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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printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2005 VAC Supplement includes final regulations published through *Virginia Register* Volume 21, Issue 24, dated August 8, 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 3-10-10	Amended	22:5 VA.R. 706	12/14/05
4 VAC 3-10-20	Amended	22:5 VA.R. 707	12/14/05
4 VAC 3-10-30	Amended	22:5 VA.R. 707	12/14/05
4 VAC 3-10-40	Repealed	22:5 VA.R. 709	12/14/05
4 VAC 20-70-30	Amended	22:4 VA.R. 575	12/1/05
4 VAC 20-70-70	Amended	22:4 VA.R. 575	12/1/05
4 VAC 20-70-140	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-80-30	Amended	21:25 VA.R. 3469	7/29/05
4 VAC 20-110-60	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-150-60	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-230-30	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-230-50	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-252-30 emer	Amended	22:4 VA.R. 627	9/29/05-10/28/05
4 VAC 20-252-90	Amended	22:1 VA.R. 81	9/1/05
4 VAC 20-252-100	Amended	22:1 VA.R. 81	9/1/05
4 VAC 20-270-30	Amended	21:25 VA.R. 3469	7/29/05
4 VAC 20-310-15	Added	22:4 VA.R. 582	10/1/05
4 VAC 20-310-20	Amended	22:4 VA.R. 582	10/1/05
4 VAC 20-310-40	Amended	22:4 VA.R. 583	10/1/05
4 VAC 20-310-50	Amended	22:4 VA.R. 583	10/1/05
4 VAC 20-566-10 through 4 VAC 20-566-50 emer	Added	21:25 VA.R. 3552	8/16/05-9/14/05
4 VAC 20-566-10 through 4 VAC 20-566-50	Added	22:1 VA.R. 81-82	9/15/05
4 VAC 20-610-40	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-610-50	Amended	22:4 VA.R. 577	12/1/05
4 VAC 20-650-10 through 4 VAC 20-650-40 emer	Amended	22:4 VA.R. 628	10/1/05-10/30/05
4 VAC 20-670-20	Amended	22:4 VA.R. 577	12/1/05
4 VAC 20-670-30	Amended	21:25 VA.R. 3470	7/29/05
4 VAC 20-670-50	Amended	21:25 VA.R. 3470	7/29/05
4 VAC 20-720-20	Amended	22:4 VA.R. 584	10/1/05
4 VAC 20-720-40	Amended	22:4 VA.R. 585	10/1/05
4 VAC 20-720-50	Amended	22:4 VA.R. 586	10/1/05
4 VAC 20-720-60	Amended	22:4 VA.R. 586	10/1/05
4 VAC 20-720-70	Amended	22:4 VA.R. 586	10/1/05
4 VAC 20-720-75	Amended	22:4 VA.R. 587	10/1/05
4 VAC 20-720-80	Amended	22:4 VA.R. 587	10/1/05
4 VAC 20-720-100	Amended	22:4 VA.R. 587	10/1/05
4 VAC 20-730-20	Repealed	22:4 VA.R. 577	12/1/05
4 VAC 20-890-25	Amended	22:4 VA.R. 577	12/1/05
4 VAC 20-900-30	Amended	22:4 VA.R. 578	12/1/05
4 VAC 20-920-30	Amended	22:4 VA.R. 578	12/1/05
4 VAC 20-920-40	Amended	22:4 VA.R. 578	12/1/05
4 VAC 20-950-46 emer	Amended	22:4 VA.R. 628	10/1/05-10/30/05
4 VAC 20-950-48 emer	Amended	22:4 VA.R. 629	10/1/05-10/30/05
4 VAC 20-950-48.2 emer	Added	22:4 VA.R. 629	10/1/05-10/30/05

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-950-49 emer	Amended	22:4 VA.R. 630	10/1/05-10/30/05
4 VAC 20-1090-10 through 4 VAC 20-1090-40	Added	22:4 VA.R. 579-582	12/1/05
4 VAC 25-20 (Forms)	Amended	22:5 VA.R. 720	--
4 VAC 25-130-816.11	Amended	21:26 VA.R. 3706	8/10/05-8/9/06
4 VAC 25-130-816.64	Amended	21:26 VA.R. 3707	8/10/05-8/9/06
Title 6. Criminal Justice and Corrections			
6 VAC 20-230-160	Erratum	22:2 VA.R. 296	--
6 VAC 20-230-210	Erratum	22:2 VA.R. 296	--
6 VAC 20-230-10 through 6 VAC 20-230-350	Added	21:26 VA.R. 3680-3691	10/5/05
Title 8. Education			
8 VAC 20-21-80	Amended	21:25 VA.R. 3471	9/22/05
8 VAC 20-21-90	Amended	21:25 VA.R. 3473	9/22/05
8 VAC 20-21-660	Amended	21:25 VA.R. 3473	9/22/05
8 VAC 20-21-680	Amended	21:25 VA.R. 3474	9/22/05
Title 9. Environment			
9 VAC 5-50-400	Amended	22:4 VA.R. 588	12/1/05
9 VAC 5-60-60	Amended	22:4 VA.R. 588	12/1/05
9 VAC 5-60-90	Amended	22:4 VA.R. 588	12/1/05
9 VAC 5-60-100	Amended	22:4 VA.R. 588	12/1/05
9 VAC 10-10-10	Amended	22:5 VA.R. 709	12/14/05
9 VAC 10-10-20	Amended	22:5 VA.R. 710	12/14/05
9 VAC 10-10-30	Amended	22:5 VA.R. 710	12/14/05
9 VAC 20-80-60	Amended	21:26 VA.R. 3691	10/5/05
9 VAC 20-80-400	Amended	21:26 VA.R. 3694	10/5/05
9 VAC 20-80-480	Amended	21:26 VA.R. 3697	10/5/05
9 VAC 20-80-485	Amended	21:26 VA.R. 3698	10/5/05
9 VAC 20-80-485	Erratum	22:2 VA.R. 296	--
9 VAC 20-80-790	Amended	22:1 VA.R. 104	12/19/05
9 VAC 25-40-10	Amended	22:3 VA.R. 370	11/16/05
9 VAC 25-40-20	Repealed	22:3 VA.R. 370	11/16/05
9 VAC 25-40-25	Added	22:3 VA.R. 370	11/16/05
9 VAC 25-40-30	Amended	22:3 VA.R. 371	11/16/05
9 VAC 25-40-40	Amended	22:3 VA.R. 371	11/16/05
9 VAC 25-40-50	Amended	22:3 VA.R. 371	11/16/05
9 VAC 25-40-70	Added	22:3 VA.R. 371	11/16/05
9 VAC 25-110-10	Amended	22:4 VA.R. 595	11/30/05
9 VAC 25-110-20	Amended	22:4 VA.R. 595	11/30/05
9 VAC 25-110-60	Amended	22:4 VA.R. 596	11/30/05
9 VAC 25-110-70	Amended	22:4 VA.R. 596	11/30/05
9 VAC 25-110-80	Amended	22:4 VA.R. 597	11/30/05
9 VAC 25-260-30	Amended	22:3 VA.R. 381	*
9 VAC 25-180-10 through 9 VAC 25-180-70	Repealed	22:4 VA.R. 605	11/30/05
9 VAC 25-630-50	Amended	22:2 VA.R. 229	11/2/05
9 VAC 25-720-10	Amended	22:3 VA.R. 372	11/16/05
9 VAC 25-720-30	Amended	22:3 VA.R. 374	11/16/05
9 VAC 25-720-40	Amended	22:3 VA.R. 374	11/16/05
9 VAC 25-720-50	Amended	22:2 VA.R. 236	11/2/05
9 VAC 25-720-50	Amended	22:3 VA.R. 376	11/16/05
9 VAC 25-720-70	Amended	22:3 VA.R. 378	11/16/05
9 VAC 25-720-90	Amended	22:2 VA.R. 237	11/2/05
9 VAC 25-720-110	Amended	22:3 VA.R. 380	11/16/05
9 VAC 25-720-130	Amended	22:2 VA.R. 238	11/2/05
9 VAC 25-750-10 through 9 VAC 25-750-50	Repealed	22:4 VA.R. 605	11/30/05

