~ \$10. Openers in excess of ~~\$5.00~~ \$10 in wholesale value may be sold, provided the reasonable open market price is charged therefor.

E. Any manufacturer of spirits may sell, lend, buy for or give to any retail licensee, without regard to the value thereof, back-bar pedestals to be used on the retail premises and upon which advertising matter regarding spirits may appear.

F. Manufacturers or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees paper or plastic cups upon which advertising matter regarding wine or beer may appear.

G. Manufacturers, bottlers or wholesalers of alcoholic beverages may not provide point-of-sale advertising for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine to retail licensees except in accordance with 3 VAC 5-20-20. Manufacturers, bottlers and wholesalers may provide advertising materials to any retail licensee that have been customized for that retail licensee provided that such advertising materials must:

1. Comply with all other applicable regulations of the board;
2. Be for interior use only;
3. Contain references to the alcoholic beverage products or brands offered for sale by the manufacturer, bottler, or wholesaler providing such materials and to no other products; and
4. Be made available to all retail licensees.

H. Any manufacturer, bottler or wholesaler of wine, beer or spirits may sell, lend, buy for or give to any retail licensee clip-ons and table tents ~~containing the listing of not more than four wines or four beers. There is no limitation on the number of spirits brands which may be listed on clip-ons and table tents.~~

I. Any manufacturer, bottler or wholesaler of alcoholic beverages may clean and service, either free or for compensation, coils and other like equipment used in dispensing wine and beer, and may sell solutions or compounds for cleaning wine and beer glasses, provided the reasonable open market price is charged.

J. Any manufacturer, bottler or wholesaler of alcoholic beverages licensed in this Commonwealth may sell ice to retail licensees provided the reasonable open market price is charged.

K. Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4.1-216 A of the Code of Virginia, wholesaler or retailer who violates, attempts to violate, solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalties as provided in § 4.1-328 of the Code of Virginia.

3 VAC 5-30-70. Routine business entertainment; definition; permitted activities; conditions.

A. Nothing in this regulation shall prohibit a wholesaler or manufacturer of alcoholic beverages licensed in the Commonwealth from providing a retail licensee "routine business entertainment" which is defined as those activities enumerated in subsection B.

B. Permitted activities are:

1. Meals and beverages;
2. Concerts, theatre and arts entertainment;
3. Sports participation and entertainment;
4. Entertainment at charitable events; and
5. Private parties.

C. The following conditions apply:

1. Such routine business entertainment shall be provided without a corresponding obligation on the part of the retail licensee to purchase alcoholic beverages or to provide any other benefit to such wholesaler or manufacturer or to exclude from sale the products of any other wholesaler or manufacturer;
2. Wholesaler or manufacturer personnel shall accompany the personnel of the retail licensee during such business entertainment;
3. Except as is inherent in the definition of routine business entertainment as contained herein, nothing in this regulation shall be construed to authorize the providing of property or any other thing of value to retail licensees;
4. ~~Routine business entertainment that requires overnight stay is prohibited;~~
5. No more than ~~\$200~~ \$400 may be spent per 24-hour period on any employee of any retail licensee, including a self-employed sole proprietor, or, if the licensee is a partnership, or any partner or employee thereof, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership or stockholder, and the like, shall not be included within the foregoing restrictions;
6. No person enumerated in subdivision ~~C-5~~ 4 of this subsection may be entertained more than six times by a wholesaler and six times by a manufacturer per calendar year;
7. Wholesale licensees and manufacturers shall keep complete and accurate records for a period of three years of all expenses incurred in the entertainment of retail licensees. These records shall indicate the date and amount

of each expenditure, the type of entertainment activity and retail licensee entertained; and

~~8-~~ 7. This regulation shall not apply to personal friends of wholesalers as provided for in 3 VAC 5-70-100.

VA.R. Doc. No. R03-114; Filed May 11, 2005, 10:06 a.m.

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.

Effective Date: June 29, 2005.

Agency Contact: W. Curtis Coleburn, III, Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Road, Post Office Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411, or e-mail curtis.coleburn@abc.virginia.gov.

Summary:

The amendments (i) remove certification and chemical analysis requirements for new beer and wine products proposed for sale in Virginia and (ii) allow the use of resealable "growlers" for the sale of beer in all on- and off-premises beer retail establishments. The previous regulation required 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 adopted the alternative of relying on the federal approval rather than requiring a separate analysis for the purposes of the Commonwealth.

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 20:23 2485-2488 July 26, 2004, 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. R03-115; Filed May 11, 2005, 10:07 a.m.

Titles of Regulations: **3 VAC 5-40. Requirements for Product Approval (amending 3 VAC 5-40-20 and 3 VAC 5-40-50).**

3 VAC 5-70. Other Provisions (adding 3 VAC 5-70-220).

Statutory Authority: §§ 4.1-103, 4.1-111, 4.1-112.1, and 4.1-204 of the Code of Virginia.

Effective Date: June 29, 2005.

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Agency Contact: W. Curtis Coleburn, III, Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Road, Post Office Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411, or e-mail curtis.coleburn@abc.virginia.gov.

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 don.carignan@djj.virginia.gov.

Summary:

The 2003 General Assembly enacted House Bill 1652 and Senate Bill 1117, two identical pieces of legislation allowing direct shipments of beer and wine to consumers by holders of wine or beer shippers' licenses. The amendments provide for the application process, recordkeeping and reporting process for wine or beer shippers' licensees and common carriers approved to deliver shipments from such licensees. An associated secondary action revises current label approval rules to exempt products sold only by direct shipment from most of the requirements.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:25 VA.R. 3047-3055 August 23, 2004, 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. R03-271; Filed May 11, 2005, 10:08 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF JUVENILE JUSTICE

Title of Regulation: **6 VAC 35-140. Standards for Juvenile Residential Facilities** (amending 6 VAC 35-140-10 through 6 VAC 35-140-90, 6 VAC 35-140-110 through 6 VAC 35-140-150, 6 VAC 35-140-170 through 6 VAC 35-140-230, 6 VAC 35-140-250 through 6 VAC 35-140-350, 6 VAC 35-140-400, [~~6 VAC 35-140-440~~ 6 VAC 35-140-430] through 6 VAC 35-140-500, 6 VAC 35-140-530 through 6 VAC 35-140-630, 6 VAC 35-140-660 through 6 VAC 35-140-700, 6 VAC 35-140-730 through 6 VAC 35-140-770; adding 6 VAC 35-140-22, 6 VAC 35-140-23, 6 VAC 35-140-24, 6 VAC 35-140-45, 6 VAC 35-140-192, 6 VAC 35-140-275, 6 VAC 35-140-295, 6 VAC 35-140-385 through 6 VAC 35-140-389, 6 VAC 35-140-545, 6 VAC 35-140-615, 6 VAC 35-140-685, 6 VAC 35-140-701 through 6 VAC 35-140-709, [*and*] 6 VAC 35-140-711 through 6 VAC 35-140-715 [, ~~6 VAC 35-140-810~~]; and repealing 6 VAC 35-140-510).

Statutory Authority: §§ 16.1-309.9, 66-10 and 66-25.1 of the Code of Virginia.

Effective Date: July 1, 2005.

Summary:

The amendments provide standards for postdispositional detention facilities. Additional standards make the Virginia regulation conform more closely to the standards of the American Correctional Association or the National Commission on Correctional Health Care. The revisions address practical concerns raised by administrators and staff of secure facilities and by parents of juveniles. The final regulation provides more guidance in some cases and more flexibility in other cases.

In response to comments by personnel of secure facilities, some proposed changes were rescinded (6 VAC 35-140-75, 6 VAC 35-140-560, 6 VAC 35-140-570, and 6 VAC 35-140-810), and the requirement is added that the mandated activities must be accomplished "in accordance with written procedures" (6 VAC 35-140-75, 6 VAC 35-140-90, 6 VAC 35-140-560, and 6 VAC 35-140-570). Juvenile correctional centers are removed from the scope of 6 VAC 35-140-550.

Changes are made to count the department's substantial orientation training as part of new employees' first year training. Corrections or clarifications are made to guide both facility practice and the regulatory inspection process by which facilities are overseen and certified by the board. Amendments are made to enhance the wards' contact with family and community.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:24 VA.R. 2727-2743 August 9, 2004, 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 changes since publication of the proposed are set out.

6 VAC 35-140-10. Definitions.

Unless the context clearly indicates otherwise, terms that are defined in Standards for the Interdepartmental Regulation of Residential Facilities for Children shall have the same meaning when used in this chapter, and the following words and terms have the following meanings:

"Board" means Board of Juvenile Justice.

"Boot camp" means a short-term secure or nonsecure juvenile residential program that includes aspects of basic military training, such as drill and ceremony.

"Department" means the Department of Juvenile Justice.

"Detention home" means a secure facility ~~which~~ *that* houses juveniles who are ordered detained pursuant to the Code of Virginia.

"~~Family operated~~ *oriented group home*" means a private home in which juveniles may reside upon placement by a lawful child-placing agency.

"*Halfway house*" means a residential facility housing juveniles in transition from direct care.

"*Health authority*" means a physician, health administrator or health agency designated responsible for arranging all levels of health care in a facility, consistent with law and medical ethics.

"*Health record*" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including all findings, diagnoses, treatments, dispositions, prescriptions and their administration.

"*Health-trained staff person*" means a staff person who is trained by a licensed health care provider to provide ~~assistance to a physician, physician's assistant, or other professional medical staff by performing such~~ perform duties such as preparing or reviewing screening forms for needed follow up, preparing residents and their records for sick call, and assisting in the implementation of medical orders regarding diets, housing and work assignments.

"*Independent living program*" means a residential program designed to help residents obtain skills which will allow them to become self-sufficient adults and which provides limited supervision by adults and encourages independent decision making.

"*Informed consent*" means the agreement by a patient to a treatment, examination, or procedure after the patient receives the material facts regarding the nature, consequences and risks of the proposed treatment, examination, or procedure, and the alternatives to it. For an invasive procedure where there is some risk to the patient, informed consent is documented on a written form containing the juvenile's signature or that of the legal guardian if required.

"*Infraction*" or "*rule violation*" means a violation of the program's rules of conduct, in one of the following degrees of severity:

"*Major rule violation*" means any action ~~which that~~ threatens the life, safety or security of persons or property and requires due process for resolution.

"*Moderate infraction*" or "*intermediate infraction*" means a violation of the program's rules of conduct requiring use of due process procedures for resolution.

"*Minor infraction*" means a violation of the program's rules of conduct that staff may resolve informally.

"*Isolation*" means the confinement of a resident, after due process, in a single self-contained cell for a specified period of time as a disciplinary sanction for rule infractions. During isolation, all activities with the exception of eating, sleeping, personal hygiene, reading and writing are restricted and the resident is not permitted to participate in activities with other residents.

"*Juvenile correctional center*" means a secure facility operated by, ~~or under contract with,~~ the Department of Juvenile Justice

to house and treat persons committed to the department. Unless the context clearly indicates otherwise, the term includes the reception and diagnostic center.

"*Juvenile residential facility*" means a publicly or privately operated facility where 24-hour-per-day care is provided to children within Virginia's juvenile justice system. As used in this regulation, the term includes, but is not necessarily limited to, group homes, family-oriented group homes, halfway houses, secure detention facilities, boot camps, wilderness work camps and juvenile correctional centers.

"*Legal correspondence ["] and ["legal] mail*" means that which is sent to or received from a designated class of correspondents, as defined in the particular standard, such as a court, legal counsel, administrators of the grievance system, or administrators of the department.

~~"Main control center" means the central point within a secure facility where security activities are monitored and controlled 24 hours a day.~~

"*Master file*" means the complete record of a committed resident ~~which that~~ is retained at the reception and diagnostic center.

~~"Medical record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including all findings, diagnoses, treatments, dispositions, prescriptions and their administration.~~

"*Military style discipline*" means a system whereby staff in a ~~boot camp, Junior ROTC program or other~~ military-style program are authorized to respond to minor infractions at the moment they notice the infraction being committed by imposing immediate sanctions. The offender may be directed immediately to perform some physical feat, such as pushups or some other sanction as provided for in the facility's written policies and procedures.

~~"Personal control room" means a sleeping room with locked doors, where residents are housed who have serious behavior problems which threaten self, others or facility security.~~

"*Resident*" means a juvenile or other person who is legally placed in or formally admitted to the facility. In some facilities, residents may be referred to as wards, *cadets*, *inmates* or detainees.

"*Room confinement*" means restricting a resident to his room.

"*Secure facility*" means a local, regional or state publicly or privately operated residential facility for children ~~which that~~ has construction fixtures designed to prevent escape and to restrict the movement and activities of juveniles held in lawful custody.

"*Segregation*" means the placement of a resident, after proper administrative process, in a *special* housing unit or *designated individual cell that is* reserved for special management of residents for purposes of protective care or custodial management.

"*Shall*" means that an obligation to act is imposed.

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"Transfer file" means the complete record of a committed resident which that accompanies the resident to whatever facility the resident is transferred to while in direct state care.

"Volunteer" means any individual or group who of their own free will, and without any financial gain, provides goods or services to the program without compensation.

"Wilderness work camp" means a secure residential facility in a remote wilderness setting providing a program of therapeutic hard work to increase vocational skills.

6 VAC 35-140-20. [No change from proposed.]

6 VAC 35-140-22. [No change from proposed.]

6 VAC 35-140-23. Outcome-based and performance-based standards authorized.

The board may, in its discretion on a case-by-case basis and for a specified time, exempt individual facilities from specific standards set out in this chapter and authorize the facility to implement on an experimental basis one or more substitute standards that measure performance or outcomes. [Such substitute standards may be modeled on standards adopted or being considered by nationally recognized bodies such as the American Correctional Association or may be developed by a facility to meet specific circumstances.]

6 VAC 35-140-24 through 6 VAC 35-140-50. [No change from proposed.]

6 VAC 35-140-60. Residents' Admission and orientation.

Written policy, procedure and practice governing the admission and orientation of residents to the juvenile residential facility shall provide for:

1. Verification of legal authority for placement;
2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate;
3. Medical Health screening;
4. Notification of family including admission, visitation, and general information [, including how the resident's parent or legal guardian may request information and register concerns and complaints with the facility];
5. Interview with resident to answer questions and obtain information;
6. Explanation to resident of program services and schedules; and
7. Assignment of resident to a housing unit or room.

6 VAC 35-140-65. [No change from proposed.]

6 VAC 35-140-70. [No change from proposed.]

6 VAC 35-140-75. Residents' mail.

Written policy, procedure and practice shall provide that:

4. A. In the presence of a witness and in accordance with written procedures, staff may open and inspect incoming and outgoing nonlegal mail for contraband, but shall not read it; and

~~2. Based on legitimate interests of facility order and security B. In accordance with written procedures, staff may read, censor or reject open and inspect residents' incoming and outgoing mail and shall notify residents for contraband. When based on legitimate facility interests of order and security, mail may be read, censored, or rejected. [In accordance with written procedures,] the juvenile shall be notified when incoming or outgoing letters are withheld in part or in full; .~~

~~3. C. In the presence of the recipient and in accordance with written procedures, staff shall not may open or to inspect for contraband, but shall not read, legal correspondence and mail: a. to or from a court, legal counsel, administrators of the grievance system or administrators of the department; or.~~

~~b. D. [In accordance with written procedures, when permission has been obtained from a court of competent jurisdiction or from the juvenile, staff may, in the presence of a witness, read correspondence or mail] Staff shall not read mail [addressed to parents, family, legal guardian, guardian ad litem, counsel, courts, officials of the committing authority, public official or grievance administrators [unless permission has been obtained from a court of competent jurisdiction or] when [the director or his designee has determined that there is a reasonable belief that the security of a facility is threatened. When so authorized, staff may read such mail in the presence of a witness, in accordance with] as provided for by written procedures: .~~

4. E. Incoming and outgoing letters shall be held for no more than 24 hours and packages for no more than 48 hours, excluding weekends and holidays;.

5. F. Cash, stamps and other specified items may be held for the resident;.

6. G. Upon request, each resident shall be given postage and writing materials for all legal correspondence and to mail at least two letters per week; and.

7. H. Residents shall be permitted to correspond at their own expense with any person or organization provided such correspondence does not pose a threat to facility order and security and is not being used to violate or to conspire to violate the law.

I. First class letters and packages received for juveniles who have been transferred or released shall be forwarded.

J. Written policy and procedure governing correspondence of juveniles shall be made available to all staff and juveniles and shall be reviewed annually and updated as needed.

6 VAC 35-140-80. [No change from proposed.]

6 VAC 35-140-90. Visitation.

A. Residents in all juvenile residential programs shall be permitted to have visitors, consistent with written policies and procedures that take into account the need for facility security and order and the behavior of individual residents and visitors [and the importance of helping the resident maintain strong family and community ties].

B. The Each juvenile residential facility shall have a designated visiting area.

C. Visiting facilities in each juvenile residential facility permit informal communication between residents and visitors, including opportunity for physical contact [in accordance with written procedures].

6 VAC 35-140-110 through 6 VAC 35-140-220. [No change from proposed.]

6 VAC 35-140-230. Hospitalization and other outside medical treatment of residents.

[A.] When a resident of a juvenile residential facility needs hospital care or other medical treatment outside the facility:

1. The resident shall be transported safely and in a timely manner; and
2. A parent or legal guardian, a staff member, or a law-enforcement officer, as appropriate, shall accompany the resident and stay at least during admission and, in the case of securely detained or committed residents, until appropriate security arrangements are made.

[B. If a parent or legal guardian does not accompany the resident to the hospital or other medical treatment outside the facility, the parent or legal guardian shall be informed that the resident was taken outside the facility for medical attention as soon as is practicable.]

6 VAC 35-140-250. [No change from proposed.]

6 VAC 35-140-260. Background checks on personnel.

A. Except as provided in subsection C of this section, all persons selected for employment in a juvenile residential facility after January 1, 1998, all family-oriented group home parents staff, all persons who teach in the facility or provide professional services on a regular basis, and all volunteers and interns [persons] who work one-on-one with residents shall immediately, prior to assuming their duties, undergo a check, as specified in department procedures, of references, criminal records, central registry and, if appropriate, driving record, to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of juveniles in the program. The background check shall include a fingerprint check with the Virginia State Police and FBI if the State Police determine that the requesting agency is a qualified entity, or a criminal history request or a noncriminal justice interface with the Virginia State Police if the State Police determine that the requesting agency is not a qualified entity to receive fingerprint-based criminal information.

B. The facility shall have procedures for supervising nonstaff persons who have contact with residents.

~~B. If C. To minimize vacancy time when a fingerprint check has been requested, direct care staff are may be hired pending the completion of background checks, they results of the fingerprint checks, provided:~~

1. The CPS check and criminal background check have been completed;
2. The applicant is given written notice that continued employment is contingent on the fingerprint check results; and
3. Staff hired under this exception shall always work with staff whose background checks have been completed.

6 VAC 35-140-270. Physical examination.

When the qualifications for a position in a juvenile residential facility require a given level of health or set of physical ability abilities, all persons selected for such positions shall be examined by a physician at the time of employment to ensure that they have the level of medical health or physical ability required to perform assigned duties. Persons hired after [~~the effective date of this regulation July 1, 2005,~~] into positions that require a given set of physical abilities may be reexamined annually in accordance with written procedures.

6 VAC 35-140-275. [No change from proposed.]

6 VAC 35-140-280. Training.

A. Initial orientation and annual training shall be provided to all staff, relief staff, volunteers, and interns of juvenile residential facilities, and family-oriented group home parents staff, in ~~accord~~ accordance with each position's job description and annual training plan.

B. Prior to assuming their duties, juvenile residential facility staff who are responsible for supervising residents shall receive an orientation that addresses at least the following items:

1. The facility's program philosophy and services;
2. Residents' rules and the facility's behavior management program;
3. Residents' rights and responsibilities;
4. Residents' disciplinary and grievance procedures;
5. Security and emergency procedures; and
6. Documentation requirements.

C. In addition to the orientation required by subsection B of this section, juvenile residential facility staff who work with juveniles shall receive sufficient training so that they are thoroughly familiar with the rules of juvenile conduct, the rationale for the rules, and the sanctions available.

~~C. D.~~ All full-time staff of juvenile residential facilities who provide direct services or supervision to residents or families shall receive at least 40 hours of training annually, ~~not including [in addition to initial orientation].~~ As applicable to the individual's position, this training shall include the training required by:

1. The Standards for the Interdepartmental Regulation of [Children's] Residential Facilities [~~for Children (22 VAC 42-10)~~]; and
2. The standards in this regulation dealing with:
 - a. Suicide prevention (6 VAC 35-140-250);
 - b. Special medical needs of residents (6 VAC 35-140-200);
 - c. Health screenings at admission (6 VAC 35-140-190); and
 - d. Mechanical restraints (6 VAC 35-140-680).

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6 VAC 35-140-290 through 6 VAC 35-140-400. [No change from proposed.]

[6 VAC 35-140-430. Mental health assessment in secure detention.

Written policy, procedure and practice shall provide that:

1. As part of the intake process in each secure detention facility, staff trained in the application of an approved ~~assessment screening~~ tool shall ascertain the resident's need for a mental health assessment; and
2. If staff determine that a mental health assessment is needed, it shall take place within 24 hours of such determination.]

6 VAC 35-140-440. Classification plan.

[A.] Residents of the secure facility shall be assigned to sleeping rooms and living units according to a written plan that takes into consideration facility design, staffing levels, and the behavior and characteristics of individual residents.

[B. When the department places wards in residential facilities according to custody or security level, department procedure and practice shall provide for a systematic decrease in supervision and a corresponding increase in juvenile responsibility as the ward moves to a less secure placement in preparation for the ward's ultimate release from direct care.]

6 VAC 35-140-450 through 6 VAC 35-140-490. [No change from proposed.]

6 VAC 35-140-500. Reading materials.

A. Reading materials that are appropriate to residents' ages and levels of competency shall be available to all residents of the secure facility [, including new arrivals,] and shall be coordinated by a designated person.

B. Each detention home and juvenile correctional center shall have and follow written policy and procedure governing youth access to publications.

6 VAC 35-140-510. [No change from proposed.]

6 VAC 35-140-530. Outdoor Recreation.

~~There~~ A. Each detention home and juvenile correctional center shall ~~be an~~ have appropriate indoor and outdoor area in which residents are permitted to recreation areas. An opportunity for large muscle exercise shall be provided daily. Outdoor recreation will be available [~~according to~~ whenever practicable, in accordance with] the secure facility's recreation plan [~~, which must provide at least one hour of planned outdoor recreation at least three times per week, unless prevented by documented. Staff shall document any~~ adverse weather conditions [or ,] threat to facility security [or other circumstances preventing outdoor recreation] .

B. Each detention home and juvenile correctional center shall provide a variety of fixed and movable equipment for each indoor and outdoor recreation period.

6 VAC 35-140-540. [No change from proposed.]

6 VAC 35-140-545. [No change from proposed.]

6 VAC 35-140-550. Due Disciplinary process.

A. ~~In each~~ Each secure detention facility, ~~when a rule violation occurs which is punishable by confinement for 48 hours or less, [and juvenile correctional center] shall have~~ written policy, procedure and practice shall provide for: guidelines for resolving minor juvenile misbehavior. Before room restriction or privilege restriction is imposed as a sanction, the reason for the restriction shall be explained to the juvenile and the juvenile shall be given an opportunity to explain the behavior that led to the restriction. Room restriction for minor misbehavior shall serve only as a "cooling off" period and shall not exceed 60 minutes.

- ~~1. Reporting major rule violations to supervisory personnel;~~
- ~~2. Conducting a timely, impartial investigation and hearing including provisions for the youth to participate in and to be represented at the hearing;~~
- ~~3. Recording and notifying the parties of the hearing's findings and any action taken;~~
- ~~4. Expunging all reference to the charges if the youth is found innocent;~~
- ~~5. Reviewing the hearing record to ensure conformity with policy and regulations; and~~
- ~~6. Permitting the juvenile to appeal the decision.~~

B. ~~In~~ Each secure detention facility, ~~when and juvenile correctional center shall have and follow a written process for handling instances when a resident is charged with a major rule violation occurs which is punishable by confinement for more than 48 hours, and in all other secure custody facilities when a major or moderate rule violation occurs, written policy, procedure and practice shall provide the following: .~~

- ~~1. Staff shall prepare a disciplinary report when a resident has committed a major or moderate violation of facility rules.~~

C. A resident may admit to the charge to a facility administrator or designee who was not involved in the incident, accept the sanction prescribed for the offense, and waive his right to a formal process. If the resident denies the charge or there is reason to believe that the resident's admission is coerced or that the resident does not understand the charge or the implication of the admission, the formal process for resolving the matter shall be followed.

~~2. D. When it is necessary to place the juvenile in confinement to protect the facility's security or the safety of the resident or others, a resident who is charged with a rule violation the charged juvenile may be confined pending a due process hearing for up to 24 hours;. Confinement for longer than 24 hours must be reviewed at least once every 24 hours by an administrator or designee who was not involved in the incident must approve any longer confinement.~~

3. E. In each secure detention facility and juvenile correctional center, when staff have reason to believe a resident has committed a rule violation that cannot be resolved through the facility's informal process:

1. Staff shall prepare a disciplinary report;
2. ~~A-~~ The resident who is charged with a major or moderate rule violation shall be ~~a-~~ given a written copy of the charge within 24 hours of the infraction;
- ~~b-~~ ~~Scheduled for a~~ 3. If a hearing is required under subsection C of this section, the hearing shall be scheduled to occur no later than 48 hours after the infraction ~~excluding in a detention facility and no later than seven days after the infraction in a juvenile correctional center. These timeframes do not include weekends and holidays; and~~
- ~~e-~~ Given 4. The charged resident shall be given at least 24 hours notice of the time and place of the hearing, but the hearing may be held within 24 hours with the resident's written consent- ;
4. 5. Disciplinary hearings on rule violations shall be conducted by an impartial person or panel of persons; a record of the proceedings shall be made and shall be kept for six months- ;
5. 6. Residents charged with rule violations shall be present at *throughout* the hearing unless they waive that right in writing or through their behavior but may be excluded during the testimony of any resident whose testimony must be given in confidence. The reason for the resident's absence or exclusion shall be documented- ;
6. 7. Residents shall be permitted to make a statement and present evidence at the hearing and to request witnesses on their behalf. The reasons for denying such requests shall be documented- ;
7. 8. At the resident's request, a staff member shall represent the resident at the hearing and question witnesses. A staff member shall be appointed to help the resident when it is apparent that the resident is not capable of effectively collecting and presenting evidence on his own behalf- ;
8. 9. A written record shall be made of the hearing decision and given to the resident. The hearing record shall be kept in the resident's file and in the disciplinary committee's records- ;
9. 10. The disciplinary report shall be removed from the file of a resident who is found not guilty- ;
10. 11. The facility administrator or designee shall review all disciplinary hearings and dispositions to ensure conformity with policy and regulations- ; *and*
11. 12. The resident shall have the right to appeal the disciplinary hearing decision to the facility administrator or designee within 24 hours of receiving the decision. The appeal shall be decided within 24 hours of its receipt, and the resident shall be notified in writing of the results within three days. These time frames do not include weekends and holidays.

6 VAC 35-140-560. Room confinement and isolation.

A. Written policy, procedures and practice shall govern how and when residents of a *secure facility* may be confined to a room ~~and shall provide for~~ .

4. B. Whenever a resident of a secure facility is confined to a locked room, including but not limited to being placed in isolation, staff ~~checks~~ shall check the resident visually at least every [30 45] minutes and more often if indicated by the circumstances; .

2. [Staff shall ~~checks~~ conduct a check at least every 15 minutes, in accordance with approved procedures when the resident is on suicide watch] .

3. C. Residents of a secure facility who are confined to a room, including but not limited to being placed in isolation, shall be afforded the opportunity for at least one hour of physical exercise [~~daily every 24 hours~~] .

B. D. If a resident in secure detention or a juvenile correctional center is confined to his room for more than 24 hours, the superintendent or designee shall be notified. If the confinement extends to more than 72 hours, the confinement shall be immediately reported to the ~~regional manager designated department staff person who has oversight responsibility for the facility,~~ along with the steps being taken or planned by the facility to resolve the situation, and followed immediately with a *written, faxed, copy of the or secure e-mail report to the regional manager in accordance with established department procedures.*

C. If a resident in a juvenile correctional center is confined for more than 24 hours, the superintendent or designee shall be notified. If the confinement extends to 72 hours the Chief of Operations for Juvenile Correctional Centers, or designee, must approve the continued confinement. Residents who are confined to their rooms shall be given an opportunity to exercise daily.

D. E. Room confinement as a sanction in a secure facility, or isolation, shall not exceed five days.

E. [F. The director or designee ~~An administrator of the secure facility~~] shall make personal contact with ~~the each~~ resident who is confined to a locked room, including being placed in isolation, each day of confinement.

G. Residents of detention homes and juvenile correctional centers who are placed in administrative [~~confinement or in isolation~~ segregation] shall be afforded [*basic*] living conditions [~~and privileges~~] approximating those available to the facility's general population [*and, as provided for in approved procedures, shall be afforded privileges similar to those of the general population*]. Exceptions may be made in accordance with established procedures when justified by clear and substantiated evidence.

6 VAC 35-140-570. Questioning of residents.

[~~The No~~] secure [~~detention residential~~] facility [or employee of a secure residential facility may play any role in allowing contacts with law enforcement to which a resident does not consent. The secure residential facility] shall have [*written policy, procedure and practice*] governing the [*requiring permission*] required to be [~~obtained from the committing agency, procedures for establishing a resident's consent to any given contact and for documenting the resident's decision. The procedures may provide for opportunities, at the resident's request, to confer with an~~] attorney, parent or guardian or other person [~~standing~~] in [~~loco parentis before~~]

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permitting any local, state or federal authority to question a resident making the decision].

6 VAC 35-140-580 through 6 VAC 35-140-709. [No change from proposed.]

Article 2 3.
Wilderness Work Camps.

Article 3 4.
Juvenile Correctional Centers.

6 VAC 35-140-711. Staff training in juvenile correctional centers.

A. All staff of juvenile correctional centers who supervise residents shall receive at least 120 hours of training during their first year of employment [~~in addition to orientation training~~], and at least an additional 40 hours of training each subsequent year.

B. Professional specialists employed by the juvenile correctional center (including but not limited to case managers, counselors, social workers, psychologists, medical personnel and recreation specialists) who have contact with youth shall receive at least 120 hours of training during their first year of employment [~~in addition to orientation training~~], and at least an additional 40 hours of training each subsequent year.

C. All administrative and managerial staff, and all support employees of the juvenile correctional center who have regular or daily contact with juveniles, shall receive at least 40 hours of training [~~in addition to orientation training~~] during their first year of employment and at least 40 hours of training each year thereafter, in areas relevant to their positions.

D. All clerical and support employees of the juvenile correctional center who have no contact or only minimal contact with juveniles shall receive [~~in addition to their first year orientation~~], at least 16 hours of training during the first year of employment and at least 16 hours of training each year thereafter.

E. Library and reference services shall be available [at the department's central training facility] to complement the training and staff development program.

6 VAC 35-140-712. [No change from proposed.]

6 VAC 35-140-713. Administration and organization.

Each juvenile correctional center shall have a written document describing its organization. The description shall include an organizational chart that groups similar functions, services, and activities in administrative subunits. This document shall be reviewed and updated as needed [, as determined by the facility administrator or designee].

6 VAC 35-140-714 through 6 VAC 35-140-750. [No change from proposed.]

6 VAC 35-140-760. Institutional Operating procedures.

[~~When it is necessary to provide institution specific guidance for implementing standard operating procedures,~~] Institutional operating procedures shall be in place that are consistent with standard operating procedures. [~~The institutional operating~~

~~procedures shall be approved by the Chief of Operations for Juvenile Correctional Centers Deputy for Institutions.]~~

6 VAC 35-140-770. [No change from proposed.]

[~~6 VAC 35-140-810. Compliance with central administration guidance.~~

~~As part of the certification audit, an assessment will be made of the juvenile correctional center's compliance with policies, procedures, directives or other official guidance from the department's central administration. A summary of the findings will be included in the certification audit report to the board.]~~

DOCUMENTS INCORPORATED BY REFERENCE

"Guidelines for Transporting Juveniles in Detention," Board of Youth and Family Services, June 13, 1991.

VA.R. Doc. No. R02-43; Filed May 10, 2005, 2:12 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **9 VAC 5-91. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area (amending 9 VAC 5-91-20, 9 VAC 5-91-160, 9 VAC 5-91-180, 9 VAC 5-91-740, 9 VAC 5-91-750, and 9 VAC 5-91-760; adding 9 VAC 5-91-741, 9 VAC 5-91-742, and 9 VAC 5-91-743).**

Statutory Authority: §§ 46.2-1178.1, 46.2-1178.2 and 46.2-1180 of the Code of Virginia; § 182 of the federal Clean Air Act; 40 CFR Part 51, Subpart S.

Effective Date: June 29, 2005.

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Summary:

The amendments conform the regulation to changes in Virginia law pertaining to remote sensing. In general, the regulation is amended to reflect new emission standards for vehicles detected via remote sensing as well as criteria for conducting random testing of motor vehicle emissions, procedures to notify owners of test results, and assessment of civil charges for noncompliance with emissions standards in the current regulation.

Two specific changes to the regulation as a result of changes to the Code of Virginia include the change in the model year coverage for vehicles subject to remote sensing to include model year 1968 and newer model vehicles, and the requirement to establish a program to subsidize repair costs of some vehicles identified by remote sensing.

Changes to the proposed regulation include changing the effective date for certain violations and the simplification of

the civil charge structure to better reflect repair costs and waiver amount.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:24 VA.R. 2777-2792 August 9, 2004, 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.

9 VAC 5-91-20. Terms defined.

"Aborted test" means an emissions inspection procedure that has been initiated by the inspector but stopped and not completed due to inspector error or a vehicular problem that prevents completion of the test. Aborted tests are not tests that cannot be completed due to a "failed/invalid" result caused by an exhaust dilution problem or an engine condition that prevents the inspection from being completed.

"Access code" means the security phrase or number which allows authorized station personnel, the department, and analyzer service technicians to perform specific assigned functions using the certified analyzer system, as determined by the department. Depending on the assigned function, the access code is a personal password, a state password or a service password. Access code is not an identification number, but is used as an authenticator along with the identification number where such number is needed to perform specific tasks.

"Actual gross weight" means the gross vehicle weight rating (GVWR).

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

"Affected motor vehicle" means any motor vehicle which:

1. Was manufactured or designated by the manufacturer as a model year less than 25 calendar years prior to January 1 of the present calendar year according to the formula, the current calendar year minus 24, *except those identified by remote sensing as specified in subdivision 5 of this definition;*
2. Is designed for the transportation of persons or property;
3. Is powered by an internal combustion engine; ~~and~~
4. For the Northern Virginia Emissions Inspection Program, has an actual gross weight of 10,000 pounds or less; *and*
5. *For vehicles subject to the remote sensing requirements of 9 VAC 5-91-180, was designated by the manufacturer as model year 1968 or newer.*

The term "affected motor vehicle" does not mean any:

1. Vehicle powered by a clean special fuel as defined in § 58.1-2101 of the Code of Virginia, provided the federal

Clean Air Act permits such exemptions for vehicles powered by clean special fuels;

2. Motorcycle;

3. Vehicle ~~which,~~ *that* at the time of its manufacture, was not designed to meet emissions standards set or approved by the federal government;

4. Any antique motor vehicle as defined in § 46.2-100 of the Code of Virginia and licensed pursuant to § 46.2-730 of the Code of Virginia;

5. Firefighting equipment, rescue vehicle, or ambulance;

6. Vehicle for which no testing standards have been adopted by the board; or

7. Tactical military vehicle.

"Air intake systems" means those systems ~~which~~ *that* allow for the induction of ambient air (to include preheated air) into the engine combustion chamber for the purpose of mixing with a fuel for combustion.

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

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

"Air system" means a system for providing supplementary air to promote further oxidation of hydrocarbons and carbon monoxide gases and to assist catalytic reaction.

"Alternative fuel" means an internal combustion engine fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% volume of gasoline.

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

~~"ASM" means Acceleration Simulation Mode testing which is~~ *(ASM) test" means* a dynamometer-based emissions test performed in one or more, discreet, simulated road speed and engine load modes, and equipment which can be used to perform any such test.

"Authorized personnel" means department personnel, an individual designated by analyzer manufacturer, station owner, licensed emissions inspector, station manager or other person as designated by the station manager.

"Basic engine systems" means those parts or assemblies which provide for the efficient conversion of a compressed air and fuel charge into useful power to include but not limited to valve train mechanisms, cylinder head to block integrity, piston-ring-cylinder sealing integrity and post-combustion emissions control device integrity.

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"Bi-fuel" means any motor vehicle capable of operating on one of two different fuels, usually gasoline and an alternative fuel, but not a mixture of the fuels. That is, only one fuel at a time.

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

"Calibration" means establishing or verifying the response curve of a measurement device using several different measurements having precisely known quantities.

"Calibration gases" means gases of precisely known concentrations that are used as references for establishing or verifying the response curve of a measurement device.

"Canister" means a mechanical device capable of adsorbing and retaining hydrocarbon vapors.

"Catalytic converter" means a post combustion device ~~which~~ *that* oxidizes hydrocarbons, carbon monoxide gases, and may also reduce oxides of nitrogen.

"Certificate of emissions inspection" means a document, device, or symbol, whether recorded in written or electronic form, as prescribed by the director and issued pursuant to this chapter, which indicates that (i) an affected motor vehicle has satisfactorily complied with the emissions standards and passed the emissions inspection provided for in this chapter; (ii) the requirement of compliance with the emissions standards has been temporarily waived; or (iii) the affected motor vehicle has failed the emissions inspection.

"Certified emissions repair facility" means a facility, or portion of a facility, that has obtained a certification in accordance with Part VII (9 VAC 5-91-500 et seq.) to perform emissions related repairs on motor vehicles.

"Certified emissions repair technician" means a person who has obtained a certification in accordance with Part VIII (9 VAC 5-91-550 et seq.) to perform emissions related repairs on motor vehicles.

"Certified enhanced analyzer system" or "analyzer system" means the complete system that samples and reads concentrations of hydrocarbon, carbon dioxide, ~~nitrogen~~ *nitric* oxides and carbon monoxide gases and that is approved by the department for use in the Enhanced Emissions Inspection Program in accordance with Part X (9 VAC 5-91-640 et seq.). The system includes the exhaust gas handling system, the exhaust gas analyzer, evaporative system pressure test equipment, associated automation hardware and software, data media, the analyzer system cabinet, the dynamometer and appurtenant devices, vehicle identification equipment, and associated cooling and exhaust fans and gas cylinders.

"Certified thermometer" means a laboratory grade ambient temperature-measuring device with a range of at least 20°F through 120°F, and an attested accuracy of at least 1°F with increments of 1°, with protective shielding.

"Chargeable inspection" means a completed inspection on an affected motor vehicle, for which the station owner is entitled to collect an inspection fee. No fee shall be paid for (i) inspections for which a certificate of emissions inspection has not been issued, (ii) inspections that are conducted by the department for referee purposes, (iii) inspections which were

ordered due to on-road test failures but which result in an emissions inspection "pass" at an inspection station, or (iv) the first reinspection done at the same station that performed the initial inspection within 14 days. An inspection ordered by the department due to an on-road test failure ~~and~~ that results in ~~an emissions inspection~~ a *confirmation test* failure at the ~~an~~ emissions inspection station is a chargeable inspection.

"Confirmation test" means an emissions inspection required due to a determination that the vehicle exceeds the exhaust emissions standards prescribed in Table III-B in 9 VAC 5-91-180 for on-road testing through remote sensing. The confirmation emissions inspection procedure may include an exhaust test (ASM or TSI), OBD system test or both.

"Consent order" means a mutual agreement between the department and any owner, operator, emissions inspector, or emissions repair technician that such owner or other person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with this chapter. A consent order may include agreed upon civil charges. Such orders may be issued without a formal hearing.

"Curb idle" means vehicle operation whereby the transmission is disengaged and the engine is operated with the throttle in the closed or idle stop position with the resultant engine speed between 400 and 1,250 revolutions per minute (rpm), or at another idle speed if so specified by the manufacturer.

"Data handling system" means all the computer hardware, software and peripheral equipment used to conduct emissions inspections and manage the enhanced emissions inspection program.

"Data medium" or "data media" means the medium contained in the certified analyzer system and used to electronically record test data.

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

"Dedicated alternative fuel vehicle" means a vehicle that was configured by the vehicle manufacturer to operate only on one specific fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% by volume of gasoline.