* Effective upon filing notice of approval by U.S. EPA.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-780-30	Erratum	22:4 VA.R. 660	--
9 VAC 25-780-50	Erratum	22:4 VA.R. 660	--
9 VAC 25-780-90	Erratum	22:4 VA.R. 660	--
9 VAC 25-780-140	Erratum	22:4 VA.R. 660	--
9 VAC 25-780-10 through 9 VAC 25-780-190	Added	22:2 VA.R. 238-246	11/2/05
Title 10. Finance and Financial Institutions			
10 VAC 5-20-50	Added	22:3 VA.R. 383	9/30/05
Title 12. Health			
12 VAC 5-70-10 through 12 VAC 5-70-50 emer	Repealed	22:5 VA.R. 713	3/1/06-2/28/07
12 VAC 5-71-10 through 12 VAC 5-71-170 emer	Added	22:5 VA.R. 713-719	3/1/06-2/28/07
12 VAC 5-380	Repealed	22:3 VA.R. 388	1/1/06
12 VAC 5-381-10 through 12 VAC 5-381-360	Added	22:3 VA.R. 388-406	1/1/06
12 VAC 5-381-120	Erratum	22:4 VA.R. 659	--
12 VAC 5-500-10 through 12 VAC 5-500-350	Repealed	22:3 VA.R. 407	1/1/06
12 VAC 5-501-10 through 12 VAC 5-501-350	Added	22:3 VA.R. 407-413	1/1/06
12 VAC 30-80-40	Amended	22:3 VA.R. 414	11/16/05
12 VAC 30-120-1600 through 12 VAC 30-120-1660 emer	Added	22:2 VA.R. 255-261	9/14/05-9/13/06
12 VAC 30-141-10 emer	Amended	21:25 VA.R. 3553	8/1/05-7/31/06
12 VAC 30-141-10 emer	Amended	21:25 VA.R. 3561	8/1/05-7/31/06
12 VAC 30-141-40 emer	Amended	21:25 VA.R. 3555	8/1/05-7/31/06
12 VAC 30-141-100 emer	Amended	21:25 VA.R. 3555	8/1/05-7/31/06
12 VAC 30-141-100 emer	Amended	21:25 VA.R. 3563	8/1/05-7/31/06
12 VAC 30-141-120 emer	Amended	21:25 VA.R. 3564	8/1/05-7/31/06
12 VAC 30-141-150 emer	Amended	21:25 VA.R. 3564	8/1/05-7/31/06
12 VAC 30-141-160 emer	Amended	21:25 VA.R. 3557	8/1/05-7/31/06
12 VAC 30-141-170 emer	Repealed	21:25 VA.R. 3557	8/1/05-7/31/06
12 VAC 30-141-175 emer	Added	21:25 VA.R. 3559	8/1/05-7/31/06
12 VAC 30-141-200 emer	Amended	21:25 VA.R. 3560	8/1/05-7/31/06
12 VAC 30-141-810 through 12 VAC 30-141-1660 emer	Added	21:25 VA.R. 3566-3573	8/1/05-7/31/06
Title 13. Housing			
13 VAC 5-21-10 through 13 VAC 5-21-70	Amended	22:3 VA.R. 416-419	11/16/05
13 VAC 5-21-45	Added	22:3 VA.R. 418	11/16/05
13 VAC 5-21-61	Erratum	22:5 VA.R. 734	--
13 VAC 5-31-20	Amended	22:3 VA.R. 420	11/16/05
13 VAC 5-31-40	Amended	22:3 VA.R. 420	11/16/05
13 VAC 5-31-50	Amended	22:3 VA.R. 421	11/16/05
13 VAC 5-31-80	Amended	22:3 VA.R. 421	11/16/05
13 VAC 5-31-100	Amended	22:3 VA.R. 422	11/16/05
13 VAC 5-31-190	Amended	22:3 VA.R. 422	11/16/05
13 VAC 5-31-200	Added	22:3 VA.R. 422	11/16/05
13 VAC 5-31-210	Added	22:3 VA.R. 422	11/16/05
13 VAC 5-51-21	Amended	22:3 VA.R. 422	11/16/05
13 VAC 5-51-31	Amended	22:3 VA.R. 423	11/16/05
13 VAC 5-51-41	Amended	22:3 VA.R. 423	11/16/05
13 VAC 5-51-51	Amended	22:3 VA.R. 424	11/16/05
13 VAC 5-51-51	Erratum	22:5 VA.R. 734	--
13 VAC 5-51-61	Amended	22:3 VA.R. 425	11/16/05
13 VAC 5-51-81	Amended	22:3 VA.R. 425	11/16/05
13 VAC 5-51-91	Amended	22:3 VA.R. 432	11/16/05
13 VAC 5-51-121	Amended	22:3 VA.R. 433	11/16/05
13 VAC 5-51-130	Amended	22:3 VA.R. 434	11/16/05
13 VAC 5-51-131	Amended	22:3 VA.R. 434	11/16/05
13 VAC 5-51-132	Amended	22:3 VA.R. 435	11/16/05
13 VAC 5-51-133	Amended	22:3 VA.R. 435	11/16/05
13 VAC 5-51-133.5	Added	22:3 VA.R. 436	11/16/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-51-134	Added	22:3 VA.R. 436	11/16/05
13 VAC 5-51-135	Amended	22:3 VA.R. 436	11/16/05
13 VAC 5-51-135.5	Added	22:3 VA.R. 437	11/16/05
13 VAC 5-51-136	Repealed	22:3 VA.R. 437	11/16/05
13 VAC 5-51-145	Added	22:3 VA.R. 437	11/16/05
13 VAC 5-51-150	Amended	22:3 VA.R. 438	11/16/05
13 VAC 5-51-152	Added	22:3 VA.R. 442	11/16/05
13 VAC 5-51-154	Added	22:3 VA.R. 442	11/16/05
13 VAC 5-51-155	Amended	22:3 VA.R. 443	11/16/05
13 VAC 5-62-10 through 13 VAC 5-62-480	Repealed	22:3 VA.R. 444	11/16/05
13 VAC 5-63-10 through 13 VAC 5-63-550	Added	22:3 VA.R. 444-497	11/16/05
13 VAC 5-63-120	Erratum	22:5 VA.R. 734	--
13 VAC 5-63-210	Erratum	22:5 VA.R. 734	--
13 VAC 5-63-270	Erratum	22:5 VA.R. 734	--
13 VAC 5-63-300	Erratum	22:5 VA.R. 734	--
13 VAC 5-91-10	Amended	22:3 VA.R. 498	11/16/05
13 VAC 5-91-20	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-40	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-50	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-70	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-80	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-90	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-110 through 13 VAC 5-91-220	Amended	22:3 VA.R. 499-501	11/16/05
13 VAC 5-91-245 through 13 VAC 5-91-270	Amended	22:3 VA.R. 502	11/16/05
13 VAC 5-112-10 through 13 VAC 5-112-560 emer	Added	22:4 VA.R. 630-649	9/30/05-9/29/06
Title 14. Insurance			
14 VAC 5-170-20 through 14 VAC 5-170-105	Amended	21:25 VA.R. 3477-3490	8/15/05
14 VAC 5-170-120	Amended	21:25 VA.R. 3490	8/15/05
14 VAC 5-170-130	Amended	21:25 VA.R. 3492	8/15/05
14 VAC 5-170-150	Amended	21:25 VA.R. 3493	8/15/05
14 VAC 5-170-150	Erratum	22:1 VA.R. 114	--
14 VAC 5-170-160	Amended	21:25 VA.R. 3525	8/15/05
14 VAC 5-170-190 Appendices A through D	Amended	21:25 VA.R. 3527-3548	8/15/05
Title 16. Labor and Employment			
16 VAC 15-21-20	Amended	22:4 VA.R. 606	12/1/05
16 VAC 15-21-30	Amended	22:4 VA.R. 606	12/1/05
Title 18. Professional and Occupational Licensing			
18 VAC 47-20-10 emer	Amended	21:25 VA.R. 3574	8/1/05-7/31/06
18 VAC 47-20-35 emer	Added	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-70 emer	Amended	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-140 emer	Amended	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-240 emer	Repealed	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-250 emer	Added	21:25 VA.R. 3576	8/1/05-7/31/06
18 VAC 47-20-260 emer	Added	21:25 VA.R. 3576	8/1/05-7/31/06
18 VAC 47-20-270 emer	Added	21:25 VA.R. 3576	8/1/05-7/31/06
18 VAC 60-20-10 emer	Amended	22:1 VA.R. 106	9/1/05-8/31/06
18 VAC 60-20-20 emer	Amended	22:1 VA.R. 107	9/1/05-8/31/06
18 VAC 60-20-71 emer	Amended	22:1 VA.R. 107	9/1/05-8/31/06
18 VAC 60-20-105 emer	Amended	22:1 VA.R. 107	9/1/05-8/31/06
18 VAC 60-20-106 emer	Amended	22:1 VA.R. 108	9/1/05-8/31/06
18 VAC 60-20-210 emer	Amended	22:1 VA.R. 108	9/1/05-8/31/06
18 VAC 60-20-230 emer	Amended	22:1 VA.R. 109	9/1/05-8/31/06
18 VAC 76-20-20 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06
18 VAC 76-20-30 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06
18 VAC 76-20-50 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 76-20-60 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06
18 VAC 76-20-70 emer	Added	21:25 VA.R. 3578	7/25/05-7/24/06
18 VAC 85-20	Erratum	22:1 VA.R. 114	--
18 VAC 85-20-25	Added	22:1 VA.R. 82	10/19/05
18 VAC 85-20-26	Added	22:1 VA.R. 83	10/19/05
18 VAC 85-20-27	Added	22:1 VA.R. 83	10/19/05
18 VAC 85-20-28	Added	22:1 VA.R. 83	10/19/05
18 VAC 85-20-29	Added	22:1 VA.R. 84	10/19/05
18 VAC 85-20-30	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-40	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-50	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-80	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-90	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-100	Amended	22:1 VA.R. 85	10/19/05
18 VAC 85-20-105	Amended	22:1 VA.R. 85	10/19/05
18 VAC 85-40-85 through 18 VAC 85-40-91	Added	22:1 VA.R. 87-89	10/19/05
18 VAC 85-50-175 through 18 VAC 85-50-184	Added	22:1 VA.R. 89-91	10/19/05
18 VAC 85-80-120 through 18 VAC 85-80-125	Added	22:1 VA.R. 92-93	10/19/05
18 VAC 85-80-120 through 18 VAC 85-80-125	Erratum	22:4 VA.R. 659	--
18 VAC 85-101-161 through 18 VAC 85-101-166	Added	22:1 VA.R. 94-95	10/19/05
18 VAC 85-110-175 through 18 VAC 85-110-183	Added	22:1 VA.R. 95-98	10/19/05
18 VAC 85-120-50	Amended	22:2 VA.R. 254	12/17/05
18 VAC 85-120-155 through 18 VAC 85-120-162	Added	22:1 VA.R. 98-100	10/19/05
18 VAC 105-20-5	Added	22:4 VA.R. 607	11/30/05
18 VAC 105-20-10	Amended	22:4 VA.R. 607	11/30/05
18 VAC 105-20-15	Amended	22:4 VA.R. 607	11/30/05
18 VAC 105-20-16	Added	22:4 VA.R. 608	11/30/05
18 VAC 105-20-20	Amended	22:4 VA.R. 608	11/30/05
18 VAC 105-20-70	Amended	22:4 VA.R. 608	11/30/05
18 VAC 105-30-10 through 18 VAC 105-30-120	Repealed	22:4 VA.R. 606	11/30/05
18 VAC 110-20-20	Amended	22:2 VA.R. 246	11/2/05
18 VAC 112-20-135	Amended	22:1 VA.R. 100	10/19/05
18 VAC 112-20-150	Amended	22:1 VA.R. 101	10/19/05
18 VAC 112-20-151	Repealed	22:1 VA.R. 101	10/19/05
18 VAC 115-20-20	Amended	22:2 VA.R. 249	1/14/06
18 VAC 115-30-30	Amended	22:2 VA.R. 250	1/21/06
18 VAC 150-20-100	Amended	21:26 VA.R. 3701	10/5/05
Title 20. Public Utilities and Telecommunications			
20 VAC 5-400-80	Repealed	22:4 VA.R. 612	11/1/05
20 VAC 5-427-10	Erratum	22:1 VA.R. 114	--
20 VAC 5-427-10 through 20 VAC 5-427-170	Added	22:4 VA.R. 613-625	11/1/05
20 VAC 5-427-100	Erratum	22:1 VA.R. 114	--
20 VAC 5-427-110	Erratum	22:1 VA.R. 114	--
20 VAC 5-427-130	Erratum	22:1 VA.R. 114	--
Title 22. Social Services			
22 VAC 40-71-10 emer	Amended	22:2 VA.R. 261	12/28/05-12/27/06
22 VAC 40-71-50 emer	Amended	22:2 VA.R. 266	12/28/05-12/27/06
22 VAC 40-71-55 emer	Added	22:2 VA.R. 266	12/28/05-12/27/06
22 VAC 40-71-60 emer	Amended	22:2 VA.R. 267	12/28/05-12/27/06
22 VAC 40-71-65 emer	Added	22:2 VA.R. 269	12/28/05-12/27/06
22 VAC 40-71-80 emer	Amended	22:2 VA.R. 269	12/28/05-12/27/06
22 VAC 40-71-120 emer	Amended	22:2 VA.R. 270	12/28/05-12/27/06
22 VAC 40-71-130 emer	Amended	22:2 VA.R. 270	12/28/05-12/27/06
22 VAC 40-71-150 emer	Amended	22:2 VA.R. 270	12/28/05-12/27/06
22 VAC 40-71-400 emer	Amended	22:2 VA.R. 274	12/28/05-12/27/06
22 VAC 40-71-485 emer	Added	22:2 VA.R. 277	12/28/05-12/27/06

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-71-485	Erratum	22:4 VA.R. 659	--
22 VAC 40-71-630 emer	Amended	22:2 VA.R. 278	12/28/05-12/27/06
22 VAC 40-71-630	Erratum	22:4 VA.R. 660	--
22 VAC 40-71-650 emer	Amended	22:2 VA.R. 279	12/28/05-12/27/06
22 VAC 40-71-660 emer	Repealed	22:2 VA.R. 280	12/28/05-12/27/06
22 VAC 40-71-670 emer	Amended	22:2 VA.R. 280	12/28/05-12/27/06
22 VAC 40-71-700 emer	Amended	22:2 VA.R. 281	12/28/05-12/27/06
22 VAC 40-80-120 emer	Amended	22:2 VA.R. 285	12/28/05-12/27/06
22 VAC 40-80-340 emer	Amended	22:2 VA.R. 286	12/28/05-12/27/06
22 VAC 40-80-345 emer	Added	22:2 VA.R. 287	12/28/05-12/27/06
22 VAC 40-730-10	Amended	22:2 VA.R. 251	11/2/05
22 VAC 40-730-115	Amended	22:2 VA.R. 252	11/2/05

PETITIONS FOR RULEMAKING

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Initial Agency Notice

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

Statutory Authority: § 62.1-44.15 (3a) of the Code of Virginia.

Name of Petitioner: Sally Mello.

Nature of Petitioner's Request: Designate as an exceptional state surface water the main stem of the Hazel River from its headwaters in Rappahannock County to its confluence in Culpeper County with the Rappahannock River.

Agency's Plan for Disposition of the Request: The State Water Control Board will decide whether or not to move forward with the rulemaking at their first quarterly meeting of 2006.

Comments may be submitted until December 19, 2005.

Agency Contact: Jean W. Gregory, Environmental Manager II, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4116, toll free (800) 592-5482, or e-mail jwgregory@deq.virginia.gov.

VA.R. Doc. No. R06-109; Filed November 7, 2005, 2:11 p.m.

TITLE 12. HEALTH

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

Initial Agency Notice

Title of Regulation: **None specified.**

Statutory Authority: §§ 2.2-4117 and 37.2-203 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Requests that the agency adopt regulations related to dispute resolution proceedings to specifically deal with disputes with the department rather than with state facilities or training centers. The regulations should also cover disputes over guidelines dealing with the management of NGRI acquittees.

Agency's Plan for Disposition of the Request: The board will consider the petition and any comments received at its regularly scheduled meeting on January 18, 2006.

Comments may be submitted until December 19, 2005.

Agency Contact: Wendy V. Brown, Agency Regulatory Coordinator, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-0092, or e-mail wendy.brown@co.dmhmrzas.virginia.gov.

VA.R. Doc. No. R06-103; Filed November 2, 2005, 8:40 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Initial Agency Notice

Title of Regulation: **18 VAC 5-21. Board of Accountancy Regulations.**

Statutory Authority: §§ 2.2-4007, 54.1-4403 and 54.1-4409 of the Code of Virginia.

Name of Petitioner: Anonymous.

Nature of Petitioner's Request: The petitioner is requesting that the board consider creating an exception to the board's current education requirements to sit for the Uniform CPA examination and to obtain a license to practice public accountancy in Virginia. The exception would be based upon an individual's experience.

Agency's Plan for Disposition of the Request: The board will submit the petition for publication in the Virginia Register for a 21-day public comment period. The board will initially review the petition at its meeting on December 13, 2005. Once the public comments have been reviewed, the board will take up the matter again at its next meeting to make an agency decision.

Comments may be submitted until December 19, 2005.

Agency Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 West Broad Street, Suite 378, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174, or e-mail boa@boa.virginia.gov.

VA.R. Doc. No. R06-112; Filed November 10, 2005, 2:45 p.m.

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 2. AGRICULTURE

VIRGINIA PESTICIDE CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Pesticide Control Board intends to consider amending regulations entitled **2 VAC 20-20, Rules and Regulations for Enforcement of the Virginia Pesticide Law**, and promulgating regulations entitled **2 VAC 20-25, Rules and Regulations for the Registration of Pesticides and Pesticide Products Under Authority of the Virginia Pesticide Control Act**. The purpose of the proposed action is to promulgate a new regulation that deals solely with all processes and procedures relating to the registration and subsequent sale and use of pesticides and pesticide products in Virginia as well as to review 2 VAC 20-20 for effectiveness and continued need. The agency invites comment on whether there should be an advisor.

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

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Public comments may be submitted until January 20, 2006.

Contact: Dr. W. Wayne Surles, Program Manager, Virginia Pesticide Control Board, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558, FAX (804) 786-9149 or e-mail wayne.surles@vdacs.virginia.gov.

VA.R. Doc. No. R06-110; Filed November 8, 2005, 3:51 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF JUVENILE JUSTICE

† 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 Juvenile Justice intends to consider promulgating regulations entitled **6 VAC 35-180, Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles**. The purpose of the proposed action is to ensure continuity of necessary treatment and services for juveniles being released from incarceration.

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

Statutory Authority: § 16.1-293.1 of the Code of Virginia.

Public comments may be submitted until December 30, 2005.

Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 E. Franklin St., P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743, FAX (804) 371-0773 or e-mail don.carignan@djj.virginia.gov.

VA.R. Doc. No. R06-104; Filed November 3, 2005, 12:55 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

† 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 Education intends to consider amending regulations entitled **8 VAC 20-160, Regulations Governing Secondary School Transcripts**. The purpose of the proposed action is to provide definitions, format options for transcripts and profile data sheets, and the elements for weighing advanced, accelerated, advanced placement and honors level courses. The proposed revisions remove the 1988-89 effective date provisions, revise the definitions as necessary to comport with those in other Board of Education regulations, and revise the format options for the transcript and profile data sheets to reflect both Board of Education regulations and state and federal law. The sections concerning class rankings, advanced placement courses and the elements of weighing advanced, accelerated, advanced placement, and honors level courses also need to be reviewed to ensure that they comport with best instructional practices, as well as other state requirements.

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

Statutory Authority: §§ 22.1-16 and 22.1-253.13:3 of the Code of Virginia.

Public comments may be submitted until December 29, 2005.

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 or e-mail margaret.roberts@doe.virginia.gov.

VA.R. Doc. No. R06-111; Filed November 9, 2005, 9:50 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled **9 VAC 5-50, New and Modified Stationary Sources** and **9 VAC 5-80, Permits for Stationary Sources (Rev. H05)**. The purpose of the proposed action is to simplify the minor new source review program requirements and reduce the complexity of the permit program as well as revise program requirements based on implementation experience. This action replaces Rev. K04 that was withdrawn.

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

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

Public comments may be submitted until January 5, 2006.

Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510 or e-mail gegraham@deq.virginia.gov.

VA.R. Doc. No. R06-106; Filed November 7, 2005, 2:11 p.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 repealing regulations entitled **12 VAC 5-70, Regulations Governing the Newborn Screening and Treatment Program**, and promulgating regulations entitled **12 VAC 5-71, Regulations for Virginia Newborn Screening Services**. The purpose of the proposed action is repeal the existing newborn screening regulations (12 VAC 5-70) and adopt new regulations for Virginia Newborn Screening Services, 12 VAC 5-71. The new regulation will replace 12 VAC 5-70 and expand the program by which newborn infants are screened for certain conditions, enabling treatment and services to address those conditions.