"Dedicated-fuel vehicle" means a vehicle that was designed and manufactured to operate and operates on one specific fuel.

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

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

"Dual fuel" means a vehicle ~~which~~ *that* operates on a combination of fuels, usually gasoline or diesel and an alternative fuel, at the same time. That is, the mixed fuels are introduced into the combustion chamber of the engine.

"Emissions control equipment" means any part, assembly or equipment originally installed by the manufacturer in or on a motor vehicle for the sole or primary purpose of reducing emissions.

"Emissions control systems" means any system consisting of parts, assemblies or equipment originally installed by the manufacturer in or on a motor vehicle for the primary purpose of reducing emissions.

"Emissions inspection" means an emissions inspection of a motor vehicle performed by an emissions inspector employed by or working at an emissions inspection station or fleet emissions inspection station, using the tests, procedures, and provisions set forth in this chapter.

"Emissions inspection station" means a facility or portion of a facility ~~which~~ *that* has obtained an emissions inspection station permit from the director authorizing the facility to perform emissions inspections in accordance with the provisions of this chapter.

"Emissions inspector" means a person licensed by the department to perform inspections of vehicles required under the Virginia Motor Vehicle Emissions Control Law and is qualified in accordance with this chapter.

"Emissions standard" means any provision of Part III (9 VAC 5-91-160 et seq.) or Part XIV (9 VAC 5-91-790 et seq.) ~~which~~ *that* prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution.

"Empty weight (EW)" means that weight stated as the EW on a Virginia motor vehicle registration or derived from the motor vehicle title or manufacturer's certificate of origin. The EW may be used to determine emissions inspection standards.

"Enhanced emissions inspection program" means a motor vehicle emissions inspection including procedures, emissions standards, and equipment required by 40 CFR Part 51, Subpart S or equivalent and consistent with applicable requirements of the federal Clean Air Act. The director ~~shall~~ *will* administer the enhanced emissions inspection program. Under the Virginia Motor Vehicle Emissions Control Law, the program requires that affected motor vehicles, unless otherwise exempted, receive biennial inspections at official emissions inspection stations, which may be test and repair facilities, in accordance with this chapter. Nothing in this program shall bar enhanced emissions inspection stations or facilities from also performing vehicle repairs.

"EPA" means the United States Environmental Protection Agency.

"Equivalent test weight (ETW)" or "emission test weight" means the weight of a motor vehicle as automatically determined by the emissions analyzer system based on vehicle make, model, body, style, model year, engine size, permanently installed equipment, and other manufacturer and aftermarket supplied information, and used for the purpose of assigning dynamometer resistance and exhaust emissions standards for the conduct of an exhaust emissions inspection.

"Evaporative system pressure test" or "pressure test" means a physical test of the evaporative emission control system on a motor vehicle to determine whether the evaporative system vents emissions of volatile organic compounds from the fuel tank and fuel system to an on-board emission control device, and prevents their release to the ambient air under normal vehicle operating conditions. Such testing shall only be conducted at emissions inspection stations upon installation of

approved equipment and software necessary for performing the test, as determined by the director.

"Exhaust gas analyzer" means an instrument ~~which~~ *that* is capable of measuring the concentrations of certain air pollutants in the exhaust gas from a motor vehicle.

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

"Federal Clean Air Act" means 42 USC § 7401 et seq.

"Fleet" means 20 or more motor vehicles ~~which~~ *that* are owned, operated, leased or rented for use by a common owner.

"Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

"Flexible-fuel vehicle" means any motor vehicle capable of operating on two or more fuels, either one at a time or any mixture of two or more different fuels.

"Formal hearing" means a board or department process that provides for the right of private parties to submit factual proofs as provided in § 2.2-4020 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 2.2-4019 of the Administrative Process Act.

"Fuel control systems" means those mechanical, electro-mechanical, galvanic or electronic parts or assemblies which regulate the air-to-fuel ratio in an engine for the purpose of providing a combustible charge.

"Fuel filler cap pressure test" or "gas cap pressure test" means a test of the ability of the fuel filler cap to prevent the release of fuel vapors from the fuel tank under normal operating conditions.

"Gas span" means the adjustment of an exhaust gas analyzer to correspond with known concentrations of gases.

"Gas span check" means a procedure using known concentrations of gases to verify the gas span adjustment of an analyzer.

"Gross vehicle weight rating (GVWR)" means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and is (i) expressed on a permanent identification label affixed to the motor vehicle; (ii) stated on the manufacturer's certificate of origin; or (iii) coded in the vehicle identification number. If the GVWR can be determined it shall be one element used to determine emissions inspection standards and test type. If the GVWR is unavailable, the department may make a determination based on the best available evidence including manufacturer reference, information coded in the vehicle identification number, or other available sources of information from which to make the determination.

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"Heavy duty gasoline vehicle (HDGV)" means a heavy duty vehicle using gasoline as its fuel.

"Heavy duty vehicle (HDV)" means any affected motor vehicle (i) which is rated at more than 8,500 pounds GVWR or (ii) which has a loaded vehicle weight or GVWR of more than 6,000 pounds and has a basic frontal area in excess of 45 square feet.

"High emitter index" means the method of categorizing the probable emissions inspection failure-rates of engine families. Values within the index are determined by computing the percentile of the historical emissions inspection failure rate of a specific engine family, i.e., a specific group of vehicles with the same vehicle type, year, make and engine size, to the historical emissions inspection failure rate of all engine families in a specific model year group. Failure rates are based on the most recent full year of emissions inspection test data from the Virginia Motor Vehicle Emissions Control Program. Vehicles with an index value above 75 are considered "high-emitters."

"Identification number" means the number assigned by the department to uniquely identify department personnel, an emissions inspection station, a certified emissions repair facility, a licensed emissions inspector, a certified emissions repair technician or other authorized personnel as necessary for specific tasks.

"Idle mode" means a condition where the vehicle engine is warm and running at the rate specified by the manufacturer as curb idle, where the engine is not propelling the vehicle, and where the throttle is in the closed or idle stop position.

"Ignition systems" means those parts or assemblies which that are designed to cause and time the ignition of a compressed air and fuel charge.

"Implementation plan" means the plan, including any revision thereof, that has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act, or promulgated or approved by the administrator pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and that implements the relevant requirements of the federal Clean Air Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 2.2-4019 of the Administrative Process Act.

"Initial inspection" means the first complete emissions inspection of a motor vehicle conducted in accordance with the biennial inspection requirement and for which a valid vehicle emissions inspection report was issued. Any test following the initial inspection is a retest or reinspection.

"Inspection area" means the area that is occupied by the certified analyzer system and the vehicle being inspected.

"Inspection fee" means the amount of money that the emissions inspection station may collect from the motor vehicle owner for each chargeable inspection.

"Light duty gasoline vehicle (LDGV)" means a light duty vehicle using gasoline as its fuel.

"Light duty gasoline truck (LDGT1)" means a light duty truck 1 using gasoline as its fuel.

"Light duty gasoline truck (LDGT2)" means a light duty truck 2 using gasoline as its fuel."

Light duty truck (LDT)" means any affected motor vehicle which (i) has a loaded vehicle weight or GVWR of 6,000 pounds or less and meets any one of the criteria below; or (ii) is rated at more than 6,000 pounds GVWR but less than 8,500 pounds GVWR and has a basic vehicle frontal area of 45 square feet or less; and meets one of the following criteria:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.
2. Designed primarily for transportation of persons and has a capacity of more than 12 persons.
3. Equipped with special features enabling off-street or off-highway operation and use.

"Light duty truck 1" or " (LDT1)" means any ~~affected motor vehicle which meets the criteria above and is~~ light duty truck rated at 6,000 pounds GVWR or less. LDT1 is a subset of light duty trucks.

"Light duty truck 2" or " (LDT2)" means any ~~affected motor vehicle which meets the criteria above and is~~ light duty truck rated at greater than 6,000 pounds GVWR. LDT2 is a subset of light duty trucks.

"Light duty vehicle (LDV)" means an affected motor vehicle that is a passenger car or passenger car derivative capable of seating 12 passengers or less.

"Loaded vehicle weight (LVW)" or "curb weight" means the weight of a vehicle and its standard equipment; i.e., the empty weight as recorded on the vehicle's registration or the base shipping weight as recorded in the vehicle identification number, whichever is greater; plus the weight of any permanent attachments, the weight of a nominally filled fuel tank, plus 300 pounds.

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

"Mobile fleet emissions inspection station" means a facility or entity which that provides emissions inspection equipment or services to a fleet emissions inspection station on a temporary basis. Such equipment is not permanently installed at the fleet facility but is temporarily located at the fleet facility for the sole purpose of testing vehicles owned, operated, leased or rented for use by a common owner.

"Model year" means, except as may be otherwise defined in this chapter, the motor vehicle manufacturer's annual production period which includes the time period from January 1 of the calendar year prior to the stated model year to December 31 of the calendar year of the stated model year; provided that, if the manufacturer has no annual production period, the term "model year" shall mean the calendar year of manufacture. For the purpose of this definition, model year is

applied to the vehicle chassis, irrespective of the year of manufacture of the vehicle engine.

"Motor vehicle" means any motor vehicle as defined in § 46.2-100 of the Code of Virginia as a motor vehicle and that:

1. Is designed for the transportation of persons or property; and
2. Is powered by an internal combustion engine.

"Motor vehicle dealer" means a person who is licensed by the Department of Motor Vehicles in accordance with §§ 46.2-1500 and 46.2-1508 of the Code of Virginia.

"Motor vehicle inspection report" means a printed certificate of emissions inspection that is a report of the results of an emissions inspection. It indicates whether the motor vehicle has (i) passed, (ii) failed, or (iii) obtained a temporary emissions inspection waiver. It may also indicate whether the emissions inspection could not be completed due to an exhaust dilution or an engine condition that prevents the inspection from being completed. The report shall accurately identify the motor vehicle and shall include inspection results, recall information provided by the department, warranty and repair information, and a unique identification number.

"Motor vehicle owner" means any person who owns, leases, operates, or controls a motor vehicle or fleet of motor vehicles.

"Nonconforming vehicle" means a vehicle not manufactured for sale in the United States to conform to emissions standards established by the federal government.

"Normal business hours" for emissions inspection stations, means a daily eight-hour period Monday through Friday, between the hours of 8 a.m. and 6 p.m., with the exception of national holidays, state holidays, temporary closures noticed to the department and closures due to the inability to meet the requirements of this chapter. Nothing in this chapter shall prevent stations from performing inspections at other times in addition to the "normal business hours." Emissions inspection stations may, with the approval of the department, substitute a combined total of eight hours, between 8 a.m. and 6 p.m., over a weekend period for one weekday as their "normal business hours" for conducting emission inspections. Emissions inspection stations shall post inspection hours.

"Northern Virginia emissions inspection program" means the emissions inspection program required by this chapter in the Northern Virginia program area.

"Northern Virginia program area" or "program area" means the territorial area encompassed by the boundaries of the following localities: the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

"On-board diagnostic system"—~~or~~—" (OBD system)" means the computerized emissions control diagnostic system installed on model year 1996 and newer affected motor vehicles.

"On-board diagnostic system test"—~~or~~—" (OBD) system test" means an evaluation of the OBD system pursuant to 40 CFR 86.094-17 according to procedures specified in 40 CFR 85.2222 and this chapter.

"On-board diagnostic vehicle"—~~or~~—" (OBD vehicle)" means a model year 1996 and newer model affected motor vehicle equipped with an on-board diagnostic system and meeting the requirements of 40 CFR 85.2231.

"On-road testing" means tests of motor vehicle emissions or emissions control devices by means of roadside pullovers or remote sensing devices.

"Operated primarily" means [*motor*] vehicle operation that constitutes [~~a significant use in the program area. For the purpose of~~] this definition [~~compliance with the requirements of 9 VAC 5-91-160 and 9 VAC 5-91-170, significant use shall be (i) mileage in excess of 6,000 miles per year or (ii) routine operation into or within the program area as evidenced by recordation of travel in the program area at least three times in a two-week period by remote sensing or on road testing. For the purpose of compliance with the requirements of 9 VAC 5-91-180, significant use shall be~~] routine operation into or within the program area as evidenced by [~~recordation by~~] observation using [] remote sensing equipment at least three times in a [~~two-month~~ 60-day] period with no less than 30 days between the first and last [~~recordation~~] observation []. The director may increase the number of observations required for compliance determination if, in his discretion, based on program experience, such an increase would not significantly adversely impact the objectives of this chapter. [The term "operated primarily" shall be used to identify motor vehicle operation that is subject to the exhaust emission standards for on-road testing through remote sensing set forth in 9 VAC 5-91-180. The term "operated primarily" shall not be used to identify motor vehicle operation that will subject the vehicle to the compliance provisions set forth in 9 VAC 5-91-160 and 9 VAC 5-91-170 for biennial emissions inspections.]

"Order" means any decision or directive of the board or the director, including orders, consent orders, and orders of all types rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of this chapter. Unless specified otherwise in this chapter, orders shall only be issued after the appropriate administrative proceeding.

"Original condition" means the condition of the vehicle, parts, and components as installed by the manufacturer but not necessarily to the original level of effectiveness.

"Owner" means any person who owns, leases, operates, controls or supervises a facility or motor vehicle.

"Party" means any person who actively participates in the administrative proceeding or offers comments through the public participation process and is named in the administrative record. The term "party" also means the department.

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

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

"Referee station" means those facilities operated or used by the department to (i) determine program effectiveness, (ii)

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resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations, and (iii) provide such other technical support and information, as appropriate, to emissions inspection stations and motor vehicle owners.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in Appendix A of 40 CFR Part 60.

"Reinspection" or "retest" means a type of inspection selected by the department or the emissions inspector when a request for an inspection is due to a previous failure. Any inspection that occurs 120 days or less following the most recent chargeable inspection is a retest.

"Rejected" or "rejected from testing" means that the vehicle cannot be inspected due to conditions in accordance with 9 VAC 5-91-420 C or 9 VAC 5-91-420 G 3.

"Remote sensing" means the observation, measurement, and recordation of motor vehicle exhaust emissions from motor vehicles while ~~travelling~~ *traveling* on roadways or in specified areas by specialized equipment. Such equipment may use light sensing and electronic stimuli in conjunction with devices, including videographic and digitized images, to detect and record vehicle identification information, such as registration or other identification numbers.

"Sensitive mission vehicle" means any vehicle which, for law enforcement or national security reasons, cannot be tested in the public inspection system and must not be identified through the fleet testing system. For such vehicles, an autonomous fleet testing system may be established by agreement between the controlling agency and the director.

"Span gas" means gases of known concentration used as references to adjust or verify the accuracy of an exhaust gas analyzer that are approved by the department and are so labeled.

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

"Standardized instruments" means laboratory instruments calibrated with precision gases traceable to the National Institute of Standards and Technology and accepted by the department as the standards to be used for comparison purposes. All candidate instruments are compared in performance to the standardized instruments.

"Tactical military vehicle" means any motor vehicle designed to military specifications or a commercially designed motor vehicle modified to military specifications to meet direct transportation support of combat, tactical, or military relief operations, or training of personnel for such operations.

"Tampering" means to alter, remove or otherwise disable or reduce the effectiveness of emissions control equipment on a motor vehicle.

"Test" means an emissions inspection of a vehicle, or any portion thereof, performed by an emissions inspector at an emissions inspection station, using the procedures and provisions set forth in this chapter.

"Test and repair" means motor vehicle emissions inspection stations ~~which that~~ perform emissions inspections and may

also perform vehicle repairs. No provision of this chapter shall bar emissions inspection stations from also performing vehicle repairs.

"Thermostatic air cleaner" means a system that supplies temperature-regulated air to the air intake system during engine operation.

"True concentration" means the concentration of the gases of interest as measured by a standardized instrument ~~which that~~ has been calibrated with 1.0% precision gases traceable to the National Bureau of Standards.

"Two-speed idle test"—~~or~~—" (TSI)" means a vehicle exhaust emissions test, performed in accordance with section (II) of 40 CFR Part 51, Appendix B to Subpart S, which measures the concentrations of pollutants in the exhaust gases of an engine (i) while the motor vehicle transmission is not propelling the vehicle and (ii) while the engine is operated at both curb idle and at a nominal engine speed of 2,500 rpm.

"*Vehicle specific power (VSP)*" means an indicator expressed as a function of vehicle speed, acceleration, drag coefficient, tire rolling resistance and roadway grade that is used to characterize the load a vehicle is operating under at the time and place a vehicle is measured by remote sensing equipment. It is calculated using the following formula:

$$VSP = 4.39 \times \text{Sine (Site Grade in Degrees/57.3)} \times \text{Speed} + K1$$

$$\times \text{Speed} \times \text{Acceleration} + K2 \times \text{Speed} + K3 \times \text{Speed}^3.$$

Where:

VSP = vehicle specific power indicator;

Sine = the trigonometric function that for an acute angle is the ratio between the side opposite the angle when it is considered part of a right triangle and the hypotenuse;

Site Grade in Degrees = slope of road where remote sensing measurement is taken;

K1, K2 and K3 = empirically determined coefficients specific to the weight class of the vehicle;

Speed = rate of motion in miles per hour of vehicle at the time remote sensing measurement is taken; and

Acceleration = change in speed in miles per hour per second.

For light duty vehicles the values for K1, K2 and K3 are respectively 0.22, 0.0954 and 0.0000272. Based on EPA guidance, the department may develop different values for K1, K2 and K3 that are applicable to heavy duty vehicles or to specific classes of light duty vehicles.

"Virginia Motor Vehicle Emissions Control Program" means the program for the inspection and control of motor vehicle emissions established by Virginia Motor Vehicle Emissions Control Law.

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

"Visible smoke" means any air pollutant, other than visible water droplets, consisting of black, gray, blue or blue-black airborne particulate matter emanating from the exhaust system or crankcase. Visible smoke does not mean steam.

"Zero gas" means a gas, usually air or nitrogen, which is used as a reference for establishing or verifying the zero point of an exhaust gas analyzer.

9 VAC 5-91-160. [No change from proposed].

9 VAC 5-91-180. Exhaust emissions standards for on-road testing through remote sensing.

A. No *affected* motor vehicle shall exceed the emissions standard for carbon monoxide (CO), the emission standard for hydrocarbons (HC) or nitric oxide (NO), whichever is selected for use, or both, set forth in Table III-B when measured with a remote sensing device and in accordance with the inspection procedures prescribed in Part XII (9 VAC 5-91-740 et seq.).

B. Any *affected* motor vehicle determined to have exceeded any emissions standards in Table III-B at least twice within 90 days when measured by a remote sensing device in accordance with the procedures of Part XII (9 VAC 5-91-740 et seq.) may be subject to an emissions inspection at an emissions inspection station in accordance with Part XII (9 VAC 5-91-740 et seq.) or a civil charge in accordance with § 46.2-1178.1 B of the Code of Virginia, or both.

C. Beginning January 1, [2004 2005], motor vehicles that exceed the emissions standards in Table III-B two days in any 120-day period shall be considered to have violated the emissions standards. In addition, the department may use the high emitter index as [an additional a] screening requirement.

D. Beginning [January July] 1, 2005, or later date based on analysis of remote sensing failure rates and confirmation test results, the department may determine that an affected vehicle is a high emitter if the vehicle exceeds the standards in Table III-B once and is also determined to have a high emitter index of greater than 75.

E. All remote sensing measurements used to determine if a vehicle exceeds emissions standards prescribed in Table III-B shall be taken at valid sites under conditions at which the vehicle specific power (VSP) indicator is between 3 and 22. Standards for NO shall be corrected for VSP using the following formula:

$$\text{NO standard} = \text{Low Range Standard} + (\text{VSP}-3)/19 \times (\text{High Range Standard} - \text{Low Range Standard}).$$

Where:

Low Range Standard = the smaller values in Table III-B in the NO (ppm) Range column;

VSP = vehicle specific power indicator; and

High Range Standard = the larger values in Table III-B in the NO (ppm) Range column.

F. The department may adjust the standards in Table III-B if it is determined that the a standard is causing a false failure confirmation test pass rate in excess of 20% or less than 5.0% as measured by the results of emissions inspections at emissions inspection stations. Such adjustments may be for

specific model years models within each model year group based on manufacturer's emissions control technology.

TABLE III-B.
EXHAUST EMISSION STANDARDS FOR REMOTE SENSING.

Model Year	CO (%)	HC (ppm)
1977-79, 6000 lb. and less	10.0	1600
1977-79, more than 6000 lb.	12.0	2000
1980-95, 8500 lb. and less	4.8	880
1980-95, more than 8500 lb.	6.0	880
1996-98, 6000 lb. and less	3.6	660
1996-98, more than 6000 lb.	5.0	660
1999 and newer, 6000 lb. and less	3.60	440
1999 and newer, more than 6000 lb.	5.0	440

Standards Beginning January 1, [2004 2005]			
Period/Model Year/ Vehicle Type	CO (%)	HC (ppm)	NO (ppm) Range ¹ Low to High
Pre-1981 – LDGT (1 or 2)	7.0%	1000	
Pre-1981 – LDGV	7.0%	1000	
Pre-1981 – HDGV	7.0%	1000	
1981 to 1985 – LDGT (1 or 2)	6.0%	800	1500–2000
1981 to 1985 – LDGV	6.0%	750	1200–1800
1981 to 1985 – HDGV	7.0%	750	
1986 to 1990 – LDGT (1 or 2)	5.5%	700	1200–1800
1986 to 1990 – LDGV	5.5%	650	1000–1600
1986 to 1990 – HDGV	6.5%	750	
1991 to 1995 – LDGT (1 or 2)	5.0%	650	1200–1800
1991 to 1995 – LDGV	5.0%	600	1000–1600
1991 to 1995 – HDGV	6.0%	700	
1996 and newer LDGT (1 or 2)	4.0%	450	600–900
1996 and newer LDGV	4.0%	450	600–900
1996 and newer HDGV	5.0%	600	
Standards Beginning [January July] 1, 2005, and later - Two or More On-Road Measurements			
Period/Model Year/ Vehicle Type	CO (%)	HC (ppm)	NO (ppm) Range Low to High
Pre-1981 – LDGT (1 or 2)	7.0%	1000	
Pre-1981 – LDGV	7.0%	1000	
Pre-1981 – HDGV	7.0%	1000	
1981 to 1985 – LDGT (1 or 2)	6.0%	800	1500–2000
1981 to 1985 – LDGV	6.0%	750	1200–1800
1981 to 1985 – HDGV	7.0%	750	
1986 to 1990 – LDGT (1 or 2)	5.5%	700	1200–1800
1986 to 1990 – LDGV	5.5%	650	1000–1600
1986 to 1990 – HDGV	6.5%	750	
1991 to 1995 – LDGT (1 or 2)	4.0%	550	1000–1500
1991 to 1995 – LDGV	4.0%	500	900–1400
1991 to 1995 – HDGV	6.0%	700	
1996 and newer LDGT (1 or 2)	3.0%	350	500–800
1996 and newer LDGV	3.0%	350	500-800
1996 and newer HDGV	5.0%	600	
[January July] 1, 2005 and later - Single On-Road Measurement Vehicle must have High Emitter Index of 75% or Higher			
Period/Model Year/ Vehicle Type	CO (%)	HC (ppm)	NO (ppm) Range Low to High
Pre-1981 – LDGT (1 or 2)	7.0%	1000	
Pre-1981 – LDGV	7.0%	1000	
Pre-1981 – HDGV	7.0%	1000	
1981 to 1985 – LDGT (1 or 2)	6.0%	800	1500–2000
1981 to 1985 – LDGV	6.0%	750	1200–1800

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1981 to 1985 – HDGV	7.0%	750	
1986 to 1990 – LDGT (1 or 2)	5.5%	700	1200–1800
1986 to 1990 – LDGV	5.5%	650	1000–1600
1986 to 1990 – HDGV	6.5%	750	
1991 to 1995 – LDGT (1 or 2)	4.0%	550	1000–1500
1991 to 1995 – LDGV	4.0%	500	900–1400
1991 to 1995 – HDGV	6.0%	700	
1996 + LDGT (1 or 2)	3.0%	350	500–800
1996 + LDGV	3.0%	350	500–800
1996 + HDGV	5.0%	600	

¹ NO standard = Low Range standard + (Actual VSP-3)/19 x (High Range standard – Low Range Standard)

~~D. For any 30 day period, up to 5.0% of the number of vehicles measured three times which have been detected as having the cleanest measurements, based on an average of three measurements using on-road testing equipment within the period, may, at the discretion of the director, be recorded as having passed an emissions inspection and such result shall be entered into the emissions inspection record for that vehicle.~~

~~E. Remote sensing measurements used for such purposes shall be from at least two different on-road testing locations.~~

~~F. Remote sensing measurements obtained while a vehicle is decelerating shall not be used for the purpose described in this section.~~

G. Beginning [~~January~~ July] 1, 2005, clean screen vehicles will be identified using on-road testing equipment measurements based on all of the following criteria:

1. Up to 5.0% of the number of vehicles measured during any 30-day period may be identified as clean screen vehicles. [This percentage may be evaluated annually by the department and adjusted based on the amount of emissions reduction lost due to clean screening.]

2. Vehicles that have the cleanest measurements based on an average of at least three measurements (taken on three different days [in a 120-day time period]) may be identified as clean screen vehicles.

3. Vehicles [~~with~~ must have] no measurements exceeding the standards in Table III B [~~may~~ (taken on three different days in a 120-day time period as required in subdivision 2 of this subsection) to] be identified as clean screen vehicles.

[4. Vehicles must not be equipped with an OBD system unless DEQ makes a determination to include certain OBD model years based on evidence that there would not be a significant loss in emissions reduction benefits.]

H. At the discretion of the director, vehicles identified as clean screen vehicles in accordance with subsection G of this section may be recorded as having passed the next emissions inspection required by § 46.2-1183 of the Code of Virginia and the result shall be entered into the emissions inspection record for that vehicle.

9 VAC 5-91-740 through 9 VAC 5-91-743. [No change from proposed.]

9 VAC 5-91-750. Operating procedures; violation of standards.

A. Remote sensing equipment shall be operated in accordance with the remote sensing equipment manufacturers operating instructions and any contract or agreement between the department and the equipment operator.

B. Motor vehicles determined by remote sensing equipment to have exceeded the applicable emissions standard in Table III-B in 9 VAC 5-91-180 ~~twice within 90 days~~ shall be considered to have violated such emissions standards.

1. Owners of such motor vehicles ~~shall~~ will be issued a notice of violation and shall be subject to the civil charges in 9 VAC 5-91-760 unless waived pursuant to this section.

2. Upon a determination by the department that a violation has occurred, motorists ~~shall~~ will be informed by the department or its representative of the failure to comply with emissions standards and of the dates, times, and places such remote sensing *measurement* occurred.

C. Civil charges assessed pursuant to this part ~~shall~~ will be waived if, within ~~90~~ 30 days of the date of the notice of the violation, the motor vehicle owner provides proof to the department that ~~since the date of the violation, (i) the vehicle has passed a vehicle emissions inspection, (ii) the vehicle has received an emissions inspection waiver, or (iii) the vehicle has qualified for a waiver within the 12 months prior to the violation.~~ :

1. Since the date of the violation, the vehicle has passed, or received a waiver as the result of, a confirmation test, or

2. Within the 12 months prior to the violation, the vehicle had received an emissions inspection waiver.

D. The requirement for an emissions inspection ~~or payment of civil charges~~, based on a remote sensing failure, may be waived by the department if the *affected* motor vehicle in question (i) is, by virtue of its registration date, required to have an emissions inspection within ~~90 days~~ three months of the date of the ~~notice of violation~~ remote sensing *measurement* that indicates the vehicle has exceeded the applicable standards in Table III-B in 9 VAC 5-91-180 or (ii) has received a waiver within the 12 months prior to the violation.

E. For 1996 and newer model vehicles with OBD, the director may require that the vehicle pass an exhaust test (ASM or two-speed idle) in addition to the OBD system test.

[F. Notice of violations and civil charges may be issued to any motorist no more than two times in any 365-day period for any one motor vehicle.]

9 VAC 5-91-760. Schedule of civil charges.

A. No charge shall exceed an adjusted maximum charge of \$450 adjusted annually by using 1990 as the base year and applying the consumer price index.

B. For violations measured in accordance with 9 VAC 5-91-750 B to be up to [~~120%~~ 150%] of the applicable standard,

the charge shall not exceed [~~20%~~ 50%] of the adjusted maximum charge in subsection A of this section.

~~[G. For violations measured in accordance with 9 VAC 5-91-750 B to be more than 120% but not exceeding 140% of the applicable standard, the charge shall not exceed 40% of the adjusted maximum charge in subsection A of this section.~~

~~D. For violations measured in accordance with 9 VAC 5-91-750 B to be more than 140% but not exceeding 160% of the applicable standard, the charge shall not exceed 60% of the adjusted maximum charge in subsection A of this section.~~

~~E. For violations measured in accordance with 9 VAC 5-91-750 B to be more than 160% but not exceeding 180% of the applicable standard, the charge shall not exceed 80% of the adjusted maximum charge in subsection A of this section.~~

F. C.] For violations measured in accordance with 9 VAC 5-91-750 B to be over [~~480%~~ 150%] of the applicable standard, the charge shall not exceed the adjusted maximum charge in subsection A of this section.

~~[G. D.]~~ Civil charges assessed pursuant to this part shall be paid into the state treasury according to § 46.2-1178.1 of the Code of Virginia.

~~[H. E.]~~ For the purpose of applying a civil charge as prescribed in this section, the degree of violation shall be determined by averaging the ~~readings highest~~ [~~percentage percentages~~] by which the emissions standard was exceeded for each remote sensing measurement in which ~~exceeded~~ at least one of the ~~standard applicable standards~~ was exceeded.

VA.R. Doc. No. R03-196; Filed May 10, 2005, 2:35 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-141. Family Access to Medical Insurance Security Plan (amending 12 VAC 30-141-500).**

Statutory Authority: §§ 32.1-324, 32.1-325 and 32.1-351 of the Code of Virginia.

Effective Date: June 29, 2005.

Agency Contact: Linda L. Nablo, Director, Child Health Insurance Programs/FAMIS Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4212, FAX (804) 786-1680, or e-mail linda.nablo@dmas.virginia.gov.

Summary:

The amendments provide that certain FAMIS enrollees who are prescribed more than nine unique prescriptions in a 180-day period shall receive retrospective utilization review of their drug profiles. In addition, for enrollees who meet the threshold requirement and where the utilization reveals their drug regimen could cause a potentially harmful drug-to-drug

Level One interaction, the program will require the dispensing pharmacist to obtain prior authorization before dispensing the prescribed drug.

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.

12 VAC 30-141-500. Benefits reimbursement.

A. Reimbursement for the services covered under FAMIS fee-for-service and PCCM and MCHIPs shall be as specified in this section.

B. Reimbursement for physician services, surgical services, clinic services, prescription drugs, laboratory and radiological services, outpatient mental health services, early intervention services, emergency services, home health services, immunizations, mammograms, medical transportation, organ transplants, skilled nursing services, well baby and well child care, vision services, durable medical equipment, disposable medical supplies, dental services, case management services, physical therapy/occupational therapy/speech-language therapy services, hospice services, school-based health services, and certain community-based mental health services shall be based on the Title XIX rates.

C. Reimbursement to MCHIPs shall be determined on the basis of the estimated cost of providing the MCHIP benefit package and services to an actuarially equivalent population. MCHIP rates will be determined annually and published 30 days prior to the effective date.

D. Exceptions.

1. Prior authorization is required after five visits in a fiscal year for physical therapy, occupational therapy and speech therapy provided by home health providers and outpatient rehabilitation facilities and for home health skilled nursing visits. Prior authorization is required after five visits for outpatient mental health visits in the first year of service and prior authorization is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging, Computer Axial Tomography scans, or Positron Emission Tomography scans.

2. Reimbursement for inpatient hospital services will be based on the Title XIX rates in effect for each hospital. Reimbursement shall not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made shall be final and there shall be no retrospective cost settlements.

3. Reimbursement for outpatient hospital services shall be based on the Title XIX rates in effect for each hospital. Payments made will be final and there will be no retrospective cost settlements.

4. Reimbursement for inpatient mental health services other than by free standing psychiatric hospitals will be based on the Title XIX rates in effect for each hospital. Reimbursement will not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made will be final and there will be no retrospective cost settlements.

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5. Reimbursement for outpatient rehabilitation services will be based on the Title XIX rates in effect for each rehabilitation agency. Payments made will be final and there will be no retrospective cost settlements.

6. Reimbursement for outpatient substance abuse treatment services will be based on rates determined by DMAS for children ages 6 through 18. Payments made will be final and there will be no retrospective cost settlements.

7. Reimbursement for prescription drugs will be based on the Title XIX rates in effect. Reimbursements for Title XXI do not receive drug rebates as under Title XIX.

8. *Reimbursement for covered prescription drugs for noninstitutionalized FAMIS recipients receiving the fee-for-service or PCCM benefits will be subject to review and prior authorization when their current number of prescriptions exceeds nine unique prescriptions within 180 days, and as may be further defined by the agency's guidance documents for pharmacy utilization review and the prior authorization program. The prior authorization process shall be applied consistent with the process set forth in 12 VAC 30-50-210 A 7.*

VA.R. Doc. No. R04-142; Filed May 10, 2005, 4:44 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Title of Regulation: 18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (adding 18 VAC 60-20-17).

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

Effective Date: June 29, 2005.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, or e-mail sandra.reen@dhp.virginia.gov.

Summary:

The regulation establishes the criteria for delegation of informal fact-finding proceedings to an agency subordinate, 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.

The regulation replaces emergency regulations that have been in effect since August 25, 2004.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

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; and*
- 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.

VA.R. Doc. No. R04-200; Filed May 3, 2005, 2:02 p.m.

Title of Regulation: 18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-10, 18 VAC 60-20-16, 18 VAC 60-20-20, 18 VAC 60-20-50 through 18 VAC 60-20-90, 18 VAC 60-20-105, 18 VAC 60-20-110, 18 VAC 60-20-120, 18 VAC 60-20-190, 18 VAC 60-20-195; adding 18 VAC 60-20-106, 18 VAC 60-20-107, 18 VAC 60-20-135; repealing 18 VAC 60-20-130).

Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: June 29, 2005.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 West Broad Street, 5th Floor, Richmond, VA

23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, or e-mail sandra.reen@dhp.virginia.gov.

Summary:

The amendments update definitions to reflect current terminology, particularly those that pertain to revised regulations for anesthesia and sedation, and eliminate terms that are no longer being used. Amendments to the requirements for dental education reflect the current board interpretation of an accredited or approved dental program, which is either a predoctoral dental education program or a one- or two-year postdoctoral dental education program.

Changes in examination requirements offer additional options for persons who took the board-approved examinations five or more years prior to applying for licensure in Virginia. In addition, there are new requirements for remediation for candidates who have failed the licensure examination three times. Rather than requiring passage of a jurisprudence examination, the board will now require that the applicant read and understand the laws and regulations governing the practice of dentistry in Virginia.

Regulations for anesthesia, sedation and analgesia are rewritten and reorganized to make clear the application of the rules in various settings, the educational and training qualifications of the dentist and dental assistants, the equipment and monitoring needed for each level, and the discharge criteria for ensuring the safety of the patient.

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.

REGISTRAR'S NOTICE: The repropoed regulation was adopted as published in 21:6 VA.R. 576-591 November 29, 2004, 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 repropoed regulation are set out.

18 VAC 60-20-10. [No change from repropoed.]

18 VAC 60-20-16. [No change from repropoed.]

18 VAC 60-20-20. [No change from repropoed.]

18 VAC 60-20-50. Requirements for continuing education.

A. After April 1, 1995, a dentist or a dental hygienist shall be required to have completed a minimum of 15 hours of approved continuing education for each annual renewal of licensure.

1. Effective [~~one year after the effective date of this regulation~~] June 29, 2006, a dentist or a dental hygienist shall be required to maintain evidence of successful completion of training in basic cardiopulmonary resuscitation.

2. Effective [~~one year after the effective date of this regulation~~] June 29, 2006, a dentist who administers or a dental hygienist who monitors patients under general anesthesia, deep sedation or conscious sedation shall complete four hours every two years of approved continuing

education directly related to administration or monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

3. Continuing education hours for dentists in excess of the number required for renewal may be transferred or credited to ~~another~~ the next renewal year for a total of not more than 15 hours.

B. An approved continuing dental education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dentistry and dental hygiene; or
2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any courses, to include audio and video presentations, which meet the requirements in subdivision B 1 of this section and which are given by one of the following sponsors:

1. American Dental Association and National Dental Association, their constituent and component/branch associations;
2. American Dental Hygienists' Association and National Dental Hygienists Association, their constituent and component/branch associations;
3. American Dental Assisting Association, its constituent and component/branch associations;
4. American Dental Association specialty organizations, their constituent and component/branch associations;
5. American Medical Association and National Medical Association, their specialty organizations, constituent, and component/branch associations;
6. Academy of General Dentistry, its constituent and component/branch associations;
7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;
8. A college ~~or~~ university ~~or~~ hospital service which that is accredited by an accrediting agency approved by the U.S. Office Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Health Care Organizations;
9. The American Heart Association, the American Red Cross, the American Safety and Health Institute and the American Cancer Society;
10. A medical school which is accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

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11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society; or

13. *The MCV Orthodontic and Research Foundation;*

14. *The Dental Assisting National Board; or*

~~13. 15. Any other board approved programs~~ A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, or Western Regional Examining Board) when serving as an examiner.

D. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following his the licensee's initial licensure.

E. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

F. A licensee is required to provide information on compliance with continuing education requirements in his annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

G. All licensees are required to maintain original documents verifying the date and subject of the program or activity. Documentation must be maintained for a period of four years following renewal.

H. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, must submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active, *not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement.*

I. Continuing education hours required by disciplinary board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

J. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

18 VAC 60-20-60 through 18 VAC 60-20-105. [No change from proposed.]

18 VAC 60-20-106. General provisions.

A. *This part (18 VAC 60-20-106 et seq.) shall not apply to:*

1. *The administration of local anesthesia in dental offices; or*

2. *The administration of anesthesia in (i) a licensed hospital as defined in §32.1-123 of the Code of Virginia or state-operated hospitals or (ii) a facility directly maintained or operated by the federal government.*

B. *Appropriateness of administration of general anesthesia or sedation in a dental office.*

1. *Anesthesia and sedation may be provided in a dental office for patients who are Class I and II as classified by the American Society of Anesthesiologists (ASA).*

2. *Conscious sedation, deep sedation or general anesthesia shall not be provided in a dental office for patients in ASA risk categories of Class IV and V, as classified by the American Society of Anesthesiologists (ASA).*

3. *Patients in ASA risk category Class III shall only be provided general anesthesia or sedation by:*

a. *A dentist after consultation with their primary care physician or other medical specialist regarding potential risk and special monitoring requirements that may be necessary; or*

b. *An oral and maxillofacial surgeon after performing an evaluation and documenting the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.*

C. *Prior to administration of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the anesthesia or sedation planned along with the risks, benefits and alternatives and shall obtain informed, written consent from the patient or other responsible party.*

D. *The determinant for the application of these rules shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the type and dosage of medication, the method of administration and the individual characteristics of the patient as documented in the patient's record.*

E. *A dentist who is administering anesthesia or sedation to patients prior to [~~(insert effective date of regulations)~~ June 29, 2005,] shall have one year from that date to comply with the educational requirements set forth in this chapter for the administration of anesthesia or sedation.*

18 VAC 60-20-107. [No change from repropoed.]

18 VAC 60-20-110. Requirements to administer deep sedation/general anesthesia.

A. Educational requirements. A dentist may employ or use deep sedation/general anesthesia on an outpatient basis by meeting one of the following educational criteria and by posting the educational certificate, in plain view of the patient, which verifies completion of the advanced training as required in subdivision 1 or 2 of this subsection. ~~The foregoing~~ These requirements shall not apply nor interfere with requirements for obtaining hospital staff privileges.

1. *Has completed a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with published guidelines by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry; effective October 1999), which are incorporated by reference in this chapter in effect at the time the training occurred; or*

2. Completion of an American Dental Association approved residency in any dental specialty which incorporates into its curriculum a minimum of one calendar year of full-time training in clinical anesthesia and related clinical medical subjects (i.e. medical evaluation and management of patients), the standards of teaching comparable to those set forth in published guidelines by the American Dental Association (~~Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry, effective October 1999~~), which are incorporated by reference in this chapter for Graduate and Postgraduate Training in Anesthesia in effect at the time the training occurred.