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

Statutory Authority: §§ 32.1-12 and 32.1-67 (effective March 1, 2006) of the Code of Virginia.

Public comments may be submitted until December 14, 2005.

Contact: Nancy Ford, MHP, R.N., Director, Pediatric Screening and Genetic Services, Division of Child and Adolescent Health, Department of Health, 109 Governor St., 8th Floor, Richmond, VA 23219, telephone (804) 864-7691, FAX (804) 864-7722 or e-mail nancy.ford@vdh.virginia.gov.

VA.R. Doc. No. R06-97; Filed October 26, 2005, 11:20 a.m.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider amending regulations entitled **12 VAC 35-105, Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services**. The purpose of the proposed action is to add standards for the evaluation of the need and appropriateness for the issuance of new licenses for providers of treatment for persons with opioid addiction.

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

Statutory Authority: § 37.2-203 of the Code of Virginia and Chapter 7 of the 2005 Acts of Assembly.

Public comments may be submitted until December 16, 2005.

Contact: Leslie Anderson, Director, Office of Licensing, Department Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank St., Richmond, VA 23218, telephone (804) 371-6885, FAX (804) 692-0066 or e-mail landerson@co.dmhmrzas.virginia.gov.

VA.R. Doc. No. R06-88; Filed October 18, 2005, 2:31 p.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider repealing regulations entitled **13 VAC 5-111, Enterprise Zone Program Regulations**, and promulgating regulations entitled **13 VAC 5-112, Enterprise Zone Grant Program Regulations**. The purpose of the proposed action is to implement the process and procedures for the new Enterprise Zone Grant Program and repeal existing Enterprise Zone Program Regulations.

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

Notices of Intended Regulatory Action

Statutory Authority: § 59.1-541 of the Code of Virginia.

Public comments may be submitted until November 30, 2005.

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

VA.R. Doc. No. R06-81; Filed October 7, 2005, 9:48 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects intends to consider amending regulations entitled **18 VAC 10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Rules and Regulations**. The purpose of the proposed action is to develop necessary regulations to implement a regulatory program for photogrammetrists, including standards for determination of topography, as permitted by HB 2863 from the 2005 session of the General Assembly. Other changes that may be necessary may also be considered.

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

Statutory Authority: §§ 54.1-404 and 54.1-411 of the Code of Virginia.

Public comments may be submitted until December 14, 2005.

Contact: Mark 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 or e-mail apelscidla@dpor.virginia.gov.

VA.R. Doc. No. R06-86; Filed October 13, 2005, 2:30 p.m.

AUCTIONEERS BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Auctioneers Board intends to consider amending regulations **18 VAC 25-21, Rules and Regulations of the Virginia Auctioneers Board**. The purpose of the proposed action is to perform a general review

of the existing regulations to clarify the basic qualifications for license by examination and license by reciprocity, modify the examination application procedures, and establish and modify standards of practice and standards of conduct to identify requirements that affect the administration of, and compliance with, the board's regulations. The proposed changes will improve clarity that will enhance compliance by the board's licensees and thereby better protect the citizens of the Commonwealth. Other changes that may be necessary may also be considered.

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

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

Public comments may be submitted until December 14, 2005.

Contact: Marian H. Brooks, Board Administrator, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail auctioneers@dpor.virginia.gov.

VA.R. Doc. No. R06-87; Filed October 18, 2005, 3:09 p.m.

BOARD FOR BARBERS AND COSMETOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Barbers and Cosmetology intends to consider promulgating regulations entitled **18 VAC 41-70, Esthetics Regulations**. The purpose of the proposed action is to promulgate regulations governing the licensure and practice of esthetics as directed by Chapter 829 of the 2005 Acts of Assembly.

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

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

Public comments may be submitted until November 30, 2005.

Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295 or e-mail barbercosmo@dpor@virginia.gov.

VA.R. Doc. No. R06-83; Filed October 11, 2005, 2:07 p.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled **18 VAC 65-20, Regulations of the Board of Funeral Directors and Embalmers**. The purpose of the proposed action is to adopt recommendations of the periodic review to include clarification of the responsibility of the manager of

Notices of Intended Regulatory Action

record, consistency in renewal dates, and other technical changes.

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

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

Public comments may be submitted until December 14, 2005.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9943 or e-mail elizabeth.young@dhp.virginia.gov.

VA.R. Doc. No. R06-91; Filed October 25, 2005, 9:39 a.m.

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled **18 VAC 90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to consider an inactive licensure status with a reduced renewal fee and certain requirements for reactivation.

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

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

Public comments may be submitted until December 14, 2005.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512 or e-mail jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R05-255; Filed October 25, 2005, 9:39 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT OF REHABILITATIVE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Rehabilitative Services intends to consider amending regulations entitled **22 VAC 30-10, Public Participation Guidelines**. The purpose of the proposed action is to provide methods to improve public participation and include procedures for the usage of the Town Hall website.

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

Statutory Authority: §§ 2.2-4007 and 51.5-14 of the Code of Virginia.

Public comments may be submitted until November 30, 2005.

Contact: Mary Lutkenhaus, Policy Analyst, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 662-7610, FAX (804) 662-7696 or e-mail mary.lutkenhaus@dhs.virginia.gov.

VA.R. Doc. No. R06-85; Filed October 13, 2005, 3:23 p.m.

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider adopting regulations entitled **22 VAC 40-221, Interstate Compact on the Placement of Children**. The purpose of the proposed action is to promulgate regulations that shall be used as authority for judges, licensed placing agencies and other interested parties when addressing issues related to children who are placed across state lines for foster care or adoption.

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

Statutory Authority: § 63.2-1105 of the Code of Virginia.

Public comments may be submitted until December 14, 2005.

Contact: RoseMarie Keith, Program Administration Manager III, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7581, FAX (804) 726-7498 or e-mail rosemarie.keith@dss.virginia.gov.

VA.R. Doc. No. R06-89; Filed October 18, 2005, 1:22 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 8. EDUCATION

STATE BOARD OF EDUCATION

Title of Regulation: **8 VAC 20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8 VAC 20-131-10, 8 VAC 20-131-20, 8 VAC 20-131-30, 8 VAC 20-131-50 through 8 VAC 20-131-110, 8 VAC 20-131-140, 8 VAC 20-131-150, 8 VAC 20-131-170 through 8 VAC 20-131-210, 8 VAC 20-131-240, 8 VAC 20-131-260 through 8 VAC 20-131-310, 8 VAC 20-131-325, 8 VAC 20-131-330, and 8 VAC 20-131-340; adding 8 VAC 20-131-5; and repealing 8 VAC 20-131-40, 8 VAC 20-131-160, and 8 VAC 20-131-320).**

Statutory Authority: §§ 22.1-19 and 22.1-253.13:3 of the Code of Virginia.

Public Hearing Date: January 17, 2006 - 7 p.m.

Public comments may be submitted until January 31, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or e-mail anne.wescott@doe.virginia.gov.

Basis: Section 22.1-19 of the Code of Virginia requires that the Board of Education "... provide for the accreditation of public elementary, middle, and high schools in accordance with standards prescribed by it." Further, the Standards of Quality for Public Schools in Virginia (SOQ), in § 22.1-253.13:3 of the Code of Virginia requires that local school boards maintain schools that meet the standards of accreditation prescribed by the Board of Education. The current standards were last amended in September 2000. Since that time, public schools in Virginia have implemented more rigorous requirements for accountability both at the school level and the student level. Now that most Virginia schools are fully accredited, and the first high school class required to earn verified units of credit has graduated from high school, the board undertook a comprehensive review of the regulations to determine if there are changes that might be needed.

Purpose: This action is essential to protect the health, safety, and welfare of the Commonwealth's most vulnerable citizens: its school-age population. The goals of the proposal are to strengthen the quality of instruction in public schools in Virginia and to bring the standards into conformity with amended or new state and federal laws. These regulations form the basis for the day-to-day operation of the educational program in each public school in Virginia. The regulations contain provisions to govern philosophy, goals and objectives; academic achievement; school accountability; building and

student safety and instructional support services; school leadership; involving and reporting to parents; and procedures for accreditation.

Substance: There are a number of substantive changes to the regulations, most notably in 8 VAC 20-131-300 addressing the calculation of accreditation ratings. A phase-in of new requirements is being proposed. Other substantive changes are found in 8 VAC 20-131-50 where additional options for students to meet the requirements for diplomas have been proposed. Changes have been proposed in 8 VAC 20-131-340 to increase the sanctions on schools and school boards should a school have its accreditation denied.

Issues: The primary issue with the proposed regulatory action is that the proposed revisions to the standards more closely align the state's school accountability program with the requirements of the federal No Child Left Behind Act of 2001. The changes are necessary to close gaps between the two programs and to alleviate the requirements on schools to meet the rigors of two accountability programs. The federal law requires that there be a single accountability program. In addition, the proposed regulatory action includes revisions that better define sanctions for schools, superintendents, and school boards if a school receives a rating of Accreditation Denied.

The proposed revisions are advantageous to the public, the agency, and the Commonwealth at large in that they eliminate some requirements posed by different accountability programs making it easier for the public to understand both. There are no disadvantages.

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 Education (board) proposes several amendments to these regulations, including: 1) new language on the consequences of accreditation denial, 2) allowing the "Conditionally Accredited" rating to be awarded to schools that are being reconstituted in accordance with these regulations upon agreement with the board, 3) raising the pass rate for accreditation to 75 percent in English and 70 percent in mathematics, science, and history/social science, 4) permitting students to earn a second

verified credit for completing a career and technical program sequence and earning an industry certification, state license, or occupational competency credential, 5) new language to require counseling of students in obtaining industry certifications, occupational competency, or professional licenses in career and technical education fields, 6) changed requirements for the Governor's Seal on the Advanced Studies Diploma, 7) the establishment of the Board of Education's Seal for Excellence in Civics Education, 8) requiring that middle schools make Algebra 1 available to all 8th grade students, 9) requiring secondary schools to offer at least three Advanced Placement, International Baccalaureate or college-level courses for degree credit, 10) giving the board the option to approve results of tests administered as part of another state's accountability assessment program to count toward verified credit, 11) elimination of a reporting requirement on the extent to which an unencumbered lunch is provided for all classroom teachers, 12) requiring that the number of students obtaining industry certifications and passing state licensure assessments and occupational competency assessments while still in high school be reported on the secondary school's School Performance Report Card, 13) specifying that the school administration shall "Provide facilities for the adequate and safe administration and storage of student medications" 14) adding "allergic reactions" to the list of examples of emergencies that the school is to have written procedures to follow, 15) specifying that schools have "Written procedures to follow for the safe evacuation of persons with special physical, medical, or language needs who may need assistance to exit a facility," 16) elimination of a waiver of specified regulatory requirements for schools that maintain a passing rate of 80 percent or higher on the SOLs or other board-approved tests, 17) permitting schools that maintain a passing rate of 95 percent or above in the four core academic areas (English, math, science, and history/social science) for two consecutive years to receive a waiver from annual accreditation, and 18) requiring that all elementary and middle school students participate in a program of physical fitness during the regular school year.

Estimated economic impact. Consequences of accreditation denial. In both the current and proposed regulations, schools cannot be rated Accreditation Denied prior to 2006. The current regulations only state the following concerning the consequences of accreditation denial. "In any school division in which 1/3 or more of the schools have been rated Accreditation Denied, the superintendent shall be evaluated by the local school board with a copy of such evaluation submitted to the board no later than December 1 of each year in which such condition exists." Otherwise, the current regulations are silent on the consequences of accreditation denial.

The board proposes to specify that any school rated Accreditation Denied be subject to sanctions prescribed by the state board. The sanctions would be "affirmed through a memorandum of understanding between the state board and the local school board," or alternatively the local school board could enter into an agreement with the state to reconstitute the school. The local school board may also close the school or combine it with a higher performing school in the division.

The proposed regulations state that the memorandum of understanding may include but not be limited to:

1. Submitting status reports detailing implementation of corrective actions to the Board of Education. The status reports shall be signed by the school principal, division superintendent, and the chair of the local school board. The Board of Education may require the school principal, division superintendent, and the chair of the local school board to appear before the board to present such status reports.
2. Undergoing an educational service delivery and management review. The Board of Education shall prescribe the content of such review and approve the reviewing authority retained by the school division.
3. Employing a turnaround specialist credentialed by the state to address those conditions at the school that may impede educational progress and effectiveness and academic success.

The Virginia Department of Education (department) has contracted with the University of Virginia Partnership for Leaders in Education, a partnership of the Darden Graduate School of Business Administration and the Curry School of Education (Darden/Curry Partnership), to deliver an executive education program specially designed for individuals who are charged with "turning around" consistently low-performing schools in the Commonwealth. Experienced administrators are currently enrolled. Thus, there has been preparation to supply turnaround specialists credentialed by the state to address those conditions at the school that may impede educational progress and effectiveness and academic success. According to the department, the program is only enrolling administrators who have demonstrated some prior success. Presuming that the Darden/Curry Partnership does successfully teach effective school turnaround skills, then school divisions that employ and give authority to turnaround specialists credentialed by the state will likely see some improvement in school performance. Even if the Darden/Curry Partnership does not successfully teach effective school turnaround skills, the fact that only previously successful administrators may enter the program indicates that the turnaround specialists may have productive school management skills not previously employed in the failed school division. Thus, if given significant authority, employing a turnaround specialist as part of a memorandum of understanding has the potential to improve school performance.

As stated above, rather than reaching agreement with the state board on a memorandum of understanding, the local board may alternatively enter into an agreement with the state to reconstitute the school. The reconstitution agreement must include at least one of the following:

1. Replacing all or a majority of the administrative staff and a substantial percentage of the instructional staff; or
2. Hiring a private or nonprofit management firm from a Board of Education reviewed list; or

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3. Converting the school to a charter school in accordance with § 22.1-212.6 of the Code of Virginia, with consideration given to collaboration with an institution of higher education or other suitable entity.

Replacing all or a majority of the administrative staff and a substantial percentage of the instructional staff may or may not help improve affected schools. It of course depends on the quality of the new staff. Similarly, hiring a private or nonprofit management firm may or may not help improve affected schools, depending on the abilities and efforts of the hired management firm. The effects of conversion to a charter school are also uncertain.