~~B. Additional training required. After March 31, 2005 [(one year from the effective date of this regulation) June 29, 2006], dentists who administer deep sedation/general anesthesia shall hold current certification in advanced resuscitative techniques, such as courses in Advanced Cardiac Life Support or Pediatric Advanced Life Support from the American Heart Association, and current Drug Enforcement Administration registration, and training to the level consistent with Part I and Part II of the ADA guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.~~

~~B. Exemptions~~ Exemptions.

1. A dentist who has not met the requirements specified in subsection A of this section may treat patients under deep sedation/general anesthesia in his practice if a qualified anesthesiologist, or a dentist who fulfills the requirements specified in subsection A of this section, is present and is responsible for the administration of the anesthetic.

2. If a dentist fulfills the requirements himself to use general anesthesia and conscious sedation specified in subsection A ~~and B~~ of this section, he may employ the services of a certified nurse anesthetist.

~~D. C. Posting. Any dentist who utilizes deep sedation/general anesthesia shall post with the dental license and current registration with the Drug Enforcement Administration, the certificate of education required under subsections subsection A and B of this section.~~

~~E. D. Emergency equipment and techniques. A dentist who administers deep sedation/general anesthesia shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation, and shall maintain the following emergency equipment in the dental facility:~~

1. Full face mask for children or adults, as appropriate for the patient being treated;
2. Oral and nasopharyngeal airways;
3. Endotracheal tubes for children or adults, or both, with appropriate connectors;
4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades for children or adults, or both;

5. Source of delivery of oxygen under controlled positive pressure;

6. Mechanical (hand) respiratory bag;

7. Pulse oximetry and blood pressure monitoring equipment available and used in the treatment room;

8. Appropriate emergency drugs for patient resuscitation; ~~and~~

9. EKG monitoring equipment and temperature measuring devices-;

10. Pharmacologic antagonist agents;

11. External defibrillator (manual or automatic); and

12. For intubated patients, an End-Tidal CO² monitor.

~~F. E. Monitoring requirements.~~

1. The ~~anesthesia~~ treatment team for deep sedation/general anesthesia shall consist of the operating dentist, a second person to monitor and observe the patient and a third person to assist the operating dentist, all of whom shall be in the operatory with the patient during the dental procedure.

2. Monitoring of the patient under deep sedation/general anesthesia, including direct, visual observation of the patient by a member of the team, is to begin immediately after the patient has been induced and a maintenance level has been established prior to induction of anesthesia and shall take place continuously during the dental procedure and recovery from anesthesia. The person who administered the anesthesia or another licensed practitioner qualified to administer the same level of anesthesia must remain on the premises of the dental facility until the patient has regained consciousness and is discharged.

3. Monitoring deep sedation/general anesthesia shall include the following: recording and reporting of blood pressure, pulse, respiration and other vital signs to the attending dentist.

18 VAC 60-20-120. Requirements to administer conscious sedation; intravenous and intramuscular.

A. Automatic qualification. Dentists qualified to administer deep sedation/general anesthesia may administer conscious sedation.

B. Educational requirements for administration of conscious sedation by any method.

1. A dentist may employ or use any method of conscious sedation by meeting one of the following criteria:

- ~~1. A dentist may administer conscious sedation upon a.~~ Completion of training for this treatment modality according to guidelines published by the American Dental Association (~~Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry, effective October 1999~~) and incorporated by reference in this chapter in effect at the time the training occurred, while enrolled at an approved accredited dental school program or while

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enrolled in a post-doctoral university or teaching hospital program.; or

2- b. Completion of an approved continuing education course consisting of 60 hours of didactic instruction plus the management of at least 20 patients per participant, demonstrating competency and clinical experience in parenteral conscious sedation and management of a compromised airway. The course content shall be consistent with guidelines published by the American Dental Association (*Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry*) in effect at the time the training occurred.

2. A dentist who was self-certified in anesthesia and conscious sedation prior to January 1989 may continue to administer only conscious sedation if ~~he completes 12 hours of approved continuing education directly related to administration of conscious sedation by March 31, 2005. A dentist qualified to administer conscious sedation by a certificate issued by the board shall maintain documentation of the required continuing education.~~

C. Educational requirement for enteral administration of conscious sedation only. A dentist may administer conscious sedation by an enteral method if he has completed a an approved continuing education program of not less than 40 18 hours of ~~clinical training for this treatment modality according to didactic instruction plus 20 clinically-oriented experiences in enteral and/or combination inhalation-enteral~~ conscious sedation techniques. The course content shall be consistent with the guidelines published by the American Dental Association (*Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry*) in effect at the time the training occurred.

D. Additional training required. After ~~March 31, 2005 [one year from the effective date of this regulation]~~ June 29, 2006], dentists who administer conscious sedation shall hold current certification in advanced resuscitation techniques, such as Advanced Cardiac Life Support ~~from the American Heart Association~~ as evidenced by a certificate of completion posted with the dental license, and current registration with the Drug Enforcement Administration.

E. Emergency equipment and techniques. A dentist who administers conscious sedation shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation, and shall maintain the following emergency airway equipment in the dental facility:

1. Full face mask for children or adults, as appropriate for the patient being treated;
2. Oral and nasopharyngeal airways;
3. Endotracheal tubes for children or adults, or both, with appropriate connectors ;~~4. and a laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades for children or adults, or both .~~ In lieu of a laryngoscope and endotracheal tubes, a dentist may maintain airway adjuncts designed for the maintenance of a

patent airway and the direct delivery of positive pressure oxygen;

4. Pulse oximetry;
5. Blood pressure monitoring equipment;
6. Pharmacologic antagonist agents;
- ~~5.~~ 7. Source of delivery of oxygen under controlled positive pressure;
- ~~6.~~ 8. Mechanical (hand) respiratory bag; and
- ~~7.~~ 9. Appropriate emergency drugs for patient resuscitation.

F. Monitoring requirements.

1. The ~~treatment~~ administration team for conscious sedation shall consist of the operating dentist and a second person to assist, monitor and observe the patient.

2. Monitoring of the patient under conscious sedation, including direct, visual observation of the patient by a member of the team, is to begin prior to administration of sedation, or if medication is self-administered by the patient, when the patient arrives at the dental office and shall take place continuously during the dental procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of sedation must remain on the premises of the dental facility until the patient is responsive and is discharged.

18 VAC 60-20-130. [No change from repropoed.]

18 VAC 60-20-135. Ancillary personnel.

After ~~March 31, 2005 [one year from the effective date of this regulation]~~ June 29, 2006], dentists who employ ancillary personnel to assist in the administration and monitoring of any form of conscious sedation or deep sedation/general anesthesia shall maintain documentation that such personnel have:

1. Minimal training resulting in current certification in basic resuscitation techniques, such as Basic Cardiac Life Support ~~from the American Heart Association~~ and or an approved, clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18 VAC 60-20-50 C; or
2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

18 VAC 60-20-190. [No change from repropoed.]

18 VAC 60-20-195. [No change from repropoed.]

DOCUMENTS INCORPORATED BY REFERENCE. [No change from repropoed.]

VA.R. Doc. No. R02-176; Filed May 4, 2005, 9:45 a.m.

Title of Regulation: 18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-20; adding 18 VAC 60-20-91).

Statutory Authority: §§ 54.1-2400 and 54.1-2711.1 of the Code of Virginia.

Effective Date: June 29, 2005.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, or e-mail sandra.reen@dhp.virginia.gov.

Summary:

The amendments set an application and renewal fee and establish the requirements for issuance of a temporary license and for practice by a dentist under such a license.

Summary of Public Comments and Agency's Response: No public comment was received by the promulgating agency.

18 VAC 60-20-20. License renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license, a full-time faculty license, or a restricted volunteer license to practice dentistry or dental hygiene shall, on or before March 31, renew his license. Every person holding a teacher's license, *temporary resident's license* or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, renew his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be \$150, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be \$50.

2. The fee for renewal of an inactive license shall be \$75 for dentists and \$25 for dental hygienists.

3. The fee for renewal of a restricted volunteer license shall be \$15.

4. *The application fee for a temporary resident's license shall be \$55. The annual renewal fee shall be \$35 a year. An additional fee for late renewal of licensure shall be \$15.*

B. Late fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee of \$50 for dentists and \$20 for dental hygienists. The board shall renew a license if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice of dentistry/dental hygiene shall be illegal.

1. Any person whose license has expired for more than one year and who wishes to reinstate such license shall submit to the board a reinstatement application, the renewal fee and the reinstatement fee of \$225 for dentists and \$135 for dental hygienists.

2. Practicing in Virginia with an expired license may subject the licensee to disciplinary action and additional fines by the board.

3. The executive director may reinstate such expired license provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18 VAC 60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid renewal fee, the reinstatement fee and any fines or assessments.

D. Reinstatement of a license previously revoked or indefinitely suspended. Any person whose license has been revoked shall submit to the board for its approval a reinstatement application and fee of \$750 for dentists and \$500 for dental hygienists. Any person whose license has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of \$350 for dentists and \$250 for dental hygienists.

18 VAC 60-20-91. Temporary licenses to persons enrolled in advanced dental education programs.

A. *A dental intern, resident or postdoctoral certificate or degree candidate applying for a temporary license to practice in Virginia shall:*

1. *Successfully complete a D.D.S. or D.M.D. dental degree program required for admission to board-approved examinations and submit a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received.*

2. *Submit a recommendation from the dean of the dental school or the director of the accredited graduate program specifying the applicant's acceptance as an intern, resident or post-doctoral certificate or degree candidate in an advanced dental education program. The beginning and ending dates of the internship, residency or post-doctoral program shall be specified.*

B. *The temporary license applies only to practice in the hospital or outpatient clinics of the hospital or dental school where the internship, residency or post-doctoral time is served. Outpatient clinics in a hospital or other facility must be a recognized part of an advanced dental education program.*

C. *The temporary license may be renewed annually, for up to five times, upon the recommendation of the dean of the dental school or director of the accredited graduate program.*

D. *The temporary license holder shall be responsible and accountable at all times to a licensed dentist, who is a member of the staff where the internship, residency or postdoctoral candidacy is served. The temporary licensee is prohibited from employment outside of the advanced dental education program where a full license is required.*

E. *The temporary license holder shall abide by the accrediting requirements for an advanced dental education program as approved by the Commission on Dental Accreditation of the American Dental Association.*

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NOTICE: The forms used in administering 18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the 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

Outline and Explanation of Documentation Required for Dental Licensure by Exam, Teacher's License, Restricted License, Full Time Faculty License, and Temporary Permit (rev. 12/02).

Application for Licensure to Practice Dentistry (rev. 12/02).

Application for Restricted Volunteer Licensure to Practice Dentistry and Dental Hygiene (eff. 7/98).

Requirements and Instructions for a Temporary Resident's License to Persons Enrolled in Advanced Dental Education Programs (eff. 7/04).

Application for Temporary Resident's License (eff. 7/04).

Form A, Certification of Dental School for Temporary Resident's License (eff. 7/04).

Form B, Certification from Dean of Dental School or Director of Accredited Graduate Program, Temporary Resident's License (eff. 7/04).

Form C, Certification of Dental Licensure, Temporary Resident's License (eff. 7/04).

Form D, Chronology, Temporary Resident's License (eff. 7/04).

Form A, Certification of Dental/Dental Hygiene School (rev. 12/02).

Form AA, Sponsor Certification for Dental/Dental Hygiene Volunteer License (eff. 7/98).

Form B, Chronology (rev. 12/02).

Form C, Certification of Dental/Dental Hygiene Boards (rev. 12/02).

Outline and Explanation of Documentation Required for Dental Hygiene Licensure by Exam, Teacher's License, Dental Hygiene by Endorsement, and Dental Hygiene Temporary Permit (rev. 12/02).

Application for Licensure to Practice Dental Hygiene (rev. 12/02).

Instructions for Reinstatement (rev. 12/02).

Reinstatement Application for Dental/Dental Hygiene Licensure (rev. 12/02).

Radiology Information for Dental Assistants (rev. 7/97).

Renewal Notice and Application, 0401 Dentist (rev. 12/02).

Renewal Notice and Application, 0402 Dental Hygienist (rev. 12/02).

Renewal Notice and Application, 0404 Dental Teacher (rev. 12/02).

Renewal Notice and Application, 0406 Dental Hygiene Teacher (rev. 12/02).

Renewal Notice and Application, 0411 Full-time Faculty (rev. 12/02).

Renewal Notice and Application, 0438 Cosmetic Procedure Certification (rev. 12/02).

Renewal Notice and Application, 0439 Oral and Maxillofacial (rev. 12/02).

Application for Certification to Perform Cosmetic Procedures (rev. 12/02).

Rhinoplasty/similar Procedures (rev. 7/02).

Bletharoplasty/similar Procedures (rev. 7/02).

Rhytidectomy/similar Procedures (rev. 7/02).

Submental liposuction/similar Procedures (rev. 7/02).

Browlift/either open or endoscopic technique/similar Procedures (rev. 7/02).

Otoplasty/similar Procedures (7/02).

Laser Resurfacing or Dermabrasion/similar Procedures (rev. 7/02).

Platysmal muscle plication/similar Procedures (rev. 7/02).

Application Review Worksheet (rev. 7/02).

Practitioner Questionnaire (rev. 12/02).

Oral and Maxillofacial Surgeon Registration of Practice (rev. 12/02).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).

VA.R. Doc. No. R04-235; Filed May 4, 2005, 9:44 a.m.



DEPARTMENT OF HEALTH PROFESSIONS

Title of Regulation: 18 VAC 76-20. Regulations Governing the Prescription Monitoring Program (amending 18 VAC 76-20-60).

Statutory Authority: §§ 54.1-2505 and 54.1-2520 of the Code of Virginia.

Effective Date: June 29, 2005.

Agency Contact: Ralph Orr, Program Manager, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9921, FAX (804) 662-9943, or e-mail ralph.orr@dhp.virginia.gov.

Summary:

The amendments (i) eliminate the requirement for submitting a copy of the patient's written consent for

disclosure; (ii) require the prescriber to attest to having obtained written consent from the patient; and (iii) require that the written consent for disclosure be maintained as part of the patient record.

Summary of Public Comments and Agency's Response: No public comment was received by the promulgating agency.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 21:2 VA.R. 118-126 October 4, 2004, 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. R04-146; Filed May 4, 2005, 9:40 a.m.

BOARD OF NURSING HOME ADMINISTRATORS

Title of Regulation: **18 VAC 95-20. Regulations Governing the Practice of Nursing Home Administrators (adding 18 VAC 95-20-471).**

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

Effective Date: June 29, 2005.

Agency Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Summary:

The regulation establishes the criteria for delegation of informal fact-finding proceedings to an agency subordinate, including the decision to delegate at the time of a probable cause determination, the types of cases that may not be delegated except upon approval of a committee of the board, and the individuals who may be designated as agency subordinates.

The regulation replaces emergency regulations that have been in effect since July 28, 2004.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 20.

REGULATIONS OF THE BOARD GOVERNING THE PRACTICE OF NURSING HOME ADMINISTRATORS.

18 VAC 95-20-471. 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 subdivisions 1, 3 and 5 of 18 VAC 95-20-470, except as may otherwise be determined by a special conference committee of the board.*

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.*

VA.R. Doc. No. R04-259; Filed May 3, 2005, 2:02 p.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 Date: June 29, 2005.

Agency Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, or e-mail elizabeth.young@dhp.virginia.gov.

Summary:

The regulation establishes the criteria for delegation of informal fact-finding proceedings to an agency subordinate, 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.

The regulation replaces emergency regulations that have been in effect since August 25, 2004.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

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;*

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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.*

VA.R. Doc. No. R04-202; Filed May 3, 2005, 2:02 p.m.

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TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-170. Voluntary Registration of Family Day Homes - Requirements for Contracting Organizations (amending 22 VAC 40-170-10 and 22 VAC 40-170-30 through 22 VAC 40-170-210 and 22 VAC 40-170-230; and repealing 22 VAC 40-170-20).**

Statutory Authority: §§ 63.2-217, 63.2-1704 and 63.2-1734 of the Code of Virginia.

Effective Date: August 1, 2005.

Agency Contact: Doris Sherrod, Program Development Consultant, Division of Licensing Programs, Virginia Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7153, FAX (804) 726-7132, or e-mail doris.sherrod@dss.virginia.gov.

Summary:

The amendments (i) update statutory references throughout the regulation to the new citations in recodified Title 63.2 of the Code of Virginia, along with other revised statutory references since initial adoption; (ii) eliminate requirements that have been found to be inefficient or burdensome, including but not limited to, the establishment and duties of the contracting organization's review committee; (iii) clarify contracting organizations' responsibilities in areas including, but not limited to, training and complaint investigations; (iv) add requirements that establish time frames for submission

of reports and for notification of the department of certain events and changes; (v) transfer responsibility for providing certain information to parents and for processing all aspects of adverse enforcement actions from contracting organizations to the department; and (vi) make various technical changes for consistency and clarity.

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.

22 VAC 40-170-10. Definitions.

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

"Applicant" means a person 18 years of age or older who has applied for an initial certificate of registration.

"Certificate of registration" means a document issued by the commissioner to a family day [home] provider, acknowledging that the provider has been certified by the contracting organization or the department and has met the *Voluntary Registration of Family Day Homes - Requirements for Providers (22 VAC 40-180-40 et seq.)* [or the current regulation] under the Voluntary Registration Program for Family Day Homes.

"Child" means any individual under 18 years of age.

"Commissioner" means the commissioner of ~~Social Services~~ the department, his designee or authorized representative.

"Commissioner's designee" means a designated individual or division within the Department of Social Services who is delegated to act on the commissioner's behalf in one or more specific responsibilities.

"Contract" means the document signed by the Department of Social Services and the contracting ~~agency~~ organization.

"Contracting organization" means the agency ~~which has been selected by that has contracted with~~ the Department of Social Services to administer the voluntary registration program for family day homes.

"Cooperative agreement" means an agreement between or among contractors administering the Voluntary Registration Program.

"Denial of certificate of registration" means a refusal by the commissioner to issue a certificate of registration.

"Department" means the ~~Virginia~~ State Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner ~~in carrying out the responsibilities and duties specified in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia.~~

["~~Division~~" means ~~Division of Licensing Programs.~~]

"Evaluate" or "evaluation" means the review of a family day-care [home] provider by a contracting organization upon

receipt of an application for a certificate of registration to verify that the applicant meets the requirements for providers.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the care provider's own children and any children who reside in the home, when at least one child receives care for compensation. ~~From July 1, 1993, until July 1, 1996, family day homes serving nine through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. Effective July 1, 1996, the family day homes serving six through 12 children, exclusive of the provider's own children, shall be licensed. The provider of a licensed or registered home family day home shall disclose to the parents or guardians of the children in care the percentage of time per week that persons other than the provider will care for children. Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed.~~ However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day provider applicant" or "provider applicant" means ~~a person at least 18 years of age who has applied for a certificate of registration.~~

"Good character and reputation" means ~~findings have been established and~~ knowledgeable and objective people agree that the individual (i) maintains business or , professional, family, and community relationships ~~which that~~ are characterized by honesty, fairness, truthfulness, and dependability, and (ii) ~~has a history or pattern of behavior that demonstrates a concern for the well-being of others to the extent that the individual is considered suitable and able to administer a program for to be entrusted with the care, supervision, and protection of children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, may shall~~ not be considered objective references.

"Monitor" or "monitoring visit" means to visit a registered family day [home] provider to review the provider's compliance with ~~applicable the~~ Requirements for Providers (22 VAC 40-180) or a visit to the contracting organization to review the organization's compliance with the Requirements for Contracting Organizations (22 VAC 40-170) and any other applicable requirements.

"Parent" means a biological, foster or adoptive parent, legal guardian, or any person with responsibility for, or custody of, a child enrolled or in the process of being enrolled in a family day home.

"Provider" or "registered family day [home] provider" means a person who has received ~~an initial or renewed~~ a certificate of registration issued by the commissioner. This provider has primary responsibility [in for] providing care, protection, supervision, and guidance for children in the registered home.

"Provider assistant" or "assistant" means a person 14 years of age or older who has been designated by the family day [home] provider and approved by the contracting organization to assist the provider or substitute provider in the care, protection, supervision, and guidance of children in the home.

"Refusal to renew a certificate of registration" means the nonissuance of a certificate of registration by the commissioner after the expiration of the existing certificate of registration.

"Registered family day home" means any family day home ~~which that~~ has met the standards for voluntary registration for such homes pursuant to regulations prescribed by the Board of Social Services and ~~which that~~ has obtained a certificate of registration from the Commissioner of Social Services.

"Registration fee" means the payment to a contracting organization by a provider or applicant upon filing an application for a certificate of registration.

"Renewal of a certificate of registration" means the issuance of a certificate of registration by the commissioner after the expiration of the existing certificate of registration.

~~"Requirements for Contracting Organizations" means the definitions for key terms and the staff and service requirements for contracting organizations.~~

~~"Requirements for Providers" means the procedures and general information set forth for providers operating family day homes who voluntarily register. This includes staffing requirements and a self-administered health and safety checklist.~~

"Revocation of a certificate of registration" means the removal of a provider's current certificate of registration by the commissioner for failure to comply with the applicable requirements for providers.

"Sponsoring organization" refers to an agency administering the ~~USDA's adult and child food nutrition program~~ USDA Child and Adult Care Food Program.

"Staff member" means a person employed by or working for a contracting organization on a regularly scheduled basis. This includes full-time, part-time, and voluntary staff, whether paid or unpaid.

"Substitute provider" means a ~~provider~~ person at least 18 years of age who meets the Requirements for Providers, is approved by the department and who is readily available to provide substitute child care in a registered provider's home or in the substitute provider's home.

~~"Surrender of a certificate of registration" means voluntary termination of a certificate of registration by a provider prior to expiration.~~

"USDA" means the United States Department of Agriculture.

22 VAC 40-170-20. Legal authority. (Repealed.)

~~The Code of Virginia was amended and § 63.1-196.04 was added in the 1991 General Assembly session to establish provisions for the voluntary registration of family day homes. In 1993, § 63.1-196.04 of the Code of Virginia was amended~~

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~~and reenacted to include a new definition of a family day home.~~

22 VAC 40-170-30. Eligibility and qualifications.

A. Any public or private for-profit or nonprofit organization may apply to become a family day contracting organization, provided the organization meets the eligibility requirements.

B. In order to secure, maintain or renew a contract to provide registration services for family day homes, a contracting organization shall demonstrate its ability to provide for sound facility and finances, permanent records, the collection of fees, the maintenance and provision of reports, officers and agents [~~who that~~] have good character and reputation, and as set forth below.

1. The contractor shall maintain adequate facilities as verified by an on-site visit prior to approval of the contract and subsequent inspections and monitoring visits.

2. The contractor shall demonstrate its ability to provide for sound financial management through submission of:

a. Financial statements of the organization for which an independent auditor has rendered an opinion for the most recent fiscal year;

b. A report on the internal control structure of the organization prepared by an independent auditor for the most recent fiscal year [~~, which is free of that indicates freedom from~~] material weaknesses that affect the fiscal management capabilities of the organization; and

c. Any program audit or review performed by state and federal agencies prepared within the last two years [~~which that~~] is free of material weaknesses that affect the fiscal management capabilities of the organization.

3. The contractor shall provide for workers' compensation insurance required by Virginia law and a minimum of \$500,000 liability insurance.

4. Contracting requirements.

a. The contracting organization must meet the applicable contracting requirements of the commissioner and the State Board of Social Services and the Requirements for Contracting Organizations.

b. The commissioner may give preference to contracting organizations [~~which that~~] serve large geographic areas and may limit the number of contractors based on available resources.

c. The commissioner may modify the territories assigned to contractors to better facilitate the administration of the registration program at any time.

5. Training, technical assistance, and information. The organization shall provide training ~~or~~ and educational information, technical assistance and consultation to providers (See 22 VAC 40-170-150 and 22 VAC 40-170-200).

6. Program requirements. The contracting organization shall:

a. Process applications for voluntary registration;

b. Certify family day homes as eligible for registration (as noted in 22 VAC 40-170-160);

c. Provide educational information to parents;

d. Maintain a list of substitute providers who are voluntary registrants [~~which that~~] shall be given to providers upon request; and

e. Provide information as required under the Freedom of Information Act (§ ~~2.1-340 et seq.~~ 2.2-3700 *et seq.* of the Code of Virginia) and ~~Privacy Protection Act~~ *Government Data Collection and Dissemination Practices Act* (§ ~~2.1-377 et seq.~~ 2.2-3800 *et seq.* of the Code of Virginia).

7. Monitoring, complaints and referrals. The contracting organization shall:

a. Monitor family day [*home*] providers for compliance with ~~health and safety checklist~~ *the Requirements for Providers* (as described in 22 VAC 40-170-190);

b. Respond to routine complaints under the directions of the department (as noted in 22 VAC 40-170-180);

c. Make appropriate referrals to state and local agencies; and

d. ~~Encourage provider participation in~~ *Provide information about* the USDA food program and refer interested persons to sponsoring organizations.

8. The contracting organization shall comply with all performance provisions and level of service provisions as specified in the executed contract.

C. The contracting organization may elect to provide training and may subcontract for the provision of this training to providers. The contracting organization shall ensure that:

1. An agency under subcontract complies with all applicable Requirements for Contracting Organizations in the delivery of training to the providers;

2. Trainers meet the criteria set forth in 22 VAC 40-170-150; and

3. A copy of the subcontract between the contracting organization and the agency subcontracted to perform training shall be maintained on file with the contracting organization.

22 VAC 40-170-40. Administrative responsibility.

A. A privately operated contracting organization shall have a governing board of at least three members that has the authority to:

1. Set overall administrative and operational policies for the contracting organization;

2. Ensure the financial viability of the contracting organization;

3. Ensure policies pertaining to, but not limited to:

a. Program services;

- b. Personnel recruitment, selection, training and performance evaluation; and
- c. Data collection and reporting;

4. Oversee fiscal operations, including budget and resource development.

B. The governing board shall delegate responsibility for day-to-day operations to an executive director or administrator. The director shall maintain minutes and attendance records of board meetings for review by the [~~division~~ department].

C. A publicly operated contracting organization shall have an advisory committee of at least three people that offers advice and counsel to the contracting organization on the fiscal and administrative operations of the family day [*home*] registration program. The director shall maintain minutes and attendance records of advisory committee meetings and attendance for review by the [~~division~~ department].

~~D. The governing board of a private contracting organization or the director of a public contracting organization shall appoint a review committee of at least three people who shall:~~

- ~~1. Review recommendations to the commissioner to deny, revoke or refuse to renew a certificate of registration if requested by the provider;~~
- ~~2. Exclude from its membership staff members responsible for recommending decisions regarding the denial, revocation or refusal to renew a certificate of registration; and~~
- ~~3. Maintain on file documentation of its findings.~~

~~E. D.~~ The contracting organization shall make family day registration services available to those who request it.

22 VAC 40-170-50. Inspection and monitoring of contractors.

A. The department will conduct a comprehensive programmatic inspection of the contracting organization to determine compliance at least once during the contract period.

B. Each contract period shall be two years or as established by the department.

C. An authorized representative of the department may make an announced or unannounced visit at any time during the contracting organization's normal operating hours to monitor the contracting organization and review files, reports or records to determine its compliance with the requirements and to investigate a complaint.

D. The department shall notify the contracting organization in writing whenever the department determines that the contracting organization is operating in violation of any of the Requirements for Contracting Organizations. Notifications will specify the plan of corrective action, including completion date, that must be taken by the contracting organization in order to abate the violation or violations.

E. If the contracting organization fails to abate the violation or violations or commits subsequent violations, the contract may be revoked or refused renewal. A contract may also be revoked or refused renewal for:

1. Any activity, policy or conduct that presents a serious or imminent hazard to the health, safety and well-being of a child;

2. Demonstrating ~~of~~ unfitness or inability to operate or to administer the voluntary family day registration program in accordance with the contract *or this regulation*;

3. Using fraud in obtaining or maintaining a contract;

4. Any fiscal policies, procedures, or conduct ~~which~~ *that* demonstrate inadequate fiscal management of program funds; or

5. Failing to comply with the cooperative agreement among contractors.

F. If a contracting organization's approval is revoked or refused renewal or if the contract is terminated for any reason, all records related to voluntary registration shall be brought up to date, put in good order, and given to the department within five working days.

22 VAC 40-170-60. Reporting requirements.

A. The contracting organizations or any staff member shall notify the local department of social services or the [*state*] department's [~~Child Protective Services office~~ *toll-free child abuse and neglect hotline*] as specified in Chapter ~~42~~ *15* (§ ~~63.1-248.3 et seq.~~ *63.2-1509 et seq.*) of Title ~~63.4~~ *63.2* of the Code of Virginia, whenever there is a reason to suspect that a child [*in care*] has been subjected to abuse or neglect by a provider or any other person.

B. The contracting organization or any staff member shall notify the department immediately of any imminent danger [~~or dangers~~] or hazard [~~or hazards~~] that threaten the health and safety of children in the provider's home.

~~C. The contracting organization shall notify the division and the local health department in the provider's municipality of the occurrence of a communicable disease. Such notification shall be made by the next working day after the contracting organization learns of the occurrence.~~

~~D. C.~~ The contracting organization shall notify the ~~central office of the~~ [*division department*], orally, of any of the following changes or events by the next working day after the contracting organization learns of their occurrence *and in writing within five work days*:

- 1. Injury that results in ~~the~~ *emergency medical treatment or the* admission of a child to a hospital while in the care of a provider;
- 2. Lost or missing child when it was necessary to seek assistance of local emergency or police personnel;
- 3. The death of a child while in the care of a provider;
- 4. Damage to the contracting organization's offices that affects the operation of family day registration;
- 5. Any criminal charge or charges and their disposition or dispositions, as specified in § ~~63.1-198.4~~ *63.2-1719* of the Code of Virginia, of the staff of the contracting organization or of a provider, substitute provider, provider assistant, or member of a provider's household;

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6. Cancellation of the contracting organization's general or comprehensive liability insurance coverage;

7. Unanticipated permanent or temporary closing of the contracting organization or the registration program; and

8. ~~The A~~ provider is exceeding the number of children allowed under registration and is required by law to be licensed.

~~E. D.~~ The contracting organization shall notify the [~~division department~~] orally within three working days, of any change in office location or the director of the contracting organization or the registration program *and in writing within five work days*.

~~F. E.~~ The contracting organization shall report statistical data as noted in 22 VAC 40-170-70 and specified by the contract.

22 VAC 40-170-70. Contracting organization records.

A. The contracting organization shall maintain the following records:

1. Administrative records.

~~a. The Requirements for Voluntary Registration of Family Day Homes;~~

~~b. The document providing information to parents as specified in 22 VAC 40-170-210;~~

~~c. a.~~ Staff records, as specified in 22 VAC 40-170-100;

~~d. b.~~ A copy of the contracting organization's insurance policies as specified ~~here and~~ by the contract *and in 22 VAC 40-170-30 B 3*;

~~e. c.~~ Documentation of all funds collected and expended related to the administration of the program, including registration fees;

~~f. d.~~ A copy of the contracting organization's financial records and audits;

~~g. e.~~ Documentation of training sessions conducted by the contracting organization or subcontractors and the qualifications of trainers;

~~h. f.~~ Files documenting recommended denials, *surrenders, revocations* and nonrenewals of certificates of registration ~~and appeals~~ as specified in 22 VAC 40-170-230;

~~i. g.~~ A copy of corrective action plans to abate violations of the Requirements for Contracting Organizations;

~~j. h.~~ A copy of the inspection and monitoring visit reports completed by the department; and

~~k. i.~~ A copy of the cooperative agreements with other contractors.

2. A copy of contracts between the contracting organization and any subcontracted agency to perform training related to family day [*home*] registration.

3. Records on providers as specified in Part IV (22 VAC 40-170-140 et seq.) and all documents related to the registration application. Records shall also be kept on

providers who have discontinued family day [*home*] services, and additional information as may be received regarding the provider's compliance with the Requirements for Providers.

B. The contracting organization shall, *within 30 days after the end of each quarter*, submit ~~quarterly~~ narrative and statistical reports including, but not limited to:

~~1.~~ *The total number of registered providers;*

~~2.~~ The number of applications pending and withdrawn;

~~3.~~ The training information listed in 22 VAC 40-170-150 G;

~~4.~~ Program income and expenditures as noted in 22 VAC 40-170-170;

~~5.~~ Number of monitoring visits, the areas of noncompliance and the results of any complaint investigations; and

~~6.~~ Narrative reports on progress or impediments related to the attainment of goals and objectives set forth in the contract.

C. The administrative records specified in this section shall be maintained by the contracting organization for three calendar years.

22 VAC 40-170-80. Complaints against a contracting organization.

A. Complaints against a contracting organization ~~shall~~ *will* be investigated by the department. An investigation ~~shall~~ *will* be conducted to determine compliance with the contract and the Requirements for Contracting Organizations. The contracting organization ~~shall~~ *will* be notified of the findings by the department.

B. If the contracting organization wishes to appeal an administrative decision that does not result in revocation of the contract by the department, the contractor ~~may~~ *shall* follow an informal appeal process as outlined in the [~~Department of Social Services, Division of Licensing Programs department's~~] *current regulation*, General Procedures and Information for Licensure (22 VAC 40-80 [~~-40 et seq.~~]).

C. The contracting organization may appeal a decision by the department resulting in a revocation decision in accordance with the Administrative Process Act (§ ~~9-6-14:1 et seq.~~ 2.2-4000 et seq. of the Code of Virginia).

22 VAC 40-170-90. Public access to records.

A. The contracting organization shall make the following files available for public review:

1. Active applications for a certificate of registration and related materials or documentation;

2. List of registered providers updated quarterly;

3. Correspondence between the contracting organization and the provider or other parties in matters pertaining to the contracting organization's monitoring or registration of the provider;

4. Evaluation and monitoring reports, where applicable, reflecting the results of the contracting organization's evaluation and monitoring of the provider;

5. Forms and other standard documents used to collect routine data on the provider as part of the provider's record of compliance with the Requirements for Providers;

6. Enforcement letters from the contracting organization requiring abatement of violations of the Requirements for Providers;

7. Correspondence to the contracting organization from the department regarding enforcement actions against the provider;

~~8. Chronological lists of events about the provider on compliance and enforcement matters;~~

~~9.~~ 8. Completed complaint investigations reports, except child abuse or neglect investigations or other information restricted by the requirements of Chapter 42 15 (§ 63.1-248.1 et seq. 63.2-1500 et seq.) of Title 63.1 63.2 of the Code of Virginia or other state law; and

~~10.~~ 9. Any other documents, materials, reports, or correspondence that would normally be included as part of the public record shall remain on file for three years.

B. The contracting organization shall keep confidential and not part of the public record the following:

1. Records, reports or correspondence that pertain to child abuse or neglect investigations involving enrolled children and any other information pertaining to children, parents or providers that are restricted from public access under Chapter 42 15 (§ 63.1-248.1 63.2-1500 et seq.) of Title 63.1 63.2 of the Code of Virginia or other state law;

2. Records, reports, correspondence or forms containing names of enrolled children and their parents;

3. Confidential information with regard to specific contracting organization personnel;

4. Any items that deal with reports of inspection or complaint investigations that are still in progress; and

5. Other material required by state law to be maintained as confidential.

C. If a contracting organization has a question about whether information may be released to the public, the executive director should consult the organization's attorney and a representative of the department.

D. Contractors may not charge more than provided under the Freedom of Information Act (§ 2.1-340 et seq. 2.2-3700 et seq. of the Code of Virginia) for copies of public information.

~~E. The contracting organization shall maintain on file for the executive director or administrator and for each staff member the information described in Part III (22 VAC 40-170-100 et seq.).~~

22 VAC 40-170-100. General staff requirements.

A. The executive director or administrator, board members, corporate officers, or partners and every staff member of a

contracting organization shall be of good character and reputation. Staff shall possess ability to provide services to parents and providers, as specified in these requirements. The director, board members, and corporate officers shall possess ability to direct the organization.

B. Prior to the employment or utilization of the executive director or administrator or a staff member directly involved with administering the registration program, the contracting organization shall require the applicant for executive director or administrator and each staff applicant to complete and sign an application for employment, indicating the applicant's:

1. Name, address and telephone number;

2. Education and work experience; and

3. ~~Criminal records check and Child Protective Services Central Registry clearance~~ Background checks in accordance with § 63.2-1721 B of the Code of Virginia and the current regulation regarding background checks.

C. Prior to the executive director's or administrator's or any staff member's employment, the contracting organization shall obtain two references, either in writing or orally, from former employers or other persons who have knowledge of the applicant's work experience, education and character. If the reference is given orally, documentation shall be on file with comments. If staff is already employed, references shall be provided within 20 days of signing the contract with the department.

D. The executive director or administrator and every staff member shall notify the contracting organization by the end of the contracting organization's next working day of any criminal convictions or charges filed during their employment or utilization by the contracting organization.

E. Evidence of conviction for crimes of violence, child abuse or neglect or other crimes which may relate adversely to the operation of the contracting organization shall be among those actions that are considered in determining an individual's fitness and suitability to serve as executive director or administrator or as a staff member.

F. Except for crimes specified in § 63.1-498.1 63.2-1719 of the Code of Virginia, evidence of conviction of a crime by an individual serving as executive director or administrator, corporate officer, or partner or as a staff member shall not automatically result in the cancellation of the contract. Such determination shall be made on a case-by-case basis by the commissioner or the commissioner's designee.

22 VAC 40-170-110. Types and responsibilities of staff.

A. Each contracting organization shall have an executive director or administrator who is responsible for the overall management and administration of the contracting organization's family day registration program.

B. The contracting organization shall have sufficient staff to carry out the family day registration program.

C. The executive director may also serve as a staff member if the administrator has no role in approving providers for the USDA food program. Likewise, staff involved in approving homes for USDA shall not approve homes for registration

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unless an alternative arrangement is approved by the [~~division~~ department].

D. The executive director or administrator shall ensure:

1. That the contracting organization operates in compliance with all applicable Requirements for Contracting Organizations;
- ~~2. That each provider operates in compliance with all applicable Requirements for Providers;~~
- ~~3.~~ 2. The supervision of all staff members assigned to the contracting organization's family day [*home*] registration program;
4. 3. The development and implementation of policies and procedures for the day-to-day operation of the contracting organization's family day [*home*] registration program;
- ~~5.~~ 4. The orientation of staff members to the policies and procedures of the contracting organizations;
- ~~6.~~ 5. The development and maintenance of administrative, fiscal and program records; and
- ~~7.~~ 6. The development and implementation of a program of outreach, public relations, and technical assistance as directed by the [~~division~~ department].

22 VAC 40-170-120. Staff qualifications.

A. The executive director or administrator shall possess a bachelor's degree and a minimum of two years of managerial or supervisory experience. The degree and experience shall be in the field of human services, child care services, child development, education, psychology, nursing, social work, or business.

B. Staff members responsible for provider evaluation, monitoring, support, *and* technical assistance ~~and training~~ shall possess the following:

1. An associate's degree in human services, child care services, child development, education, nursing or social work and one year professional experience working with children; or
2. A high school diploma or General Education Development (GED) diploma and three years of experience in the field of human services, child care services, child development, education, nursing, psychology, or social work and at least one year of which must be professional experience working directly with children.

22 VAC 40-170-130. Staff training.

The executive director or administrator shall:

1. Provide staff members with access to a copy of the Requirements for Contracting Organizations and the Requirements for Providers.
2. Ensure that staff, as appropriate, are trained in:
 - a. Recognizing and reporting child abuse or neglect;
 - b. Evaluating provider applicants as specified in 22 VAC 40-170-140;

c. Conducting or securing training sessions for providers when requested;

d. Monitoring providers as specified in 22 VAC 40-170-190;

e. Providing technical assistance to providers as specified in 22 VAC 40-170-200;

f. Procedures for identification and referral of special needs children; and

g. Recruiting providers for registration and promoting the program through public relations as directed or approved by the ~~division~~ department.

3. Ensure staff designated to conduct training meet the qualifications set forth for trainers in 22 VAC 40-170-150.

22 VAC 40-170-140. Evaluation of family day [*home*] provider applicants.

A. The contracting organization shall provide to each applicant for a certificate of registration the following information:

1. A voluntary registration provider application, including the health and safety checklist;
2. A request form for a criminal records check and a Child Protective Services (CPS) Central Registry clearance;
3. A sworn disclosure statement;
4. A copy of the Requirements for Providers;
5. A list of sponsoring organizations for the USDA food program;
6. A list of all contracting organizations; and
7. Other forms and information as required by the [~~division~~ department].

B. The contracting organization's evaluation of each applicant shall include a review of the information required on the application for registration and other program requirements.

C. The contracting organization shall evaluate each provider prior to recommending certification, denial or refusal to renew the provider's certificate of registration.

D. The contracting organization shall visit each applicant's home as described in 22 VAC 40-170-190 prior to recommending the issuance of the certificate of registration and at renewal to evaluate the applicant's compliance with the Requirements for Providers.

E. A renewal application packet ~~will~~ *shall* be sent to the provider no later than 90 days prior to the expiration of the current certificate of registration.

F. If needed, the provider and contracting organization shall complete a corrective action plan during the initial home visit. This will briefly describe any standard not met, the action to be taken to meet it, the date by which it will be completed, and the signature of the provider.

22 VAC 40-170-150. Training of family day [*home*] providers.

A. The contracting organization shall supply to each provider:

1. Prior to recommending the issuance of a certificate of registration, a copy of appropriate informational materials supplied by the department; and

2. From time to time, any other available materials that may assist the provider in operating a family day home.

B. The contracting organization shall ensure training or educational materials are available and easily accessible to providers prior to recommending the issuance of a certificate of registration and after being awarded the certificate by the commissioner.

C. Training or educational materials shall include information regarding, but not limited to, the following subjects:

1. Child development;
2. Discipline;
3. Safety, first aid and emergency evacuation procedures;
4. Health and sanitation;
5. Nutrition;
6. Program activities;
7. Child abuse detection and prevention;
8. Parent-provider communication;
9. Injury prevention; and
10. ~~Special needs training.~~ *Serving children with disabilities; and*
11. *First aid and CPR, as appropriate to the ages of children in care.*

D. Where training is provided, sessions for provider applicants shall include group or individual instruction by persons with expertise in the areas of instruction. All trainers used, including those under subcontract, shall have the following education and experience:

1. A.A., B.A., B.S., or advanced degree in early childhood education (ECE), child development, home economics, psychology, nursing, social work, special education or related field from an accredited college or university (the degree must directly relate to the area of training); or
2. A valid professional credential (or certification) from an early childhood education or child development related organization (such as Child Development Associate Credential or National Association for Family Day Care Accreditation); or
3. Have at least four years of substantial compliance with applicable regulations, in a child care setting working directly with children as a caregiver, teacher, child life worker, social worker, or in a similar role in a program serving children of the age represented in the course, seminar or workshop; and
4. At least 12 college level credits in courses directly related to child growth and development and three professional references. A professional reference may not be from a relative, and must directly relate to the training topics for which the applicant is applying.

E. Alternatives to the education or experience requirements in 22 VAC 40-170-150 D will be considered on an individual basis for specialized subject matter that is relevant for child care providers but which does not require academic preparation in early childhood education. The applicant must provide the following documentation for consideration:

1. A written description of education or experience related to the field of expertise under consideration; and
2. A brief explanation of how the area of expertise relates to early childhood care.

F. Training may be supplemented by:

1. Printed materials;
2. Television broadcasts; or
3. Audio-visual materials.

G. The contracting organization shall maintain on file documentation of training it provides, including for each training session the names of the participants, the goals, a description of the information presented, the date the training occurred and an evaluation.

22 VAC 40-170-160. Issuance of the certificate of registration.

A. If the contracting organization determines that the provider applicant is in compliance with all applicable requirements for providers, the contracting organization shall certify the home as eligible for registration and submit a recommendation on forms prescribed by the commissioner. Upon receipt, the commissioner shall evaluate the recommendation for certification and may register the family day home.

B. The certificate of registration shall be issued by the commissioner to a specific provider at a specific location and shall not be transferable.

C. A provider who has been denied a certificate of registration or has had a certificate revoked or refused renewal by the commissioner shall not be eligible for issuance of a certificate of registration until six months after the date of such action unless the waiting period is waived by the commissioner as noted in Chapter 40 17 (§ ~~63.1-495 et seq.~~ 63.2-1700 et seq.) of Title ~~63.1~~ 63.2 of the Code of Virginia.

22 VAC 40-170-170. Collection of registration fees.

A. The contracting organization shall process all applications for a certificate of registration without regard to the applicant's race, national origin, religion, sex, or age (provider must be at least 18 years of age to register).

B. The contracting organization may collect a nonrefundable biennial registration fee which shall not exceed \$50 from the provider applicant and with each application for renewal of the certificate of registration. The fee shall be paid in the form of check or money order made payable to the contracting organization. This does not include the fee for the criminal records check, CPS Central Registry clearance, or the tuberculosis test.

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~~C.~~ *The contracting organization may collect a nonrefundable fee not to exceed \$50 when a registered provider moves to a new address.*

~~C.~~ *D.* The contracting organization may assess a fee not to exceed ~~\$40~~ \$20 for an additional home visit if corrective action is needed after the initial home visit and as specified in the Requirements for Providers.

~~D.~~ *E.* An additional fee shall not be required if a minor change in the information collected occurs before the expiration date of the current certificate of registration or if the provider requires a duplicate copy of the certificate of registration due to loss or destruction of the original.

~~E.~~ *F.* The contracting organization shall retain the funds generated by registration fees and shall maintain a record of the registration fees collected from the providers, in accordance with *the* department's contract requirements.

~~F.~~ *G.* The contracting organization shall ensure and document that the registration fees collected are directed to the maintenance or improvement of the contracting organization's voluntary registration program.

22 VAC 40-170-180. Complaints and violations.

~~A.~~ *Complaints against a provider and alleged violations by a provider which are directed to the contracting organization shall be referred to the appropriate agency within a timeframe specified by the division. This may include referrals to Child Protective Services, health and safety officials, the appropriate sponsoring organization or USDA office, or the department's regional licensing office if the complaint alleges that the home is subject to licensure. When the contracting organization receives a complaint of alleged violations of the Requirements for Providers, the contracting organization shall investigate the complaint and shall require the provider to correct any violations found.*

1. Complaints of abuse or neglect of children in care shall be referred immediately to Child Protective Services and, where possible, shall be investigated jointly with the local department of social services protective services staff.

2. Issues not included in the Requirements for Providers, including but not limited to sanitation, fire safety and food service issues, shall immediately be referred to the appropriate agency, including health and safety officials or USDA.

~~B.~~ *Complaints shall also be received by or referred to the contracting organization with procedures developed under the direction of the department.*

~~C.~~ *B.* If, during the course of investigating a complaint, the commissioner determines that it is necessary to revoke a certificate of registration, the contracting organization and the commissioner shall take action in accordance with 22 VAC 40-170-230.

22 VAC 40-170-190. Monitoring of family day [home] providers.

A. The contracting organization shall monitor, unannounced, at least 10% of the providers registered who are not participating in the food program every two years to evaluate

compliance with the Requirements for Providers. ~~The USDA requires that providers participating in the food program be monitored three times a year and recommends one of these visits be unannounced.~~

B. The contractor shall visit the home during the hours in which care is being provided to children by the provider.

C. The contracting organization shall maintain on file a written report of each monitoring visit to the provider's home.

22 VAC 40-170-200. Technical assistance.

A. The contracting organization shall provide technical assistance to registered providers and parents of enrolled children upon request. This assistance shall include responding to providers' and parents' questions and concerns regarding family day care and referrals to appropriate agencies.

B. The contracting organization shall maintain a listing of support services available in the community and shall refer providers and parents of enrolled children upon request.

C. The contracting organization shall make the following information available to providers:

1. A list of reportable communicable diseases;
2. A list of physical symptoms or conditions that indicate a child may have a communicable disease;
3. Guidelines for administration of medication;
4. Guidelines for the care of sick children;
5. Guidelines for positive discipline;
6. A list of services to which a provider is entitled, including:
 - a. Participating in training sessions offered by or through the contracting organization *or the department*; and
 - b. Receiving technical assistance from the contracting organization;
7. Resources for children with a potential or actual handicapping condition. This may include a toll free number for early intervention (1-800-234-1448) or:
 - a. Informing the parent of the child's rights to a special education program and related services;
 - b. Referring the parent to the Virginia Department of Education for a possible comprehensive evaluation and individual service plan development for the child; and
 - c. Referring the parent to the health clinic in the local health department for a possible comprehensive medical evaluation for the child;
8. Information on how to identify children who are victims of abuse and neglect and who to contact if it is suspected; *and*
9. *A copy of the Recommended Childhood and Adolescent Immunization Schedule - United States, 2003.*

22 VAC 40-170-210. Information to parents.

A. ~~The contracting organization shall~~ *department shall* will supply to providers sufficient copies of a written information to parents statement ~~that shall be posted in a conspicuous location in the registered home for the parents of all enrolled children,~~ which indicates:

1. The provider has received a certificate of registration;
2. The provider is required to comply with the Requirements for Providers;
3. The scope and limitations of voluntary registration;
4. The name, address and phone number of the contractor so that parents may receive a copy of the Requirements for Providers by contacting the contracting organizations;
5. Parents may report alleged violations of the Requirements for Providers to the local contracting organizations and complaints about the contractor to the [~~division~~ department];
6. Any person providing full-time or part-time child care for pay on a regular basis who has reason to suspect that a child is an abused or neglected child is required by state law to report the matter immediately to the local social services department (except as prescribed in § ~~63-1-248.3~~ 63.2-1509 of the Code of Virginia) or to call the statewide toll free hotline (1-800-552-7096/TDD). Further, any person may report suspected abuse and neglect as set forth in § ~~63-1-248.4~~ 63.2-1510 of the Code of Virginia;
7. Parents of enrolled children shall be permitted to visit the family day home at any time their child or children are present without having to secure the prior approval of the provider. Parents may be restricted to visit only those areas of the home designated for family day care;
8. The operation of the family day home is subject to unannounced monitoring visits by the contracting organization and monitoring of a sample of registered family day homes by the department;
9. Parents may request that the contracting organization provide technical assistance to the parent or the provider, and referrals to appropriate community resources; ~~and~~
10. Parents are advised to ask their provider whether they carry liability insurance- ; *and*
11. *Providers must inform parents of the percentage of time someone other than the provider will be caring for children.*

22 VAC 40-170-230. Denials, revocations, refusals to renew, provider appeals procedures.

A. The contracting organization may recommend to the commissioner that a provider's certificate of registration be denied, revoked, or refused renewal for cause, including, but not limited to:

1. Failure to comply with adult-child ratios, staffing requirements, or other standards set forth in the Requirements for Providers;

2. Use of fraud or misrepresentation in obtaining a certificate of registration or in the subsequent operation of the family day home;
3. Any conduct or activity which adversely affects or presents a serious hazard to the health, safety, and general well-being of an enrolled child, or which otherwise demonstrates unfitness by a provider to operate a family day home;
4. Refusal to furnish the contracting organization or the department with records;
5. Refusal to permit immediate admission to the family day home to the parent of an enrolled child who is present in the home or to an authorized representative of the contracting organization or department ~~when any enrolled child is present during the home's hours of operation;~~ or
6. Documentation maintained by a contracting organization or the department that a provider's certificate of registration has been denied, revoked, or refused renewal by the commissioner during the six months prior to the date the application is resubmitted for a certificate of registration.

B. When a provider is found to be in violation of any of the provisions of subsection A of this section, the contracting organization shall notify the provider of the violation or violations first orally and then in writing, and, as appropriate, shall afford the provider an opportunity to abate the violation or violations within a time frame agreed upon by the contracting organization and the provider. The provider shall immediately abate the violation situations where children are at risk of abuse, neglect or serious harm or injury.

C. The contracting organization may recommend to the commissioner that the certificate of registration be denied, revoked, or refused renewal if the provider fails to abate the violation or violations within the agreed upon time frame or commits a subsequent violation. A statement referencing the standard violated shall be included with the recommendation.

~~D. Upon notification of the contracting organization's intent to recommend to the commissioner that a certificate of registration be denied, revoked or refused renewal, the contracting organization shall give written notice to the provider within five calendar days, specifying the reason for such action, either by hand delivery or by certified mail with return receipt requested. The notice shall afford the provider an opportunity to request, in writing, a review within 15 calendar days after receipt of notification before the contracting organization's review committee.~~

~~E. If the provider requests a review, the contracting organization's review committee shall consider each recommendation to deny, revoke, or refuse renewal within 15 calendar days of receiving the provider's request and shall afford the provider an opportunity to be heard. The review committee shall issue a written report of its findings to the provider and the commissioner's designee within five working days after completing its review.~~

~~F. D.~~ The contracting organization shall submit its recommendation to the commissioner's designee who shall make a decision to accept or refuse the recommendation.

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~~G. E.~~ If the commissioner's designee upholds the recommendation to deny, revoke, or refuse renewal, the commissioner's designee ~~shall~~ will inform the provider that the decision may be appealed in accordance with the Administrative Process Act (§ ~~9-6-14:1 et seq.~~ 2.2-4000 ~~et seq.~~ of the Code of Virginia) and a hearing may be requested in writing within 15 calendar days after receipt of the notification of the decision.

~~H. F.~~ After a hearing, the commissioner shall issue the final order and shall notify the provider that this order may be appealed in accordance with the Administrative Process Act (§ ~~9-6-14:1 et seq.~~ 2.2-4000 ~~et seq.~~ of the Code of Virginia).

~~I.~~ If the provider's certificate of registration is revoked or refused renewal by the commissioner or the commissioner's designee, the contracting organization shall request that the provider notify the parent of each child enrolled in the family day home within 10 calendar days of such action.

FORMS

~~Voluntary Registration Contracting Organization's Recommendation to Deny, Revoke, Refuse to Renew, or Close Certificate of Registration, 032-05-209/1 (rev. 10/00).~~

DOCUMENT INCORPORATED BY REFERENCE

Recommended Childhood and Adolescent Immunization Schedule-United States, 2003.

VA.R. Doc. No. R04-11; Filed May 5, 2005, 12:19 p.m.

Titles of Regulations: **22 VAC 40-660. Child Day Care Services Policy (REPEAL) (repealing 22 VAC 40-660-10 through 22 VAC 40-660-100).**

22 VAC 40-661. Child Care Program (adding 22 VAC 40-661-10 through 22 VAC 40-661-90).

Statutory Authority: § 63.2-217 of the Code of Virginia and 45 CFR 98.11.

Effective Date: August 1, 2005.

Agency Contact: Dottie Wells, Director, Division of Child Care and Development, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7639, FAX (804) 726-7655, or e-mail dottie.wells@dss.virginia.gov.

Summary:

The joint action repeals 22 VAC 40-660 and replaces it with new regulation 22 VAC 40-661. The new regulation (i) eliminates obsolete language, replacing it with current terms and practices; (ii) clarifies the receipt of child care subsidies for children of family day home owners or operators; (iii) clarifies the length of time background checks will be valid; and (iv) specifies a requirement for child care provider training and new policies on how to handle suspected fraud.

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.

CHAPTER 661. CHILD CARE PROGRAM.

22 VAC 40-661-10. Definitions.

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

"Applicant" means a person who has applied for child care services and the disposition of the application has not yet been determined.

"Background checks" means a sworn statement or affirmation as may be required by the Code of Virginia, the Criminal History Record Check, the Sex Offender and Crimes Against Minors Registry Check and the Central Registry Child Protective Services check.

"Child care services" means those activities that assist eligible families in the arrangement for or purchase of child care for children for care that is less than a 24-hour day. It also means activities that promote parental choice, consumer education to help parents make informed choices about child care, activities to enhance health and safety standards established by the state, and activities that increase and enhance child care and early childhood development resources in the community.

"Child protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents, establish paternity, and establish, modify, enforce, or collect child support, or child and spousal support.

"Children with special needs" means children with documented developmental disabilities, mental retardation, emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

"Copayment" means a specific fee that is a portion of a household's income that is contributed toward the cost of child care.

"Department" means the State Department of Social Services.

["Family" means any individual, adult or adults and/or children related by blood, marriage, adoption, or an expression of kinship who function as a family unit.]

"Federal poverty [~~level~~ guidelines] " means the income levels by family size, determined by the federal Department of Health and Human Services, used as guidelines in determining at what level families in the country are living in poverty.

"Fee" means a charge for a service and may include, but is not limited to, copayments, charges above the maximum reimbursable rate, or charges for registration, activities or transportation.

"Fraud" means the knowing employment of deception or suppression of truth in order to receive services one is not entitled to receive.

"FSET" means Virginia's Food Stamp Employment and Training Program, a multi-component employment and training program that provides Job Search, Job Search Training, Education, Training, and Work Experience to certain Food Stamp recipients.

"Good cause" means a valid reason why a parent in a two-parent household, or any other person under Virginia law responsible for the support of the children, cannot provide the needed child care, or a valid reason why a parent will not be required to register with the Division of Child Support Enforcement.

"Head Start" means the comprehensive federal child development programs that serve children from birth through age five, pregnant women, and their families (as established by the Head Start Act (42 USC § 9840)).

"Income eligible" means that eligibility for subsidy is based on income and family size.

"In-home" means child care provided in the home of the child and parent when all the children in care reside in the home and the provider does not live in the home.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Maximum reimbursable rate" means the maximum rate paid for child care services through the subsidy program that is established by the department and set out in the state Child Care and Development Fund plan filed with the United States Department of Health and Human Services.

"Nonfraud overpayment" means an overpayment that was caused by the local department, or by an inadvertent household or provider error.

"Parent" means the primary adult caretaker or guardian of a child.

"Resource and referral" means services that provide information to parents to assist them in choosing child care, and may include assessment of the family's child care needs, collection and maintenance of information about child care needs in the community, and efforts to improve the quality and increase the supply of child care.

"Service plan" means the written, mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

"Subsidy programs" means the department programs that assist low income eligible families with the cost of child care, including the TANF child care program and the income eligible child care programs.

"TANF assistance unit" means a household composed of an individual or individuals who meet all categorical requirements and conditions of eligibility for TANF.

"TANF capped child" means a child who the TANF worker has determined ineligible for inclusion in the TANF assistance unit because the child was born more than 10 full months after the mother's initial TANF payment was issued.

"Temporary assistance for needy families" or "TANF" means the program administered by the department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Transitional child care" means the program that provides child care subsidy to eligible former TANF recipients after the TANF case closes.

22 VAC 40-661-20. Families and children served.

Child care services are provided to children in eligible families that meet the following criteria:

1. Need for child care.
 - a. Families served must have an established need for child care subsidy. In two-parent households there must be good cause why either parent cannot provide the needed child care.
 - b. Child care can be provided to support:
 - (1) Employment,
 - (2) Approved education or training, or
 - (3) Child protective services.
2. Financial eligibility. Families served must be financially eligible to receive child care subsidy.
3. Residence. Children served must be legal residents of the United States and must reside in the locality where application is made.
4. Age of children. Children served must be under age 13, or under the age of 18 if they are physically or mentally incapable of caring for themselves or subject to court supervision. Child care must not be purchased for children who are eligible to attend public kindergarten or for older children during that portion of a day when appropriate public education is available, unless there are valid and documented reasons the children must be out of school.
- ~~5. Child support. Where there is an absent person who has responsibility for support of the children, families must be referred to the Division of Child Support Enforcement (DCSE) for child support services, as appropriate. The service worker is responsible for determining good cause why any applicant or recipient parent should not be referred to DCSE. Once referred, it is the parent's responsibility to cooperate with DCSE in order for the local department to approve child care subsidy payments. Noncooperation is grounds for case closure.~~
- 6- 5.] Children of owners or operators of family day homes. A child of an owner or operator of a family day home shall

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not be eligible to receive a child care subsidy if that child will be cared for in the home of the owner or operator.

22 VAC 40-661-30. Child care programs.

Child care subsidy, to the extent of available funding, is provided through the following programs:

1. **TANF Child Care Program.** Child care subsidy and services are made available to recipients of TANF. TANF child care includes needed care for the TANF capped child. These services are also provided to:

- a. A child who receives Supplemental Security Income (SSI), if the parent is on the TANF grant and if the child would have been in the TANF assistance unit were it not for the receipt of SSI, or
- b. Children who are not in the TANF assistance unit but who are financially dependent upon the parent who is in the TANF assistance unit.

2. **Income eligible child care programs.**

- a. **Transitional child care.** Child care subsidy and services are made available to eligible children of former TANF recipients to support parental employment if the TANF case is closed, and they are found income eligible.
- b. **Head Start child care.** Head Start child care subsidy and services are made available to eligible Head Start enrolled children. The program is for extended day and extended year child care beyond times covered by federally funded Head Start core hours.
- c. **Fee child care.** Fee child care subsidy and services are made available to children in eligible low income families to the extent of available funding.

3. **Food Stamp child care.** Child care subsidy and services are made available to children of parents in Virginia's FSET program to allow participation in an approved activity.

22 VAC 40-661-40. State income eligible scale and copayments.

A. **State income eligible scale.** The department establishes the scale for determining financial eligibility for the income eligible child care programs. Income eligibility is determined by measuring the family's income and size against the percentage of the federal poverty [~~level~~ guidelines] for their locality. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except: Supplemental Security Income; TANF benefits; general relief; food stamp benefits; child support paid to another household; earnings of a child under the age of 18 years; garnished wages; earned income tax credit; lump sum child support payments; and scholarships, loans, or grants for education except any portion specified for child care.

Unless a local alternate scale is approved, the income eligibility scale established by the department must be used for the transitional, Head Start and fee programs. Proposed alternate sliding scales must be approved by the department prior to submission to the local board of social services.

B. **Copayments.** Copayments are established by the department. All families receiving child care subsidy have a

copayment responsibility of 10% of their [~~gross~~ countable] monthly income or the copayment established by an approved local alternate scale except that families whose gross monthly income is at or below the federal poverty [~~level~~ guidelines] who are recipients of TANF, participants in the FSET program, or families in the Head Start program will have no copayment.

C. **Five-year limit.** Localities may limit receipt of fee child care program subsidies to a maximum of 60 months (five years). Receipt of transitional child care does not count toward the five years.

D. **Waiting list.** Local departments must have a waiting list policy for the fee child care program. Prior receipt of TANF must not be a reason for preferential placement on a waiting list. Proposed policy for a waiting list must be approved by the department prior to submission to the local board of social services. A waiting list policy must assure that decisions are made uniformly.

22 VAC 40-661-50. Parental choice [~~and providers used~~].

Families who receive subsidy have full parental choice of all legally operating child care. Agencies must not establish policies that limit parental choice of providers.

[22 VAC 40-661-53. Access to children.

A.] Providers used must afford parents unlimited access to their children when they are in care.

[B.] Providers must afford state and local department staff unlimited access to children in care when one or more children in care receive a child care subsidy.

[22 VAC 40-661-57. Provider requirements.

A.] Providers who participate in the subsidy program must be at least 18 years of age, obtain background checks as required by the regulations for their type of child care, and participate in annual training. [Providers and other individuals required to have background checks according to § 63.2-1725 of the Code of Virginia who are not otherwise governed by another state regulation requiring background checks shall obtain background checks as defined in this regulation.

B.] Background checks for regulated child care providers and local department approved child care providers remain valid according to the provisions of the regulations for their type of child care. Background checks for employees of certified preschools or nursery schools and unregulated family day home providers that participate in the child care subsidy program will remain valid for three years as long as the provider provides continuous services under the child care subsidy program. For any other individual who is required to have background checks according to § 63.2-1725 of the Code of Virginia, the background checks will remain valid for three years as long as the individual maintains continuous employment, residence or volunteer status with that provider.

[C.] Training requirements will consist of current certification in first aid and cardiopulmonary resuscitation (CPR) as appropriate for the age for the children in care, the cost of which will be borne by the provider. Four hours of skills training will also be required annually. Skills training is

available through the department at a cost of less than \$20 per participant.

22 VAC 40-661-60. Determining payment amount.

A. Maximum reimbursable rates.

1. The department will establish maximum reimbursable rates for child care subsidies for all localities in the state by type of care.
2. For children with special needs, payment over the maximum reimbursable rate is allowed when this is appropriate as determined by the local department.
3. Providers will be paid up to the maximum reimbursable rate of the jurisdiction in which the provider is located. Local departments must pay the rates and fees providers charge the general public, up to the maximum reimbursable rate, or a negotiated rate that is lower.
4. For out-of-state providers, the local department maximum reimbursable rate is used.
5. Parents who choose to place a child in a facility with a rate above the maximum reimbursable rate are responsible for payment of any additional amount, unless the local department elects to pay the additional amount out of local funds.

B. In-home care. For in-home child care, payment must be at least minimum wage, but not more than the maximum reimbursable rate for the number of children in care.

C. Registration fee. A single annual registration fee, if charged, will be paid. Transportation fees are paid only when the transportation services are provided by the provider. The total cost of care, excluding the single annual registration fee, but including special programs, other fees and transportation, must not exceed the maximum reimbursable rate and must be identified as one child care cost.

22 VAC 40-661-70. Case management.

A. Application and assessment. Parents who request child care services are required to sign an application and cooperate with an assessment by the local department. Consumer education, including the selection and monitoring of child care, must be provided to parents to assist them in gaining needed information about child care services and availability of providers.

B. Service planning. Child care workers must complete a written service plan for each child care case. The service plan outlines the mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

C. Due process. Applicants and recipients will be afforded due process through timely written notices of ~~[action at the time of case approval, for all significant changes, and at the time of case termination]~~ any action deciding or affecting his eligibility for services or copayment amount. Such written notice shall include the reason for the action and the notice of appeal rights and procedures, including the right to a fair hearing if the applicant or recipient is aggrieved by the local department's action or failure to act on an application].

D. Reassessment. Local departments will make regular contacts with a member of the case household or the provider. The purpose of these contacts is to evaluate whether the child care services authorized are meeting the needs of the child and the parent.

E. Beginning date of service payment.

1. The beginning date of service payment is the date the signed application is received in the local department if the family is determined eligible within 45 days.
2. If the determination is made more than 45 days after the signed application is received, services may begin only on the date eligibility is actually determined, except in the case of administrative delay.
3. Administrative delay is when either the parent or provider does not provide needed information for eligibility purposes to the local department within the 45 days due to circumstances beyond their control.
4. Payment cannot be made to licensed providers prior to the effective dates of their initial licenses.

F. Parental responsibilities.

1. Parents must be informed of their responsibility to report changes that could affect their eligibility. These changes must be reported to the local department within 10 calendar days. Parents must be informed that failure to report required changes may result in case closure, repayment of child care costs, or prosecution for fraud.
2. Parents must be informed of their responsibility to pay all fees owed. Parental failure to pay fees may result in case closure.

G. Termination. Local department termination of child care services must be planned jointly with the parent and provider. Adequate documentation supporting the reasons for termination must be filed in the case record.

22 VAC 40-661-80. Fraud.

A. Fraud.

[1.] When it is suspected that there has been a deliberate misrepresentation of facts in order to receive services, the local department must determine whether or not fraud was committed. There must be clear and convincing evidence that demonstrates that the household or provider committed or intended to commit fraud. [Suspected instances of child care fraud shall be referred to the fraud staff for investigation.

2. Disqualification.

- a. Parents will be disqualified from participating in the child care subsidy program for three months upon the first finding of child care fraud, 12 months upon the second finding, and permanently upon the third finding.
- b. Providers will be permanently disqualified from participating in the child care subsidy program upon the first finding of child care fraud.]

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B. Repayment. In addition to any criminal punishment, anyone who causes the local department to make an improper vendor payment by withholding required information or by providing false information will be required to repay the amount of the improper payment.

C. Nonfraud overpayment. In cases of nonfraud overpayment, neither the parent nor provider will be disqualified from participating in the subsidy program [, as long as a repayment schedule is entered into with the local department and payments are made according to that schedule]. [If an overpayment was made as result of an error by the local department, the local department will not seek to recoup those funds from the parent or the provider.]

22 VAC 40-661-90. Complaints in the child care setting.

All complaints regarding possible child abuse or neglect occurring in a child care setting must be referred to the child protective services unit at the local department serving the area where the child care service is located. Information regarding the complaint must be shared with the worker responsible for licensure or approval. All other complaints are referred to the approval authority.

[DOCUMENTS INCORPORATED BY REFERENCE

Child Care and Development Fund Plan for FFY 2004-2005, Department of Social Services, effective October 1, 2003.]

VA.R. Doc. Nos. R03-291 and R03-292; Filed May 5, 2005, 12:18 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 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Titles of Regulations: **9 VAC 5-50. New and Modified Stationary Sources (amending 9 VAC 5-50-260).**

9 VAC 5-60. Hazardous Air Pollutant Sources (adding 9 VAC 5-60-92).

9 VAC 5-80. Permits for Stationary Sources (amending 9 VAC 5-80-1100, 9 VAC 5-80-1110, 9 VAC 5-80-1120, 9 VAC 5-80-1140, 9 VAC 5-80-1160, 9 VAC 5-80-1170, 9 VAC 5-80-1280, 9 VAC 5-80-1290, 9 VAC 5-80-1300, and 9 VAC 5-80-1320).

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

Public Hearing Date: July 7, 2005 - 10 a.m.

Public comments may be submitted until July 29, 2005.

(See Calendar of Events section for additional information)

Effective Date: August 29, 2005.

Agency Contact: Robert A. Mann, Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4419, FAX (804) 698-4510, or e-mail ramann@deq.virginia.gov.

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

Purpose: The purpose of the regulation is to protect public health, safety and welfare by establishing the procedural and legal basis for the issuance of new source permits for proposed new or expanded facilities (i) that will enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, (ii) to assess the impact of the emissions from the facility on air quality, and (iii) that will provide a state and federally enforceable mechanism to enforce permit program requirements. The proposal is being made to simplify the program requirements and reduce the complexity of the permit program.

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 rationale for using the fast track process is as follows:

1. On May 21, 2002, a major revision to the minor new source review (NSR) program was adopted. The evolution of 9 VAC 5-80-10 and 9 VAC 5-80-11 to Article 6 resulted in

several major changes being made to the program enabling regulation. The new Article 6 became effective on September 1, 2002, in order to provide a period to train the department staff.

2. One of these changes was to convert from a permit applicability approach that looks at physical or operational changes at a single emissions unit to determine applicability to an approach, like that of the prevention of significant deterioration (PSD) program, which looks at the changes from a source-wide perspective to determine applicability. However, unlike PSD, the determination of applicability does not look back at historical emissions changes but looks only at the emissions changes at the other emissions units directly resultant from the physical or operational change at the affected emissions unit. Applicability is based on the net emissions increase in emissions from all affected units in the project.

3. While the netting concept, essential to determining applicability, works well in major NSR, it is not working in minor NSR, primarily due to the lack of an underlying permit program to make the netting operations enforceable.

4. Implementation of the new regulation has placed an unmanageable administrative burden upon the department and the affected entities. Under the new regulation, determination of permit and BACT applicability cannot be made with any reasonable degree of efficiency, effectiveness or consistency. Interpreting the new regulation has become a major time-consuming workload. While some problems were identified during the adoption process, the complexity of the resulting implementation problems far exceeded the predictions.

5. After almost two years of training, discussions, regulatory interpretations, and guidance documents, little progress has been made toward implementing the program in a satisfactory manner. The current situation cannot continue; the regulation must be fixed as soon as possible. The preferred and simplest course of action would be to eliminate the netting concept and return the regulation to its previous applicability structure.

6. This action is not being initiated at the behest of any external groups or parties nor would the proposal contain any of the EPA major NSR elements. However, opposition would be unlikely from the regulated community as they are as frustrated with the new regulation as is the department. Also, opposition would be unlikely from the environmental community since they objected to the netting concept during the process of initial adoption. Finally, EPA would have no basis to object since the regulation would be returned to the applicability structure in the currently approved SIP version.

If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, the agency will (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register and (ii) proceed with the normal promulgation process with the

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initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action. Any objections must be filed with the agency contact specified below in the public participation section.

Also, if public comments are received indicating that use of the source-wide approach to determine applicability is beneficial to some of the regulated community, the agency will consider (i) stopping the fast-track process and (ii) proceeding with the normal promulgation process, with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Substance: The substantive change that is being made to the program is to convert from a permit applicability approach that looks at the changes from a source-wide perspective to determine applicability to an approach that looks at each physical or operational change to the source individually to determine applicability. Currently applicability is based on the net emissions increase in actual emissions based on all the source-wide emissions changes directly resultant from the physical or operational change. The revised program would base permit applicability on the uncontrolled emissions from each individual physical or operational change to the source. The provisions covering permits for sources subject to the federal hazardous air pollutant new source review program have been restructured to increase clarity. Finally, a number of other provisions have been rewritten to increase clarity.

Issues: The advantages to the affected entities will vary widely according to source size and type and the particular options chosen by each source in order to comply with the regulation. The current regulation poses many challenges to the affected entities in making applicability determinations, particularly for smaller businesses for which the program is mainly intended. Implementation of the current regulation has placed a significant administrative burden upon the affected entities. Under the current regulation, determination of permit applicability cannot be made with any reasonable degree of efficiency, effectiveness or consistency. Interpreting the new regulation is major time-consuming workload for the affected entities. However, the affected entities will lose the increased flexibility inherent in the more complex regulation.

The problems cited above relative to making applicability determinations also place a similar burden upon the department. The primary benefit as a result of the changes to this regulation will be a reduction in the complexity of the regulation and associated reduction in workload of the permit writers and field inspectors who make compliance determinations. There are no disadvantages to the department.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 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. In determining the applicability of minor new source review standards of the State Air Pollution Control Board (the board), existing regulations use a source-wide, "net emissions increase" approach. The proposed regulations convert from using this approach to an approach that looks at changes in the uncontrolled emission rate resulting from an individual physical or operational change.

Estimated economic impact. These regulations contain applicability rules and standards for Minor New Source Review (MNSR). MNSR is the review of new and modified sources of certain air emissions from sources that do not qualify for review under Prevention of Significant Deterioration and Nonattainment New Source Review. MNSR review looks at the emissions changes resulting from new sources or modifications to existing sources. There have been two approaches used in Virginia for analyzing permit applicability under MNSR. The individual unit uncontrolled emissions approach looks at the changes to individual emissions units and evaluates the impact of changes to individual emissions units on emissions in the absence of any control technology. The source-wide net emissions increase approach looks at all changes in controlled emissions rates resulting from changes to a cluster of sources. The main difference between the two approaches is that one looks at each physical or operational change to the source individually to determine applicability and the other looks at the net increase in controlled emissions based on all the source-wide emissions changes directly resulting from the physical or operational change. Prior to 2002, MNSR review was conducted based on the individual unit uncontrolled emissions approach. In 2002, the State Air Pollution Board converted to the source-wide net emissions increase approach. The board now proposes to convert back to the old approach that was utilized prior to 2002.

The differences between the two approaches are significant. Looking at emissions changes from individual sources is much simpler and more straightforward to implement. Generally, no more than a simple analysis of the uncontrolled emissions changes is required in order to determine whether or not a permit is required. Writing permit conditions and compliance provisions for the individual changes are also a lot easier. Thus, the administrative costs of preparing and reviewing an application are quite low. In addition, many more of the less significant individual changes are exempt from permitting requirements, reducing the compliance cost on these sources. However, larger firms have less flexibility for making more significant changes under the individual unit uncontrolled emissions approach.

Looking at the source-wide net emissions increase that results from a number of changes at a source, on the other hand, provides more flexibility to larger firms in terms of avoiding permitting requirements and making those changes more quickly. Under this approach, a firm can offset emission increases by making concurrent changes that reduce the net emissions increase (such as removing related equipment),

thereby avoiding MNSR. However, the administrative costs of this approach are higher compared to the individual unit uncontrolled emissions approach because it requires complex emissions calculations, and a difficult (and often contested) analysis of the relationship of all the concurrent changes. The Department of Environmental Quality (the department) has to allocate more administrative resources to monitor and implement this complex approach.

In 2002, the board converted to the source-wide net emissions increase approach, anticipating that there would be benefits to the regulated community and to the department. The increased flexibility to "net out" of permit applicability was expected to result in more changes exempt from permitting requirements (resulting in fewer permit applications), and fewer delays for the firms making those exempt changes. This and concurrent changes to the control technology requirements were also expected to result in decreased permit processing times. Firms would have the flexibility to make more of their operational changes more quickly without burdensome permitting requirements. The department would see fewer applications and make fewer control technology determinations, which in turn would offset the administrative costs of the more complex application review process.

However, after more than 2.5 years of experience with the new approach, the board now proposes to revert to the uncontrolled emissions approach. According to the department, flaws in the basic concept of the new rule have made implementation problematic and the expected benefits have not been realized. The department's review process under the new rule has become more complex, without the expected increase in the number of exempt sources. The department's ability to make timely determinations of permit and BACT applicability has been greatly reduced and consistency has suffered.

Most sources are facing increased difficulties and costs in preparing their application packages. The main reason for the increased problems is the complexity of calculating changes in total emissions. Larger firms are not able to predict their applicability without experienced assistance from consultants, resulting in more applications overall for the department to review. Many sources are small firms that cannot afford outside help and who turn to the department for assistance. Thus, the new approach has placed a significant administrative burden on the department and affected entities and has significantly slowed the department's permit review process. For example, average processing time increased from 35 days to 72 days for the permits that do not require a public hearing. For permits that require a public hearing, the average processing time increased from 73 days to 90 days.

Based on the experience of the department with the net emissions approach in the last 2.5 years, the proposed change to revert to the uncontrolled emissions approach is expected to reduce the complexity of the regulation and consequently the administrative costs for the department and for a majority of sources. A significant reduction in workload of the permit writers and field inspectors who make compliance determinations is expected. Also, sources are likely to find it easier and cheaper to prepare a MNSR application package because they are familiar with the simpler

approach. The cost to prepare a permit application varies considerably from \$80 for a small source to \$80,000 for a large source. Similarly, the costs of an amendment to a permit vary from \$160 to \$4,200 depending on the size of the source. While firms are likely to realize some cost savings, they will also lose some operational flexibility and potential savings from the operational flexibility. According to the department, most firms desire to revert to the individual emissions approach. This may be taken as an indication that the expected reduction in administrative costs outweighs the expected costs of losing some operational flexibility for most firms.

The effect of proposed changes on the statewide emissions is not expected to be significant. Under the proposed changes, additional sources will be subject to MNSR, but also some of the sources currently subject to MNSR will no longer be regulated under these rules. Overall, the net change in statewide emissions is not expected to be significant.

Even though this proposal may benefit most firms, some firms, particularly large firms, may be negatively affected. It is likely that the administrative costs associated with MNSR are less significant for larger firms than they are for smaller firms. Also, some of the large firms subject to MNSR are also subject to major new source review for different facilities. Because the net emissions approach is used under major new source review, they are already familiar with this somewhat complex emissions analysis and they already possess resources to conduct the required emissions modeling. Thus, the added administrative costs of complying with the net emissions approach for large firms are probably less significant. At the same time, the value of operational flexibility provided by the net emissions approach is probably higher for large firms. In addition to the large sources, there may be other firms that stand to lose from reverting to the uncontrolled emissions approach for firm-specific reasons.

While the uncontrolled emissions approach appears to be best for most of the facilities, the net emissions approach seems to be the preferred method for some other firms, especially large firms. Thus, using a uniform approach will have the unintended consequence of hurting either small facilities or large facilities. Perhaps the best way to minimize compliance costs is to establish a dual system, where firms are afforded the opportunity to choose the method of review when they are filing their application. A dual approach would ensure that small firms minimize their administrative costs and at the same time large firms maximize their operational flexibility and savings from that flexibility. A dual system would also help the department alleviate the backlog of application reviews, as most firms are expected to choose the simple uncontrolled emissions review method. Although such a dual system would somewhat complicate the review process, the department is already familiar with both systems and should not have significant difficulty in accommodating a small number of requests it may receive for review under the net emissions method.

Businesses and entities affected. The proposed regulations will affect businesses and entities that wish to construct or modify their stationary sources in a way that is subject to

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MNSR. Approximately 335 permits were issued in 2001, 350 in 2002, 250 in 2003, and 170 in the first half of 2004.

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

Projected impact on employment. The proposed changes are expected to reduce administrative compliance costs associated with obtaining a permit from the department. However, the reduction in compliance costs does not, by itself infer a change in employment, since it is not known how the released funds will be used. If consulting businesses lose a significant number of customers as a result of the proposed changes, their demand for professional labor could decrease.

Effects on the use and value of private property. Any reduction in compliance costs for sources of air emissions can be expected to increase profits to firms owning the sources. The increase in profits will not, in general, be as large as the reduction in the firm's compliance costs. In competitive industries, much of the reduced costs will show up as reduced consumer prices. Insofar as profits increase, the value of the firms owning the sources will also increase. In the unlikely event that the changes lead to increased air emissions, then properties close to those increased emissions may suffer a loss in market value.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and disagrees strongly with the suggestion that "the best way to minimize compliance costs is to establish a dual system" whereby large firms may choose to maximize their operational flexibility under the source-wide net emission increase permit review system.