Studies comparing student achievement in charter schools versus traditional schools have had mixed results. Solmon, Paark, and Garcia (2001) track student achievement in Arizona charter schools and find that students spending two to three years in charter schools outperformed conventional public school students. On the other hand, Bifulco and Ladd (2003) estimate the impact of charter schools in North Carolina for the 1995-96 to 2001-02 school years and find that student performance in charter schools was significantly worse than the performance of similar students in conventional public schools. Bettinger (2004) compares the test scores of charter and conventional public school students in Michigan. Controlling for relevant factors, he finds no significant differences in test scores for charter and conventional public school students.

The results of Grønberg and Jansen's (2001) analysis of charter school versus traditional school performance in Texas may be particularly relevant for Virginia. Grønberg and Jansen found that charter schools that focus on at-risk students provided slightly more "value added" than conventional public schools, while non-at-risk charters provided slightly less value added than conventional schools. They also examine the relative age of the charter schools and find that schools with two or more years of experience produced better academic outcomes. Since the provision for conversion to a charter school in these regulations concerns failed schools, the author's finding that charter schools that focus on at-risk students provided slightly more "value added" than conventional public schools provides some promise that conversion to a charter school as part of reconstitution has some promise.

Buddin and Zimmer (2005) point out that the inconsistency of results across studies may be partially explained by the varying charter laws and charter school types across states. They also note that most of the studies have shown age as an important contributing factor. Buddin and Zimmer examine California data and disaggregate their findings by charter school types and age. They distinguish "conversions" from "startup" charter schools. Conversion schools are schools that previously existed as conventional public schools and they typically retain an existing facility as well as faculty and students when they become charter schools. Startup schools, by contrast, are new entities that acquire facilities, faculty, and students at their inception. Further they distinguish charter schools in traditional classroom settings from charter schools that make extensive use of nonclassroom settings, such as homeschooling, independent study, and distance learning.

Their results indicate that startup classroom-based charter schools provide the greatest promise of improving performance. They find that classroom-based conversion charter schools are, on average, performing only on par with conventional public schools, while nonclassroom-based charter schools are performing poorly. Overall, their results imply that conversion to a charter school as part of reconstitution would be more likely to be successful if combined with the first list option for reconstitution, replacing all or a majority of the administrative staff and a substantial percentage of the instructional staff.

Whether the local board enters into a memorandum of understanding with the state board, or chooses to enter into an agreement to reconstitute the school, the proposed regulations require that parents of enrolled students and other interested parties be provided with: 1) written notice of accreditation denial within 30 calendar days of the school's receiving notification from the department, 2) a copy of the school division's proposed corrective action plan, including a timeline for implementation, to improve the school's accreditation rating, and 3) an opportunity to comment on the division's proposed corrective plan. Public disclosure of school ratings has been shown to significantly affect localities beyond the schools. For example, Figlio and Lucas (2002) found that new information about schools provided by ratings on "school report cards," significantly affects housing prices. Thus, even childless adults have financial reasons to care about school ratings in their localities. The proposed requirements for timely and open disclosure of the rating and plan for corrective action should help create local public pressure for positive change.

The proposed regulations do not specifically address the repercussions if a local school board that has one or more schools with Accreditation Denied ratings either fails to live up to a memorandum of understanding or reconstitution agreement, or refuses to enter into either type of agreement. Section 22.1-253.13:8 of the Code of Virginia does give the board the authority to petition the court for failure to meet the Standards of Quality (SOQ); and the SOQ includes the provision that all schools be fully accredited. Thus it does appear that the state board has recourse if the local school board with one or more schools with Accreditation Denied ratings is entirely recalcitrant.

Research has shown that when there are consequences, state school accountability programs such as Virginia's Standards of Learning do have a positive impact on student achievement. For example, Hanushek and Raymond (2005) found consistent evidence that the introduction of state accountability had a positive impact on student performance during the 1990s. Specifically, states that introduced consequential accountability systems early displayed more rapid gains in NAEP¹ performance, holding other inputs and policies constant. Therefore the proposed specification of sanctions described above will be beneficial in that it helps solidify that there are consequences to school failure. Since

¹ The National Assessment of Educational Progress (NAEP) is often referred to as the "nation's report card." NAEP tests are given in schools throughout the country. NAEP provides a consistent measure of student performance that allows comparisons of students across time and across states.

the proposed language does leave some flexibility to adapt the sanctions to what best fits the situation, the proposed specification of sanctions is not costly. Thus, the proposal should produce a net benefit.

Conditional accreditation

Under the current regulations, new schools that are comprised of students from one or more existing schools in the division are rated conditionally accredited for one year pending an evaluation of the school's eligible students' performance on SOL tests or additional tests. The board proposes to award the "Conditionally Accredited" rating to schools that are being reconstituted in accordance with these regulations upon agreement with the board. Since reconstituted schools are changed to the extent that they are no longer essentially the same school, treating reconstituted schools as new schools for rating purposes is logical.

Raising pass rates

Under the current regulations, a school is rated Fully Accredited when its eligible students meet or exceed the pass rate of 70 percent in each of the four core academic areas, except for third and fifth grade English where the minimum pass rate is 75 percent, and third grade science and history/social science where the minimum pass rate is 50 percent. The board proposes that beginning with ratings earned in 2010-2011 and beyond (based on assessments in 2009-2010 and beyond), the pass rate for accreditation be raised to 75 percent in English for all grades and 70 percent in mathematics, science, history and social science for all grades. Raising the pass rate for accreditation is consistent with the federal No Child Left Behind Act (NCLB). NCLB requires that each state set steadily increasing goals for student achievement, with the ultimate goal of all students meeting the state's standard for "proficient" in language arts and math by 2014.

Industry certifications, state licenses, and occupational competency credentials

It is the board's current policy to allow students who complete a career and technical program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry, or trade or professional association or acquires a professional license in a career and technical education field from the Commonwealth of Virginia to substitute the certification, competency credential, or license for the student selected verified credit. The board proposes to specify this policy in the regulations. The examination or occupational competency assessment must be approved by the board as an additional test to verify student achievement.

Additionally, the board proposes that for a standard diploma, when the certification, license, or credential confers more than one verified credit, a second verified credit could be substituted for a verified unit of credit in science or history/social science. This proposed change will encourage the pursuit of certifications, competency credentials, and licenses for high school students. It will, of course, also result

in some students taking one less science or history/social science class. It is not entirely clear whether the benefit of potential increased pursuit of certifications, competency credentials, and licenses will outweigh the cost of lost knowledge from taking one less science or history/social science class.

For some students it may slightly increase the probability of graduating from high school. For example, say a student is determined to become an automotive technician and is bored with academic-oriented classes. This student sees that he can get a job with the car repair skills that he has developed. He is considering dropping out of school to start working full time at such a job. The proposal to permit a student who has obtained a certification, license, or credential that confers more than one verified credit to substitute that second verified credit in lieu of a verified unit of credit in science or history/social science may be enough for a small number of such students to remain in school and get their diploma rather than dropout.

The board also proposes to add language to require counseling of students in obtaining industry certifications, occupational competency credentials, or professional licenses in career and technical education fields. This may have some impact in school divisions where students who may benefit by earning these credential are not currently being informed. Students who are interested in pursuing work for which there are industry certifications, occupational competency, or professional licenses will likely be better off if they pursue and obtain these credentials, then if they just seek to work in these areas without them.²

Diploma seals

The board proposes to increase the requirements for the Governor's Seal on the Advanced Studies Diploma. Under both the current and proposed regulations, an Advanced Studies Diploma with an average grade of "B" or better is required for the Governor's Seal. The current regulations further require successful completion of at least one Advanced Placement (AP) or International Baccalaureate (IB) course, or one college-level course for credit. The proposed regulations require completion of college-level course work that will earn the student at least 9 transferable college credits in Advanced Placement (AP), International Baccalaureate (IB), Cambridge, or dual enrollment courses. The proposed change to the requirements for the Governor's Seal on the diploma will likely increase demand from interested students in taking additional AP, IB, and Cambridge courses. This will enable such affected students to enter college needing fewer credits to graduate. This in turn is potentially beneficial to the Commonwealth in that in the long run there may be less financial stress in finding space for students at Virginia colleges and universities.

² While most industry certifications, occupational competency credentials, and professional licenses are considered valuable or even required to do work in their applicable fields, there are likely some credentials that are modestly valued at best.

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Pursuant to § 22.1-253.13:4 of the Code of Virginia, the proposed regulations also include a new diploma seal, the Board of Education's Seal for Excellence in Civics Education. The Board of Education's Seal for Excellence in Civics Education will be awarded to students who earn either a Standard or Advanced Studies Diploma and do the following.

- i) Complete Virginia and United States History and Virginia and United States Government courses with a grade of "B" or higher;
- ii) have good attendance and no disciplinary infractions as determined by local school board policies, and
- iii) complete 50 hours of voluntary participation in community service or extracurricular activities. Activities that would satisfy the requirements of clause (iii) include: (a) volunteering for a charitable or religious organization that provides services to the poor, sick or less fortunate; (b) participating in Boy Scouts, Girl Scouts, or similar youth organizations; (c) participating in JROTC; (d) participating in political campaigns or government internships, or Boys State, Girls State, or Model General Assembly; or (e) participating in school-sponsored extracurricular activities that have a civics focus. Any student who enlists in the United States military prior to graduation will be deemed to have met this community service requirement.

The introduction of this seal may encourage some students who otherwise would have met most, but not all of the requirements, to pursue additional activities in order to earn the seal. For example, some students who have completed Virginia and United States History and Virginia and United States Government courses with a grade of "B" or higher and have good attendance and no disciplinary infractions, but have completed fewer than 50 hours of voluntary participation in community service or extracurricular activities, may respond to the opportunity to earn the Board of Education's Seal for Excellence in Civics Education by participating in additional voluntary, community service or extracurricular activities. To the extent that students do react in this manner, and those qualifying activities do benefit the public, the establishment of the Board of Education's Seal for Excellence in Civics Education may be beneficial.

Required course offerings

The board proposes to require all middle schools to make Algebra 1 available to all 8th grade students. There will be no impact initially, since according to the department, all middle schools currently comply. Secondary schools are currently required to offer at least two Advanced Placement or college-level courses for degree credit. The board proposes to require secondary schools to offer at least three Advanced Placement, International Baccalaureate or college-level courses for degree credit. This is necessary to enable all students the opportunity to earn the Governor's Seal on the Advanced Studies Diploma. As far as the department knows, all schools currently comply with this requirement. The department also points out that schools can easily comply by making use of the Virtual Advanced Placement School.³

Out-of-state test results

Under the current regulations the board may approve tests administered on a multistate or international basis for verified credit. Under the proposed regulations the board may also approve tests administered as part of another state's accountability assessment program for verified credit. The board can determine whether the other state's test is sufficiently rigorous to count toward Virginia verified credit. Thus, the proposed language will not cause a dilution in the value represented by verified credit. Allowing the board this flexibility will help transfer students achieve credits for graduation to the extent that it is used. Given the benefit for qualified transfer students and lack of cost to the public, this proposed amendment will create a net benefit.

Reporting requirements

The current regulations require that each school report the extent to which an unencumbered lunch is provided for all classroom teachers. An unencumbered lunch is time for classroom teachers to have lunch without responsibility to supervise students. The board proposes to eliminate this text. According to the department, some teachers have misinterpreted the requirement that each school report the extent to which an unencumbered lunch is provided for all classroom teachers to mean that schools must provide an unencumbered lunch for all classroom teachers. This is not the intent of the language. Removing the language may reduce some conflict between teachers and schools. The department can still request this data if desired without this language in the regulations. Thus, this proposal will produce a net benefit since some conflict between teachers and schools may be reduced, while the department and board retain the right to request the data.

The board proposes to require that the number of students obtaining industry certifications and passing state licensure assessments and occupational competency assessments while still in high school be reported on the secondary school's School Performance Report Card. The collection of accurate data is necessary to enable informed policy decisions. Since students receive verified credit for these activities, the schools should already have records of their occurrence. Thus, the costs of adding this information to the school's School Performance Report Card should be small. Thus, this proposal will likely produce a net benefit.

Health and safety

The board proposes to require that school administrations: (i) provide facilities for the adequate and safe administration and storage of student medications; (ii) ensure that the school has written procedures to follow in emergencies such as fire, injury, illness, and violent or threatening behavior; and (iii) have written procedures to follow for the safe evacuation of persons with special physical, medical, or language needs who may need assistance to exit a facility. As far as the department knows, all schools currently comply with these requirements. Nevertheless, it is beneficial to bring to their attention in case of oversights.

Waivers

The current regulations include a waiver of specified regulatory requirements for schools that maintain a passing

³ The Virtual Advanced Placement School is described in detail at the following website: www.doe.virginia.gov/VDOE/Technology/VAPS.html

rate of 80% or higher on SOLs or other board-approved tests. The board proposes to eliminate this waiver since no school has requested nor is expected to request the waiver. Since no school has requested nor is expected to request the waiver, elimination of this waiver should have no effect.

The board proposes to permit schools that maintain a passing rate of 95% or above in the four core academic areas (English, math, science, and history/social science) for two consecutive years to receive a waiver from annual accreditation for three years. However the school shall continue to annually submit documentation in compliance with the preaccreditation requirements. Since schools that maintain a passing rate of 95% or above in the four core academic areas for two consecutive years are very unlikely to fail to qualify for full accreditation in the next three years without the waiver, and those schools will still be required to annually submit documentation in compliance with the preaccreditation requirements, the proposed waiver has little value.

Physical Fitness Program Requirement

Under the current regulations elementary and middle schools are required to provide instruction in physical education, but there is no requirement that every student participate in physical activity. The board proposes to "...require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the Board of Education."

According to the department, no data is currently collected concerning students' participation in physical fitness programs at Virginia schools. The department believes that most or all elementary and middle schools currently do have all students participate in some form of physical fitness activities. For those schools where all the students do not currently participate in physical fitness activities, complying with the proposed requirement will create both benefits and costs. Increasing exercise will likely improve student health.⁴ Healthier students will likely be able to focus better and perhaps learn more.⁵ On the other hand, given a fixed length of the school day, newly devoting time to physical fitness activities will necessitate taking time away from other pursuits. Also, in some cases schools may require additional space to house the physical fitness activity.

It is not clear whether the proposed additional requirement will create a net benefit. Students in schools that are not already effectively meeting the requirement will likely benefit from additional exercise, but will have less time for other school activities. The proposed language is phrased in a manner that permits flexibility in how such programs of physical fitness are designed. If the Board of Education were to create guidelines

⁴ DuRant et al (1993) and Williams et al (1992) find that children with the lowest physical activity or fitness levels and highest percentage of body fatness are most likely to develop other risk factors for cardiovascular disease, including elevated blood pressure and serum cholesterol levels. Roccini et al (1988) show that weight and blood pressure can be lowered in children when physical activity is an integral part of the treatment regimen.

⁵ Studies such as Caterino and Polak (1999) suggest that concentration can improve significantly with physical activity.

that permitted schools to satisfy the proposed requirement in a manner that took minimal time away from academic instruction and other productive activities, then there would likely be minimal costs and the benefits would likely exceed those costs. Programs that use minimal time will likely have less benefit to student health than more time consuming programs, though.

Businesses and entities affected. The proposed amendments affect the 132 school divisions in the Commonwealth. Businesses throughout the state may be affected by improved skills in workers graduating from Virginia schools. Educational consulting and management firms may obtain new business as a result of the reconstitution of schools.

Localities particularly affected. The proposed amendments affect all Virginia localities.

Projected impact on employment. The proposed amendments may have a positive impact on student learning. In the long run, a more knowledgeable work force leads to higher job growth for two reasons. Higher-skilled labor is more productive; and increased productivity leads to a higher rate of economic growth. Accelerating economic growth creates employment and creates pressure for higher wages. A more knowledgeable work force also makes the Commonwealth more attractive for firm location. In the short run as well as the long run, educational consulting and management firms may obtain new business as a result of the reconstitution of schools. This additional business will create jobs in educational consulting and management.

Effects on the use and value of private property. Educational consulting and management firms may obtain new business and increase their value as a result of the reconstitution of schools. In the long run, businesses may encounter better-skilled, more productive job applicants. More productive workers would reduce long-run costs and increase the value of firms.

Small businesses: costs and other effects. In the long run, small businesses may encounter better-skilled, more productive job applicants. More productive workers would reduce long-run costs. In the short run as well as the long run, small educational consulting and management firms may obtain new business as a result of the reconstitution of schools.

Small businesses: alternative method that minimizes adverse impact. The proposed amendments do not adversely affect small businesses.

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Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the economic impact analysis done by DPB on the proposed Regulations Establishing Standards for Accrediting Public Schools in Virginia, 8 VAC 20-131. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

Summary:

The proposed amendments include additional options for students to meet the requirements for graduation; changes to the methodology for calculating accreditation ratings; greater flexibility for transfer students; more rigorous benchmarks for accreditation; and better defined sanctions for schools, superintendents, and school boards if a school loses its accreditation. In consideration of the Governor's Healthy Virginians initiative, the Governor has asked that the Board of Education consider two additional revisions to the proposed accrediting regulations that will help promote the

health and physical fitness of elementary and middle school students. The recommended revisions would require all elementary and middle schools to require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the Board of Education.

8 VAC 20-131-5. Definitions.

The following words and terms apply only to these regulations and do not supersede those definitions used for federal reporting purposes or for the calculation of costs related to the Standards of Quality (§ 22.1-253.13:1 et seq. of the Code of Virginia). When used in these regulations, these words shall have the following meanings, unless the context clearly indicates otherwise:

"Accreditation" means a process used by the Virginia Department of Education (hereinafter "department") to evaluate the educational performance of public schools in accordance with these regulations.

"Additional test" means a test, including substitute tests approved by the Board of Education that students may use in lieu of a Standards of Learning test to obtain verified credit.

"Combined school" means a public school that contains any combination of or all of the grade levels from kindergarten through grade 12. This definition does not include those schools defined as elementary, middle, or secondary schools.

"Department" means the Virginia Department of Education.

"Elementary school" means a public school with any grades kindergarten through five.

"Eligible students" means the total number of students of school age enrolled in the school at a grade or course for which a Standards of Learning test is required unless excluded under the provisions of 8 VAC 20-131-30 F and 8 VAC 20-131-280 D relative to limited English proficient (LEP) students.

"Enrollment" means the act of complying with state and local requirements relative to the registration or admission of a child for attendance in a school within a local school division. This term also means registration for courses within the student's home school or within related schools or programs.

"First time" means the student has not been enrolled in the school at any time during the current school year (for purposes of 8 VAC 20-131-60 with reference to students who transfer in during the school year).

"Four core areas" or "four core academic areas" means English, mathematics, science, and history and social science for purposes of testing for the Standards of Learning.

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or a licensed clinical psychologist.

"Locally awarded verified credit" means a verified unit of credit awarded by a local school board in accordance with 8 VAC 20-131-110.

"Middle school" means a public school with any grades 6 through 8.

"School" means a publicly funded institution where students are enrolled for all or a majority of the instructional day and:

1. Those students are reported in fall membership at the institution; and
2. At a minimum, the institution meets the preaccreditation eligibility requirements of these regulations as adopted by the Board of Education.

"Secondary school" means a public school with any grades 9 through 12.

"Standard school day" means a day that averages at least five and one-half instructional hours for students in grades 1 through 12, and a minimum of three instructional hours for students in kindergarten, excluding breaks for meals and recess.

"Standard school year" means a school year of at least 180 teaching days or a total of at least 990 teaching hours per year.

"Standard unit of credit" or "standard credit" means credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. Local school boards may develop alternatives to the requirement for 140 clock hours of instruction as provided for in 8 VAC 20-131-110.

"Standards of Learning (SOL) tests" means those criterion referenced assessments approved by the Board of Education for use in the Virginia assessment program that measure attainment of knowledge and skills required by the Standards of Learning.

"Student" means a person of school age as defined by § 22.1-1 of the Code of Virginia, a child with disabilities as defined in § 22.1-213 of the Code of Virginia, and a person with limited English proficiency in accordance with § 22.1-5 of the Code of Virginia.

"Verified unit of credit" or "verified credit" means credit awarded for a course in which a student earns a standard unit of credit and achieves a passing score on a corresponding end-of-course SOL test or an additional test approved by the Board of Education as part of the Virginia assessment program.

"Virginia assessment program" means a system used to evaluate student achievement that includes Standards of Learning tests and additional tests that may be approved from time to time by the Board of Education.

8 VAC 20-131-10. Purpose.

The foremost purpose of public education in Virginia is to provide children with a quality education giving them opportunities to meet their fullest potential in life. The standards for the accreditation of public schools in Virginia are designed to ensure that an effective educational program is established and maintained in Virginia's public schools. The

mission of the public education system is to educate students in the essential academic knowledge and skills in order that they may be equipped for citizenship, work, and a private life that is informed and free. The accreditation standards:

1. Provide an essential foundation of educational programs of high quality in all schools for all students.
2. Encourage continuous appraisal and improvement of the school program for the purpose of raising student achievement.
3. Foster public confidence.
4. Assure recognition of Virginia's public schools by other institutions of learning.
5. Establish a means of determining the effectiveness of schools.

Section 22.1-253.13:3 B of the Code of Virginia requires the Virginia Board of Education (hereinafter "board") promulgate regulations establishing standards for accreditation.

The statutory authority for these regulations is delineated in § 22.1-19 of the Code of Virginia, which includes the requirement that the board shall provide for the accreditation of public elementary, middle and secondary schools in accordance with regulations prescribed by it.

These regulations govern public schools operated by local school boards providing instruction to students as defined in 8 VAC 20-131-5. Other schools licensed under other state statutes are exempt from these requirements.

8 VAC 20-131-20. Philosophy, goals, and objectives.

A. Each school shall have a current philosophy, goals, and objectives that shall serve as the basis for all policies and practices and shall be developed using the following criteria:

1. The philosophy, goals, and objectives shall be developed with the advice of professional and lay people who represent the various populations served by the school and in consideration of the needs of the community and shall serve as a basis for the creation and review of the biennial school plan.
2. The school's philosophy, goals and objectives shall be consistent with the Standards of Quality.
3. The goals and objectives shall (i) be written in plain language so as to be understandable to noneducators, including parents; (ii) to the extent possible, be stated in measurable terms; and (iii) consist primarily of measurable objectives to raise student and school achievement in the core academic areas of the Standards of Learning (SOL), to improve student and staff attendance, to reduce student drop-out rates, to increase graduation rates, and to increase the quality of instruction through professional staff development and licensure.
4. The school staff and community representatives shall review annually the extent to which the school has met its prior goals and objectives, analyze the school's student performance data including data by grade level or academic

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department as necessary, and report these outcomes to the division superintendent and the community in accordance with local school board policy. This report shall be in addition to the school report card required by 8 VAC 20-131-270 B.

B. Copies of the school's philosophy, goals and objectives shall be available upon request.

8 VAC 20-131-30. Student achievement expectations.

A. Each student should learn the relevant grade level/course subject matter before promotion to the next grade. The division superintendent shall certify to the Department of Education that the division's promotion/retention policy does not exclude students from membership in a grade, or participation in a course, in which SOL tests are to be administered. *Each school shall have a process, as appropriate, to identify and recommend strategies to address the learning, behavior, communication, or development of individual children who are having difficulty in the educational setting.*

B. In kindergarten through eighth grade, where SOL tests are administered, each student shall be expected to take the SOL tests; *students who are accelerated should take the tests for the grade level of the content received in instruction.* Schools shall use the SOL test results in kindergarten through eighth grade as part of a set of multiple criteria for determining the promotion or retention of students. *Students promoted to high school from eighth grade should have attained basic mastery of the Standards of Learning in English, history and social science, mathematics, and science and should be prepared for high school work.* Students shall not be required to retake the SOL tests unless they are retained in grade and have not previously passed the related SOL tests, ~~or they participate in a remediation/recovery program established by the board in English (Reading, Literature, and Research) or mathematics or both.~~

C. In kindergarten through grade 8, students may participate in a remediation/recovery program as established by the board in English (Reading, Literature and Research) or mathematics or both. ~~In grades 9 through 12, the remediation/recovery program shall include all retakes of end-of-course SOL mathematics tests only. However, students in the ninth grade who are participants in a remediation/recovery program may be retested on the eighth grade English (Reading, Literature and Research) and mathematics SOL tests.~~

D. The board recommends that students in kindergarten through grade 8 not be required to attend summer school or weekend remediation classes solely based on failing a SOL test in science or history/social science.

E. Each student in middle and secondary schools shall take all applicable end-of-course SOL tests following course instruction. Students who achieve a passing score on an end-of-course SOL test shall be awarded a verified unit of credit in that course in accordance with the provisions of 8 VAC 20-131-110 B. Students may earn verified units of credit in any courses for which end-of-course SOL tests are available. Middle and secondary schools may consider the student's end-of-course SOL test score in determining the student's final

course grade. However, no student who has failed an end-of-course SOL test but passed the related course shall be prevented from taking any other course in a content area and from taking the applicable end-of-course SOL test. The board may approve ~~other~~ additional tests to verify student achievement in accordance with guidelines adopted for verified units of credit described in 8 VAC 20-131-110 B.

F. Participation in ~~SOL testing the Virginia assessment program~~ by students with disabilities ~~will~~ shall be prescribed by provisions of their Individualized Education Program (IEP) or 504 Plan.

~~Beginning with the school year 2000-01, students with disabilities for whom participation in an alternate assessment is prescribed in their IEP shall demonstrate proficiency on that assessment. All students with disabilities shall be assessed with appropriate accommodations and alternate assessments where necessary.~~

G. ~~All students identified as limited English proficient (LEP) shall participate in the Virginia assessment program. A school-based committee shall convene and make determinations regarding the participation of LEP students in SOL testing by students identified as limited English proficient (LEP) shall be guided by a school-based committee convened to make such determinations the Virginia assessment program.~~ In kindergarten through eighth grade, limited English proficient students may be granted a one-time exemption from SOL testing in ~~each of the four core academic areas of science and history and social science.~~

H. ~~Students identified as foreign exchange students taking courses for credit shall be required to take the relevant Virginia assessment program tests. Foreign exchange students who are auditing courses and who will not receive a standard unit of credit for such courses shall not be required to take the Standards of Learning tests for those courses.~~

8 VAC 20-131-40. Literacy Passport Tests. (Repealed.)

~~Students who were in the eighth grade or above in the 1998-99 school year shall be required to pass the Literacy Passport Tests in order to receive a Standard or Advanced Studies Diploma from a Virginia public school.~~

~~In order to receive a graded status, such students must pass the Literacy Passport Tests, except for students with disabilities who progress according to the goals of their Individualized Education Program (IEP).~~

~~Students who are not eligible for graded status shall be enrolled in appropriate programs leading to passing of the Literacy Passport Tests and one or more of the following:~~

- ~~1. High school diploma;~~
- ~~2. General Educational Development (GED) credential;~~
- ~~3. Certificate of Program Completion; and~~
- ~~4. Job entry skills.~~

8 VAC 20-131-50. Requirements for graduation.

A. The requirements for a student to earn a diploma from a Virginia high school shall be those in effect when that student

enters the ninth grade for the first time. Students ~~may~~ shall be awarded a diploma or certificate upon graduation from a Virginia high school.

When students below the ninth grade successfully complete courses offered for credit in grades 9 through 12, credit shall be counted toward meeting the standard units required for graduation provided the courses ~~meet SOL content requirements or~~ are equivalent in content and academic rigor as those courses offered at the secondary level. To earn a verified unit of credit for these courses, students must meet the requirements of 8 VAC 20-131-110 B.

The following requirements shall be the only requirements for a diploma, unless a local school board has prescribed additional requirements ~~which that~~ have been approved by the ~~board~~ Board of Education. All additional requirements prescribed by local school boards, and in effect as of June 30, 1997, ~~are approved to continue those requirements pending further action by the board that have been approved by the Board of Education, remain in effect until such time as the local school board submits a request to amend or discontinue them. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality.~~

B. Requirements for a Standard Diploma.

~~1. Beginning with the ninth grade class of 1998-99, students shall earn the standard units of credit outlined in subdivision 4 of this subsection.~~

~~2. During a transition period applicable only to the ninth grade classes of 2000-01, 2001-02, and 2002-03, students shall earn the standard units of credit described in subdivision 4 of this subsection and the following number of verified units of credit (8 VAC 20-131-110):~~

~~a. English—two;~~

~~b. Four additional verified units of credit of the student's own choosing.~~

~~3. 1. Beginning with the ninth grade classes of 2003-04 and beyond, students shall earn the required standard and verified units of credit described in subdivision 4- 2 of this subsection.~~

~~4. 2. Credits required for graduation with a Standard Diploma.~~

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics ¹	3	1
Laboratory Science ^{2,6}	3	1
History and Social Sciences ^{3,6}	3	1
Health and Physical Education	2	
Fine Arts or Practical	1	

Arts Career and Technical Education		
Electives ⁴	6	
Student Selected Test ⁵		1
Total	22	6

¹ Courses completed to satisfy this requirement shall be at or above the level of algebra and shall include at least two course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of algebra and geometry. The board may approve additional courses to satisfy this requirement.