In reaching this conclusion, the report assumes that there are operational flexibility benefits to be realized under the source-wide net emission increase method of minor NSR permit review. No such operational flexibility benefits are possible. Although that was originally one of the primary objectives of the source-wide net emissions increase method, the lack of a means for making such "netting" emission reductions enforceable without a minor NSR permit means that the netting reductions cannot be used to avoid minor NSR review. Preserving a dual system would only preserve the procedural complexity and the increased administrative costs for the department, without providing any real benefits to the public or regulated community.

The report assumes that the increased administrative costs of preserving the source-wide review system would not be as significant for large sources because large sources would already be familiar with the similar emissions analysis method used under major source NSR. The differences between the source-wide net emission increase analysis methods under the major NSR and minor NSR programs are significant. They differ in nearly every aspect of the analysis (i.e., no contemporaneous period, limited to "directly resultant" emission increases and decreases, no backup permitting system, etc.). EPA guidance for major NSR is useless for understanding the minor NSR analysis. If there are reasons

that large firms would experience reduced administrative costs, previous familiarity with major NSR is not among them.

The report also indicates that there is reason to believe that large sources would support preserving aspects of source-wide net emission increase system in this dual tiered system, without providing any supporting evidence. DEQ did not believe this to be true and encouraged DPB to contact the large sources or their representative to get their input first hand; however, to the best of our knowledge this was never done.

Finally, this regulatory action is being presented as a fast-track amendment specifically to provide relief to both DEQ and the regulated industry. Basic to the fast track proposal is DEQ's belief that returning to the previous single emission unit system would not be controversial. This allows the change to be made through an abbreviated process. Constructing a new regulation that preserves the option for a source-wide analysis is deemed by DEQ to have the potential to be highly controversial. This would delay the benefits of this regulatory relief and subject both DEQ and the regulated industry to unnecessary permit costs and delays.

Summary:

The regulation applies to the construction or reconstruction of new stationary sources or expansions (modifications) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the net emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a source-wide perspective to determine applicability based upon the net emissions changes directly resulting from the modification (physical or operational change). Procedures for making changes to permits are included. There are provisions that allow the use of a general permit. The regulation also allows consideration of additional factors for making Best Available Control Technology (BACT) determinations for sources subject to minor new source review.

The major change that is being made to the program is to convert from a permit applicability approach that looks at the changes from a source-wide perspective to determine applicability to an approach that looks at each physical or operational change to the source individually to determine applicability. Currently applicability is based on the net emissions increase in actual emissions based on all the source-wide emissions changes directly resultant from the physical or operational change. The revised program would base permit applicability on the uncontrolled emissions from each individual physical or operational change to the source.

9 VAC 5-50-260. Standard for stationary sources.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility.

~~B. A stationary source shall apply best available control technology for each regulated pollutant that it would have the potential to emit in amounts equal to or greater than the levels in 9 VAC 5-80-1320 C.~~

~~C. A modification shall apply best available control technology for each regulated pollutant for which it would result in a net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur in amounts equal to or greater than the levels in 9 VAC 5-80-1320 D as a result of physical change or change in the method of operation in the unit.~~

~~D. B.~~ For phased construction projects, the determination of best available control technology shall be reviewed and modified, as appropriate, at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

9 VAC 5-60-92. Federal Hazardous Air Pollutant Program.

The Environmental Protection Agency (EPA) Hazardous Air Pollutant Program as promulgated in § 112 of the federal Clean Air Act is incorporated by reference into the regulations of the board to the extent that the provisions of 40 CFR Part 63 are incorporated by reference into this article. The following provisions govern implementation of the federal Hazardous Air Pollutant Program.

1. For the purposes of the federal Hazardous Air Pollutant Program, a hazardous air pollutant is any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63. The specific version of Subpart C adopted by reference shall be that contained in the CFR specified in 9 VAC 5-60-90.

2. For the purposes of the federal Hazardous Air Pollutant Program, the source category schedule for standards is the schedule issued pursuant to § 112(e) of the federal Clean Air Act for promulgating the standards issued pursuant to § 112(d) of the federal Clean Air Act and promulgated in 40 CFR Part 63. The specific schedule adopted by reference shall be that promulgated on February 12, 2002 (67 FR 6521).

9 VAC 5-80-1100. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to the construction, reconstruction, relocation or modification of any stationary source.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article do not apply to any stationary source, emissions unit or facility that is exempt under the provisions of 9 VAC 5-80-1320. Exemption from the requirement to obtain a permit under this article shall not relieve any owner of the responsibility to comply with any other applicable provisions of regulations of the board or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction. Any stationary source, emissions unit or facility which is exempt from the provisions of this article based on the criteria in 9 VAC 5-80-1320 but which exceeds the applicability thresholds for any applicable emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) if it were an existing source or any applicable standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) shall be subject to the more restrictive of the provisions of either the emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) or the standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).

D. The fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article. The provisions of this article do not apply to a stationary source or modification that would be subject to this article ~~only~~ if *only* fugitive emissions, to the extent quantifiable, are considered in calculating the ~~actual uncontrolled~~ emissions of the source ~~or net emissions increase~~.

E. An affected facility subject to Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 shall not be exempt from the provisions of this article, except where:

1. The affected facility would be subject only to recordkeeping or reporting requirements or both under Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50; or

2. The affected facility is constructed, reconstructed or modified at a stationary source which has a current permit for similar affected facilities that requires compliance with emission standards and other requirements that are not less stringent than the provisions of Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

G. Except as provided in 9 VAC 5-80-1310, no provision of this article shall be construed as exempting any stationary source or emissions unit from the provisions of the major new source review program. Accordingly, no provision of the major new source review program regulations shall be construed as exempting any stationary source or emissions unit from this article.

H. *For sources subject to the federal hazardous air pollutant new source review program, the provisions of the federal hazardous air pollutant new source review program shall be*

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implemented through this article and the applicable article of 9 VAC 5 Chapter 60 (9 VAC 5-60). Additional details may be found in subdivisions 1, 2 and 3 of this subsection. Permits issued under this article shall be the administrative mechanism for issuing approvals under the provisions of the federal hazardous air pollutant new source review program. Except as noted below, in cases where there are differences between the provisions of this article and the provisions of the federal hazardous air pollutant new source review program, the more restrictive provisions shall apply. The provisions of 9 VAC 5-80-1150 and 9 VAC 5-80-1160 shall not apply to sources subject to the federal hazardous air pollutant new source review program. Other sections of this article also provide requirements relative to the application of this article to sources subject to the federal hazardous air pollutant new source review program, in which case those provisions shall prevail. This subsection applies only to the extent that the provisions of the federal hazardous air pollutant new source review program are not being implemented by other new source review program regulations of the board.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60.

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9 VAC 5-60-90 et seq.) of Part II of 9 VAC 5 Chapter 60.

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the construction of a new emissions unit. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9 VAC 5-60-120 et seq.) of Part II of 9 VAC 5 Chapter 60. Any information regarding how permits are to be issued to a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program under the provisions of this article may be found in Article 3 (9 VAC 5-60-120 et seq.) of Part II of 9 VAC 5 Chapter 60.

4. The provisions of 40 CFR 63.40 through 40 CFR 63.44 for issuing approvals to construct a new source or reconstruct a source listed in the source category schedule for standards and to construct a new major source or reconstruct a major source even if the source category is not listed in the source category schedule for standards. These provisions of the federal hazardous air pollutant new source review program shall not be implemented through this article but shall be implemented through Article 7 (9 VAC 5-80-1400 et seq.) of this part.

I. Unless specified otherwise, the provisions of this article are applicable to various sources as follows:

1. Provisions referring to "sources," "new or modified sources, or both" or "stationary sources" are applicable to the construction, reconstruction or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of the major new source review program.

2. Provisions referring to "major stationary sources" are applicable to the construction or reconstruction of all major stationary sources subject to this article. Provisions referring to "major modifications" are applicable to major modifications of stationary sources subject to this article.

3. In cases where the provisions of the major new source review program conflict with those of this article, the provisions of the major new source review program shall prevail.

4. Provisions referring to "state and federally enforceable" or "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9 VAC 5-80-1120 F.

9 VAC 5-80-1110. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10), unless otherwise required by context.

C. Terms defined.

~~"Actual emissions" means the actual rate of emissions (expressed in tons per year) of a pollutant from a stationary source or portion thereof, as determined in accordance with the provisions of this definition.~~

~~1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two year period that precedes the particular date and that is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.~~

~~2. The board may presume that source specific allowable emissions for the emissions unit are equivalent to the actual emissions of the unit.~~

~~3. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.~~

~~"Allowable emissions" means the emission rate of a stationary source calculated by using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:~~

- ~~1. Applicable emission standards;~~
- ~~2. The emission limitation specified as a state and federally enforceable permit condition, including those with a future compliance date; and~~
- ~~3. Any other applicable emission limitation, including those with a future compliance date.~~

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future effective compliance dates):

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.
2. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.
3. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.
4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
5. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
6. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
7. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.
8. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.
9. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.
10. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.
11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.
12. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except

applicable state requirements and (ii) requirements regarding increments or visibility as provided in Article 8 (9 VAC 5-80-1700 et seq.) of this part.

13. Any standard or other requirement under § 126(a)(1) and (c) of the federal Clean Air Act.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.

"Commence," as applied to the construction, reconstruction or modification of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

1. Begun, or caused to begin, a continuous program of actual on-site construction, reconstruction or modification of the unit, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction, reconstruction or modification of the unit, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and that the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means fabrication, erection or installation of an emissions unit.

"Emergency" means, in the context of 9 VAC 5-80-1320 B 2, a situation where immediate action on the part of a source is needed and where the timing of the action makes it impractical to meet the requirements of this article, such as sudden loss of power, fires, earthquakes, floods or similar occurrences.

"Emissions cap" means any limitation on the rate of emissions of any regulated air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

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

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

1. Are permanent;

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2. Contain a legal obligation for the owner to adhere to the terms and conditions;
3. Do not allow a relaxation of a requirement of the implementation plan;
4. Are technically accurate and quantifiable;
5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with 9 VAC 5-80-1180 and other regulations of the board; and
6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal hazardous air pollutant new source review program" means a program for the preconstruction review and approval of new sources or expansions to existing ones in accordance with regulations specified below and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. ~~These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.~~

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E. ~~These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9 VAC 5-60-90 et seq.) of 9 VAC 5 Chapter 60.~~

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT approval prior to the construction of a new emissions unit. ~~These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9 VAC 5-60-120 et seq.) of (9 VAC 5 Chapter 60.~~

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

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act, as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission

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

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

4. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.

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

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

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

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

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions ~~which that~~ could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9 VAC 5-80-1250.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by ~~40 CFR 63.60 Subpart C of 40 CFR Part 63.~~

"Major modification" means any modification defined as such in 9 VAC 5-80-1710 C or 9 VAC 5-80-2010 C, as may apply.

"Major new source review (major NSR program)" means a program for the preconstruction review of changes ~~which that~~ are subject to review as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Major stationary source" means any stationary source ~~which that~~ emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant.

"Minor new source review (minor NSR program)" means a program for the preconstruction review of changes ~~which that~~ are subject to review as new or modified sources and ~~which that~~ do not qualify as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Modification" means any physical change in, change in the method of operation of, or addition to, ~~a stationary source that would result in a net emissions increase~~ *an emissions unit that increases the uncontrolled emission rate* of any regulated air pollutant emitted into the atmosphere by the ~~source unit~~ or ~~which that~~ results in the emission of any regulated air pollutant into the atmosphere not previously emitted, except that the following shall not, by themselves (unless previously limited by permit conditions), be considered modifications under this definition:

1. Maintenance, repair and replacement ~~which that~~ the board determines to be routine for a source type and which does not fall within the definition of reconstruction;
2. An increase in the production rate of a unit, if that increase does not exceed the operating design capacity of that unit;
3. An increase in the hours of operation;
4. Use of an alternative fuel or raw material if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the ~~source emissions unit~~ was designed to accommodate that alternative use. A ~~source unit~~ shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications;
5. Use of an alternative fuel or raw material if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the ~~source emissions unit~~ was not designed to accommodate that alternative use and the owner demonstrates to the board that as a result of trial burns at the ~~source unit~~ or other ~~sources units~~ or of other sufficient data that the *uncontrolled* emissions resulting from the use of the alternative fuel or raw material supply are decreased;
6. The addition, replacement or use of any system or device whose primary function is the reduction of air pollutants, except when a system or device that is necessary to comply with applicable air pollution control laws and regulations is replaced by a system or device which the board considers to be less efficient in the control of air pollution emissions; or
7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or device is not (i) necessary for the source to comply with any applicable air pollution control laws or regulations or (ii) *used to avoid any applicable new source review program requirement.*

"Modified source" means any stationary source (or portion of it), the modification of which commenced on or after March 17, 1972.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations ~~which that~~ are part of the implementation plan.

~~"Net emissions increase" means the amount by which the sum of the following exceeds zero: (i) any increase in actual emissions from a particular physical change or change in the~~

~~method of operation at a stationary source and (ii) any other increases and decreases in actual emissions at the source that are concurrent with the particular change and are otherwise creditable. An increase or decrease in actual emissions is concurrent with the increase from the particular change only if it is directly resultant from the particular change. An increase or decrease in actual emissions is not creditable if the board has relied on it in issuing a permit for the source under the new source review program and that permit is in effect when the increase in actual emissions from the particular change occurs. Creditable increases and decreases shall be federally enforceable or enforceable as a practical matter.~~

"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.

"Nonroad engine" means any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers);
2. In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or
3. That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.

An internal combustion engine is not a nonroad engine if:

1. The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under § 202 of the federal Clean Air Act; or
2. The engine otherwise included in subdivision 3 above remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.

For purposes of this definition, a location is any single site at a building, structure, facility or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a

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permanent basis (i.e., at least two years) and that operates at the single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

"Pollution control project" means physical or operational changes whose primary function is the reduction of emissions of targeted regulated air pollutants but ~~which that~~ results in an increase in emissions of nontargeted regulated air pollutants that qualify as a major modification as defined in 9 VAC 5-80-1710 or 9 VAC 5-80-2010. The fabrication, manufacture or production of pollution control/prevention equipment and inherently less-polluting fuels or raw materials is not a pollution control project. A pollution control project shall be so designated by the board.

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being moved from one location to another for the purpose of operating at multiple locations and storage when idle. Indications of portability include, but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction" means the replacement of an emissions unit or its components to such an extent that:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit;
2. The replacement significantly extends the life of the emissions unit; and
3. It is technologically and economically feasible to meet the applicable emission standards prescribed under regulations of the board.

Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

1. The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;
2. The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;

3. The extent to which the components being replaced cause or contribute to the emissions from the unit; and

4. Any economic or technical limitations on compliance with applicable standards of performance ~~which that~~ are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound;
2. Any pollutant for which an ambient air quality standard has been promulgated;
3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act;
4. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under 40 CFR Part 63; or
5. Any pollutant subject to a regulation adopted by the board.

"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Secondary emissions" means emissions which occur or would occur as a result of the construction, reconstruction, modification or operation of a stationary source, but do not come from the stationary source itself. For the purpose of this article, secondary emissions must be specific, well-defined, and quantifiable; and must impact upon the same general areas as the stationary source ~~which that~~ causes the secondary emissions. Secondary emissions include emissions from any off site support facility ~~which that~~ would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source. Secondary emissions do not include any emissions ~~which that~~ come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Source category schedule for standards" means the schedule (i) issued pursuant to § 112(e) of the federal Clean Air Act for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and (ii) incorporated by reference into the regulations of the board at 9 VAC 5-60-92 B.

"State enforceable" means all limitations and conditions ~~which that~~ are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9 VAC 5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit, and practicable enforceability.

"Stationary source" means any building, structure, facility or installation ~~which that~~ emits or may emit any regulated air

pollutant. A stationary source shall include all of the pollutant-emitting activities ~~which that~~ belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any watercraft or any nonroad engine. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., ~~which that~~ have the same two-digit code) as described in the "Standard Industrial Classification Manual," ~~as amended by the supplement~~ (see 9 VAC 5-20-21).

"Synthetic minor" means a stationary source whose potential to emit is constrained by state enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

"Targeted regulated air pollutants" means regulated air pollutants that are reduced as a result of physical or operational changes whose primary function is the reduction of emissions of regulated air pollutants to meet an applicable federal requirement, exclusive of the new source review program.

"Uncontrolled emission rate" means the emission rate from a stationary source or emissions unit when operating at maximum capacity without air pollution control equipment. Air pollution control equipment includes control equipment that is not vital to its operation, except that its use enables the source to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8,760 hours of operation per year) of the source, unless the source is subject to state and federally enforceable permit conditions that limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted, stored, or processed may be used in determining the uncontrolled emission rate of a source. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.

9 VAC 5-80-1120. General.

A. No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source.

B. Except as provided in 9 VAC 5-80-1320 A 1 c, no owner or other person shall relocate any stationary source or emissions unit from one stationary source to another without first obtaining from the board a permit to relocate the source or unit.

C. No owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any pollutant from an affected facility without first obtaining a permit from the board.

D. The board may combine the requirements of and the permits for emissions units within a stationary source subject to the new source review program into one permit. Likewise the board may require that applications for permits for

emissions units within a stationary source required by any provision of the new source review program be combined into one application.

E. The board may incorporate the terms and conditions of a state operating permit into a permit issued pursuant to this article. The permit issued pursuant to this article may supersede the state operating permit provided the public participation provisions of the state operating permit program are followed. The board may incorporate the terms and conditions of a permit issued pursuant to this article into a state operating permit provided all of the permitted emissions units are operational and determined to be in compliance in accordance with 9 VAC 5-80-1200.

F. All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9 VAC 5-40-130 et seq.) of 9 VAC 5 Chapter 40, Article 2 (9 VAC 5-50-130 et seq.) of 9 VAC 5 Chapter 50, Article 4 (9 VAC 5-60-200 et seq.) or Article 5 (9 VAC 5-60-300 et seq.) of 9 VAC 5 Chapter 60.

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

G. Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

~~H. For sources subject to the federal hazardous air pollutant new source review program, the provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and the applicable article of 9 VAC 5 Chapter 60 (9 VAC 5-60). Permits issued under this article shall be the administrative mechanism for issuing approvals under the provisions of federal hazardous air pollutant new source review program. Except as noted below, in cases where there are differences between the provisions of this article and the provisions of federal hazardous air pollutant new source review program, the more restrictive provisions shall apply. The provisions of 9 VAC 5-80-1150 and 9 VAC 5-80-1160 shall not apply to sources subject to the federal hazardous air pollutant new source review program. Other sections of this article also provide requirements relative to the application of this article to sources subject to the federal hazardous air pollutant new source review program, in which case those provisions shall prevail. This subsection applies only to the extent that the provisions of the federal hazardous air pollutant new source review program are not~~

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~~being implemented by other new source review program regulations of the board.~~

9 VAC 5-80-1140. Applications.

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures acceptable to the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted.

B. A separate application is required for each stationary source.

C. For projects with phased development, a single application should be submitted covering the entire project.

D. Any application, form, report, or certification submitted to the board shall comply with the provisions of 9 VAC 5-20-230.

E. Any application submitted pursuant to this article shall contain a certification signed by the applicant as follows:

"I certify that I understand that the existence of a permit under this article does not shield the source from potential enforcement of any regulation of the board governing the major new source review program and does not relieve the source of the responsibility to comply with any applicable provision of the major NSR *program* regulations."

9 VAC 5-80-1160. Action on permit application.

A. Within 30 days after receipt of an application, the board will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application will be provided by the board in writing and will include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the board received all required information, *including any applicable permit fees*, and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

B. If no public comment period is required, processing time for a permit is normally 90 days following receipt of a complete application. If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required or if a public hearing is conducted under 9 VAC 5-80-1170. Processing steps may include, but not be limited to, the following:

1. Completion of the preliminary review and analysis in accordance with 9 VAC 5-80-1190 and the preliminary decision of the board. This step may constitute the final step

if the provisions of 9 VAC 5-80-1170 concerning public participation are not applicable.

2. When required, completion of the public participation requirements in 9 VAC 5-80-1170.

3. Completion of the final review and analysis and the final decision of the board.

C. The board will normally take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments from that) when required, unless more information is needed. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9 VAC 5-80-1200.

D. The applicant may appeal the decision pursuant to Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170.

E. Within five days after notification to the applicant pursuant to subsection C of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9 VAC 5-80-1170 E 1.

9 VAC 5-80-1170. Public participation.

A. No later than 15 days after receiving the initial determination notification required under 9 VAC 5-80-1160 A, the applicant for a permit for a major stationary source or a major modification shall notify the public of the proposed major stationary source or major modification in accordance with subsection B of this section.

B. The public notice required by subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the following:

1. The source name, location, and type;

2. The pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;

3. The control technology proposed to be used at the time of the publication of the notice; and

4. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

C. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public to that required in subsections A and B of this section.

D. Prior to the decision of the board, permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection E of this section.

1. Applications for stationary sources of hazardous air pollutants requiring a case-by-case maximum achievable control technology determination under Article 3 (9 VAC 5-60-120 et seq.) of 9 VAC 5 Chapter 60.

2. Applications for major stationary sources and major modifications.

3. Applications for stationary sources which have the potential for public interest concerning air quality issues, as determined by the board ~~in its discretion~~. The identification of such sources ~~may~~ shall be made using the following ~~nonexclusive~~ criteria:

- a. Whether the project is opposed by any person;
- b. Whether the project has resulted in adverse media;
- c. Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and
- d. Whether the project has generated adverse comment by a local official, governing body or advisory board.

4. Applications for stationary sources for which any provision of the permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by subdivisions 1 and 2 of the GEP definition. The demonstration specified in subdivision 3 of the GEP definition must be available during the public comment period.

E. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing.

1. Information on the permit application (exclusive of confidential information under 9 VAC 5-170-60), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

F. In order to facilitate the efficient issuance of permits under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of this part, upon request of the applicant the board shall process the permit application under this article using public participation procedures meeting the requirements of this section and 9 VAC 5-80-270 or 9 VAC 5-80-670, as applicable.

9 VAC 5-80-1280. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable federal requirement;
2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;
3. Do not require or change a case-by-case determination of an emission limitation or other standard;
4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

a. An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act *that would otherwise require a permit under the new source review program*; and

6. Are not required to be processed as a significant amendment under 9 VAC 5-80-1290 or as an administrative permit amendment under 9 VAC 5-80-1270.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that:

1. Involve the use of economic incentives, emissions trading, and other similar approaches to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require more frequent monitoring or reporting by the permittee or a reduction in the level of an emissions cap.

3. Designate any term or permit condition that meets the criteria in 9 VAC 5-80-1120 F 1 (i) as state-only enforceable as provided in 9 VAC 5-80-1120 F 2 for any permit issued under this article or any regulation from which this article is derived.

C. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

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D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.
2. A request that such procedures be used.

E. The public participation requirements of 9 VAC 5-80-1170 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.
2. Deny the permit amendment request.
3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follow follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.
2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.
3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

9 VAC 5-80-1290. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9 VAC 5-80-1280 or as administrative amendments under 9 VAC 5-80-1270.
2. Significant amendment procedures shall be used for those permit amendments that:
 - a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.
 - b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

- (1) An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and
- (2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

B. A request for a significant permit amendment shall ~~include~~ be governed by the following requirements:

1. The request shall include, as a minimum, either:

- a. All of the information required in 9 VAC 5-80-1140 and 9 VAC 5-80-1150 if the change is a modification that would require a permit subject to this article; or
- b. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs if the change is a modification that would not require a permit subject to this article.

2. The applicant may, at his discretion, include a suggested draft permit amendment.

C. The provisions of 9 VAC 5-80-1170 shall apply to requests made under this section if the ~~permit is for a stationary source emissions unit~~ subject to the request under this section was subject to review in a previous permit application that was subject to 9 VAC 5-80-1170.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required or if a public hearing is conducted under 9 VAC 5-80-1170.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9 VAC 5-80-1300. Reopening for cause.

A. A permit may be reopened and ~~amended~~ revised under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.
2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not

sufficient to meet all of the standards and requirements contained in this article.

4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

9 VAC 5-80-1320. Permit exemption levels.

A. The general requirements for permit exemption levels are as follows:

1. The provisions of this article do not apply to the following stationary sources or emissions units:

a. The construction, reconstruction, relocation or modification of any stationary source or emissions unit that is exempt under the provisions of subsections B through F of this section. *In determining whether a source is exempt from the provisions of this article, the provisions of subsections B through D of this section are independent from the provisions of subsections E and F of this section. A source must be determined to be exempt both under the provisions of subsections B through D taken as a group and under the provisions of subsection E or F to be exempt from this article.*

~~b. The reconstruction of any stationary source or emissions unit if the potential to emit resulting from the reconstruction will not increase.~~

~~e. b.~~ The relocation of a portable emissions unit provided that:

(1) The new emissions from the portable emissions unit are secondary emissions;

(2) The portable emissions unit has previously been permitted or is subject to a general permit;

(3) The unit would not undergo modification or reconstruction;

(4) The unit is suitable to the area in which it is to be located; and

(5) Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

~~e. c.~~ The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9 VAC 5-20-220.

~~e. d.~~ The use by any source of an alternative fuel or raw material, if the owner demonstrates to the board that, as a result of trial burns at their facility or other facilities or other sufficient data, the *uncontrolled* emissions resulting from the use of the alternative fuel or raw material supply are decreased.

~~2. In determining whether a facility source is exempt from the provisions of this article, the provisions of subsections B through D of this section are independent from the provisions of subsections E and F of this section. A source must be determined to be exempt both under the provisions of subsections B through D taken as a group and under the provisions of subsection E or F to be exempt from this article.~~

~~3. 2.~~ In determining whether a facility is exempt from the provisions of this article under the provisions of subsection B of this section, the definitions in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the board.

~~4. 3.~~ Any owner claiming that a facility is exempt from this article under the provisions of this section shall keep records as may be necessary to demonstrate to the satisfaction of the board that the facility was exempt at the time a permit would have otherwise been required under this article.

B. Facilities as specified below shall be exempt from the provisions of this article as they pertain to construction, ~~modification~~, reconstruction or relocation.

1. Fuel burning equipment units (external combustion units, not engines and turbines) as follows:

a. Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.

b. Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.

c. Using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.

d. Using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour.

2. Engines and turbines *that are* used for emergency purposes only and ~~which~~ *that* do not *individually* exceed 500 hours of operation per year at a single stationary source ~~as follows~~. *All engines and turbines in a single application must also meet the following criteria to be exempt.*

a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and gasoline engines powering electrical generators having an aggregate rated electrical power output of less than 611 kilowatts.

b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines

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powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.

c. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).

3. Engines that power mobile sources during periods of maintenance, repair or testing.

4. Volatile organic compound storage and transfer operations involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:

a. Volatile organic compound transfer operations involving:

(1) Any tank of 2,000 gallons or less storage capacity; or

(2) Any operation outside the volatile organic compound emissions control areas designated in 9 VAC 5-20-206.

b. Volatile organic compound storage operations involving any tank of 40,000 gallons or less storage capacity.

5. Vehicle customizing coating operations, if production is less than 20 vehicles per day.

6. Vehicle refinishing operations.

7. Coating operations for the exterior of fully assembled aircraft or marine vessels.

8. Petroleum liquid storage and transfer operations involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this article when used or stored at ambient temperatures); and any operation or facility specified below:

a. Gasoline bulk loading operations at bulk terminals located outside volatile organic compound emissions control areas designated in 9 VAC 5-20-206.

b. Gasoline dispensing facilities.

c. Gasoline bulk loading operations at bulk plants:

(1) With an expected daily throughput of less than 4,000 gallons; or

(2) Located outside volatile organic compound emissions control areas designated in 9 VAC 5-20-206.

d. Account/tank trucks; however, permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the

same requirements as those trucks serving existing facilities.

e. Petroleum liquid storage operations involving:

(1) Any tank of 40,000 gallons or less storage capacity;

(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer; or

(3) Any tank storing waxy, heavy pour crude oil.

9. Petroleum dry cleaning plants with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9 VAC 5-50-410.

10. Any addition of, relocation of or change to a woodworking machine within a wood product manufacturing plant provided the system air movement capacity, expressed as the cubic feet per minute of air, is not increased and maximum control efficiency of the control system is not decreased.

11. Wood sawmills and planing mills primarily engaged in sawing rough lumber and timber from logs and bolts, or resawing cants and flitches into lumber, including box lumber and softwood cut stock; planing mills combined with sawmills; and separately operated planing mills that are engaged primarily in producing surfaced lumber and standard workings or patterns of lumber. This also includes facilities primarily engaged in sawing lath and railroad ties and in producing tobacco hogshead stock, wood chips, and snow fence lath. This exemption does not include any facility that engages in the kiln drying of lumber.

12. Exhaust flares at natural gas and coalbed methane extraction wells.

13. *Reconstructed stationary sources or emissions units if the potential to emit resulting from the reconstruction will not increase.*

C. The exemption of new and relocated sources shall be determined as specified below:

1. ~~Stationary sources with a potential to emit at~~ *Unless exempted under subsection B of this section, emission units with uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the provisions of this article pertaining to construction or relocation.*

Pollutant	Emissions rate	
Carbon Monoxide	100 tons per year	chlorinated dibenzo-p-dioxins and dibenzofurans)
	(tpy)	Municipal waste combustor metals
Nitrogen Oxides	40 tpy	(measured as particulate matter)
Sulfur Dioxide	40 tpy	Municipal waste combustor acid gases
Particulate Matter	25 tpy	(measured as the sum of SO ₂ and HCl)
Particulate Matter (PM ₁₀)	15 tpy	Municipal solid waste landfill emissions
Volatile organic compounds	25 tpy	(measured as nonmethane organic compounds)
Lead	0.6 tpy	
Fluorides	3 tpy	
Sulfuric Acid Mist	6 tpy	
Hydrogen Sulfide (H ₂ S)	9 tpy	
Total Reduced Sulfur (including H ₂ S)	9 tpy	
Reduced Sulfur Compounds (including H ₂ S)	9 tpy	
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy	
Municipal waste combustor metals (measured as particulate matter)	13 tpy	
Municipal waste combustor acid gases (measured as the sum of SO ₂ and HCl)	35 tpy	
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy	

~~2. Facilities exempted by subsection B of this section shall not be included in the determination of potential to emit of a stationary source for purposes of exempting sources under this subsection.~~

~~3- 2. If the particulate matter (PM₁₀) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀), the stationary source shall be considered to be exempt for particulate matter. If the emissions of particulate matter (PM₁₀) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter shall be used to determine the exemption status.~~

D. The exemption of modified and reconstructed sources shall be determined as specified below:

~~1. Stationary sources with net emissions increases Emissions units with increases in uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the provisions of this article pertaining to modification or reconstruction.~~

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year
	(tpy)
Nitrogen Oxides	10 tpy
Sulfur Dioxide	10 tpy
Particulate Matter	15 tpy
Particulate Matter (pm ₁₀)	10 tpy
Volatile organic compounds	10 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H ₂ S)	9 tpy
Total Reduced Sulfur (including H ₂ S)	9 tpy
Reduced Sulfur Compounds (including H ₂ S)	9 tpy
Municipal waste combustor organics (measured as total tetra-through octa-	3.5 x 10 ⁻⁶ tpy

~~2. Facilities exempted by subsection B of this section shall not be included in the determination of net emissions increase of a stationary source for purposes of exempting sources under this subsection. However, any other increases and decreases in actual emissions at the source that are concurrent with a particular change shall be included in the determination of net emissions increase of a stationary source for purposes of exempting sources under this subsection, and if the change is not exempt, the other increases shall be subject to 9 VAC 5-50-260 C.~~

~~3- 2. If the particulate matter (PM₁₀) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀), the stationary source shall be considered to be exempt for particulate matter. If the emissions of particulate matter (PM₁₀) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter shall be used to determine the exemption status.~~

E. Exemptions for stationary sources of toxic pollutants not subject to the federal hazardous air pollutant new source review program shall be as follows:

1. Stationary sources exempt from the requirements of Article 5 (9 VAC 5-60-300 et seq.) of 9 VAC 5 Chapter 60 as provided in 9 VAC 5-60-300 C 1, C 2, D or E shall be exempt from the provisions of this article.

2. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the provisions of this article.

a. Incinerators, unless the incinerator is used exclusively as air pollution control equipment.

b. Ethylene oxide sterilizers.

c. Boilers, incinerators, or industrial furnaces as defined in 40 CFR 260.10 and subject to 9 VAC 20 Chapter 60 (9 VAC 20-60)

~~F. Any source category or portion of a source category subject to the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 61 or 63. This subsection provides information on the extent to which any source category or portion of a source category subject to the federal hazardous air pollutant new source review program may be exempt from the provisions of this article.~~

~~1. This subdivision addresses those source categories subject to the provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 that establish the requirements for issuing approvals of the~~

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construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 61.

2. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.5 that establish the requirements for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 63.

3. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.50 through 40 CFR 63.56 that establish the requirements for issuing notices of MACT approval prior to the construction of a new emissions unit listed in the source category schedule for standards. Any information regarding exemptions for a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program may be found in Article 3 (9 VAC 5-60-120 et seq.) of Part II of 9 VAC 5 Chapter 60.

4. This subdivision addresses those source categories for which EPA has promulgated a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act in the source category schedule for standards. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article.

VA.R. Doc. No. R05-191; Filed May 10, 2005, 2:37 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-70).

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 July 29, 2005.
(See Calendar of Events section for additional information)

Effective Date: August 15, 2005.

Agency Contact: Diana Thorpe, Long Term Care and Quality Assurance Division, Department of Medical Assistance

Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8490, FAX (804) 786-1680, or e-mail diana.thorpe@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 of Medical Assistance. Section 32.1-324 of the Code of Virginia grants to the Director of DMAS the authority to administer and amend the Plan of Medical Assistance in lieu of board action pursuant to the board's requirements.

Purpose: Without endangering recipients' health and safety, this action decreases the administrative burden of home health providers as they render services to recipients. This action modifies home health physician certification and recertification requirements as contained in 12 VAC 30-60-70. This reduces administrative oversight that home health providers currently provide for recipients of home health services. Home health providers have indicated that the additional oversight was burdensome and did not necessarily improve patient care and outcomes.

This regulatory action is expected to help protect the health, safety, and welfare of recipients receiving home health services by enabling them to live successfully in their homes and communities.

Rationale for Using Fast-Track Process: Without compromising on quality of care, this action decreases the administrative burden of home health providers as they render services to recipients so objections by providers and their advocacy groups are not anticipated. These regulatory changes were shared with an advisory group of providers and advocates and they had no substantive comments about the changes but supported them. The agency is using the fast-track process in order to complete the needed regulatory changes as soon as possible so as to decrease the administrative burden to providers.

Substance: The current requirements, implemented in 1996, for the coverage of home health services include that the attending physician sign and date the recipient certification (of the need for the home health care) within 21 days of the start of care and sign and date the recertifications (of the need for continuing care) within 60 days of the renewal date. Based on the existing knowledge and experience in 1996, these standards were reasonable and duly promulgated. Since the implementation of these regulations, DMAS has held the home health agencies responsible for ensuring that the physician sign and date the certifications within 21 days and the recertifications within 60 days. This was put into place to ensure that the attending physician approved the plan of care before services began or continued. If the attending physician did not comply with these requirements, DMAS has held the home health agency responsible and retracted reimbursement on utilization review for services already provided.

In 1999, the Centers for Medicare and Medicaid Services (CMS) implemented the Outcome and Assessment Information Set (OASIS) for Medicare beneficiaries and changed its conditions of participation for home health agencies. Since the Medicaid program was not required to comply with these requirements, DMAS did not change its

1996 requirements. In light of the Medicare change and DMAS' retention of its then-current policies, this left the home health agencies in the position of complying with different sets of requirements for Medicare and for Medicaid. Such differences between these two major health care programs created, for home health agencies, considerable administrative and management burdens. Furthermore, the Medicare conditions of participation did not just apply for Medicare beneficiaries but to all clients of home health agencies.

Recently, DMAS determined that the quality of care rendered to home health recipients is not compromised if Medicare requirements regarding physician review of the home health certifications and recertifications are adopted for Medicaid recipients. In the spring of 2004, DMAS convened an advisory group, comprised of DMAS staff, provider agencies, and provider advocacy groups, to assist with issues concerning the home health program. The provider-members of the advisory group advised DMAS that its restrictive administrative requirements were causing some home health providers to consider reducing the number of Medicaid recipients in their caseloads.

With the implementation of this regulatory change, home health providers will not be held to the current stringent physician requirements. This new regulation outlines the requirements for physician oversight of home health services that home health agencies must follow in order to receive reimbursement from DMAS. These changes do not conflict with home health regulations from the Virginia Department of Health.

Issues: The primary advantage for the Commonwealth with these changes is that home health providers are more likely to continue providing services to Medicaid recipients thereby enabling recipients to remain in their homes and averting institutional costs of care. The advantage of these changes to Medicaid recipients in need of home health care is that their access to such care, across the Commonwealth, will be preserved. The advantage to home health agencies afforded by these changes is the reduction of administrative and management duties required by DMAS' current requirements.

The disadvantage to the Commonwealth, Medicaid recipients, and home health providers of not instituting these changes could be the reduction in the availability of these services as providers relinquish their Medicaid provider agreements.

There are no disadvantages to the Commonwealth or Medicaid recipients in implementing these changes.

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 (i) require that the start-of-care patient assessment for home health services must be completed within the first five calendar days of the certification period, (ii) require that physician recertification of a patient's condition must be performed within the last five days of the 60-day certification period, (iii) extend the period for which a physician signs the certification and recertifications to until the home health agency submits the bill, and (iv) remove the requirement that a physician sign and personally design the plans of care for physical therapy, occupational therapy, and speech language pathology services.

Estimated economic impact. These regulations contain procedural standards for the provision of home health services to Medicaid recipients. The main purpose of the proposed changes is to make these requirements consistent with Medicare home health requirements, which were amended in 1999. Currently, home health providers have to comply not only with Medicare rules, but also a slightly different set of Medicaid rules. Although the proposed changes are relatively minor, consistency between the Medicare and Medicaid rules is expected to provide some administrative cost savings to the providers without compromising patient health and safety.

One of the proposed changes will require that the start-of-care patient assessment for home health services must be completed within the first five calendar days of the certification period. Currently, this assessment has to be completed within the first 21 days. Early assessment of patient needs will help patients receive appropriate services sooner and could improve their health status. Even though this change appears to reduce a provider's flexibility to conduct assessments, providers are currently complying with a five-day time frame for Medicare patients. According to the Department of Medical Assistance Services, an advisory group representing the providers supports this change, which could be taken as an indication that the expected provider benefits from consistent Medicare and Medicaid rules exceed the provider costs associated with a shorter time frame in which to conduct these assessments.

Another change will require that physician recertification of a patient's condition must be performed within the last five days of the 60-day certification period. Under the current regulations, recertifications can be done anytime within the 60-day period. Thus, moving the recertification window towards the end of the certification period will better reflect the patient's more recent condition and could improve health outcomes. On the other hand, the providers will have a narrower window in which to perform recertifications. Similar to the previous change, providers are currently complying with this time frame for Medicare patients and have shown support for performing the recertification within the Medicare time frame. This support appears to suggest that providers expect to realize net benefits from consistent Medicare and Medicaid timeframes.

The proposed changes will also extend the period for which a physician signs the certification and recertifications to until the

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home health agency submits the bill, provided the physician reviews the case within the 60-day certification period. Currently, unless the physician reviews and signs the certification within the 60-day period, the Medicaid reimbursement is denied. This proposed change will provide more flexibility to providers. A physician will still be required to review the case within the 60-day certification period, but providers will be afforded more time to obtain signatures from them. Because physicians will review the case within the same timeframe as before, no significant adverse effects on patient health is expected. However, this change will benefit providers by affording them a longer time frame in which to obtain physician signatures for reimbursement.

The proposed regulation will also remove the requirement that a physician sign and personally design the plans of care for physical therapy, occupational therapy, and speech language pathology services. With this change, physicians will still have to review the case within the 60-day certification period, but providers will have more time to obtain signatures from physicians. While this change is unlikely to create any significant adverse effects on patient health, it is expected to provide some net benefits to the providers. Furthermore, this particular change will no longer require that a physician personally design the plans of care for physical therapy, occupational therapy, and speech language pathology services. In reality, services are designed by the licensed therapists and not by the physicians. Thus, this change will make the regulatory language consistent with the procedures followed in practice and is unlikely to produce any significant effects on either patient health or provider costs.

Businesses and entities affected. The proposed regulations apply to 176 Medicaid home health providers. Last year 3,490 patients received home health services from the Medicaid program. Of these, approximately 2,059 received physical therapy, occupational therapy, or speech language pathology services.