² Courses completed to satisfy this requirement shall include course selections from at least two different science disciplines: earth sciences, biology, chemistry, or physics. The board may approve additional courses to satisfy this requirement.

³ Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one ~~world history/geography~~ course in either world history or geography or both. ~~Courses which satisfy the world history/geography requirement are: (i) World History, (ii) World Geography, (iii) World History and Geography Part I, (iv) World History and Geography Part II, or (v) a semester course of World History Part I and a semester course of World Geography.~~ The board may approve additional courses to satisfy this requirement.

⁴ ~~Beginning with the graduating class of 2003,~~ Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.

⁵ A student may utilize additional tests for earning verified credit in computer science, technology, ~~career and technical education~~ or other areas as prescribed by the board in 8 VAC 20-131-110 B.

⁶ ~~Students who complete a career and technical program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry, or trade or professional association, or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification, competency credential, or license for (i) the student-selected verified credit and (ii) either a science or history and social science verified credit when the certification, license, or credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the Board of Education as an additional test to verify student achievement.~~

Students completing the requirements for the Standard Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection I of this section.

C. Requirements for an Advanced Studies Diploma.

~~1. Beginning with the ninth grade class of 1998-99, students shall earn the standard units of credit outlined in subdivision 2 of this subsection. Beginning with the ninth grade class of 2000-01, students shall earn the standard and verified units of credit outlined in subdivision 2 of this subsection.~~

~~2. Credits required for graduation with an Advanced Studies Diploma.~~

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2

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Mathematics ¹	4	2
Laboratory Science ²	4	2
History and Social Sciences ³	4	2
Foreign Language ⁴	3	
Health and Physical Education	2	
Fine Arts or Practical Arts <i>Career and Technical Education</i>	1	
Electives	2	
Student Selected Test ⁵		1
Total	24	9

¹ Courses completed to satisfy this requirement shall be at or above the level of algebra and shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board may approve additional courses to satisfy this requirement.

² Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board may approve additional courses to satisfy this requirement.

³ Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and two ~~world history/geography~~ courses in either world history or geography or both. Acceptable courses to satisfy the world history/geography requirements include: (i) World History and World Geography; (ii) World History and Geography Part I, and World History and Geography Part II; or (iii) a semester course of World Geography, a semester course of World History Part I, and a year-long course of World History Part II. The board may approve additional courses to satisfy this requirement.

⁴ Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

⁵ A student may utilize additional tests for earning verified credit in computer science, technology, *career or technical education* or other areas as prescribed by the board in 8 VAC 20-131-110 B.

Students completing the requirements for the Advanced Studies Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection F 1 of this section.

D. Requirements for the Modified Standard Diploma.

1. Every student shall be expected to pursue a Standard Diploma or Advanced Studies Diploma. The Modified Standard Diploma program is intended for certain students at the secondary level who have a disability and are unlikely to meet the credit requirements for a Standard Diploma. Eligibility and participation in the Modified Standard Diploma program shall be determined by the student's ~~individual~~ Individualized Education Program (IEP) team and including the student, where appropriate, at any point after the student's eighth grade year.

~~2. The school must secure the informed written consent of the parent/guardian and the student to choose this diploma program after review of the student's academic history and the full disclosure of the student's options.~~

~~3. The student who has chosen to pursue a Modified Standard Diploma shall also be allowed to pursue the Standard or Advanced Studies Diploma at any time throughout that student's high school career, and the student must not be excluded from courses and tests required to earn a Standard or Advanced Studies Diploma.~~

~~4. Beginning with the ninth grade class of 2000-01,~~ 2. Students pursuing the Modified Standard Diploma shall pass literacy and numeracy competency assessments prescribed by the board.

~~5.~~ 3. Credits required for graduation with a Modified Standard Diploma.

Discipline Area	Standard Units of Credit Required
English	4
Mathematics ¹	3
Science ²	2
History and Social Sciences ³	2
Health and Physical Education	2
Fine Arts or Practical Arts <i>Career and Technical Education</i>	1
Electives ⁴	6
Total	20

¹ Courses completed to satisfy this requirement shall include content from among applications of algebra, geometry, personal finance, and statistics in courses that have been approved by the board.

² Courses completed shall include content from at least two of the following: applications of earth science, biology, chemistry, or physics in courses approved by the board.

³ Courses completed to satisfy this requirement shall include one unit of credit in U.S. and Virginia History and one unit of credit in U.S. and Virginia Government in courses approved by the board.

~~4. Beginning with the graduating class of 2003,~~ Courses to satisfy this requirement shall include at least two sequential electives in the same manner required for the Standard Diploma.

~~6.~~ 4. The student must meet any additional criteria established by the Board of Education.

E. In accordance with the requirements of the Standards of Quality, students with disabilities who complete the requirements of their Individualized Education Program (IEP) and do not meet the requirements for other diplomas shall be awarded Special Diplomas.

F. In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of studies defined by the local school board but do not qualify for Standard, Advanced Studies, Modified Standard, or General Achievement diplomas shall be awarded Certificates of Program Completion. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality. Students receiving a general achievement diploma shall comply with 8 VAC 20-680, Regulations Governing the General Achievement Diploma.

G. In accordance with the provisions of the compulsory attendance law and 8 VAC 20-360-40 ~~et seq.~~, Regulations Governing General Education Educational Development Certificates, students who do not qualify for diplomas may earn a high school equivalency credential.

H. At a student's request, the local school board shall communicate or otherwise make known to institutions of higher education, potential employers, or other applicable third parties, in a manner that the local school board deems appropriate, that a student has attained the state's academic expectations by earning a Virginia diploma and that the value of such a diploma is not affected in any way by the accreditation status of the student's school.

I. Awards for exemplary student performance. Students who demonstrate academic excellence and/or outstanding achievement may be eligible for one of the following awards:

1. Students who complete the requirements for an Advanced Studies Diploma with an average grade of "B" or better, and successfully complete ~~at least one college-level course work that will earn the student at least nine transferable college credits in Advanced Placement course (AP), International Baccalaureate (IB) or one college-level course for credit, Cambridge, or dual enrollment courses will~~ shall receive the Governor's Seal on the diploma.

2. Students who complete the requirements for a Standard Diploma or Advanced Studies Diploma with an average grade of "A" ~~will~~ shall receive a Board of Education Seal on the diploma.

3. The Board of Education's Career and Technical Education Seal will be awarded to students who earn a Standard or Advanced Studies Diploma and complete a prescribed sequence of courses in a career and technical education concentration or specialization that they choose and maintain a "B" or better average in those courses; or (i) pass an examination or an occupational competency assessment in a career and technical education concentration or specialization that confers certification or occupational competency credential from a recognized industry, trade or professional association or (ii) acquire a professional license in that career and technical education field from the Commonwealth of Virginia.

4. The Board of Education's Seal of Advanced Mathematics and Technology will be awarded to students who earn either a Standard or Advanced Studies Diploma and (i) satisfy all of the mathematics requirements for the Advanced Studies Diploma (four units of credit including Algebra II; two verified units of credit) with a "B" average or better; and (ii) either (a) pass an examination in a career and technical education field that confers certification from a recognized industry, or trade or professional association; (b) acquire a professional license in a career and technical education field from the Commonwealth of Virginia; or (c) pass an examination approved by the board that confers college-level credit in a technology or computer science area.

5. The Board of Education's Seal for Excellence in Civics Education will be awarded to students who earn either a

Standard or Advanced Studies Diploma and (i) complete Virginia and United States History and Virginia and United States Government courses with a grade of "B" or higher; (ii) have good attendance and no disciplinary infractions as determined by local school board policies; and (iii) complete 50 hours of voluntary participation in community service or extracurricular activities. Activities that would satisfy the requirements of clause (iii) of this subdivision include: (a) volunteering for a charitable or religious organization that provides services to the poor, sick or less fortunate; (b) participating in Boy Scouts, Girl Scouts, or similar youth organizations; (c) participating in JROTC; (d) participating in political campaigns or government internships, or Boys State, Girls State, or Model General Assembly; or (e) participating in school-sponsored extracurricular activities that have a civics focus. Any student who enlists in the United States military prior to graduation will be deemed to have met this community service requirement.

~~5-~~ 6. Students may receive other seals or awards for exceptional academic, career and technical, citizenship, or other exemplary performance in accordance with criteria defined by the local school board.

J. Students completing graduation requirements in a summer school ~~accredited under this chapter~~ program shall be eligible for a diploma. The last school attended by the student during the regular session shall award the diploma unless otherwise agreed upon by the principals of the two schools.

K. Students who complete Advanced Placement courses, college-level courses, or courses required for an International Baccalaureate Diploma shall be deemed to have completed the requirements for graduation under these standards provided they have earned the standard units of credit and earned verified units of credit in accordance with the requirements of subsections B and C of this section.

L. Students shall be counseled annually regarding the opportunities for using additional tests for earning verified credits as provided in accordance with the provisions of 8 VAC 20-131-110 B, and the consequences of failing to fulfill the obligations to complete the requirements for verified units of credit.

8 VAC 20-131-60. Transfer of credits students.

A. The provisions of this section pertain generally to students who transfer into Virginia high schools. Students transferring in grades K-8 shall be placed in grade in accordance with policies adopted by the local school board.

B. For the purposes of this section, the term "beginning" means within the first 20 hours of instruction per course. The term "during" means after the first 20 hours of instruction per course.

C. Standard or verified units of credit earned by a student in a Virginia public school shall be transferable without limitation regardless of the accreditation status of the Virginia public school in which the credits were earned. Virginia public schools shall accept standard and verified units of credit from other Virginia public schools and state-operated programs.

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Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when prior written approval of the principal has been granted or the student has been given credit by the previous school attended.

~~B. D.~~ A secondary school shall accept credits toward graduation received from other ~~accredited secondary schools including accredited by any of the accrediting agencies recognized by the U.S. Department of Education and schools accredited through by one of the constituent members of the Virginia Council for Private Education (VCPE).~~ The Board of Education will maintain contact with the VCPE ~~to and may periodically review its accrediting procedures and policies on a periodic basis as part of its policies under this section.~~

Students transferring into a Virginia public school shall be required to meet the requirements prescribed in 8 VAC 20-131-50 to receive a Standard, Advanced Studies, or Modified Standard Diploma, except as provided by subsection ~~F~~ G of this section. To receive a Special Diploma or Certificate of Program Completion, a student must meet the requirements prescribed by the Standards of Quality. *Students who transfer from schools accredited by other nonrecognized agencies shall have their records evaluated by the receiving school in accordance with subsection F of this section.*

~~G. Standard or verified units of credit earned by a student in a Virginia public school shall be transferable without limitation regardless of the accreditation status of the Virginia public school in which the credits were earned.~~

~~D. Records of transferred students~~ *E. The academic record of a student transferring from other Virginia public schools shall be sent directly to the school receiving the student upon request of the receiving school in accordance with the provisions of the 8 VAC 20-150-10 et seq., Management of the Student's Scholastic Records Record in the Public Schools of Virginia.*

~~E. F.~~ The academic record of a student transferring into Virginia public schools from other than a Virginia public school, shall be evaluated to determine the number of standard units of credit that have been earned, including credit from schools outside the United States, and the number of verified units of credit needed to graduate in accordance with subsection ~~F~~ G of this section. ~~Virginia public schools shall accept standard and verified units of credit from other Virginia public schools and state-operated programs.~~ Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when ~~prior written approval of the principal has been granted or the student has been given credit by the previous school attended.~~

Students transferring above the tenth grade from schools or other education programs that do not require or give credit for health and physical education shall not be required to take these courses to meet graduation requirements.

~~F. G.~~ Students entering a Virginia public high school for the first time after the tenth grade shall ~~be encouraged to~~ earn as many credits as possible toward the graduation requirements prescribed in 8 VAC 20-131-50. However, *schools may*

substitute courses required in other states in the same content area if the student is unable to meet the specific content requirements of 8 VAC 20-131-50 without taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated. In any event, no such student shall earn fewer than the following number of verified units, nor shall such students be required to take SOL tests or additional tests as defined in 8 VAC 20-131-110 ~~B~~ for verified units of credit in courses previously completed at another school or program of study, unless necessary to meet the requirements listed in subdivisions 1 and 2 of this subsection:

1. For a Standard Diploma:

a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the tenth grade shall earn credit as prescribed in 8 VAC 20-131-50;

b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the eleventh grade shall earn a minimum of four verified units of credit: one each in English, mathematics, history, and science ~~except that during the transition period 2000-01 through 2002-03, students shall earn one in English and three of the student's own choosing; and~~

c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of two verified units of credit: one in English and one of the student's own choosing.

2. For an Advanced Studies Diploma:

a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the tenth grade shall earn credit as prescribed in 8 VAC 20-131-50;

b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the eleventh grade shall earn a minimum of six verified units of credit: two in English and one each in mathematics, history, and science and one of the student's own choosing; and

c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of four verified units of credit: one in English and three of the student's own choosing.

~~G. H.~~ Students entering a Virginia high school for the first time after the first semester of their eleventh grade year must meet the requirements of subdivision ~~F~~ G 1 c or ~~F~~ G 2 c of this section. Students transferring after 20 instructional hours per course of their senior or twelfth grade year shall be given every opportunity to earn a Standard, Advanced Studies, or Modified Standard Diploma. If it is not possible for the student to meet the requirements for a diploma, arrangements should be made for the student's previous school to award the diploma. If these arrangements cannot be made, a waiver of the verified unit of credit requirements may be available to the

student. The Department of Education may grant such waivers upon request by the local school board in accordance with guidelines prescribed by the Board of Education.

~~H.~~ *I.* Any local school division receiving approval to increase its course credit requirements for a diploma may not deny either the Standard, Advanced Studies, or Modified Standard Diploma to any transfer student who has otherwise met the requirements contained in these standards if the transfer student can only meet the division's additional requirements by taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated.

~~I.~~ *J.* The transcript of a student who graduates or transfers from a Virginia secondary school shall conform to the requirements of ~~8 VAC 20-160-40 et seq.~~, Regulations Governing Secondary School Transcripts.