Localities particularly affected. No localities are expected to be affected more than others.

Projected impact on employment. The proposed changes are relatively minor and are not expected to create any significant impact on employment.

Effects on the use and value of private property. Similarly, the proposed impact on the use and value of private property is likely to be negligible.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Agency has reviewed the Economic Impact Analysis prepared by the Department of Planning and Budget regarding the regulations concerning Standards Established and Methods Used to Assure High Quality Care: Utilization Control for Home Health Services -- Physician Certification Standards Revision (12 VAC 30-60-70). The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding this regulation.

Summary:

The amendments change DMAS requirements for physician certification and recertification of home health patient care

to conform to federal Medicare law and regulation for home health services in order to reduce confusion and errors by home health agencies. The amendments: (i) replace the requirement for the physician to sign and date the certifications/recertifications for home health patients at least every 60 days with the requirement that the physician review the certifications/recertifications at least every 60 days; (ii) add that the physician must sign the certifications and recertifications before the home health agency may bill DMAS; (iii) add the requirement that upon a patient's admission to home health services, a start-of-care comprehensive assessment must be completed within five calendar days; (iv) add the requirement that a physician recertification shall be performed within the last five days of each current 60-day certification period, i.e., between and including days 56-60; (v) delete the requirement that the physician plans of care for physical therapy, occupational therapy, and speech-language pathology services be personally signed and dated by a physician.

12 VAC 30-60-70. Utilization control: Home health services.

A. Home health services which meet the standards prescribed for participation under Title XVIII, excluding any homebound standard, will be supplied.

B. Home health services shall be provided by a home health agency that is licensed by the Virginia Department of Health (VDH); or that is certified by the VDH under provisions of Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act; or that is accredited either by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or by the Community Health Accreditation Program (CHAP) established by the National League of Nursing. Services shall be provided on a part-time or intermittent basis to a recipient in his place of residence. The place of residence shall not include a hospital or nursing facility. Home health services must be prescribed by a physician and be part of a written plan of care ~~which that~~ the physician shall review, ~~sign, and date~~ at least every 60 days.

C. Covered services. Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.

1. Nursing services;
2. Home health aide services;
3. Physical therapy services;
4. Occupational therapy services; or
5. Speech-language pathology services.

D. General conditions. The following general conditions apply to skilled nursing, home health aide, physical therapy, occupational therapy, and speech-language pathology services provided by home health agencies.

1. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement

with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

2. *When a patient is admitted to home health services a start-of-care comprehensive assessment must be completed no later than five calendar days after the start of care date.*

3. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The initial plan of care (*certification*) must be reviewed, ~~signed, and dated~~ by the attending physician, or physician designee, ~~no later than 21 days after the implementation of the plan of care.~~ *The physician must sign the initial certification before the home health agency may bill DMAS.*

~~3- 4. A physician shall review and recertify the plan of care every 60 days. A physician recertification shall be required at intervals of at least once every 60 days, must be signed and dated by the physician who reviews the plan of care, and should be obtained when the plan of care is reviewed performed within the last five days of each current 60-day certification period, i.e., between and including days 56-60.~~ The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. *The physician must sign the recertification before the home health agency may bill DMAS.*

~~4- 5. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.~~

~~5- 6. A written physician's statement located in the medical record must certify that:~~

- a. The patient needs licensed nursing care, home health aide services, physical or occupational therapy, or speech-language pathology services;
- b. A plan for furnishing such services to the individual has been established and is periodically reviewed by a physician; and
- c. These services were furnished while the individual was under the care of a physician.

~~6- 7. The plan of care shall contain at least the following information:~~

- a. Diagnosis and prognosis;
- b. Functional limitations;
- c. Orders for nursing or other therapeutic services;
- d. Orders for home health aide services, when applicable;
- e. Orders for medications and treatments, when applicable;
- f. Orders for special dietary or nutritional needs, when applicable; and

g. Orders for medical tests, when applicable, including laboratory tests and x-rays.

E. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Such post payment review audits may be unannounced. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

F. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

1. Nursing services. Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

2. Home health aide services. Home health aides must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A recipient may not receive duplicative home health aide and personal care aide services.

3. Rehabilitation services. Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by physicians of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.

a. Physical therapy services shall be directly and specifically related to an active written plan of care ~~designed and personally signed and dated~~ *approved* by a physician after any needed consultation with a physical therapist licensed by the Board of Physical Therapy. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Physical Therapy, or a physical therapy assistant who is licensed by the Board of Physical Therapy and is under the direct supervision of a physical therapist licensed by the Board of Physical Therapy. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite

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supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

b. Occupational therapy services shall be directly and specifically related to an active written plan of care ~~designed~~ *approved* by a physician after any needed consultation with an occupational therapist registered and licensed by the National Board for Certification in Occupational Therapy and licensed by the Virginia Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and licensed by the National Board for Certification in Occupational Therapy and licensed by the Virginia Board of Medicine, or an occupational therapy assistant who is certified by the National Board for Certification in Occupational Therapy under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist, as defined above, who makes an onsite supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

c. Speech-language pathology services shall be directly and specifically related to an active written plan of care ~~designed and personally signed and dated~~ *approved* by a physician after any needed consultation with a speech-language pathologist licensed by the Virginia Department of Health Professions, Virginia Board of Audiology and Speech-Language Pathology. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Virginia Department of Health Professions, Virginia Board of Audiology and Speech-Language Pathology.

4. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.

VA.R. Doc. No. R05-192; Filed May 11, 2005, 11:37 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

DEPARTMENT OF HEALTH PROFESSIONS

Title of Regulation: 18 VAC 76-40. Regulations Governing Emergency Contact Information (amending 18 VAC 76-40-10).

Statutory Authority: § 54.1-2506.1 of the Code of Virginia.

Public Hearing Date: June 6, 2005 - 9 a.m.

Public comments may be submitted until July 29, 2005.

(See Calendar of Events section

for additional information)

Effective Date: August 15, 2005.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Basis: The legislative mandate for promulgation of 18 VAC 76-40-10 is found in Chapter 602 of the 2003 Acts of Assembly. Section 54.1-2506.1 of the Code of Virginia requires the Director of the Department of Health Professions, in consultation with the Department of Health and the Department of Emergency Management, to adopt regulations that identify those licensed, certified or registered persons to which the requirement to report a public health emergency shall apply and the procedures for reporting.

Purpose: The proposed amendments are in response to a petition to the Director of the Department of Health Professions from the Advisory Board on Athletic Training and the Board of Medicine. Athletic trainers on the advisory board believe that the knowledge and skills of athletic trainers will be of considerable benefit to the citizens of the Commonwealth should a public health emergency or disaster occur. Athletic trainers are experienced in emergency response to injury and in the prevention of injury, so their expertise could be important for the protection of the health and safety of persons involved in an emergency as well as for the responders to the emergency.

Rationale for Using Fast-Track Process: Since this regulatory action is taken at the request of the regulated practitioners who will be affected by it, the director believes the action should have no objection. In addition, the need to implement the emergency contact system to inform health care professionals about or to solicit volunteer assistance in a public health emergency could occur at any time. Therefore, the initial collection of emergency contact information on licensed athletic trainers should begin at the earliest possible time.

Substance: The only change is the addition of athletic trainers to the listing of professions who are required to report emergency contact information.

Issues: The primary advantage to the public is that there would be an additional group of health care professionals available for contact and assistance in case of a public health emergency or disaster. There are no disadvantages to the Commonwealth.

The Department of Health and the Department of Emergency Management will have access to additional health care workers in case of a public health emergency. There are no disadvantages to 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. Chapter 602 of the 2003 Acts of Assembly required the Department of Health Professions (department), in consultation with the Department of Health and the Department of Emergency Management, to adopt regulations for the collection of emergency contact information to be used to notify health professionals in the event of a public health emergency. These regulations identify those licensed, certified or registered persons to which the requirement to report shall apply, the information to be reported and the procedures and time limits for reporting. Athletic trainers are not currently identified as required to report. The department proposes to add athletic trainers to the list of individuals who must report.

Estimated economic impact. In 2003, the Department of Health and the Department of Emergency Management provided the categories of professionals and entities from which contact information is needed in case of a public health emergency. The list included: 1) certified massage therapists, 2) clinical psychologists, 3) clinical social workers, 4) dentists, 5) funeral service licensees, embalmers and funeral directors, 6) licensed acupuncturists, 7) licensed practical nurses, 8) licensed professional counselors, 9) medical equipment suppliers, 10) pharmacists, 11) pharmacy technicians, 12) physical therapists, 13) physician assistants, 14) radiologic technologists, 15) registered nurses, 16) respiratory care practitioners, 17) surface transportation and removal service registrants, 18) veterinarians, and 19) wholesaler distributors of pharmaceuticals. Doctors of medicine, osteopathy, and podiatry were not on the list since they already provided such information through a previous legislative mandate. The department now proposes to add athletic trainers to the list.

The regulations specify that "Upon a request from the [department], a person or entity [listed above] shall be required to report the following information for contact in the event of a public health emergency:

1. A telephone number at which he may be contacted during weekday business hours (8:00 am - 5:00 pm);
2. A telephone number at which he may be contacted during nonbusiness hours (5:00 pm - 8:00 am weekdays and on weekends or holidays);
3. A fax number at which he may be sent information concerning the emergency; and
4. An email address at which he may be sent information concerning the emergency."

On the other hand, the department states in the Proposed Regulation Agency Background Document that it "does not anticipate initiating an enforcement proceeding against

practitioners who fail to respond at this time. In addition, no one will be denied licensure renewal for failure to comply."¹

Also, the department states in the Proposed Regulation Agency Background Document that "The practitioner will also be asked whether he would be willing to volunteer for medical response during a bioterrorism event or any other public health emergency..." Combining the collection of emergency contact information with information on whether the practitioner is willing to volunteer for medical response during public health emergencies will be beneficial. Athletic trainers are experienced in emergency response to injury and the prevention of injury. In a time of emergency when resources are strained, athletic trainers on the scene can potentially help with preliminary treatment of injuries. Athletic trainers who are interested and able to respond on short notice to emergency situations will be more easily identified and contacted quickly. This will likely provide faster medical response.

According to the department, implementing the proposed amendment would create a one-time expense of approximately \$2,000 for mailing instructions and revising the department's data system to include a new profession. There would be very modest on-going department expenditures, as emergency contact information is updated in conjunction with renewal of licensure.

Whether or not a net benefit is created for the Commonwealth depends on how much faster athletic trainers responses will be, and how much those faster responses are valued. The net value of the proposed amendment will be greater if athletic trainers are made aware that providing emergency contact information is in practice voluntary. Forcing athletic trainers who do not intend to volunteer to provide emergency contact information is a waste of time and resources for the practitioners and the Commonwealth. Additionally, the time elapsed before athletic trainers who wish to respond to the emergency are notified may be greater when those that do not wish to respond are notified first.

Businesses and entities affected. The proposed amendment affects the 672 licensed athletic trainers whose address of record is in the Commonwealth, as well as the 21 athletic trainers with Virginia licensure whose address of record is in a contiguous state or the District of Columbia.²

Localities particularly affected. The proposed amendment affects all Virginia localities.

Projected impact on employment. The proposed amendment will not affect employment levels.

Effects on the use and value of private property. The proposed amendment will not affect the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Health Professions concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 76-40, Regulations Governing Emergency

¹ The Department of Health Professions also confirmed via phone conversation that the requirement to provide emergency contact information will not be enforced.

² Source: Department of Health Professions

Fast-Track Regulations

Contact Information, to include athletic trainers among the professions from whom information will be collected.

Summary:

The proposed amendment adds licensed athletic trainers to the listing of health care practitioners from whom emergency contact information would be requested for the purpose of disseminating information in case of a public health emergency.

18 VAC 76-40-10. Requirement to report.

In accordance with provisions of § 54.1-2506.1 of the Code of Virginia, the following persons or entities who hold a license, certificate, registration or permit issued by a board within the Department of Health Professions and whose address of record is in Virginia, a contiguous state or the District of Columbia shall report emergency contact information as required by this chapter:

1. *Athletic trainers;*
2. Certified massage therapists;
- ~~3.~~ 3. Clinical psychologists;
- ~~4.~~ 4. Clinical social workers;
- ~~5.~~ 5. Dentists;
- ~~6.~~ 6. Funeral service licensees, embalmers and funeral directors;
- ~~7.~~ 7. Licensed acupuncturists;
- ~~8.~~ 8. Licensed practical nurses;
- ~~9.~~ 9. Licensed professional counselors;
- ~~10.~~ 10. Medical equipment suppliers;
- ~~11.~~ 11. Pharmacists;
- ~~12.~~ 12. Pharmacy technicians;
- ~~13.~~ 13. Physical therapists;
- ~~14.~~ 14. Physician assistants;
- ~~15.~~ 15. Radiologic technologists;
- ~~16.~~ 16. Registered nurses;
- ~~17.~~ 17. Respiratory care practitioners;
- ~~18.~~ 18. Surface transportation and removal service registrants;
- ~~19.~~ 19. Veterinarians; and
- ~~20.~~ 20. Wholesaler distributors of pharmaceuticals.

VA.R. Doc. No. R05-186; Filed May 4, 2005, 9:37 a.m.

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18 VAC 85-20-330).

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

Public Hearing Date: July 14, 2005 - 8 a.m.

Public comments may be submitted until July 29, 2005.
(See Calendar of Events section for additional information)

Effective Date: August 15, 2005.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, or e-mail william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

Purpose: The purpose of the action is to ensure that 18 VAC 85-20-330 is clarified and does not prohibit the delivery of medical services that can and have been performed safely in Virginia by qualified physicians. A major conductive block includes procedures that many nonanesthesiologists perform for therapeutic and diagnostic purposes; such procedures are currently performed by interventional physiatrists and other specialties in medicine. In order for patients in Virginia to continue receiving such procedures without a concern that the doctor performing the block may be in violation of regulations of the board, the provisions for qualification of anesthesia providers must be clarified.

The intent of the current requirement for office-based anesthesia was to ensure that anesthesia was being administered by an anesthesiologist or certified registered nurse anesthetists while the operating doctor was focused on the surgical procedure. When a major conductive block is performed for diagnostic or therapeutic purposes, the administering physician, if appropriately qualified in such a procedure, is focused on the procedure and on patient response to the delivery of the anesthesia.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendment because it is a clarification of the intent of the board in promulgating regulations for office-based anesthesia. It was not the board's intent to limit or restrict the practice of physicians who use a major conductive block in their office practices for diagnostic or therapeutic purposes. Therefore, the board believes the change is mostly clarifying and reflective of current practice.

Substance: The proposed fast-track action amends 18 VAC 85-20-330 by differentiating between major conductive blocks performed for a surgical procedure shall only be administered by an anesthesiologist or by a certified registered nurse anesthetist. A major conductive block performed for diagnostic or therapeutic purposes may be administered for a nonsurgical procedure by a doctor qualified by training and scope of practice or by a certified registered nurse anesthetist.

Issues: There are no disadvantages to the public of this amendment. Without a clarification of the rules, physicians who currently perform major conductive blocks for diagnostic or therapeutic purposes would be concerned about a violation of board rules or would need to hire an anesthesia provider to perform a procedure for which he is already qualified. Either alternative would be detrimental to the affordability of and access to necessary medical treatments and procedures.

Failure to amend this regulation would create a disadvantage to the public.

There are no disadvantages to the agency or the Commonwealth; the proposed regulation will clarify office-based anesthesia regulations for consistency with the board's intent for the rules.

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 of Medicine (board) proposes to clarify the intent of regulations for performance of office-based anesthesia.

Estimated economic impact. The current regulations state that "Deep sedation, general anesthesia or a major conductive block shall only be administered by an anesthesiologist or by a certified registered nurse anesthetist." The board did not intend to prohibit nonanesthetist physicians with appropriate training from performing major conductive blocks¹ for nonsurgical diagnostic or therapeutic purposes. To clarify this intent, the board proposes to (i) amend the above to "Deep sedation or general anesthesia shall only be administered by an anesthesiologist or by a certified registered nurse anesthetist," and (ii) add the following language:

A major conductive block performed for a surgical procedure shall only be administered by an anesthesiologist or by a certified registered nurse anesthetist. A major conductive block performed for diagnostic or therapeutic purposes may be administered for a nonsurgical procedure by a doctor qualified by training and scope of practice or by a certified registered nurse anesthetist.

As far as the department knows, qualified physicians have not refrained from performing major conductive blocks for diagnostic or therapeutic purposes. The department has told inquiring physicians that it was not the board's intent to prohibit this, and that no punitive actions would be taken toward physicians who did these procedures.

If the board were to not amend the regulations and to enforce a prohibition on any major conductive block performed by anyone other than an anesthesiologist or a certified registered nurse anesthetist, then nonanesthetist physicians or their employers would be required to hire an anesthesia provider to perform major conductive blocks for nonsurgical diagnostic or therapeutic purposes. According to the Department of Health

Professions (department), it would cost from \$700 to \$1,000 a day to hire a certified registered nurse anesthetist, or about \$2,000 a day for an anesthetist. Since major conductive blocks for nonsurgical diagnostic or therapeutic purposes are done daily throughout the Commonwealth,² the cost of compliance would likely reach millions of dollars statewide.³

The proposal to continue to permit all doctors qualified by training and scope of practice to perform major conductive blocks for nonsurgical diagnostic or therapeutic purposes will not put the public at significantly greater risk than requiring anesthesiologists or a certified registered nurse anesthetists to perform all major conductive blocks, presuming that the nonanesthetists training is rigorous enough. Also, since requiring anesthesiologists or a certified registered nurse anesthetists to perform all major conductive blocks would significantly increase the cost conductive blocks for nonsurgical diagnostic or therapeutic purposes, these procedures may be performed less often, potentially to some patients' detriment. Thus, the proposal to clarify that all doctors qualified by training and scope of practice are permitted to perform major conductive blocks for non-surgical diagnostic or therapeutic purposes should produce a net benefit.

Businesses and entities affected. The proposed amendments potentially affect the 28,535 persons licensed as doctors of medicine and surgery, the 1,103 persons licensed as doctors of osteopathy and surgery, the 474 persons licensed as podiatrists, and their patients.

Localities particularly affected. The proposed amendment does not disproportionately affect particular Virginia localities.

Projected impact on employment. The proposed amendments are clarifications. The amendments will not significantly affect employment levels since the effective policy is not changing.

Effects on the use and value of private property. The proposed amendments are clarifications. The amendments will not significantly affect the use and value of private property since the effective policy is not changing.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 85-20 for a fast-track change in the regulations for office-based anesthesia.

Summary:

The proposed amendment provides that performance of a major conductive block for diagnostic or therapeutic purposes in a physician's office does not require the services of an anesthesiologist or a certified registered nurse anesthetist, but can be administered by a qualified physician.

18 VAC 85-20-330. Qualifications of providers.

A. Doctors who utilize office-based anesthesia shall ensure that all medical personnel assisting in providing patient care

¹ A "conductive block" blocks all sensation to a specific part of the body. (Source: Department of Health Professions)

² Source: Department of Health Professions

³ According to the department, well over a thousand such procedures are performed each year, and 1,000 x \$1,000 = \$1 million.

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are appropriately trained, qualified and supervised, are sufficient in numbers to provide adequate care, and maintain training in basic cardiopulmonary resuscitation.

B. All providers of office-based anesthesia shall hold the appropriate license and have the necessary training and skills to deliver the level of anesthesia being provided.

1. Deep sedation, or general anesthesia or ~~a major conductive block~~ shall only be administered by an anesthesiologist or by a certified registered nurse anesthetist.

2. *A major conductive block performed for a surgical procedure shall only be administered by an anesthesiologist or by a certified registered nurse anesthetist. A major conductive block performed for diagnostic or therapeutic purposes may be administered for a nonsurgical procedure by a doctor qualified by training and scope of practice or by a certified registered nurse anesthetist.*

3. Moderate sedation/conscious sedation may be administered by the operating doctor with the assistance of and monitoring by a licensed nurse, a physician assistant or a licensed intern or resident.

C. Additional training.

1. On or after December 18, 2003, the doctor who provides office-based anesthesia or who supervises the administration of anesthesia shall maintain current certification in advanced resuscitation techniques.

2. Any doctor who administers office-based anesthesia without the use of an anesthesiologist or certified registered nurse anesthetist shall obtain four hours of continuing education in ~~in~~ topics related to anesthesia within the 60 hours required each biennium for licensure renewal, which are subject to random audit by the board.

VA.R. Doc. No. R05-187; Filed May 4, 2005, 9:47 a.m.



EMERGENCY REGULATIONS

TITLE 1. ADMINISTRATION

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

Title of Regulation: **1 VAC 55-30. Commonwealth of Virginia Long-Term Care Program (adding 1 VAC 55-30-10 through 1 VAC 55-30-90).**

Statutory Authority: § 2.2-1208 of the Code of Virginia.

Effective Dates: May 16, 2005, through May 15, 2006.

Agency Contact: Charles Reed, Associate Director, Department of Human Resource Management, 101 North 14th Street, Richmond, VA 23219, telephone (804) 786-3124, FAX (804) 371-0231, or e-mail charles.reed@dhrm.virginia.gov.

Preamble:

Section 2.2-1208 of the Code of Virginia directs the Department of Human Resource Management (DHRM) to establish these emergency regulations.

This chapter will establish regulations used by the Department of Human Resource Management in the administration of the long-term care plan for state employees, retirees and terminated vested participants of the Virginia Retirement System.

These regulations explain which groups of employees, former employees and their dependents are eligible for the long-term care program sponsored by the Department of Human Resource Management. Additionally they clarify the different insurance classifications, and the processes that the eligible participants within each classification must go through in order to secure coverage.

The regulations spell out that satisfactory evidence of good health is required prior to enrollment in the plan except for newly eligible active employees or during special enrollments. Regardless as to date of hire or any special enrollment in order for employees to be accepted into the program they must be actively at work.

Section 2.2-1208 states that any person eligible to participate in the long-term care insurance program established pursuant to § 2.2-1207 will not be eligible for the plan described in § 2.2-1208. Section 2.2-1207 authorizes coverage for employees and retirees of local government and school boards should the governing body elect to participate in the plan. These regulations make clear that employees or retirees of these governing bodies are not eligible to enroll in the program pursuant to § 2.2-1208 regardless as to whether or not their employer participates in the program. Participation in the program by these individuals is contingent upon participation by their employer. It is the Department of Human Resource Management's intent that provisions concerning the administration of the long-term care plan for employees and retirees of local government and school boards will be included in the permanent regulations when they are promulgated.

In effect, § 2.2-1208 creates a new group of eligible participants. Whereas § 51.1-513.1 authorized DHRM to establish a plan for state employees, § 2.2-1208 authorizes coverage for state employees and creates a new class of eligible participants. This new class of eligible participants are individuals who are neither active employees nor retirees of state or local government. However, they must have five or more years of creditable service with the Virginia Retirement System.

CHAPTER 30.

COMMONWEALTH OF VIRGINIA LONG-TERM CARE REGULATIONS.

1 VAC 55-30-10. Definitions.

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

"Actively at work" means that an employee cannot be both disabled and away from work on the effective date of the long-term care coverage.

"Administrative services arrangement" means an arrangement whereby a third-party provider agrees to administer all or part of the long-term care program.

"Department" means the Department of Human Resource Management.

"Director" means the director of the Department of Human Resource Management.

"Effective date of coverage" means the date on which the long-term care coverage begins.

"Employer" means the entity with whom a person maintains a common law employee-employer relationship. The term "employer" is inclusive of each state agency and of a local employer.

"Evidence of good health" means a statement or proof of a person's physical condition or other factors that could affect his or her acceptance for the long-term care program.

"Long-term care program" or "program" means, individually or collectively, the plan or plans the Department may establish pursuant to § 2.2-1208 of the Code of Virginia.

"Insured arrangement" means an accident or health plan underwritten by an insurance company wherein the Department's only obligation as it may relate to claims is the payment of insurance company premiums.

"Local employer" means any county, city, or town, school board, and the directing or governing body of any political entity, subdivision, branch or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public authority or body corporate, as distinguished from §§ 15.2-1300 and 15.2-1303 of the Code of Virginia or similar statutes.

"Participant" means any person actively enrolled and covered by the long-term care program.

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"Plan Administrator" means the company responsible for administering the long-term care program including such services as accounting, issuance of certificates and settlement of claims.

"Rating" the process that determines how much a particular package of benefits will cost and what will be charged to cover those expected costs for a specific group of people.

"Retiree" means employees who work for the Commonwealth of Virginia and retire with the VRS or optional state retirement program service and are eligible for an immediate annuity.

"Self-insured arrangement" means a facility through which the plan sponsor agrees to assume the risk associated with the type of benefit provided without using an insurance company.

"Spouse" means the legally married husband or wife of an employee or retiree as recognized by the Commonwealth of Virginia.

"State" means the Commonwealth of Virginia.

"State agency" means a court, department, institution, office, board, council, or other unit of state government located in the legislative, judicial or executive departments or group of independent agencies, as shown in the Appropriation Act, and that is designated in the Appropriation Act by title and a three-digit agency code.

"State employee" means any person who is regularly employed on a salaried basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, no more often than biweekly, in whole or in part, by the Commonwealth or any department, institution, or agency thereof. "State employee" shall include the Governor, Lieutenant Governor, Attorney General, and members of the General Assembly. It includes "judge" as defined in § 51.1-301 of the Code of Virginia and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth.

"Terminated vested participant" means any former state or local employee who has five or more years of creditable service with any retirement plan administered by the Virginia Retirement System but due to age restrictions was not able to receive an immediate annuity. These individuals cannot currently be employed by or be retired from a local employer.

"Underwriting" means the process of identifying and classifying the potential degree of risk represented by a proposed insured.

1 VAC 55-30-20. Designee and delegations of authority.

Pursuant to § 2.2-1207 and § 2.2-1208 of the Code of Virginia, the Department of Human Resource Management shall establish a program subject to the approval of the Governor, for providing long-term care benefits for employees and retirees of the Commonwealth of Virginia, employees and retirees of participating local employers, and for terminated vested participants of the Virginia Retirement System.

The Director of the Department of Human Resource Management hereby delegates to the Director of the Office of Health Benefits the authority to:

1. Propose, design, and administer a long-term care plan. Such plan will at a minimum, consist of a plan:

a) Covering employees and retirees of the Commonwealth, and

b) Vested terminated participants of the Virginia Retirement System.

All approved plans will, in the aggregate, constitute the long-term care program. Any plan or plans proposed by the Office of Health Benefits shall be subject to the approval of the Director of the Department of Human Resource Management.

2. Propose regulations at any time for the purpose of the implementation, communication, funding, and administration of the long-term care program.

3. Enter into one or more contracts for the purpose of implementing, communicating, funding or administering the long-term care program. To this end, but not exclusively, such contract or contracts may be for the underwriting, the funding, and administration, including claims processing and claims adjudication, of the program. Such contracts may be for the accounting and actuarial services as well as communication, statistical analysis and any other item that may be needed to effectively review and maintain the long-term care program.

1 VAC 55-30-30. Procurement.

The Department shall comply with the Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia, as it may relate to any services to which such Act shall apply.

In an effort to stabilize the administration and maintenance of the long-term care benefits program, the Department may contract for services applicable to such program for a period of time not exceeding 10 years, with the Department reserving the right, in its sole discretion, to cancel such contracts annually upon 90 days written notice to the contractor.

1 VAC 55-30-40. Types of plans.

A. The administration and underwriting of the plans shall be at the discretion of the Department and may include, but not be limited to self-funded arrangements, insured arrangements, or administrative services arrangements. The Department is authorized to exercise judgment and discretion in the establishment, procurement and implementation of all underwriting and other services necessary for the establishment, maintenance, and administration of such plans and will be deemed to do so in good faith.

B. The Department, as it deems necessary or prudent, may contract for outside services, including but not limited to actuarial, and consulting services. The Department may contract such services on an individual basis or in conjunction with other services.

1 VAC 55-30-50. No presumption of right.

These regulations and the long-term care benefits program herein established shall not be deemed to constitute a contract of employment or retirement between any participating employer and any participant. No participant in

the program shall acquire any right to be retained in the employer's employ or attain any employment service toward retirement by virtue of participation in the program, nor, upon the participant's dismissal or voluntary termination of employment, shall the participant have any interest in any assets of the program other than as may be specifically provided through the contract with the plan administrator.

Furthermore, these regulations and the long-term care program herein established shall in no event confer upon any participant any rights, duties or responsibilities other than those granted herein. The Commonwealth of Virginia specifically reserves the right to amend, modify or terminate, inclusive of eligibility, coverage and contributions provisions, the long-term care benefits program or any plan or plans comprising all or part of the program, as they may relate to any active or retired participant.

1 VAC 55-30-60. Confidentiality.

The Department will not disclose identifiable individual health data without the consent of the individual being provided coverage. Data may be compiled into statistical reports provided that the identity of individual persons is not ascertainable by the reader or disclosed by the Department.

1 VAC 55-30-70 Department discretion.

The Department reserves the right to change the plans offered and benefits provided thereunder at its sole discretion based upon market and Department considerations.

1 VAC 55-30-80 Eligible participants.

A. Active State Employees.

1. State employees as defined in 1 VAC 55-30-10 who are salaried full-time faculty or salaried classified employees or other similarly situated employees in the executive, legislative, judicial or independent agencies who are compensated on a salaried basis and work at least 20 hours, are eligible for membership in the long-term care program. A salaried employee is one who receives a paycheck no more often than biweekly and who is not paid on an hourly basis. A full-time faculty employee carries a faculty-teaching load considered to be full time at his institution.

2. Classified positions include employees who are fully covered by the Virginia Personnel Act, employees excluded from the Virginia Personnel Act by subdivision 16 of § 2.2-2905 of the Code of Virginia, and employees on a restricted appointment. A restricted appointment is a classified appointment to a position that is funded at least 10% from gifts, grants, donations, or other sources that are not identifiable as continuing in nature. An employee on a restricted appointment must receive a state paycheck in order to be eligible.

3. Certain full-time employees in auxiliary enterprises (such as food services, bookstores, laundry services, etc.) at the University of Virginia, Virginia Military Institute and the College of William and Mary are also considered state employees even though they do not receive a salaried state paycheck. The Athletic Department of Virginia Polytechnic

Institute and State University is a local auxiliary whose members are eligible for the program.

B. State Retirees.

1. Employees who has met the terms and conditions for early, normal or late retirement from the Commonwealth under the Virginia Retirement System, State Police Officers' Retirement System, Judicial Retirement System, Virginia Law Officers' Retirement System, or any retirement system authorized pursuant to §§ 51.1-126, 51.1-126.1, 51.1-126.3, 51.1-126.4, and 51.1-126.5.

2. Employees who retire under an optional state retirement program service and are eligible for an immediate annuity.

C. Terminated Vested Participants.

1. Terminated employees of the Commonwealth or local employer who have five or more year of creditable service with the Virginia Retirement System, but due to age requirements were not eligible to receive an immediate annuity.

2. In order to be eligible to participate in this class an individual must not be eligible to participate as a member of another class under this chapter.

D. Other eligible participants: Other persons eligible to participate in the long-term care program include:

1. Spouse of an active employee.

2. Parents and parents-in law of the active employee.

3. Spouse or the surviving spouse of a retired employee.

4. Spouse or the surviving spouse of a terminated vested participant.

1 VAC 55-30-90 Administration.

A. Enrollment employees.

1. Enrollment will be on-going for all eligible participants.

2. Newly eligible active employees of the Commonwealth of Virginia can enroll into the program within 60 days of eligibility without proof of good health.

3. Special open enrollment periods for active employees will be determined by the plan administrator and agreed to by the Department.

4. Eligible active employees who enroll without proof of good health must be actively at work on the effective date of coverage.

5. All other eligible participants are required to submit satisfactory evidence of good health, which must be reviewed and approved by the plan administrator before coverage can become effective.

6. Eligible individuals may be required to submit evidence that they are members of an eligible class before the plan administrator begins the enrollment process. Such evidence may include certification from the member's former employer, or the member's estimate of future annuity benefits provided by the Virginia Retirement System.

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B. Premium Payments.

1. Active employees with the employer's concurrence will be given the option of having the premiums for the long-term care program deducted from their salary. If both the employee and his/her spouse are enrolled, both premiums may be deducted from the employee's salary.

2. All other participants will be billed directed by the plan administrator or premiums may be made monthly by bank draft (EFT).

/s/ Mark R. Warner
Governor
Date: April 6, 2005

VA.R. Doc. No. R05-189; Filed May 10, 2005, 11:14 a.m.

FORMS

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

EDITOR'S NOTICE: The following form has been filed by the State Corporation Commission. The form is available for public inspection at the State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, or the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia. Copies of the form may be obtained from Angela Bowser, State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219, P.O. Box 1197, Richmond, Virginia 23218, telephone (804) 371-9141 or e-mail abowser@scc.virginia.gov.

Title of Regulation: **20 VAC 5-315. Regulations Governing Net Energy Metering.**

FORMS

Interconnection Notification, Form NMIN (eff. ~~4/04~~ 4/05).

Form NMIN

Effective 04/05

INTERCONNECTION NOTIFICATION

PURSUANT TO COMMISSION REGULATION 20 VAC 5-315-30, APPLICANT HEREBY GIVES NOTICE OF INTENT TO OPERATE A GENERATING FACILITY.

Section 1. Applicant Information

Name _____

Mail Address _____

City _____ State _____ Zip Code _____

Facility Location (if different from above) _____

Daytime Phone Number(s) _____

Distribution Utility _____ Account Number _____

Energy Service Provider (ESP) _____ Account Number _____

(if different than electric distribution company)

Proposed Interconnection Date _____

Section 2. Generating Facility Information

Fuel (check one) Solar _____ Wind _____ Hydro _____

Generator Manufacturer, Model _____

Power Rating in Kilowatts: AC _____ DC _____

Inverter Manufacturer, Model _____

Battery Backup? (circle one) Yes No

Section 3. Information for Renewable Fuel Generators with an Alternating Current Capacity in Excess of 25 Kilowatts

Generator Type (circle one) Inverter Induction Synchronous

Frequency _____ Hz, Number of phases (circle one) One Three

Capacity: DC power _____, AC apparent power _____, AC real power _____,
power factor _____%, AC voltage _____, AC amperage _____

Facility schematic and equipment layout must be attached to this form.

A prospective net metering customer considering installing a renewable fuel generator with a capacity in excess of 25 kilowatts is strongly encouraged to contact the electric distribution company prior to making financial commitments to the project.

Section 4. Vendor Certification

The system hardware is listed by Underwriters Laboratories to be in compliance with UL 1741.

Signed (Vendor) _____ Date _____
Name (printed) _____ Phone Number _____
Company _____

Section 5. Electrician Certification

The system has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code.

Signed (Licensed Electrician) _____ Date _____
Name (printed) _____
License Number _____ Phone Number _____
Mail Address _____
City _____ State _____ Zip Code _____

Utility signature signifies only receipt of this form, in compliance with the Commission's net energy metering regulations, Regulation 20 VAC 5-315-30.

Signed (Utility Representative) _____ Date _____

I hereby certify that, to the best of my knowledge, all of the information provided in this Notice is true and correct.

Signature of Applicant _____ **Date** _____

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load (TMDL) for Abrams Creek and Opequon Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) Implementation Plan for Abrams Creek and Opequon Creek in Frederick County and the City of Winchester. These streams were originally listed on the 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's general aquatic life standard and the state's water quality standard for bacteria. TMDLs for bacteria were developed to address the bacterial impairments in both streams, and TMDLs for sediment were developed in Abrams Creek and Lower Opequon creek to address the general aquatic life impairments. These TMDLs were approved by EPA on February 18, 2004 and are available on DEQ's website at

http://gisweb.deq.virginia.gov/tmdlapp/tmdl_report_search.cfm.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an implementation plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

Public participation is critical to the implementation planning process. DEQ and DCR will hold an initial public meeting on Monday, June 13, 2005, at 7 p.m. to inform the public of the IP development and to solicit participation. The meeting will be held in the Henkel Building's Hester Auditorium, which is located on the campus of Shenandoah University at 1460 University Drive in Winchester, Virginia. Driving directions are available at http://www.su.edu/find_us.asp, and a campus map at http://www.su.edu/campus_map1.html. At the first informational meeting, interested participants will have an opportunity to join working groups of interested stakeholders that are being developed to direct the process and provide input to the agencies.

The public comment period for this first public meeting will end on July 13, 2005. Questions, information requests, or written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or e-mail rbrent@deq.virginia.gov.

Total Maximum Daily Load (TMDL) for Deltaville

The Department of Environmental Quality (DEQ), Virginia Department of Health and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) for fecal coliform bacteria in three shellfish

propagation waters located in Deltaville, Middlesex County, Virginia.

One impaired segment is located in Broad Creek, a tributary to the Rappahannock River and Chesapeake Bay, and two additional segments are located in Jackson Creek, a tributary to the Piankatank River and the Chesapeake Bay.

The affected water body segments are identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish waters. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

The first public meeting, to provide information and solicit participation of citizens and local government in the development of the fecal coliform TMDL's will be held on June 9, 2005, from 7 p.m. to 9 p.m. at the Deltaville Community Association Building, 17147 General Puller Highway, Deltaville, Virginia. Directions can be obtained by calling Chester Bigelow at (804) 698-4554.

The public comment period will begin on June 10, 2005, and end on July 11, 2005. Questions or information requests should include the name, address, and telephone number of the person submitting the comments and should be sent to Chester Bigelow, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, or e-mail cbigelow@deq.virginia.gov.

Total Maximum Daily Loads (TMDLs) for Goldmine Creek, Beaver Creek, Mountain Run, Pamunkey Creek, Terrys Run and Plentiful Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) to address impairments in the following six watersheds: Goldmine Creek, Beaver Creek, Mountain Run, Pamunkey Creek, Terrys Run and Plentiful Creek. The subject stream segments are identified in Virginia's 2002 303(d) Report on Impaired Waters and the 2004 Virginia Water Quality Assessment 305(b)/303(d) Integrated Report as impaired due to exceedances of the state's water quality criterion for fecal coliform bacteria.

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) list.

The impaired stream segments are located in Louisa, Orange and Spotsylvania Counties. The first impairment is a 7.16-mile segment of Goldmine Creek extending from the headwaters of the Creek, near the intersection of Routes 22 and 625, downstream to the confluence with Lake Anna, about one mile north of Route 613. The second impairment is a 2.51-mile segment of Beaver Creek extending from the confluence of Cooks Creek and Beaver Creek, approximately

0.68 rivermiles upstream from the Route 638 bridge, downstream to its confluence with the North Anna River, about one mile west of Route 669. The third impairment is a 2.52-mile segment of Mountain Run beginning at the confluence of Madison Run and Mountain Run, about 1.5 miles east of Route 15, downstream to its confluence with the North Anna River, about one mile south of Route 643. The fourth impairment is a 12.14-mile segment of Pamunkey Creek extending from the confluence of Tomahawk Creek and Church Creek (where Pamunkey Creek begins), near the intersection of Routes 612 and 631, downstream to the confluence with Lake Anna, about one mile east of Route 651. The fifth impairment is a 5.45-mile segment of Terrys Run extending from confluence of Horsepen Branch to Terrys Run, near Route 619, downstream to the confluence with Lake Anna, near Route 651. The sixth impairment is a 3.15-mile segment of Plentiful Creek extending from the confluence of an unnamed tributary to Plentiful Creek, near Route 601, downstream to the confluence with Lake Anna, about one mile south of Route 653.

The third and final public meeting on the development of the Goldmine Creek, Beaver Creek, Mountain Run, Pamunkey Creek, Terrys Run and Plentiful Creek Bacteria TMDLs will be held on Wednesday, June 8, 2005, at 7 p.m. at Prospect Heights Middle School, located at 300 Macon Road in Orange, Virginia.

The public comment period will begin on June 8, 2005, and end on July 8, 2005. Fact sheets on the development of the TMDLs for the impairments referenced above are available upon request. Questions, information requests, and written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Ms. Kimberly Davis, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3937, FAX (703) 583-3841, or e-mail kvdavis@deq.virginia.gov.

Total Maximum Daily Load (TMDL) for Willis River

The Virginia Department of Environmental Quality and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of an implementation plan (IP) for the total maximum daily load (TMDL) to address a fecal coliform bacteria impairment in the Willis River. The Willis River was identified as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria in a 14.3-mile segment in Cumberland County. The TMDL for this impairment was completed and approved by EPA in 2002 and is available on DEQ's website at <http://www.deq.virginia.gov/tmdl>.

Section 62.1-44.19.7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits and environmental impacts.

The final public meeting on the development of the IP for the Willis River Basin impairment will be held on Thursday, June 16, 2005, at 7 p.m. at the Cumberland Elementary School,

located at 60 School Road in Cumberland, Virginia. The purpose of the meeting is to present and discuss the draft implementation plan for the Willis River fecal coliform impairments.

The public comment period for this public meeting will end on July 16, 2005. A fact sheet on the development of an IP for the Willis River Basin TMDL is available upon request. Questions, information requests, or written comments and inquires should include the name, address, and telephone number of the person submitting the comments and should be sent to Jason Ericson, Department of Conservation and Recreation, 101 N. 14th Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-3389, FAX (804) 371-0771, or e-mail jason.ericson@dcr.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on May 11, 2005. The order 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 Thirty-Nine (05)

Virginia's Ninth Online Game Lottery; "Mega Millions" (effective 5/9/05)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Implement Supplemental Payments for Dentists Who are Faculty Affiliated with Virginia Commonwealth University

Notice is hereby given that the Department of Medical Assistance Services intends to provide for a supplemental payment for dentists who are faculty affiliated with dental pediatric residency programs at Virginia Commonwealth University. This change shall also establish a methodology for calculating the supplemental payment. The supplemental payment amount shall be the difference between the Medicaid payments otherwise made for dentists and the lower of 137% of the Medicaid fee or charges. Commercial fees for dental services are approximately 137% of Medicaid fees after taking into account a 28% increase in dental fees effective July 1, 2005. This change is being made pursuant to the department's authority under Title XIX of the Social Security Act.

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from Scott Crawford, Director, Provider Reimbursement Division, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall

General Notices/Errata

(www.townhall.com). Comments or inquiries may be submitted in writing within 30 days of this notice publication to Mr. Crawford and such comments are available for review at the same address.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Virginia's State Application for Federal Fiscal Year 2005 Grant Award Under Part C of the Individuals with Disabilities Education Act

The Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services is accepting public comment on Virginia's State Application for Federal Fiscal Year 2005 Grant Award Under Part C of the Individuals with Disabilities Education Act, which has been completed and submitted to the United States Department of Education.

The Commonwealth of Virginia is making this document available for a 60-day period beginning on May 30, 2005, and concluding on July 30, 2005. Public comment will be accepted in writing for a 30-day period beginning on June 30, 2005, and concluding on July 30, 2005. The application is available on the website (www.infantva.org) under the section "What's New".

For a printed copy of the application or to submit public comment contact Karen Durst, Part C Technical Consultant, Department of Mental Health, Mental Retardation and Substance Abuse Services, Infant & Toddler Connection of Virginia, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-9844, FAX (804) 371-7959.

OFFICE OF THE SECRETARY OF NATURAL RESOURCES

Water Quality Improvement Fund Grant Guidelines

The purpose of the 1997 Virginia Water Quality Improvement Act (the Act) is to restore and improve the quality of state waters and to protect them from impairment and destruction for the benefit of current and future citizens of the Commonwealth. Because this is a shared responsibility between state and local governments and individuals, the Act also created the Water Quality Improvement Fund (WQIF). Cost-share grants are provided from the WQIF to local governments, soil and water conservation districts, institutions of higher education and individuals for point and nonpoint source pollution prevention, reduction and control programs. The primary objective of the WQIF is to reduce the flow of excess nutrients (nitrogen and phosphorus), and sediment into the Chesapeake Bay through the implementation of tributary strategy plans, prepared in accordance with state law. An additional goal of the WQIF is to improve water quality in watersheds outside the Chesapeake Bay Watershed (also known as the "Southern Rivers") area through nutrient

and sediment reductions, with current eligibility limited to nonpoint source pollution control projects.

In § 10.1-2129 B of the Act, responsibility is given to the Secretary of Natural Resources to develop written guidelines that (i) specify eligibility requirements, (ii) govern the application for and distribution and conditions of WQIF grants, and (iii) list criteria for prioritizing funding requests. These guidelines were last issued in November 1999, and must now be revised due to substantive amendments to the Act made by the General Assembly during the 2005 session, and signed into law by the Governor on March 24, 2005. The amendments to the Act take effect on July 1, 2005. The process for development of guidelines includes (a) use of an advisory committee composed of interested parties, (b) a 60-day public comment period on draft guidelines, (c) written responses to all comments received, and (d) notice of the availability of draft guidelines and final guidelines to all who request such notice.

An advisory group has been assembled, and met on May 5, 2005, to assist the Secretary in drafting revised WQIF grant guidelines. This notice announces the availability of the draft of revised WQIF guidelines for public review and comment.

Public Participation and Contact Information: Anyone wishing to submit written comments for the public comment file may do so by mail, fax, or e-mail to Russ Baxter, Office of the Secretary of Natural Resources, 1111 East Broad Street, Richmond, VA 23219, FAX (804) 371-8333, or e-mail russ.baxter@governor.virginia.gov.

Written comments must include the name and address of the commenter (including e-mail). In order to be considered, comments must be received no later than 5 p.m. on July 29, 2005.

Other Information: Copies of the proposed revisions to the WQIF grant guidelines are available to the public upon request from the contact person above or via these Internet websites:

Office of the Secretary of Natural Resources:
www.naturalresources.virginia.gov.

Department of Conservation and Recreation:
www.dcr.virginia.gov.

Department of Environmental Quality: www.deq.virginia.gov.

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

23230, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY☎, e-mail boa@boa.virginia.gov.

BOARD OF ACCOUNTANCY

June 3, 2005 - 10 a.m. -- Open Meeting

June 29, 2005 - 10 a.m. -- Open Meeting

July 26, 2005 - 10 a.m. -- Open Meeting

August 4, 2005 - 10 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Room 395, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to discuss general business matters. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY☎, e-mail boa@boa.virginia.gov.

† **June 20, 2005 - 9 a.m.** -- Teleconference

Department of Professional and Occupational Regulation, 3600 West Broad Street, Suite 378, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)
Charlottesville, Virginia.
Newport News, Virginia.

A teleconference meeting of the Legislative/Regulatory Committee to discuss general issues related to legislative and regulatory matters to be held in Richmond, Charlottesville and Newport News. If you wish to attend the meeting, please contact the board by e-mail or telephone for directions to a meeting site.

Contact: Nancy T. Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA

BOARD OF AGRICULTURE AND CONSUMER SERVICES

† **July 14, 2005 - 2 p.m.** -- Open Meeting

Eastern Shore Agricultural and Extension Center, 33446 Research Drive, Painter, Virginia.♿

A meeting to discuss issues related to Virginia agriculture and consumer services. 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 Roy Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy E. Seward, Board Secretary, Board of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 211, Richmond, VA 23219, telephone (804) 786-3538, FAX (804) 371-2945, e-mail roy.seward@vdacs.virginia.gov.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Small Grains Board

July 20, 2005 - 8 a.m. -- Open Meeting

DoubleTree Hotel Richmond Airport, 5501 Eubank Road, Richmond, Virginia.♿

A meeting to review FY 2004-2005 project reports and receive and approve the 2005-2006 project proposals. Minutes from the last board meeting and a current financial statement will be heard and will be subject to approval. Additionally, action will be taken on any other new business that comes before the group. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should

contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail butch.nottingham@vdacs.virginia.gov.

Virginia Wine Board

† **June 29, 2005 - 11 a.m.** -- Open Meeting
Virginia Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia ☎

A meeting to (i) approve the minutes of the last meeting held on March 30, 2005, (ii) review the board's financial statement, and (iii) discuss old business arising from the last meeting and any new business to come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact David Robishaw at least five days before the meeting date so that suitable arrangements can be made.

Contact: David Robishaw, Board Secretary, Virginia Wine Board, 900 Natural Resources Dr., Suite 300, Charlottesville, VA 22903, telephone (434) 984-0573, FAX (434) 984-4156, e-mail david.robishaw@vdacs.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD

June 22, 2005 - 9:30 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, 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.

† **July 7, 2005 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia.

† **July 29, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-50, New and Modified Stationary Sources; 9 VAC 5-60, Hazardous Air Pollutant Sources; and 9 VAC 5-80, Permits for Stationary Sources**. The purpose of the proposed action is to convert from a permit applicability approach that looks at the changes from a sourcewide perspective to determine applicability to an approach that looks at each physical or operational change to the source individually to determine applicability. Currently applicability is based on the net emissions increase in actual emissions based on all the

sourcewide emissions changes directly resultant from the physical or operational change. The revised program would base permit applicability on the uncontrolled emissions from each individual physical or operational change to the source.

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

Contact: Robert A. Mann, Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4419, FAX (804) 698-4510 or e-mail ramann@deq.virginia.gov.

ALCOHOLIC BEVERAGE CONTROL BOARD

June 6, 2005 - 9 a.m. -- Open Meeting
June 20, 2005 - 9 a.m. -- Open Meeting
July 5, 2005 - 9 a.m. -- Open Meeting
July 18, 2005 - 9 a.m. -- Open Meeting
August 1, 2005 - 9 a.m. -- Open Meeting
August 15, 2005 - 9 a.m. -- Open Meeting
† **August 29, 2005 - 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, Board of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY ☎, e-mail curtis.coleburn@abc.virginia.gov.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

June 7, 2005 - 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, Department for the Aging, 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.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

June 16, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia ☎

A meeting of the full board to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring

Calendar of Events

special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelscidla@dpor.virginia.gov.

ART AND ARCHITECTURAL REVIEW BOARD

June 3, 2005 - 10 a.m. -- Open Meeting

July 8, 2005 - 10 a.m. -- Open Meeting

August 5, 2005 - 10 a.m. -- Open Meeting

Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

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 Center at www.dgs.state.va.us. Request form #DGS-30-905 or submittal instructions #DGS-30-906. The deadline for submitting project datasheets and other required information is two weeks prior to the meeting date.

Contact: Richard L. Ford, AIA Chairman, Art and Architectural Review Board, 101 Shockoe Slip, 3rd Floor, Richmond, VA 23219, telephone (804) 648-5040, FAX (804) 225-0329, (804) 786-6152/TTY ☎, or e-mail rford@comarchs.com.

VIRGINIA COMMISSION FOR THE ARTS

June 7, 2005 - 9 a.m. -- Open Meeting

Libertytown Arts Workshop, 916 Liberty Street, Fredericksburg, Virginia. ♿

The final meeting of the fiscal year. Meeting is scheduled to end on June 8.

Contact: Peggy Baggett, Executive Director, Virginia Commission for the Arts, 223 Governor St., Richmond, VA 23219, telephone (804) 225-3132, FAX (804) 225-4327, (804) 225-3132/TTY ☎, e-mail peggy.baggett@arts.virginia.gov.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

† **August 17, 2005 - 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, 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.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

State Executive Council

June 15, 2005 - 9 a.m. -- Open Meeting

Location to be announced.

A regular meeting. The meeting will adjourn by noon.

Contact: Kim McGaughey, Executive Director, Comprehensive Services for At-Risk Youth and Families, 1604 Santa Rosa Rd., Richmond, VA 23229, telephone (804) 662-9830, FAX (804) 662-9831.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **August 18, 2005 - 9:30 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to discuss issues and matters related to audiology and speech-language pathology.

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) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

VIRGINIA AVIATION BOARD

† **June 6, 2005 - 3 p.m.** -- Open Meeting

† **June 7, 2005 - 9 a.m.** -- Open Meeting

Ramada Inn/Stratford and Conference Center, 2500 Riverside Drive, Danville, Virginia. ♿

A regular bimonthly meeting. Applications for state funding will be presented to the board and other matters of interest to the Virginia aviation community will be discussed. Individuals with disabilities should contact Carolyn Toth 10 days prior to the meeting if assistance is needed.

Contact: Carolyn Toth, Executive Assistant, Virginia Aviation Board, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3626, FAX (804) 236-3635, e-mail carolyn.toth@doav.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

June 2, 2005 - 9 a.m. -- Open Meeting

June 9, 2005 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. ♿

An informal fact-finding conference.

Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8575, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail barbercosmo@dpor.virginia.gov.

August 15, 2005 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4W, Richmond, Virginia. ♿

A meeting to discuss general business, including consideration of regulations issues as presented. A portion of the meeting may be held in closed session. A public comment period will be held at the beginning of the meeting. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: 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 barbercosmo@dpor.virginia.gov.

BOARD FOR THE BLIND AND VISION IMPAIRED

† July 12, 2005 - 1 p.m. -- Open Meeting

Administrative Headquarters Building, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular quarterly meeting to receive information regarding department activities and operations, review expenditures from the board endowment fund, and discuss other issues raised before the board.

Contact: Katherine C. Proffitt, Administrative Staff Assistant, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145, FAX (804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail kathy.proffitt@dbvi.virginia.gov.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Statewide Rehabilitation Council for the Blind

June 25, 2005 - 10 a.m. -- Open Meeting

Department for the Blind and Vision Impaired, 401 Azalea Avenue, Rehabilitation Center, Assembly Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting to advise the Department for the Blind and Vision Impaired on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: Susan D. Payne, VR Program Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3390,

toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail susan.payne@dbvi.virginia.gov.

DEPARTMENT OF BUSINESS ASSISTANCE

Small Business Advisory Board

† June 20, 2005 - 10 a.m. -- Open Meeting

Department of Business Assistance, 707 East Main Street, 3rd Floor Board Room, Richmond, Virginia. ♿

A general meeting.

Contact: Barbara Anderson, Administrative/Public Relations Assistant, Department of Business Assistance, 707 E. Main St., Suite 300, Richmond, VA 23219, telephone (804) 371-8215, FAX (804) 371-8111, toll-free (866) 248-8814, e-mail barbara.anderson@dba.virginia.gov.

CEMETERY BOARD

June 8, 2005 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4 West Conference Room, Richmond, Virginia. ♿

A meeting to discuss board business.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Cemetery Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail karen.oneal@dpor.virginia.gov.

June 23, 2005 - 2 p.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. ♿

Informal fact-finding conferences.

Contact: Christine Martine, Executive Director, Cemetery Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, (804) 367-9753/TTY ☎, e-mail reboard@dpor.virginia.gov.

CHARITABLE GAMING BOARD

June 3, 2005 - 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 Charitable Gaming Board intends to amend regulations entitled **11 VAC 15-22, Charitable Gaming Rules and Regulations**. The purpose of the proposed action is to simplify and clarify the gaming regulations while also making them consistent with current gaming statutes.

Statutory Authority: §§ 2.2-2456 and 18.2-340.19 of the Code of Virginia.

Public comments may be submitted to Bill Watt, Webmaster and Communications Specialist, Department of Charitable

Calendar of Events

Gaming, James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia, email bill.watt@dcg.virginia.gov.

Contact: Clyde E. Cristman, Director, Department of Charitable Gaming, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-1681, FAX (804) 786-1079, e-mail clyde.cristman@dcg.virginia.gov.

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June 3, 2005 - 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 Charitable Gaming Board intends to amend regulations entitled **11 VAC 15-31, Supplier Regulations**. The purpose of the proposed action is to simplify and clarify the gaming regulations while also making them consistent with current gaming statutes.

Statutory Authority: §§ 2.2-2456, 18.2-340.19 and 18.2-340.34 of the Code of Virginia.

Public comments may be submitted to Bill Watt, Webmaster and Communications Specialist, Department of Charitable Gaming, James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia, email bill.watt@dcg.virginia.gov.

Contact: Clyde E. Cristman, Director, Department of Charitable Gaming, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-1681, FAX (804) 786-1079, e-mail clyde.cristman@dcg.virginia.gov.

June 7, 2005 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Discovery Room, Richmond, Virginia. 

A regular quarterly meeting.

Contact: Clyde E. Cristman, Director, Department of Charitable Gaming, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-1681, FAX (804) 786-1079, e-mail clyde.cristman@dcg.virginia.gov.


CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 20, 2005 - 10 a.m. -- Open Meeting
Fredericksburg City Council Chambers, 715 Princess Anne Street, Fredericksburg, Virginia.

A regular business meeting and review of local programs.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302 Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.


STATE CHILD FATALITY REVIEW TEAM

July 12, 2005 - 10 a.m. -- Open Meeting
Office of the Chief Medical Examiner, 400 East Jackson Street, Richmond, Virginia. 

The business portion of the meeting is open to the public. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

Contact: Angela Myrick, Coordinator, Department of Health, 400 E. Jackson St., Richmond, VA 23219, telephone (804) 786-1047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail angela.myrick@vdh.virginia.gov.


COMPENSATION BOARD


† **June 22, 2005 - 11 a.m.** -- Open Meeting
830 East Main Street, 2nd Floor Conference Room, 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

June 6, 2005 - 7 p.m. -- Public Hearing
James City County Council Building, 101 C Mounts Bay Road, Building C, Meeting Room, Williamsburg, Virginia. 

June 8, 2005 - 7 p.m. -- Public Hearing
Roanoke City Council Chambers, Noel C. Taylor Municipal Building, 215 Church Avenue Southwest, Roanoke, Virginia. 

June 9, 2005 - 7 p.m. -- Public Hearing
Fredericksburg City Council Chambers, 715 Princess Anne Street, Fredericksburg, Virginia. 

June 13, 2005 - 7 p.m. -- Public Hearing
Harrisonburg City Council Chambers, City Municipal Building, 345 South Main Street, Harrisonburg, Virginia. 

July 1, 2005 - 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 Conservation and Recreation intends to amend regulations entitled **4 VAC 5-15, Nutrient Management Training and Certification Regulations**. The purpose of the proposed action is to amend the Nutrient Management and Training Certification Regulations and their attendant forms including the criteria for nutrient management plan content and development procedures in order to bring the regulations and attendant documents into compliance as may be necessary with § 62.1-44.17:1.1 of the Code of Virginia and in the requirements set forth in 40 CFR Parts 9, 122, 123 and 412 as published in the Federal Register Volume 62, No. 29, dated February 12, 2003, or as may otherwise be necessary to protect water quality.

Statutory Authority: § 10.1-104.2 of the Code of Virginia.

Contact: David C. Dowling, Policy and Planning Manager, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

† **June 28, 2005 - 7 p.m.** -- Open Meeting
Powhatan High School, Route 13, Powhatan, Virginia.

A meeting of the Powhatan State Park Master Plan Advisory Committee to develop a park purpose statement and park goals and objectives.

Contact: Robert S. Munson, Planning Bureau Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail robert.munson@dcr.virginia.gov.

Board of Conservation and Recreation

June 2, 2005 - 10 a.m. -- Open Meeting
Buckingham County Courthouse, Conference Room, Buckingham, Virginia.

A regular business meeting.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

Virginia Land Conservation Foundation Board

June 7, 2005 - 10 a.m. -- Open Meeting
Dorey Recreation Center, 7200 Darbytown Road, Richmond, Virginia.

A regular business meeting.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

Virginia Scenic River Board

June 28, 2005 - 10 a.m. -- Open Meeting
Virginia Department of Forestry, Charlottesville, Virginia.

A regular business meeting to discuss river issues.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

BOARD FOR CONTRACTORS

June 2, 2005 - 9 a.m. -- Open Meeting
† **June 16, 2005 - 9 a.m.** -- Open Meeting
† **June 21, 2005 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎

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.

June 7, 2005 - 9 a.m. -- Open Meeting
July 19, 2005 - 9 a.m. -- Open Meeting
† **August 30, 2005 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A regular meeting to address policy and procedural issues and review and render 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. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-2785 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: 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.

† **June 14, 2005 - 1 p.m.** -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

† **July 13, 2005 - 7 p.m.** -- Public Hearing
Southwest Virginia Higher Education Center, One Partnership Circle, Abingdon, Virginia.

† **July 14, 2005 - 7 p.m.** -- Public Hearing
Chesapeake City Council Chambers, 306 Cedar Road, Chesapeake, Virginia.

† **July 29, 2005** - 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 Contractors intends to amend regulations entitled **18 VAC 50-22, Board for Contractors Regulations**. The purpose of the proposed action is to amend the current regulations to reflect statutory changes, respond to changes in the industry and revise language for clarity and ease of use.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.


Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230,

Calendar of Events


telephone (804) 367-2785, FAX (804) 367-2474 or e-mail eric.olson@dpor.virginia.gov.

August 10, 2005 - 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.

BOARD OF CORRECTIONS

July 19, 2005 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor
Board Room, Richmond, Virginia. 


A meeting of the Liaison Committee to discuss correctional matters of interest to the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail woodhousebl@vadoc.state.va.us.

July 19, 2005 - 1 p.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor,
Room 3054, Richmond, Virginia. 


A meeting of the Correctional Services/Policy and Regulations Committee to discuss correctional services and policy/regulation matters to be considered by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail woodhousebl@vadoc.state.va.us.

July 20, 2005 - 9:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor
Board Room, Richmond, Virginia. 

A meeting of the Administration Committee to discuss administrative matters to be considered by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail woodhousebl@vadoc.state.va.us.

July 20, 2005 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor
Board Room, Richmond, Virginia. 

A regular meeting.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail woodhousebl@vadoc.state.va.us.

BOARD OF COUNSELING

† June 2, 2005 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 3, Richmond, Virginia.

† July 29, 2005 - 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 Counseling intends to amend regulations entitled **18 VAC 115-20, Regulations Governing the Practice of Professional Counseling; 18 VAC 115-50, Regulations Governing the Practice of Marriage and Family Therapy; 18 VAC 115-60, Regulations Governing the Licensure of Substance Abuse Treatment Practitioners.** The purpose of the proposed action is to update and provide for consistency of regulations relating to standards of practices, disciplinary actions, and reinstatement governing the three professions licensed by this board.


Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public comments may be submitted until July 29, 2005, to Evelyn B. Brown, Executive Director, Board of Counseling, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.


June 2, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia.

A meeting of the Credentials Review Committee to review files of licensee applicants.

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.

June 3, 2005 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia.

A quarterly meeting to conduct board business.

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

NOTE: CHANGE IN MEETING DATE

June 9, 2005 - 9 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia.

A meeting of the Committee on Training.


Contact: Leon D. Baker, Jr., Division Director, Department of Criminal Justice Services, Eighth Street Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 225-4086, FAX (804) 786-0588, e-mail lbaker@dcjs.state.va.us.

June 9, 2005 - 11 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.


A general business meeting.

Contact: Leon D. Baker, Jr., Division Director, Department of Criminal Justice Services, Eighth Street Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 225-4086, FAX (804) 786-0588, e-mail lbaker@dcjs.state.va.us.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

August 3, 2005 - 10 a.m. -- Open Meeting
Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Drive, 2nd Floor Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A quarterly meeting of the advisory board.

Contact: Leslie Hutcheson Prince, Policy and Planning Manager, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23235, telephone (804) 662-9703, toll-free (800) 552-7917, (804) 662-9703/TTY , e-mail leslie.prince@vddhh.virginia.gov.


BOARD OF DENTISTRY

June 3, 2005 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 


A meeting of the Sanction Study Committee to discuss the sanction study information as it relates to the Board of Dentistry.


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.

† **July 7, 2005 - 8:30 a.m.** -- Open Meeting


† **July 8, 2005 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

Formal hearings. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Board of Dentistry, 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 8, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Richmond, Virginia. 


A meeting to discuss business issues. There will be a public comment period at the beginning 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.


DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

June 16, 2005 - 11 a.m. -- Open Meeting

July 21, 2005 - 11 a.m. -- Open Meeting

† **August 18, 2005 - 11 a.m.** -- Open Meeting
Department of General Services, Eighth Street Office Building, 805 East Broad Street, 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/TTY , or e-mail rhonda.bishton@dgs.virginia.gov.

BOARD OF EDUCATION

June 22, 2005 - 9 a.m. -- Open Meeting

July 27, 2005 - 9 a.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, Main Lobby Level, Conference Rooms C and D, Richmond, Virginia. 

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.

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 margaret.roberts@doe.virginia.gov.

Calendar of Events

DEPARTMENT OF EDUCATION

July 21, 2005 - 8:45 a.m. -- Open Meeting

July 22, 2005 - 8:45 a.m. -- Open Meeting

Richmond Holiday Inn at the Koger Center, Midlothian Turnpike, Richmond, Virginia.

A meeting of the State Special Education Advisory Committee. Agenda to be announced.

Contact: Dr. Margaret N. Roberts, Office of Policy and Communications, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail margaret.roberts@doe.virginia.gov.

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

June 1, 2005 - 3 p.m. -- Open Meeting

Timbrook Public Safety Center, 231 East Piccadilly Street, Winchester, Virginia.

A regular meeting.

Contact: L.A. Miller, Fire and Rescue Chief, Winchester Fire and Rescue Department, 231 E. Piccadilly St., Winchester, VA 22601, telephone (540) 662-2298, FAX (540) 542-1318, (540) 662-4131/TTY ☎.

DEPARTMENT OF ENVIRONMENTAL QUALITY

June 1, 2005 - 7 p.m. -- Open Meeting

Blacksburg Town Council Chambers, 300 South Main Street, Blacksburg, Virginia. ♿

A meeting to initiate the implementation planning process for Stroubles Creek in Montgomery County and the Town of Blacksburg. The public notice appears in the Virginia Register of Regulations on May 16, 2005. The comment period ends on July 1, 2005.

Contact: Jason Hill, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6860, e-mail jrhil@deq.virginia.gov.

† June 9, 2005 - 7 p.m. -- Open Meeting

Deltaville Community Association Building, 17147 General Puller Highway, Deltaville, Virginia. ♿

The first public meeting on the development of a fecal coliform bacteria TMDL for three shellfish propagation waters located in Deltaville and Middlesex County. The public notice appears in the Virginia Register of Regulations on May 30, 2005. The public comment begins on June 9, 2005, and closes on July 11, 2005.

Contact: Chester Bigelow, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, e-mail cbbigelow@deq.virginia.gov.

† June 13, 2005 - 7 p.m. -- Open Meeting

Shenandoah University, Henkel Building, Hester Auditorium, 1460 University Drive, Winchester, Virginia. ♿

A public meeting on the development of the implementation plan to address bacteria impairments in Abrams Creek and Opequon Creek in Frederick County and the City of Winchester. The public notice appears in the Virginia Register of Regulations on May 30, 2005. The comment period begins on June 13, 2005, and ends on July 13, 2005.

Contact: Robert Brent, Department of Environmental Quality, 4411 Early Rd., Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, e-mail rbrent@deq.virginia.gov.

Litter Control and Recycling Fund Advisory Board

† June 1, 2005 - 10:30 a.m. -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ♿

A regular meeting.

Contact: G. Stephen Coe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4029, FAX (804) 698-4224, e-mail gscoc@deq.virginia.gov.

VIRGINIA FIRE SERVICES BOARD

† June 3, 2005 - 10 a.m. -- Open Meeting

Virginia Department of Fire Programs, 1005 Technology Park Drive, Glen Allen, Virginia. ♿ (Interpreter for the deaf provided upon request)

The following committees will meet:

10 a.m. - Committee on Fire Education and Training

1 p.m. - Committee on Fire Prevention and Control

2:30 p.m. - Committee on Administration, Policy and Finance

Contact: Nausheen I. Khan, Clerk and Research Assistant, Virginia Fire Services Board, 1005 Technology Park Dr., Glen Allen, VA, telephone (804) 371-0220, toll-free (800) 371-3408, e-mail nkhan@vdfp.state.va.us.

† June 4, 2005 - 8:30 a.m. -- Open Meeting

Virginia Department of Fire Programs, 1005 Technology Park Drive, Central Office Board Room, Glen Allen, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Nausheen I. Khan, Clerk and Research Assistant, Virginia Fire Services Board, 1005 Technology Park Dr., Glen Allen, VA, telephone (804) 371-0220, toll-free (800) 371-3408, e-mail nkhan@vdfp.state.va.us.

† June 15, 2005 - 10 a.m. -- Open Meeting

† June 16, 2005 - 9 a.m. -- Open Meeting

Department of Forestry, 900 Natural Resources Drive, Fontaine Research Park, 2nd Floor, General Services Conference Room, Suite 800, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)


A burn building work session.

Contact: Nausheen Khan, Clerk and Research Assistant, Virginia Fire Services Board, 1005 Technology Park Dr., Glen Allen, VA 23059, telephone (804) 371-0220, e-mail nkhan@vdfp.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

June 7, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting to discuss issues and matters as they relate to the board.

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


June 23, 2005 - 9 a.m. -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review and approve fiscal year 2005-2006 operating and capital budgets for the Department of Game and Inland Fisheries. The board will receive staff's recommendations for webless migratory game bird and September Canada goose seasons and bag limits; solicit and hear comments from the public in a public hearing, at which time any interested citizen present shall be heard; and adopt 2005-2006 seasons and bag limits for those species based on frameworks provided by the U.S. Fish and Wildlife Service. The board intends to consider for final adoption regulation amendments proposed on March 24, 2005, that would (i) legalize the use of a crossbow by any person in all hunting seasons in which archery equipment may be used, establish a special crossbow license for persons using a crossbow during the special archery hunting seasons, to be required in addition to the basic hunting license, and establish the fees for such special crossbow license; and (ii) change the statutory authority for the establishing of watercraft registration fees, adding § 29.1-701.1 of the Code of Virginia to that authority, and removing Item 392 of the 2002 Appropriation Act from it, an amendment that would not change the language of the regulation section establishing the fees. A public comment period on the proposed regulation amendments opened March 24 and will close June 23, 2005. To ensure the board has adequate opportunity to review written comments, however, comments should be received by the Department of Game and Inland Fisheries no later than June 18, 2004. At the June 23, 2005, meeting, the board will solicit comments from the public in a public hearing, at which time any interested citizen present shall be heard; receive staff's recommendations regarding final adoption of amendments; and then determine whether the amendments proposed on


March 24 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 March 24, 2005, meeting, as necessary for the proper management of wildlife resources. The board may also discuss general and administrative issues, hold a closed session at some time during the meeting, and elect to hold a dinner Wednesday evening, June 22, or after the meeting on Thursday, June 23, 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.virginia.gov.

BOARD FOR GEOLOGY

July 27, 2005 - 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.virginia.gov.

DEPARTMENT OF HEALTH


NOTE: CHANGE IN MEETING TIME

June 10, 2005 - 10 a.m. -- Open Meeting
Virginia Hospital and Healthcare Association, 4200 Innslake Drive, Glen Allen, Virginia. 


A meeting of the Advisory Committee on the Virginia Early Hearing Detection and Intervention Program. The advisory committee will meet four times a year.

Contact: Pat T. Dewey, Program Manager, Department of Health, 109 Governor St., 8th Floor, Richmond, VA 23219, telephone (804) 864-7713, FAX (804) 864-7721, toll-free (866) 493-1090, (804) 828-1120/TTY , e-mail pat.dewey@vdh.virginia.gov.

Radiation Advisory Board

† **July 20, 2005 - 10 a.m.** -- Open Meeting
James Madison Building, 109 Governor Street, West Conference Room, Room 132, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The annual meeting.

Contact: Les Foldesi, Director, Radiological Health Program, Department of Health, 109 Governor St., Room 730, Richmond VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, toll-free (800) 468-0138, (804) 828-1120/TTY , e-mail les.foldesi@vdh.virginia.gov.

Calendar of Events

DEPARTMENT OF HEALTH PROFESSIONS

† **June 6, 2005 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Boardroom, Richmond, Virginia.

† **July 29, 2005** - 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 Professions intends to amend regulations entitled **18 VAC 76-40, Regulations Governing the Emergency Contact Information**. The purpose of the proposed action is to include licensed athletic trainers among the professions required to report emergency contact information.

Statutory Authority: § 54.1-2506.1 of the Code of Virginia.

Public comments may be submitted until July 29, 2005, to Robert A. Nebiker, Director, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.


June 17, 2005 - 9 a.m. -- Open Meeting

† **August 19, 2005 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
Board Room 3, Richmond, Virginia. 


A meeting of the Health Practitioners' Intervention Program Committee.

Contact: Peggy W. Call, Intervention Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9424, FAX (804) 662-7358, e-mail peggy.call@dhp.virginia.gov.


BOARD FOR HEARING AID SPECIALISTS

July 18, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia 


A meeting to discuss general business matters, including consideration of regulatory issues as presented. A public comment period will be held at the beginning of the meeting. A portion of the board's business may be discussed in closed session. All meetings are subject to cancellation. The time of the meeting is subject to change. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail hearingaidspec@dpor.virginia.gov.

DEPARTMENT OF HISTORIC RESOURCES


† **June 1, 2005 - 10 a.m.** -- Open Meeting
Jefferson Library at Monticello, Thomas Jefferson Parkway,
off State Route 53, Reading Room, Charlottesville, Virginia. 

The Historic Resources Board will consider nominations to the Virginia Landmarks Register, proposed Historic Highway Markers, and proposed Historic Preservation Easements. The State Review Board will consider nominations to the National Register of Historic Places. They will convene in an informal session to consider preliminary information forms (first step of Register process where owners get informal advice and guidance). Nominations may be reviewed at www.dhr.virginia.gov/homepage_features/board_activities.htm.

Contact: Marc Wagner, National Register Manager, Department of Historic Resources, 2801 Kensington Ave., Richmond VA 23221, telephone (804) 367-2323, FAX (804) 367-2391, (804) 367-2386/TTY , e-mail marc.wagner@dhr.virginia.gov.


VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Information Technology Investment Board

† **June 6, 2005 - 1 p.m.** -- Open Meeting
110 South 7th Street, 3rd Floor Executive Conference Room,
Richmond, Virginia. 


A meeting of the Finance and Audit Committee. Public comment will be heard at the conclusion of the meeting.

Contact: Roz Witherspoon, Executive Director, Information Technologies Investment Board, 110 S. 7th St., Room 3225, Richmond, VA 23219, telephone (804) 343-9057, e-mail roz.witherspoon@vita.virginia.gov.

† **June 8, 2005 - 10 a.m.** -- Open Meeting
110 South 7th Street, 3rd Floor, Training Room, Richmond,
Virginia. 

A meeting of the Strategic Planning and Review Committee (formerly the IT Project Review Committee). Public comment will be heard at the conclusion of the meeting.

Contact: Roz Witherspoon, Executive Director, Information Technologies Investment Board, 110 S. 7th St., Room 3235, Richmond, VA 23219, telephone (804) 343-9057, e-mail roz.witherspoon@vita.virginia.gov.

† **June 8, 2005 - 1 p.m.** -- Open Meeting
110 South 7th Street, 4th Floor, Auditorium, Richmond,
Virginia. 

A regular meeting of the board. Public comment will be heard at the conclusion of the meeting.

Contact: Roz Witherspoon, Executive Director, Information Technologies Investment Board, 110 S. 7th St., Room 3235, Richmond, VA 23219, telephone (804) 343-9057, e-mail roz.witherspoon@vita.virginia.gov.

E-911 Wireless Service Board

July 13, 2005 - 9 a.m. -- Open Meeting
110 South 7th Street, 1st Floor, Telecommunications
Conference Room, Suite 100, Richmond, Virginia.

A subcommittee meeting. A request will be made to hold the meeting in closed session.


Contact: Steve Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 110 S. 7th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-0015, FAX (804) 371-2277, toll-free (866) 482-3911, e-mail steve.marzolf@vita.virginia.gov.

July 13, 2005 - 10 a.m. -- Open Meeting
110 South 7th Street, 4th Floor Auditorium, Richmond, Virginia.

A regular board meeting.

Contact: Steve Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 110 S. 7th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-0015, FAX (804) 371-2277, toll-free (866) 482-3911, e-mail steve.marzolf@vita.virginia.gov.


VIRGINIA INTERAGENCY COORDINATING COUNCIL

† June 8, 2005 - 9:30 a.m. -- Open Meeting
Henrico Area Mental Health and Retardation Services, 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: LaKeishia 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

June 8, 2005 - Noon -- Open Meeting
August 3, 2005 - 2 p.m. -- Open Meeting
Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the Executive Committee of the Jamestown 2007 Steering Committee. Call contact below for specific meeting location.

Contact: Judith Leonard, Administrative Office Manager, Jamestown-Yorktown Foundation, 410 W. Francis St., Williamsburg, VA 23185, telephone (757) 253-4253, FAX (757) 253-4950, (757) 253-5110/TTY , e-mail judith.leonard@jyf.virginia.gov.

BOARD OF JUVENILE JUSTICE

† November 9, 2005 - 10 a.m. -- Public Hearing
Department of Juvenile Justice, 700 East Franklin Street, 4th Floor, Richmond, Virginia.

† November 25, 2005 - 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 Juvenile Justice intends to amend regulations entitled **6 VAC 35-10, Public Participation Guidelines**. The purpose of the proposed action is to update the regulation to reflect technological and statutory changes since the original regulation was adopted in 1991.

Statutory Authority: §§ 2.2-4007 and 66-3 of the Code of Virginia.

Public comments may be submitted until November 25, 2005, to Patricia Rollston, P.O. Box 1110, Richmond, VA 23219-1110.

Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23219-1110, telephone (804) 371-0743, FAX (804) 371-0773 or e-mail don.carignan@djj.virginia.gov.

DEPARTMENT OF LABOR AND INDUSTRY


Virginia Apprenticeship Council

June 16, 2005 - 10 a.m. -- Open Meeting
Location to be announced.  (Interpreter for the deaf provided upon request)

A meeting to conduct general business.

Contact: Beverley Donati, Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail bgd@doli.virginia.gov.

STATE LIBRARY BOARD

June 13, 2005 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. 

Meetings of the board to discuss matters pertaining to the Library of Virginia and the board. Committees of the board will meet as follows:

8:15 a.m. - Public Library Development Committee, Orientation Room
Publications and Educational Services Committee, Conference Room B
Records Management Committee, Conference Room C

9:30 a.m. - Archival and Information Services Committee, Orientation Room
Collection Management Services Committee, Conference Room B

Calendar of Events

Legislative and Finance Committee, Conference Room C
10:30 a.m. - Library Board, Conference Room, 2M

Contact: Jean H. Taylor, Executive Secretary to the Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-8000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY ☎, e-mail jtaylor@lva.lib.va.us.

COMMISSION ON LOCAL GOVERNMENT

† **July 18, 2005 - 10 a.m.** -- Public Hearing
Department of Housing and Community Development, 205 North 2nd Street, Richmond, Virginia.

† **August 1, 2005** - 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 Commission on Local Government intends to amend regulations entitled **1 VAC 50-10, Public Participation Guidelines**. The purpose of the proposed action is to update the public participation guidelines. The commission's current guidelines were adopted in 1984 and have not been amended since that date.

Statutory Authority: § 15.2-2903 of the Code of Virginia.

Contact: Ted McCormack, Associate Director, Commission on Local Government, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 786-6508, FAX (804) 371-7090, email Ted.McCormack@dhcd.virginia.gov.

† **July 18, 2005 - 10 a.m.** -- Public Hearing
Department of Housing and Community Development, 205 North 2nd Street, Richmond, Virginia.

† **August 1, 2005** - 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 Commission on Local Government intends to amend regulations entitled **1 VAC 50-20, Organization and Regulations of Procedure**. The purpose of the proposed action is to update the regulations that are used by the commission in the review of boundary change and governmental transition issues and in the conduct of its meetings and oral presentations and public hearings. The commission's current regulations were adopted in 1984.

Statutory Authority: § 15.2-2903 of the Code of Virginia.

Contact: Ted McCormack, Associate Director, Commission on Local Government, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 786-6508, FAX (804) 371-7090, email Ted.McCormack@dhcd.virginia.gov.

† **July 18, 2005 - 1 p.m.** -- Open Meeting
The Jackson Center, 501 North Second Street, 1st Floor, Board Room, Richmond, Virginia.📍

A regular meeting to consider such matters as may be presented.

Contact: Ted McCormack, Associate Director, Commission on Local Government, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, (804) 828-1120/TTY ☎, e-mail ted.mccormack@dhcd.virginia.gov.

LONGWOOD UNIVERSITY

† **June 15, 2005 - 10 a.m.** -- Open Meeting
The Boar's Head Inn, 200 Ednam Drive, The Ednam Room, Charlottesville, Virginia.📍

A meeting to conduct routine business of the Board of Visitors.

Contact: Jeanne Hayden, Administrative Staff Assistant, Office of the President, Longwood University, 201 High St., Farmville, VA 23909, telephone (434) 395-2004.

† **June 16, 2005 - 8:30 a.m.** -- Open Meeting
The Boar's Head Inn, 200 Ednam Drive, The Ednam Room, Charlottesville, Virginia.📍

A retreat to work on Longwood's restructuring plan.

Contact: Jeanne Hayden, Administrative Staff Assistant, Office of the President, Longwood University, 201 High Street, Farmville, VA 23909, telephone (434) 395-2004.

MARINE RESOURCES COMMISSION

June 28, 2005 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia.📍 (Interpreter for the deaf provided upon request)

A monthly meeting.