~~J.~~ *K.* The accreditation status of a high school shall not be included on the student transcript provided to colleges, universities, or employers. The board expressly states that any student who has met the graduation requirements established in 8 VAC 20-131-50 and has received a Virginia diploma holds a diploma that should be recognized as equal to any other Virginia diploma of the same type, regardless of the accreditation status of the student's high school. It is the express policy of the board that no student shall be affected by the accreditation status of the student's school. The board shall take appropriate action, from time to time, to ensure that no student is affected by the accreditation status of the student's school.

8 VAC 20-131-70. Program of instruction and learning objectives.

A. Each school shall provide a program of instruction that promotes individual student academic achievement in the essential academic disciplines and shall provide additional instructional opportunities that meet the abilities, interests, and educational needs of students. Each school shall establish learning objectives to be achieved by students at successive grade levels that meet or exceed the knowledge and skills contained in the Standards of Learning for English, mathematics, science, and history/social science adopted by the board and shall continually assess the progress of each student in relation to the objectives.

B. Instruction shall be designed to accommodate all students, including those *identified with disabilities in accordance with the Individuals with Disabilities Education Act or § 504 of the Rehabilitation Act, as amended*, those identified as gifted/talented, and those who have limited English proficiency. Each school shall provide students identified as gifted/talented with instructional programs taught by teachers with special training or experience in working with gifted/talented students. Students with disabilities shall have the opportunity to receive a full continuum of education services, in accordance with ~~8 VAC 20-180-10 et seq.~~ 8 VAC 20-80, Regulations Governing Special Education Programs for Children with Disabilities in Virginia and other pertinent federal and state regulations.

8 VAC 20-131-80. Instructional program in elementary schools.

A. The elementary school shall provide each student a program of instruction ~~which~~ *that* corresponds to the Standards of Learning for English, mathematics, science, and history/social science. In addition, each school shall provide instruction in art, music, and physical education and health, and shall ~~provide~~ *require* students ~~with a daily recess during the regular school year as determined appropriate by the school to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the Board of Education.~~

B. In kindergarten through grade 3, reading, writing, spelling, and mathematics shall be the focus of the instructional program. Schools shall maintain, in a manner prescribed by the board, an early skills and knowledge achievement record in reading and math for each student in grades kindergarten through grade 3 to monitor student progress and to promote successful achievement on the third grade SOL tests. This record shall be included with the student's records if the student transfers to a new school.

C. To provide students with sufficient opportunity to learn, a minimum of 75% of the annual instructional time of 990 hours shall be given to instruction in the disciplines of English, mathematics, science, and history/social science. Students who are not successfully progressing in early reading proficiency or who are unable to read with comprehension the materials ~~necessary~~ *used* for instruction shall receive additional instructional time in reading, *which may include summer school.*

8 VAC 20-131-90. Instructional program in middle schools.

A. The middle school shall provide each student a program of instruction which corresponds to the Standards of Learning for English, mathematics, science, and history/social science. In addition, each school shall provide instruction in art, music, foreign language, physical education and health, and career and technical exploration *and shall require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the Board of Education.*

B. The middle school shall provide a minimum of eight courses to students in the eighth grade. English, mathematics, science, and history/social science shall be required. Four elective courses shall be available: level one of a foreign language, one in health and physical education, one in fine arts, and one in career and technical exploration.

C. Level one of a foreign language *and an Algebra I course* shall be available to all eighth grade students. For any high school credit-bearing course taken in middle school, parents may request that grades be omitted from the student's transcript and the student not earn high school credit for the course in accordance with policies adopted by the local school board. Notice of this provision must be provided to parents with a deadline and format for making such a request. Nothing ~~in this chapter~~ *these regulations* shall be construed to prevent

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a middle school from offering any other credit-bearing courses for graduation.

D. To provide students a sufficient opportunity to learn, each student shall be provided 140 clock hours per year of instruction in each of the four disciplines of English, math, science, and history/social science. Sixth grade students may receive an alternative schedule of instruction provided each student receives at least 560 total clock hours of instruction in the four academic disciplines.

E. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading, which may include summer school.

8 VAC 20-131-100. Instructional program in secondary schools.

A. The secondary school shall provide each student a program of instruction in the academic areas of English, mathematics, science, and history/social science that enables each student to meet the graduation requirements described in 8 VAC 20-131-50 and shall offer opportunities for students to pursue a program of studies in ~~academics~~ *foreign languages*, fine arts, and career and technical areas including:

1. Career and technical education choices that prepare the student as a career and technical education program completer in one of three or more occupational areas and that prepare the student for technical or preprofessional postsecondary programs;
2. Course work and experiences that prepare the student for college-level studies including access to at least ~~two~~ *three* Advanced Placement courses, ~~or two~~ college-level courses for *degree credit, International Baccalaureate courses, or any combination thereof*;
3. Preparation for college admissions tests; and
4. Opportunities to study and explore the fine arts *and foreign languages*.

B. Minimum course offerings for each secondary school shall provide opportunities for students to meet the graduation requirements stated in 8 VAC 20-131-50 and must include:

English	4
Mathematics	4
Science (Laboratory)	4
History and Social Sciences	4
Foreign Language	3
Electives	4
Career and Technical Education	11
Fine Arts	2
Health and Physical Education	2
Total Units	38

C. Classroom driver education may count for 36 class periods of health education. Students shall not be removed from classes other than health and physical education for the in-car phase of driver education.

D. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading, which may include summer school.

8 VAC 20-131-110. Standard and verified units of credit.

A. The standard unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction and successful completion of the requirements of the course. When credit is awarded in less than whole units, the increment awarded must be no greater than the fractional part of the 140 hours of instruction provided. If a school division elects to award credit ~~in a noncore academic course~~ on a basis other than the *140 clock hours of instruction required for a standard unit of credit* defined in this subsection, the local school division shall develop a written policy approved by the superintendent and school board which ensures:

1. That the content of the course for which credit is awarded is comparable to 140 clock hours of instruction; and
2. That upon completion, the student will have met the aims and objectives of the course.

B. A verified unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction, successful completion of the requirements of the course, and the achievement by the student of a passing score on the end-of-course SOL test for that course or additional tests as described in this subsection. *A student may also earn a verified unit of credit by the following methods:*

1. In accordance with the provisions of the Standards of Quality, students may earn a standard and verified unit of credit for any elective course in which the core academic SOL course content has been integrated and the student passes the related end-of-course SOL test. Such course and test combinations must be approved by the Board of Education.
2. Upon the recommendation of the division superintendent and demonstration of mastery of course content and objectives, qualified students may receive a standard unit of credit and be permitted to sit for the relevant SOL test to earn a verified credit without having to meet the 140-clock-hour requirement.
3. *Students who do not pass Standards of Learning tests in science or history and social science may be awarded verified credits by the local school board in accordance with criteria established in guidelines adopted by the Board of Education.*

C. The Board of Education may from time to time approve additional tests for the purpose of awarding verified credit. Such additional tests, which enable students to earn verified units of credit, must, at a minimum, meet the following criteria:

1. The test must be standardized and graded independently of the school or school division in which the test is given;
2. The test must be knowledge based;

3. The test must be administered on a multistate or international basis, *or administered as part of another state's accountability assessment program*; and

4. To be counted in a specific academic area, the test must measure content that incorporates or exceeds the SOL content in the course for which verified credit is given.

The Board of Education will set the score that must be achieved to earn a verified unit of credit on the additional test options.

D. With such funds as are appropriated by the General Assembly, the Board of Education will provide opportunities for students who meet criteria adopted by the board to have an expedited retake of ~~an end-of-course~~ a SOL test to earn verified credit *or to meet literacy and numeracy requirements for the Modified Standard Diploma.*

~~C. A school employing a scheduling configuration of less than 140 clock hours per core academic course may retain that scheduling configuration through the end of the 2000-01 school year unless a waiver is granted by the board under the provisions of 8 VAC 20-131-325 B or 8 VAC 20-131-330. If the school does not comply following the end of the 2000-01 school year, the board may take appropriate action which may include, but not be limited to, adjustment or withdrawal of the school's accreditation.~~

8 VAC 20-131-140. College preparation programs and opportunities for postsecondary credit.

Each middle and secondary school shall provide for the early identification and enrollment of students in a college preparation program with a range of educational and academic experiences in and outside the classroom, including an emphasis on experiences that will motivate disadvantaged and minority students to attend college.

Beginning in the middle school years, students shall be counseled on opportunities for beginning postsecondary education *and opportunities for obtaining industry certifications, occupational competency credentials, or professional licenses in a career and technical education field prior to high school graduation. Such opportunities shall include access to at least three Advanced Placement courses or three college-level courses for degree credit pursuant to 8 VAC 20-131-100.* Students taking advantage of such opportunities shall not be denied participation in school activities for which they are otherwise eligible. Wherever possible, students shall be encouraged and afforded opportunities to take college courses simultaneously for high school graduation and college degree credit (dual enrollment), under the following conditions:

1. Written approval of the high school principal prior to participation in dual enrollment must be obtained;
2. The college must accept the student for admission to the course or courses; and
3. The course or courses must be given by the college for degree credits (no remedial courses will be accepted).

Schools that comply with this standard shall not be penalized in receiving state appropriations.

8 VAC 20-131-150. Standard school year and school day.

A. The standard school year shall be 180 days. The standard school day for students in grades 1 through 12 shall average at least 5-1/2 hours, excluding breaks for meals *and recess*, and a minimum of three hours for kindergarten. ~~School divisions may develop alternative schedules for meeting these requirements as long as a minimum of 990 hours of instructional time is provided for grades 1 through 12 and 540 hours for kindergarten. Such alternative plans must be approved by the local school board and by the board under guidelines established by the board. No alternative plan which reduces the instructional time in the core academics shall be approved.~~

B. All students in grades 1 through 12 shall maintain a full day schedule of classes (5-1/2 hours), unless a waiver is granted in accordance with policies defined by the local school board.

8 VAC 20-131-160. Additional reading instruction. (Repealed.)

~~Each school shall ensure that students who are unable to read with comprehension the materials necessary for instruction receive additional instruction in reading, which may include summer school.~~

8 VAC 20-131-170. Family Life Education.

Each school may implement the Standards of Learning for the Family Life Education program promulgated by the Board of Education or a Family Life Education program consistent with the guidelines developed by the board, which shall have the goals of reducing the incidence of pregnancy and sexually-transmitted diseases and substance abuse among teenagers.

8 VAC 20-131-180. Off-site instruction.

A. Homebound instruction shall be made available to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For students eligible for special education or related services, the Individualized Education Program committee must revise the IEP, as appropriate. Credit for the work shall be awarded when it is done under the supervision of a licensed teacher, a person eligible to hold a Virginia license, or other appropriately licensed professional employed by the local school board, ~~and meets the there is evidence that the instructional time requirements of or alternative means of awarding credit adopted by the local school board in accordance with the provisions of 8 VAC 20-131-110 have been met.~~

B. Students may enroll in and receive a standard and verified unit of credit for supervised correspondence courses with prior approval of the principal. Standard units of credit shall be awarded for the successful completion of such courses when the course is equivalent to that offered in the regular school program and the work is done under the supervision of a licensed teacher, or a person eligible to hold a Virginia

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license, approved by the local school board. Verified units of credit may be earned when the student has passed the SOL test associated with the correspondence course completed. The local school board shall develop policies governing this method of instruction in accordance with the provisions of 8VAC 20-131-110 and the administration of required SOL tests prescribed by 8 VAC 20-131-30.

C. Schools are encouraged to pursue alternative means to deliver instruction to accommodate student needs through emerging technologies and other similar means. Standard units of credit shall be awarded for successful completion of such courses when the course is equivalent to that offered in the regular school program and the work is done under the supervision of a licensed teacher, or a person eligible to hold a Virginia teaching license and approved by *the* local school board. Verified units of credit may be earned when the student has successfully completed the requirements and passed the SOL test associated with the course. The local school board shall develop policies governing this method of delivery of instruction that shall include the provisions of 8 VAC 20-131-110 and the administration of required SOL tests prescribed by 8 VAC 20-131-30.

8 VAC 20-131-190. Library media, materials and equipment.

A. Each school shall maintain an organized library media center as the resource center of the school and provide a unified program of media services and activities for students and teachers before, during, and after school. The library media center shall contain hard copy, electronic technological resources, materials, and equipment that are sufficient to meet research, inquiry, and reading requirements of the instructional program and general student interest.

B. Each school shall provide a variety of materials and equipment to support the instructional program.

8 VAC 20-131-200. Extracurricular and other school activities; recess.

A. School sponsored extracurricular activities shall be under the direct supervision of the staff and shall contribute to the educational objectives of the school. Extracurricular activities must be organized to avoid interrupting the instructional program. Extracurricular activities shall not be permitted to interfere with the student's required instructional activities. Extracurricular activities and eligibility requirements shall be established and approved by the superintendent and the school board.

B. Competitive sports of a varsity nature (scheduled league games) shall be prohibited as a part of the elementary school program.

C. *Each elementary school shall provide students with a daily recess during the regular school year as determined appropriate by the school.*

8 VAC 20-131-210. Role of the principal.

A. The principal is recognized as the instructional leader of the school and is responsible for effective school management that promotes positive student achievement, a safe and secure environment in which to teach and learn, and efficient

use of resources. As a matter of policy, the board, through these standards, recognizes the critically important role of principals to the success of public schools and the students who attend those schools and recommends that local school boards provide principals with the maximum authority available under law in all matters affecting the school including, but not limited to, instruction and personnel, in a manner that allows the principal to be held accountable in a fair and consistent manner for matters under his direct control.

B. As the instructional leader, the principal is responsible for ensuring that students are provided an opportunity to learn and shall:

1. Protect the academic instructional time from unnecessary interruptions and disruptions and enable the professional teaching staff to spend the maximum time possible in the teaching/learning process by keeping to a minimum clerical responsibility and the time students are out of class;

2. Ensure that the school division's student code of conduct is enforced and seek to maintain a safe and secure school environment;

3. Analyze the school's test scores annually, by grade and by discipline, to:

- a. Direct and require appropriate prevention, intervention, and/or remediation to those students performing below grade level or not passing the SOL tests;

- b. Involve the staff of the school in identifying the types of staff development needed to improve student achievement and ensure that the staff participate in those activities; and

- c. Analyze classroom practices and methods for improvement of instruction;

4. Ensure that students' records are maintained and that criteria used in making placement and promotion decisions, as well as any instructional interventions used to improve the student's performance, are included in the record;

5. Monitor and evaluate the quality of instruction, provide staff development, provide support that is designed to improve instruction, and seek to ensure the successful attainment of the knowledge and skills required for students by the SOL tests; ~~and~~

6. Maintain records of students who drop out of school, including their reasons for dropping out and actions taken to prevent these students from dropping out; *and*

7. *Notify the parents of rising eleventh and twelfth grade students of:*

- a. *The number of standard and verified units of credit required for graduation; and*

- b. *The remaining number of such units of credit the individual student requires for graduation.*

C. As the school manager, the principal shall:

1. Work with staff to create an atmosphere of mutual respect and courtesy and to facilitate constructive

communication by establishing and maintaining a current handbook of personnel policies and procedures;

2. Work with the community to involve parents and citizens in the educational program and facilitate communication with parents by maintaining and disseminating a current student handbook of policies and procedures that includes the school division's standards of student conduct and procedures for enforcement, along with other matters of interest to parents and students;

3. Maintain a current record of licensure, endorsement, and in-service training completed by staff; and

4. Maintain records of receipts and disbursements of all funds handled. These records shall be audited annually by a professional accountant approved by the local school board.