Contact: Jane McCroskey, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2215, FAX (757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY ☎, e-mail jane.mccroskey@mrc.virginia.gov.

BOARD OF MEDICAL ASSISTANCE SERVICES

June 14, 2005 - 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

June 3, 2005 - 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 reduce the sheltering of assets through purchases of annuities by individuals as a means to impoverish themselves to enable their qualification for Medicaid eligibility.

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

Contact: Patricia Sykes, Policy and Research Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680 or e-mail patricia.sykes@dmas.virginia.gov.

June 3, 2005 - 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 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care**. The purpose of the proposed action is to conform to the legislative mandate to increase the reimbursement for certain emergency room procedures and increase reimbursement for certain obstetric/gynecological procedures in order to help address the growing problem with access to this care across the Commonwealth.

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

Public comments may be submitted until June 3, 2005, to Steve Ford, Provider Reimbursement Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, Virginia.

Contact: Brian M. McCormick, Regulatory Coordinators, 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 brian.mccormick@dmas.virginia.gov.

June 3, 2005 - 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 30-90, Methods and Standards for Establishing Payment Rates for Long-Term Care**. The purpose of the proposed action is to increase the per patient, per diem rate for nursing facilities by \$3.00.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Item 326 YY of Chapter 4 of the 2004 Special Session I Acts of Assembly.

Contact: William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 E. Broad St.,

Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680 or e-mail William.Lessard@dmas.virginia.gov.

June 8, 2005 - 9 a.m. -- CANCELED

Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Boardroom, Richmond, Virginia. 📍

A quarterly meeting of the Pharmacy and Therapeutics Committee has been canceled.

Contact: Katina Goodwyn, Pharmacy Contract Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0428, FAX (804) 786-0973, (800) 343-0634/TTY 📞, e-mail katina.goodwyn@dmas.virginia.gov.

† **June 15, 2005 - 1 p.m.** -- Open Meeting

July 20, 2005 - 1 p.m. -- Open Meeting

Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Boardroom, Richmond, Virginia.

A meeting of the Medicaid Transportation Advisory Committee to discuss issues and concerns about Medicaid transportation issues with the committee and the community.

Contact: Bob Knox, Transportation Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854, FAX (804) 786-5799, (800) 343-0634/TTY 📞, e-mail bob.knox@dmas.virginia.gov.

† **June 20, 2005 - 10 a.m.** -- Open Meeting

Department of Medical Assistance Services, 600 East Broad Street, Boardroom, Richmond, Virginia. 📍

A meeting of the PDL Implementation Advisory Group.

Contact: Katina Goodwyn, Pharmacy Contract Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0428, FAX (804) 786-0973, (800) 343-0634/TTY 📞, e-mail katina.goodwyn@dmas.virginia.gov.

July 12, 2005 - 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 issues and concerns about Medicaid pharmacy issues with the committee and the community.

Contact: Rachel Cain, Pharmacist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2873, FAX (804) 786-5799, (800) 343-0634/TTY 📞, e-mail rachel.cain@dmas.virginia.gov.

† **July 29, 2005** - 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-**

Calendar of Events

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; and 12 VAC 30-130, Amount, Duration and Scope of Selected Services. The purpose of the proposed action is to implement coverage of new levels of community-based residential mental health services for children and adolescents.

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


Contact: Renee Slade White, Regulatory Coordinator, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail renee.white@dmas.virginia.gov.

† **July 29, 2005** - 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 30-60, Standards Established and Methods Used to Assure High Quality Care.** The purpose of the proposed action is to change DMAS requirements for physician certification and recertification of home health patient care, to conform to federal Medicare law and regulation for home health services in order to reduce confusion and errors by home health agencies.

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

Contact: Diane Thorpe, Long-Term Care and Quality Assurance Division, 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 diane.thorpe@dmas.virginia.gov.

August 11, 2005 - 2 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia. 


A meeting of the Drug Utilization Review Board to discuss issues and concerns about Medicaid pharmacy issues with the committee and the community.

Contact: Rachel Cain, Pharmacist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2873, FAX (804) 786-5799, (800) 343-0634/TTY , e-mail rachel.cain@dmas.virginia.gov.

BOARD OF MEDICINE

† **July 14, 2005 - 7:30 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Boardroom 1, Richmond, Virginia.

A meeting of the Nominating Committee to develop a slate of officers recommended for election by the board. No public comment will be received.

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.

† **July 14, 2005 - 8 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Boardroom 2, Richmond, Virginia.

† **July 29, 2005** - 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 Medicine intends to amend regulations entitled **18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic.** The purpose of the proposed action is to clarify that the intent of regulations for performance of office-based anesthesia was to address the administration of anesthesia in an office-based setting by an amendment stating that performance of a major conductive block for diagnostic or therapeutic purposes does not require the services of an anesthesiologist or certified registered nurse anesthetist, but could be administered by a qualified physician.

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

Public comments may be submitted until July 29, 2005, to William L. Harp, M.D., Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

† **July 14, 2005 - 8 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Boardroom 2, Richmond, Virginia.

† **July 29, 2005** - 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 Medicine intends to amend regulations entitled **18 VAC 85-40, Regulations Governing the Practice of Respiratory Care Practitioners.** The purpose of the proposed action is to recognize courses directly related to the practice of respiratory care that are approved by the American Medical Association for Category 1 CME credit.

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

Public comments may be submitted until July 29, 2005, to William L. Harp, M.D., Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St.,

Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

July 14, 2005 - 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.virginia.gov.

† August 19, 2005 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

A meeting of the Legislative Committee to consider regulatory 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.virginia.gov.

Advisory Board on Acupuncture

August 3, 2005 - 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

August 4, 2005 - 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 Occupational Therapy

August 2, 2005 - 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 Physician Assistants

August 4, 2005 - 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 on Radiologic Technology

NOTE: CHANGE IN MEETING DATE
† July 27, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of radiologic technologists and radiologic technologist-limited. 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


August 2, 2005 - 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.

Calendar of Events

VIRGINIA MUSEUM OF FINE ARTS


June 6, 2005 - 10 a.m. -- Open Meeting
University of Richmond, Jepson Alumni Center, Richmond, Virginia. 

A meeting for trustees to evaluate the new committee restructuring. 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.

June 16, 2005 - 9 a.m. -- Open Meeting
Virginia Museum of Fine Arts, CEO Parlor, 200 North Boulevard, Richmond, Virginia. 


A joint meeting of the Executive and Financial Oversight Committees for staff to update the committees. 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.

BOARD OF NURSING


June 7, 2005 - 9 a.m. -- Open Meeting
June 8, 2005 - 9 a.m. -- Open Meeting
June 13, 2005 - 9 a.m. -- Open Meeting
June 14, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 


A Special Conference Committee, comprised of two members of the Virginia Board of Nursing or agency subordinate, 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.


July 18, 2005 - 9 a.m. -- Open Meeting
July 20, 2005 - 9 a.m. -- Open Meeting
July 21, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A panel of the board will conduct formal hearings with licensees and/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.

July 19, 2005 - 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 discipline case decisions as presented on the agenda. Public comment will be received at 11 a.m.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail jay.douglas@dhp.virginia.gov.

† July 19, 2005 - 1:30 p.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

† July 29, 2005 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled **18 VAC 90-25, Regulations Governing Certified Nurse Aides**. The purpose of the proposed action is to increase the biennial renewal fee for certified nurse aides from \$45 to \$50.

Statutory Authority: § 54.1-2400 and Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.


Public comments may be submitted until July 29, 2005, to Jay Douglas, R.N., Executive Director, Board of Nursing, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

JOINT BOARDS OF NURSING AND MEDICINE

June 22, 2005 - 9 a.m. -- Open Meeting
† August 24, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. 

A meeting of the Joint Boards of Nursing and Medicine.

Contact: Jay P. Douglas, RN, MSM, CSAC, 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.

BOARD OF NURSING HOME ADMINISTRATORS

July 27, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 📍

A meeting to discuss general board business. There will be a public comment period during the first 15 minutes of the meeting.

Contact: Sandra Reen, Executive Director, Board of Nursing Home Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY 📞, e-mail sandra.reen@dhp.virginia.gov.

OLD DOMINION UNIVERSITY

June 14, 2005 - 1 p.m.-- Open Meeting
Old Dominion University, Webb University Center, Norfolk, Virginia. 📍

A quarterly meeting of the governing board of the institution to discuss business of the board and the institution as determined by the rector and the president. Public comment will not be received.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

OLMSTEAD OVERSIGHT ADVISORY COMMITTEE

June 16, 2005 - 11 a.m. -- Open Meeting
August 11, 2005 - 11 a.m. -- Open Meeting
Virginia Housing Development Authority, 621 South Belvidere Street, Richmond, Virginia.

A regular meeting.

Contact: Kathie Shifflett, Administrative Assistant, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 622-7069, FAX (804) 662-7663, e-mail kathie.shifflett@drs.virginia.gov.

July 26, 2005 - 11 a.m. -- Open Meeting
Virginia Housing Development Authority, 621 South Belvidere Street, Richmond, Virginia.

A joint meeting between the Implementation Team and the Oversight Advisory Committee.

Contact: Kathie Shifflett, Administrative Assistant, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 622-7069, FAX (804) 662-7663, e-mail kathie.shifflett@drs.virginia.gov.

BOARD FOR OPTICIANS

July 22, 2005 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. 📍

A meeting to conduct general business including consideration of regulatory issues as may be presented on the agenda. A public comment period will be held at the beginning of the meeting. A portion of the board's business may be discussed in closed session. All meetings are subject to cancellation. The time of the meeting is subject to change. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY 📞, e-mail opticians@dpor.virginia.gov.

BOARD OF OPTOMETRY

† **June 8, 2005 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Room 3, Richmond, Virginia. 📍

The Professional Designation Committee will meet to consider applications for professional designation titles and consider the need to amend the regulations to address the emerging questions regarding titles. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY 📞, e-mail elizabeth.carter@dhp.virginia.gov.

† **June 8, 2005 - 11 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Room 3, Richmond, Virginia. 📍

The board will review CE audit/compliance issues and receive an audit update from the Deputy Director of Enforcement. The board will also consider a request from COPE, consider a request for CE extension/waiver, and receive reports and recommendations from the CE, Newsletter, and Professional Designation Committees. The board will also conduct any general business as needed. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY 📞, e-mail elizabeth.carter@dhp.virginia.gov.

Calendar of Events

† **June 8, 2005 - 11 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 3, Richmond, Virginia.


† **July 29, 2005** - 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 Optometry intends to amend regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry** and repeal regulations entitled **18 VAC 105-30, Regulations for Certification for Therapeutic Pharmaceutical Agents**. The purpose of the proposed action is to incorporate the current requirements for certification in therapeutic pharmaceutical agents into regulations governing the practice of optometry.


Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Public comments may be submitted until July 29, 2005, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 West Broad Street, Richmond, VA 23230-1712.


Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.


† **June 8, 2005 - 2 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Room 3, Richmond, Virginia. 


An informal conference hearing. Public comment will not be received.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail elizabeth.carter@dhp.virginia.gov.

VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES


June 13, 2005 - 5 p.m. -- Open Meeting
Holiday Inn I-64, 6531 West Broad Street, Richmond,
Virginia.  (Interpreter for the deaf provided upon request)


June 28, 2005 - 4 p.m. -- Open Meeting
Blue Ridge Independent Living Center, 1502-B Williamson
Road, NE, Roanoke, Virginia.  (Interpreter for the deaf provided upon request)

June 29, 2005 - 4 p.m. -- Open Meeting
Southwest Virginia Higher Education Center, One Partnership
Circle, Room 222, Abingdon, Virginia.  (Interpreter for the deaf provided upon request)


A public comment forum in response to the interim biennial report.


Contact: Barbara Ettner, Director Policy, Research and Evaluation, Virginia Board for People with Disabilities, 202 N.

9th St., Richmond, VA, telephone (804) 786-7333, FAX (804) 786-1118, toll-free (800) 846-4464, (804) 786-0016/TTY , e-mail barbara.ettner@vbpd.virginia.gov.


June 13, 2005 - 10 a.m. -- Open Meeting
Holiday Inn, 6531 West Broad Street, Richmond, Virginia. 

A meeting of the Executive Committee.

Contact: Sandra Smalls, Executive Assistant, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 786-0016, FAX (804) 786-1118, toll-free (800) 846-4464, (800) 846-4464/TTY , e-mail sandra.smalls@vbpd.virginia.gov.

June 14, 2005 - 9 a.m. -- Open Meeting
Holiday Inn, 6531 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly board meeting.

Contact: Sandra Smalls, Executive Assistant, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 786-0016, FAX (804) 786-1118, toll-free (800) 846-4464, (800) 846-4464/TTY , e-mail sandra.smalls@vbpd.virginia.gov.

BOARD OF PHARMACY

† **June 7, 2005 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 2, Richmond, Virginia.


† **July 29, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled **18 VAC 110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to limit the time for dispensing or refilling of Schedule VI drugs to one year from date of issuance unless the prescriber specifies a longer period, not to exceed two years.

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

Public comments may be submitted until July 29, 2005, to Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

June 7, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. 

A board meeting to consider such regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY ☎, e-mail scotti.russell@dhp.virginia.gov.

† **June 22, 2005 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, 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

† **August 19, 2005 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 📍

A regular business 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

June 2, 2005 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 📍

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. 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: Kevin Hoeft, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail kevin.hoeft@dpor.virginia.gov.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

June 6, 2005 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 📍

A quarterly board meeting.

Contact: Judith A. Spiller, Executive Director, Board for Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519, FAX (804)

367-9537, (804) 367-9753/TTY ☎, e-mail judy.spiller@dpor.virginia.gov.

BOARD OF PSYCHOLOGY

June 16, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 📍

An informal conference.

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.

July 12, 2005 - 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 regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of 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 BROADCASTING BOARD

† **June 8, 2005 - 10:30 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 📍

A regular meeting. The meeting is subject to change. If you have any questions or concerns please contact Shannon Powell.

Contact: Shannon Powell, Research Assistant, Virginia Public Broadcasting Board, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 786-1201.

VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

June 30, 2005 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. 📍

An advisory board meeting.

Contact: Janet Dingle Brown, Esq., Public Guardianship Coordinator and Legal Services Developer, Virginia 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 janet.brown@vda.virginia.gov.

Calendar of Events

VIRGINIA RACING COMMISSION

† **June 15, 2005 - 9:30 a.m.** -- Public Hearing
Tyler Building, 1300 East Main Street, Richmond, Virginia.


† **July 29, 2005** - 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 amend regulations entitled **11 VAC 10-20, Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering**. The purpose of the proposed action is to specify certain procedures for the transfer or acquisition of an interest in an existing owner's, owner-operator's, or operator's license.


Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418 or e-mail david.lermond@vrc.virginia.gov.

REAL ESTATE APPRAISER BOARD

† **August 23, 2005 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4 West Conference Room, Richmond, Virginia. 

A meeting to discuss 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.oneal@dpor.virginia.gov.


REAL ESTATE BOARD

June 1, 2005 - 9 a.m. -- Open Meeting


June 2, 2005 - 9 a.m. -- Open Meeting

June 9, 2005 - 9 a.m. -- Open Meeting

June 16, 2005 - 9 a.m. -- Open Meeting


Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. 

An informal fact-finding conference.


Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail reboard@dpor.virginia.gov.

DEPARTMENT OF REHABILITATIVE SERVICES


Commonwealth Neurotrauma Initiative (CNI) Trust Fund Advisory Board

June 17, 2005 - 10 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Road, Conference Room 101, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A regular meeting. There will be a public comment period at the beginning of the meeting.

Contact: Kristie Chamberlain, CNI Program Administrator, Department of Rehabilitative Services, DRS, 8004 Franklin Farms Dr., Richmond VA 23229, telephone (804) 662-7154, FAX (804) 662-7663, toll-free (800) 552-5019, (804) 464-9950/TTY , e-mail kristie.chamberlain@drs.virginia.gov.

VIRGINIA RESOURCES AUTHORITY

June 14, 2005 - 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 bmcrac@vra.state.va.us.

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

June 29, 2005 - 10 a.m. -- Open Meeting

August 10, 2005 - 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.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **June 15, 2005 - Noon** -- Open Meeting
Department of Business Assistance, 707 East Main Street,
3rd Floor Board Room, Richmond, Virginia. 

A meeting to review applications for loans submitted to the authority for approval and to conduct general business of the board. The meeting time is subject to change depending upon the board's agenda.


Contact: Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8256, FAX (804) 225-3384, toll-free (866) 248-8814, e-mail scott.parsons@dba.virginia.gov.


STATE BOARD OF SOCIAL SERVICES

June 15, 2005 - 9 a.m. -- Open Meeting
Berry Hill, 3105 River Road, South Boston, Virginia.


† **August 17, 2005 - 9 a.m.** -- Open Meeting
† **August 18, 2005 - 9 a.m.** -- Open Meeting
Department of Social Services, 1701 High Street, Portsmouth, Virginia. 


A regular meeting. Public comment will be received at 1:30 p.m.

Contact: Pat Rengnerth, State Board Liaison, State Board of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY , e-mail patricia.rengnerth@dss.virginia.gov.


June 16, 2005 - 9 a.m. -- Open Meeting
Department of Social Services, 1030 Cowford Building, Halifax, Virginia. 

A regular meeting.

Contact: Pat Rengnerth, State Board Liaison, State Board of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY , e-mail patricia.rengnerth@dss.virginia.gov.

August 16, 2005 - 9 a.m. -- Open Meeting
Department of Social Services, 7 North 8th Street, 6th Floor, Conference Room, Richmond, Virginia. 

New member orientation.

Contact: Pat Rengnerth, State Board Liaison, State Board of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY , e-mail patricia.rengnerth@dss.virginia.gov.


† **July 29, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled **22 VAC 40-901, Community Services Block Grant Program**. The purpose of the proposed action is to establish criteria for the expansion of existing community action agencies and the designation of new community action agencies.

Statutory Authority: §§ 2.2-5402 and 63.2-217 of the Code of Virginia.


Contact: J. Mark Grigsby, Director, Office of Community Services, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7922, FAX (804) 726-7946 or e-mail james.grigsby@dss.virginia.gov.

Family and Children's Trust Fund

† **June 9, 2005 - 8:45 a.m.** -- Open Meeting
Department of Social Services, 7 North 8th Street, Richmond, Virginia. 

The FACT Board Executive Committee will meet by telephone to finalize the agenda for the June board meeting.


Contact: Nan McKenney, Executive Director, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7604, FAX (804) 726-7015, e-mail nan.mckenney@dss.virginia.gov.

† **June 20, 2005 - 9 a.m.** -- Open Meeting
Holiday Inn Select, 1021 Koger Center Boulevard, Richmond, Virginia. 

The Board of Trustees will hold its regular business meeting.

Contact: Nan McKenney, Executive Director, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7604, FAX (804) 726-7015, e-mail nan.mckenney@dss.virginia.gov.

COUNCIL ON TECHNOLOGY SERVICES

June 23, 2005 - 2 p.m. -- Open Meeting
† **August 25, 2005 - 2 p.m.** -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A regular meeting of the advisory council to the chief information officer of the Commonwealth on matters related to information technology in the Commonwealth.

Contact: Jennifer W. Hunter, Special Assistant for Communications/COTS Executive Director, Council on Technology Services, 411 E. Franklin St., Suite 500, Richmond, VA 23219, telephone (804) 343-9012, FAX (804) 343-9015, e-mail jenny.hunter@vita.virginia.gov.

Calendar of Events

VIRGINIA TOBACCO SETTLEMENT FOUNDATION

† **June 15, 2004 - Noon** -- Open Meeting
701 East Franklin Street, Richmond, Virginia. 

A meeting to approve FY 2006 contracts.

Contact: Eloise Burke, Sr. Executive Assistant, Virginia Tobacco Settlement Foundation, 701 E. Franklin St., Richmond, VA 23219, telephone (804) 786-2523, FAX (804) 225-2272, e-mail eburke@tsf.org.

COMMONWEALTH TRANSPORTATION BOARD

July 15, 2005 - 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 Commonwealth Transportation Board intends to adopt regulations entitled **24 VAC 30-121, Comprehensive Roadside Management Program Regulations**. The purpose of the proposed action is to promulgate roadside management regulations to fulfill the directives of Chapter 679 of the 2004 Acts of Assembly.


Statutory Authority: §§ 33.1-12 and 33.1-223.2:9 of the Code of Virginia.

Contact: Jacob Porter, Roadside Operations Program Manager, Commonwealth Transportation Board, Asset Management Division, Monroe Tower, 1401 E. Broad St., 19th Floor, Richmond, VA 23219, telephone (804) 786-7218, FAX (804) 786-7987, e-mail jacobporter@vdot.virginia.gov.

TREASURY BOARD

June 15, 2005 - 9 a.m. -- Open Meeting

July 20, 2005 - 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, Secretary, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011, FAX (804) 786-0833, e-mail melissa.mayes@trs.virginia.gov.

DEPARTMENT OF VETERANS SERVICES

Veterans Services Foundation

June 8, 2005 - 11 a.m. -- Open Meeting

Location to be determined 

A regular meeting. Public comment will be received at approximately 12:50 p.m.

Contact: Steven Combs, Assistant to the Commissioner, Department of Veterans Services, 900 E. Main St., Richmond, VA 23219, telephone (804) 786-0294, e-mail steven.combs@dvs.virginia.gov.

STATE WATER CONTROL BOARD

June 3, 2005 - 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 adopt regulations entitled **9 VAC 25-780, Local and Regional Water Supply Planning**. The purpose of the proposed action is to establish a basic set of criteria that each local or regional water supply plan must contain so that the entity can plan for and provide adequate water to its citizens.

Statutory Authority: § 62.1-44.38:1 of the Code of Virginia.

Contact: Scott W. Kudlas, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4456, FAX (804) 698-4347, e-mail swkudlas@deq.virginia.gov.

June 6, 2005 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia.

June 8, 2005 - 1:30 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

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 25-720, Water Quality Management Planning Regulation**. The purpose of the proposed action is to amend the New River Basin section (9 VAC 25-720-130) to update the stream segment classifications, effluent limitations and waste load allocations that have changed to reflect new requirements or changing water quality conditions.

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1313 (e)); 40 CFR Part 130.

Public comments may be submitted until July 1, 2005.

Contact: Jason R. Hill, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6729, e-mail jrhill@deq.virginia.gov.

June 6, 2005 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia.

June 8, 2005 - 1:30 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

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 25-720, Water Quality Management Planning Regulation**. The purpose of the proposed action is to amend the Tennessee-Big Sandy River Basin section (9 VAC 25-720-90) to update the stream segment classifications, effluent limitations and

waste load allocations that have changed to reflect new requirements or changing water quality conditions.

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1313 (e)); 40 CFR Part 130.

Public comments may be submitted until July 1, 2005.

Contact: Jason R. Hill, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6729, e-mail jrhill@deq.virginia.gov.

June 6, 2005 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia.

June 8, 2005 - 1:30 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

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 25-720, Water Quality Management Planning Regulation**. The purpose of the proposed action is to amend the Roanoke River Basin section (9 VAC 25-720-80) to update the stream segment classifications, effluent limitations and waste load allocations that have changed to reflect new requirements or changing water quality conditions.

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1313 (e)); 40 CFR Part 130.

Public comments may be submitted until July 1, 2005.

Contact: Jason R. Hill, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6729, e-mail jrhill@deq.virginia.gov.

June 6, 2005 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia.

June 8, 2005 - 1:30 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

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 25-720, Water Quality Management Planning Regulation**. The purpose of the proposed action is to amend the Potomac-Shenandoah River Basin section (9 VAC 25-720-50) to update the stream segment classifications, effluent limitations and waste load allocations that have changed to reflect new requirements or changing water quality conditions.

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1313 (e)); 40 CFR Part 130.

Public comments may be submitted until July 1, 2005.

Contact: Jason R. Hill, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6729, e-mail jrhill@deq.virginia.gov.

June 8, 2005 - 10 a.m. -- Open Meeting

July 7, 2005 - 10 a.m. -- Open Meeting

August 9, 2005 - 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 water quality standards to establish nutrient criteria for lakes. Meeting date is tentative and interested persons should confirm the meeting with the contact person.

Contact: Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111, FAX (804) 698-4116, e-mail emdaub@deq.virginia.gov.

June 9, 2005 - 10 a.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. ☎

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 25-110, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Sewage Discharges Less than or Equal to 1,000 Gallons Per Day**. The purpose of the proposed action is to reissue and amend, as necessary, the existing general permit that establishes limitations and monitoring requirements for domestic sewage discharges of less than or equal to 1,000 gallons per day.

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

Public comments may be submitted until July 15, 2005.

Contact: Burton Tuxford, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4086, FAX (804) 698-4032, e-mail btuxford@deq.virginia.gov.

June 21, 2005 - 9:30 a.m. -- Open Meeting

July 14, 2005 - 9:30 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 Virginia Water Protection Permit Regulation.

Contact: William K. Norris, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4022, FAX (804) 698-4224, e-mail wknorris@deq.virginia.gov.


June 28, 2005 - 9:30 a.m. -- Open Meeting

General Assembly Building, 9th and Broad Streets, House Room C, Richmond, VA

A regular board meeting.

Calendar of Events


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 cumberland@deq.virginia.gov.

† **August 25, 2005 - 9:30 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 Virginia Water Protection Permit Regulation.

Contact: William K. Norris, State Water Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4022, FAX (804) 698-4224, e-mail wknorris@deq.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

June 22, 2005 - 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.

VIRGINIA WORKFORCE COUNCIL


† **June 8, 2005 - 1 p.m.** -- Open Meeting
The Hotel Roanoke and Conference Center, 110 Shenandoah Avenue, Roanoke, Virginia.

Public comments will be scheduled and limited to three minutes and a written copy of the comments is required.

Contact: Gail Robinson, Virginia Workforce Council Liaison, Virginia Workforce Council, 703 E. Main St., Room 121, Richmond, VA 23219, telephone (804) 225-3070, FAX (804) 225-2190, e-mail gail.robinson@vec.virginia.gov.


INDEPENDENT


VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

† **May 31, 2005 - 10 a.m.** -- Open Meeting
1910 Byrd Avenue, Suite 5, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting of the Ad Hoc Committee on the Ombudsman Program. Public comment is welcomed by the board and will be received beginning of the meeting. Public comment will also be accepted by telephone. If you wish to provide public comment via telephone, you must call Lisa Shehi, Administrative Assistant at 1-800-552-3962 (Voice/TTY) or e-mail her at lisa.shehi@vopa.virginia.gov no later than

Tuesday, May 17. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. If interpreter services or other accommodations are required, please contact Ms. Shehi.


Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail lisa.shehi@vopa.virginia.gov.

† **May 31, 2005 - Noon** -- Open Meeting
1910 Byrd Avenue, Suite 5, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting of the Executive Committee. Public comment is welcomed by the board and will be received beginning of the meeting. Public comment will also be accepted by telephone. If you wish to provide public comment via telephone, you must call Lisa Shehi, Administrative Assistant at 1-800-552-3962 (Voice/TTY) or e-mail her at lisa.shehi@vopa.virginia.gov no later than Tuesday, May 17. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. If interpreter services or other accommodations are required, please contact Ms. Shehi.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail lisa.shehi@vopa.virginia.gov


Board for Protection and Advocacy

July 19, 2005 - 9 a.m. -- Open Meeting
Virginia Office for Protection and Advocacy, Byrd Building, 1910 Byrd Avenue, Suite 5, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Public comment is welcomed and will be accepted at the start of the meeting. If you wish to provide public comment via telephone, or if interpreter services or other accommodations are required, please contact Lisa Shehi at 1-800-552-3962 or via e-mail at lisa.shehi@vopa.virginia.gov no later than Tuesday, July 5, 2005.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail lisa.shehi@vopa.virginia.gov.

Disabilities Advisory Council

July 28, 2005 - 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)

Public comment is welcome and will be received at the beginning of the meeting. For those needing interpreter services or other accommodations, please contact Ms. Delicia (Dee) Vance by July 14, 2005.

Contact: Delicia Vance, Outreach Advocate, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 662-7099, FAX (804) 662-7057, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail delicia.vance@vopa.virginia.gov.

PAIMI Advisory Council

August 11, 2005 - 10 a.m. -- Open Meeting
Location to be announced.

Public comment is welcome and will be received at the beginning of the meeting. For those needing interpreter services or other accommodations, please contact Delicia (Dee) Vance by July 29, 2005.

Contact: Delicia Vance, Outreach Advocate, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 662-7099, FAX (804) 662-7057, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail delicia.vance@vopa.virginia.gov.

VIRGINIA RETIREMENT SYSTEM

June 1, 2005 - 8 a.m. -- CANCELED
† August 17, 2005 - 9 a.m. -- Open Meeting
Location to be determined. 🗺

The Board of Trustees annual retreat has been rescheduled to August. Details will be posted 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 16, 2005 - 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 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.

† August 17, 2005 - 2:30 p.m. -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. 🗺

Meetings of the following committees:

- 11 a.m. - Investment Advisory
- 2:30 p.m. - Benefits and Actuarial
- 4 p.m. - Audit and Compliance
- 4 p.m. - Administration and Personnel

No public comment will be received.

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, 2005 - 8:30 a.m. -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East 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 St., 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

JOINT SUBCOMMITTEE ON ADOPTION LAWS AND POLICIES

† June 22, 2005 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 🗺

A regular meeting. For questions regarding the meeting agenda, contact Jeff Gore, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations at (804) 698-7450, (804) 698-7419/TTY, or write to Senate Committee Operations, P.O. Box 396, Richmond, VA 23218 at least seven days prior to the meeting.

Contact: Patty Lung, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7450.

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† June 13, 2005 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 🗺

A meeting to discuss VITA implementation status report and internal service funds.

Contact: Trish Bishop, Principal Legislative Analyst, Joint Legislative Audit and Review Commission, General Assembly Bldg., 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258, FAX (804) 371-0101, e-mail tbishop@leg.state.va.us.

VIRGINIA CODE COMMISSION


June 15, 2005 - 10 a.m. -- Open Meeting
July 20, 2005 - 10 a.m. -- Open Meeting
† August 17, 2005 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. 🗺

Calendar of Events

A meeting to discuss the 2005 workplan and begin working on the 2007 Code of Virginia publication project.

Contact: Jane Chaffin, Registrar of Regulations, Virginia Code Commission, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625 or e-mail jchaffin@leg.state.va.us.


VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

June 15, 2005 - 1 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

An agenda for the meeting will be posted as soon as it is available.


Contact: Maria Everett, Executive Director, Virginia Freedom of Information Advisory Council, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 255-3056, FAX (804) 371-0169, toll-free (866) 448-4100.

VIRGINIA HOUSING COMMISSION

† **June 9, 2005 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 

A meeting of the Affordable Housing and Policy Issues Work Group.

Contact: Lisa Gilmer, Division of Legislative Services, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail lgilmer@leg.state.va.us.

† **June 9, 2005 - 1 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 

A meeting of the Eminent Domain/Blight/Brownfields and Remediation Issues Work Group.

Contact: Lisa Gilmer, Division of Legislative Services, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail lgilmer@leg.state.va.us.


JOINT SUBCOMMITTEE ON MANUFACTURING NEEDS AND THE FUTURE OF MANUFACTURING IN VIRGINIA

June 7, 2005 - 1 p.m. -- Open Meeting
Barr Labs, 2150 Perrowville Road, Forest, Virginia.

A regular meeting. For questions regarding the meeting agenda, contact Frank Munyan, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations at (804) 698-7450, (804) 698-7419/TTY, or write to Senate Committee Operations, P.O. Box 396, Richmond, VA 23218 at least seven days prior to the meeting.

Contact: Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7450.

JOINT SUBCOMMITTEE STUDYING THE VOTING EQUIPMENT CERTIFICATION PROCESS

July 18, 2005 - 1 p.m. -- Open Meeting
August 22, 2005 - 1 p.m. -- Open Meeting
November 21, 2005 - 1 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Mary Spain or Jack Austin, Division of Legislative Services, (804) 786-3591.

Contact: Barbara L. Regen, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

CHRONOLOGICAL LIST

OPEN MEETINGS

May 31

† Protection and Advocacy, Virginia Office for

June 1

Emergency Planning Committee, Local
- City of Winchester
† Environmental Quality, Department of
- Litter Control and Recycling Fund Advisory Board
† Historic Resources, Department of
- Historic Resources Board and State Review Board
Real Estate Board

June 2

Barbers and Cosmetology, Board for
Conservation and Recreation, Department of
- Board of Conservation and Recreation
Contractors, Board for
Counseling, Board of
Polygraph Examiners Advisory Board
Real Estate Board

June 3

Accountancy, Board of
Art and Architectural Review Board
Counseling, Board of
Dentistry, Board of
† Fire Services Board, Virginia

June 4

† Fire Services Board, Virginia

June 6

Alcoholic Beverage Control Board
† Aviation Board, Virginia
† Information Technologies Agency, Virginia
- Information Technology Investment Board
Museum of Fine Arts, Virginia
Professional and Occupational Regulation, Board for

June 7

Alzheimer's Disease and Related Disorders Commission

Arts, Virginia Commission for the
† Aviation Board, Virginia
Charitable Gaming Board
Conservation and Recreation, Department of
- Virginia Land Conservation Foundation Board
Contractors, Board for
Funeral and Directors and Embalmers, Board of
Manufacturing Needs and the Future of Manufacturing in
Virginia, Joint Subcommittee on
Nursing, Board of
Pharmacy, Board of

June 8

Cemetery Board
† Information Technologies Agency, Virginia
- Information Technology Investment Board
† Interagency Coordinating Council, Virginia
Jamestown-Yorktown Foundation
Nursing, Board of
† Optometry, Board of
† Public Broadcasting Board, Virginia
Veterans Services, Department of
- Veteran Services Foundation
Water Control Board, State
† Workforce Council, Virginia

June 9

Barbers and Cosmetology, Board for
Criminal Justice Services Board
† Environmental Quality, Department of
† Housing Commission, Virginia
Real Estate Board
† Social Services, Department of
- Family and Children's Trust Fund

June 10

Health, Department of

June 13

† Audit and Review Commission, Joint Legislative
† Environmental Quality, Department of
Library Board, State
Nursing, Board of
People with Disabilities, Virginia Board for

June 14

Medical Assistance Services, Board of
Nursing, Board of
Old Dominion University
People with Disabilities, Virginia Board for
Resources Authority, Virginia

June 15

At-Risk Youth and Families, Comprehensive Services for
- State Executive Council
Code Commission, Virginia
† Fire Services Board, Virginia
Freedom of Information Advisory Council, Virginia
† Longwood University
† Medical Assistance Services, Department of
† Small Business Financing Authority, Virginia
Social Services, State Board of
† Tobacco Settlement Foundation, Virginia
Treasury Board

June 16

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

† Contractors, Board for
Design-Build/Construction Management Review Board
† Fire Services Board, Virginia
Labor and Industry, Department of
- Virginia Apprenticeship Council
† Longwood University
Museum of Fine Arts, Virginia
Olmstead Oversight Advisory Committee
Psychology, Board of
Real Estate Board
Social Services, State Board of

June 17

Health Professions, Department of
- Health Practitioners' Intervention Program Committee
Rehabilitative Services, Department of
- Commonwealth Neurotrauma Initiative Trust Fund
Advisory Board

June 20

† Accountancy, Board of
Alcoholic Beverage Control Board
† Business Assistance, Department of
- Small Business Advisory Board
Chesapeake Bay Local Assistance Board
† Medical Assistance Services, Department of
† Social Services, Department of
- Family and Children's Trust

June 21

† Contractors, Board for
Water Control Board, State

June 22

† Adoption Laws and Policies, Joint Subcommittee on
Air Pollution Control Board, State
† Compensation Board
Education, Board of
Nursing and Medicine, Joint Boards of
† Pharmacy, Board of
Waterworks and Wastewater Works Operators, Board for

June 23

Cemetery Board
Game and Inland Fisheries, Board of
Technology Services, Council on

June 25

Blind and Vision Impaired, Department of the
- Statewide Rehabilitation Council for the Blind

June 28

† Conservation and Recreation, Department of
- Virginia Scenic River Board
Marine Resources Commission
People with Disabilities, Virginia Board for
Water Control Board, State

June 29

Accountancy, Board of
† Agriculture and Consumer Services, Department of
- Virginia Wine Board
People with Disabilities, Virginia Board for
Sewage Handling and Disposal Appeal Review Board

June 30

Public Guardian and Conservator Advisory Board, Virginia

July 5

Alcoholic Beverage Control Board

July 7

† Dentistry, Board of

Calendar of Events

Water Control Board, State

July 8

Art and Architectural Review Board

† Dentistry, Board of

July 12

† Blind and Vision Impaired, Board for the

Child Fatality Review Team, State

Medical Assistance Services, Department of

Psychology, Board of

July 13

Information Technologies Agency, Virginia

- E-911 Wireless Service Board

July 14

† Agriculture and Consumer Services, Board of

† Medicine, Board of

Water Control Board, State

July 18

Alcoholic Beverage Control Board

Hearing Aid Specialists, Board for

† Local Government, Commission on

Nursing, Board of

Voting Equipment Certification Process, Joint

Subcommittee Studying the

July 19

Contractors, Board for

Corrections, Board of

Nursing, Board of

Protection and Advocacy, Virginia Office for

- Board for Protection and Advocacy

July 20

Agriculture and Consumer Services, Department of

- Virginia Small Grains Board

Code Commission, Virginia

Corrections, Board of

† Health, Department of

- Radiation Advisory Board

Medical Assistance Services, Department of

Nursing, Board of

Treasury Board

July 21

Design-Build/Construction Management Review Board

Education, Department of

- State Special Education Advisory Committee

Nursing, Board of

July 22

Education, Department of

- State Special Education Advisory Committee

Opticians, Board for

July 26

Accountancy, Board of

Olmstead Advisory Committee

July 27

Education, Board of

Geology, Board for

† Medicine, Board of

- Advisory Board on Radiologic Technology

Nursing Home Administrators, Board of

July 28

Protection and Advocacy, Virginia Office for

- Disabilities Advisory Council

August 1

Alcoholic Beverage Control Board

August 2

Medicine, Board of

- Advisory Board on Occupational Therapy

- Advisory Board on Respiratory Care

August 3

Deaf and Hard-of-Hearing, Department for the

Jamestown-Yorktown Foundation

Medicine, Board of

- Advisory Board on Acupuncture

August 4

Accountancy, Board of

Medicine, Board of

- Advisory Board of Athletic Training

- Advisory Board on Physician Assistants

August 5

Art and Architectural Review Board

August 9

Water Control Board, State

August 10

Contractors, Board for

Sewage Handling and Disposal Appeal Review Board

August 11

Medical Assistance Services, Department of

Olmstead Oversight Advisory Committee

Protection and Advocacy, Virginia Office for

- PAIMI Advisory Council

August 15

Alcoholic Beverage Control Board

Barbers and Cosmetology, Board for

August 16

Retirement System, Virginia

Social Services, State Board of

August 17

† Asbestos, Lead, and Home Inspectors, Virginia Board for

† Code Commission, Virginia

† Retirement System, Virginia

† Social Services, State Board of

August 18

† Audiology and Speech-Language Pathology, Board of

† Design-Build/Construction Management Review Board

† Retirement System, Virginia

† Social Services, State Board of

August 19

† Health Professions, Department of

- Health Practitioners Intervention Program Committee

† Medicine, Board of

† Physical Therapy, Board of

August 22

Voting Equipment Certification Process, Joint

Subcommittee Studying the

August 23

† Real Estate Appraiser Board

August 24

† Nursing, Board of

- Joint Boards of Nursing and Medicine

August 25

† Technology Services, Council on

† Water Control Board, State

August 29

† Alcoholic Beverage Control Board

August 30

† Contractors, Board for

November 21

Voting Equipment Certification Process, Joint
Subcommittee Studying the

PUBLIC HEARINGS**June 2**

† Counseling, Board of

June 6

Conservation and Recreation, Department of
† Health Professions, Department of
Water Control Board, State

June 7

† Pharmacy, Board of

June 8

Conservation and Recreation, Department of
† Optometry, Board of
Water Control Board, State

June 9

Conservation and Recreation, Department of
Water Control Board, State

June 13

Conservation and Recreation, Department of

June 14

† Contractors, Board for

June 15

† Racing Commission, Virginia

July 7

† Air Pollution Control Board, State

July 13

† Contractors, Board for

July 14

† Contractors, Board for
† Medicine, Board of

July 18

† Local Government, Commission on

July 19

† Nursing, Board of

November 9

† Juvenile Justice, Board of

Calendar of Events