8 VAC 20-131-240. Administrative and support staff; staffing requirements.

A. Each school shall have *at a minimum* the staff as specified in the Standards of Quality with proper licenses and endorsements for the positions they hold ~~including~~:

~~1. Principal; elementary: one half-time to 299, one full-time at 300; middle: one full-time; secondary: one full-time.~~

~~2. Assistant principal; elementary: one half-time at 600, one full-time at 900; middle: one full-time each 600; secondary: one full-time each 600.~~

~~3. Librarian; elementary: part-time to 299, one full-time at 300; middle: one half-time to 299, one full-time at 300, two full-time at 1,000; secondary: one half-time to 299, one full-time at 300, two full-time at 1,000.~~

~~4. Guidance counselors or reading specialists; elementary: one hour per day per 100, one full-time at 500, one hour per day additional time per 100 or major fraction.~~

~~5. Guidance counselor; middle: one period per 80, one full-time at 400, one additional period per 80 or major fraction; secondary: one period per 70, one full-time at 350, one additional period per 70 or major fraction.~~

~~6. Clerical; elementary: part-time to 299, one full-time at 300; middle: one full-time and one additional full-time for each 600 beyond 200 and one full-time for the library at 750; secondary: one full-time and one additional full-time for each 600 beyond 200 and one full-time for the library at 750.~~

B. The principal of each middle and secondary school shall be employed on a 12-month basis.

C. Each secondary school with 350 or more students and each middle school with 400 or more students shall employ at least one member of the guidance staff for 11 months. Guidance counseling shall be provided for students to ensure that a program of studies contributing to the student's academic achievement and meeting the graduation requirements specified in 8 VAC 20-131-50 is being followed. In addition, the counseling program shall provide for a

minimum of 60% of the time of each member of the guidance staff devoted to such counseling of students.

D. Middle school teachers in schools with a seven-period day may teach 150 student periods per day or 30 class periods per week, provided all teachers with more than 25 class periods per week have one period per day *or the equivalent* unencumbered of any teaching or supervisory duties.

E. The secondary classroom teacher's standard load shall be no more than 25 class periods per week. One class period each day *or the equivalent*, unencumbered by supervisory or teaching duties, shall be provided to every full-time classroom teacher for instructional planning. Teachers of block programs with no more than 120 student periods per day may teach 30 class periods per week. Teachers who teach very small classes may teach 30 class periods per week, provided the teaching load does not exceed 75 student periods per day. If a classroom teacher teaches 30 class periods per week with more than 75 student periods per day, an appropriate contractual arrangement and compensation shall be provided.

F. Middle or secondary school teachers shall teach no more than 750 student periods per week; however, physical education and music teachers may teach 1,000 student periods per week.

~~G. Each school shall report the extent to which an unencumbered lunch is provided for all classroom teachers.~~

~~H. G. Staff-student ratios in special and career and technical education classrooms shall comply with regulations of the board.~~

~~I. Pupil H. Student services personnel services, including visiting teachers, school social workers, school psychologists, and guidance counselors, as defined in the Standards of Quality shall be available as necessary to promote academic achievement and to provide support services to the school.~~

8 VAC 20-131-260. School facilities and safety.

A. Each school shall be maintained in a manner ensuring compliance with the Virginia Uniform Statewide Building Code (13 VAC 5-61-10 et seq. 13 VAC 5-63) and regulations of the board ~~pertaining to facilities~~. In addition, the school administration shall:

1. Maintain a physical plant that is accessible, barrier free, safe, and clean;

2. Provide for the proper outdoor display of flags of the United States and of the Commonwealth of Virginia;

3. Provide suitable space for classrooms, administrative staff, pupil personnel services, library and media services, and for the needs and safety of physical education; ~~and~~

4. Provide adequate, safe, and properly-equipped laboratories to meet the needs of instruction in the sciences, technology, fine arts, and career and technical programs; ~~and~~

5. *Provide facilities for the adequate and safe administration and storage of student medications.*

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B. Each school shall maintain records of regular safety, health, and fire inspections that have been conducted and certified by local health and fire departments. The frequency of such inspections shall be determined by the local school board in consultation with the local health and fire departments. In addition, the school administration shall:

1. Equip all exit doors with panic hardware as required by the *Virginia* Uniform Statewide Building Code (13 VAC 5-61-10 ~~et seq.~~ 13 VAC 5-63); and
2. Conduct fire drills at least once a week during the first month of school and at least once each month for the remainder of the school term. Evacuation routes for students shall be posted in each room. Additionally, at least one simulated lock-down and crisis emergency evacuation activity should be conducted early in the school year.

C. Each school shall have contingency plans for emergencies that include staff certified in cardiopulmonary resuscitation (CPR), the Heimlich maneuver, and emergency first aid. In addition, the school administration shall ensure that the school has:

1. Written procedures to follow in emergencies such as fire, injury, illness, *allergic reactions*, and violent or threatening behavior. The plan shall be outlined in the student handbook and discussed with staff and students during the first week of each school year;
2. Space for the proper care of students who become ill; ~~and~~
3. A written procedure, in accordance with guidelines established by the local school board, for responding to violent, disruptive or illegal activities by students on school property or during a school sponsored activity; *and*
4. *Written procedures to follow for the safe evacuation of persons with special physical, medical, or language needs who may need assistance to exit a facility.*

8 VAC 20-131-270. School and community communications.

A. Each school shall promote communication and foster mutual understanding with parents and the community. Each school shall:

1. Involve parents, citizens, community agencies, and representatives from business and industry in developing, disseminating, and explaining the biennial school plan; on advisory committees; in curriculum studies; and in evaluating the educational program.
2. Provide annually to the parents and the community the School Performance Report Card in a manner prescribed by the board. The information contained therein will be for the most recent three-year period. Such information shall include but not be limited to:
 - a. ~~SOL test scores and scores on the literacy and numeracy tests required for the Modified Standard Diploma for the school, school division, and state.~~ *Virginia assessment program results including the* ~~percentage of students tested, as well as the percentage~~

~~of students not tested, to include a breakout of students with disabilities and limited English proficient students.~~

~~e. Percentage of students who are otherwise eligible, but do not take, the SOL tests due to enrollment in an alternative, or any other program not leading to a Standard, Advanced Studies, Modified Standard, or International Baccalaureate Diploma.~~

~~d. b. Performance of students with disabilities or students with limited English proficiency student subgroups on SOL tests and alternate assessments the Virginia assessment program as appropriate.~~

~~e. c. The accreditation rating awarded to the school.~~

~~f. d. Attendance rates for students.~~

~~g. e. Information related to school safety to include, but not limited to, incidents of physical violence (including fighting and other serious offenses), possession of firearms, and possession of other weapons.~~

~~h. f. Information related to qualifications and experience of the teaching staff including the percentage of the school's teachers endorsed in the area of their primary teaching assignment.~~

~~i. g. In addition, secondary schools' School Performance Report Cards shall include the following:~~

~~(1) Advanced Placement (AP) information to include percentage of students who take AP courses and percentage of those students who take AP tests;~~

~~(2) International Baccalaureate (IB) information to include percentage of students who are enrolled in IB programs and percentage of students who receive IB Diplomas;~~

~~(3) College-level course information to include percentage of students who take college-level courses including dual enrollment courses;~~

~~(4) Percentage of (i) diplomas, (ii) certificates awarded to the senior class including GED credentials, and (iii) students who do not graduate;~~

~~(5) Percentage of students in alternative programs that do not lead to a Standard, Advanced Studies, or Modified Standard Diploma; Information on the number of students obtaining industry certifications, and passing state licensure examinations and occupational competency assessments while still in high school; and~~

~~(6) Percentage of students in academic year Governor's Schools; and~~

~~(7) (6) Percentage of drop-outs.~~

3. Cooperate with business and industry in formulating career and technical educational programs and conducting joint enterprises involving personnel, facilities, training programs, and other resources.

4. Encourage and support the establishment and/or continuation of a parent-teacher association or other organization and work cooperatively with it.

B. At the beginning of each school year, each school shall provide to its students' parents or guardians *information on the availability of and source for receiving*:

1. The learning objectives developed in accordance with the provisions of 8 VAC 20-131-70 to be achieved at their child's grade level or, in high school, a copy of the syllabus for each of their child's courses, and a copy of the school division promotion, retention, and remediation policies;

2. ~~A copy of~~ The Standards of Learning applicable to the child's grade or course requirements and the approximate date and potential impact of the child's next SOL testing; and

3. An annual notice to students in all grade levels of all requirements for Standard, Advanced Studies, and Modified Standard Diplomas, and the board's policies on promotion and retention as outlined in 8 VAC 20-131-30.

~~No later than the end of the first semester of each school year,~~ The division superintendent shall ~~certify report~~ to the department compliance with this subsection *through the preaccreditation eligibility procedures in 8 VAC 20-131-290.*

8 VAC 20-131-280. Expectations for school accountability.

A. Schools will be accredited annually based on compliance with preaccreditation eligibility requirements and achievement of the school accountability requirements of 8 VAC 20-131-300 C.

~~B. These standards apply to schools for all grade levels, kindergarten through 12, as listed below:~~

~~1. Schools with grades kindergarten through 5 shall be classified as elementary schools;~~

~~2. Schools with grades 6 through 8 shall be classified as middle schools;~~

~~3. Schools with grades 9 through 12 shall be classified as secondary schools.~~

~~4. Schools with grade configurations other than these shall be classified in accordance with policies and practices of the Department of Education.~~

G. B. Each school shall be accredited based, primarily, on achievement of the criteria established in 8 VAC 20-131-30 as specified below:

1. All students enrolled in a grade or course in which a SOL test is administered shall take each applicable SOL test, unless exempted from participating in all or part of the testing program by one of the following:

a. IEP team;

b. LEP committee;

c. Use of additional tests for verified units of credit as outlined in 8 VAC 20-131-110 B; or

d. In accordance with 8 VAC 20-131-30 B.

~~2. In a manner prescribed by the board, the evaluation of the performance of schools shall take into consideration:~~

~~a. The percentage of eligible students who achieve a passing score on the prescribed SOL tests or additional tests used for verified units of credit as outlined in 8 VAC 20-131-110 B;~~

~~b. The percentage of students who pass the literacy and numeracy tests required for the Modified Standard Diploma;~~

~~c. The percentage of those students with disabilities whose IEPs specify their participation in alternate assessment who attain a proficient level score (beginning with the 2001-02 school year); and~~

~~d. The school's attainment of the provisional accreditation benchmarks as described in 8 VAC 20-131-320.~~

~~e. The number of students who successfully complete a remediation recovery program and subsequently pass SOL tests in English (Reading, Literature, and Research) and/or mathematics during any scheduled administration by the end of the following school year.~~

~~3. 1. The awarding of an accreditation rating shall be based on the percentage of students passing SOL the Virginia assessment program tests or approved additional tests described in 8 VAC 20-131-110 B or in the four core academic areas administered in the school with the accreditation rating calculated on a trailing three-year average that includes the current year scores and the scores from the two most recent years in each applicable academic area, or on the current year's scores, whichever is higher.~~

~~2. The number of students who successfully complete a remediation recovery program.~~

~~4. Eligible students shall be defined as the total number of students enrolled in the school at a grade or course for which a SOL test is required unless excluded under subsection E of this section and those students with disabilities who participate in the alternate assessment program.~~

~~5. Schools shall be evaluated by the percentage of the school's eligible students who achieve a passing score on the SOL tests or other additional tests approved by the board as outlined in 8 VAC 20-131-110 B in the four core academic areas administered in the school.~~

~~6. 3. Schools, with grade configurations that do not house a grade or offer courses for which SOL tests or other additional tests approved by the Board of Education as outlined in 8 VAC 20-131-110 B are administered, will be paired with another school in the division housing one or more of the grades in which SOL tests are administered. The pairing of such schools will be made upon the recommendation of the local superintendent. The schools should have a "feeder" relationship and the grades should be contiguous.~~

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~~D. C. Subject to the provisions of 8 VAC 20-131-330, the governing school board of special purpose schools such as regional those provided for in § 22.1-26 of the Code of Virginia, Governor's schools, special education schools, alternative schools, or career and technical schools that serve as the student's school of principal enrollment may seek approval of an alternative accreditation plan from the Board of Education. Special purpose schools with alternative accreditation plans shall be evaluated on standards appropriate to the programs offered in the school and approved by the board prior to August 1 of the school year for which approval is requested. Any student graduating from a special purpose school with a Standard, Advanced Studies, or Modified Standard Diploma must meet the requirements prescribed in 8 VAC 20-131-50.~~

~~E. D. When calculating the passing rates on SOL tests for the purpose of school accountability, the following tolerances for limited English proficient (LEP) and transfer students will apply:~~

~~1. LEP students shall have a one-time exemption in each of the four core areas for SOL tests designed to assess SOL content in grades kindergarten through 8.~~

~~2. LEP students shall not be exempted from participating in the SOL end-of-course testing.~~

~~3. 1. The scores of LEP students enrolled in Virginia public schools fewer than 11 semesters may be removed from the calculation used for the purpose of school accreditation required by 8 VAC 20-131-280 C B and 8 VAC 20-131-300 C. Completion of a semester shall be based on school membership days. Membership days are defined as the days the student is officially enrolled in a Virginia public school, regardless of days absent or present. For a semester to count as a completed semester, a student must have been in membership for a majority of the membership days of the semester. These semesters need not be consecutive.~~

~~4. 2. In accordance with the provisions of 8 VAC 20-131-30, all students who transfer into Virginia public schools are expected to take and pass all applicable SOL tests unless they have been exempted as defined in subdivision C 4 of this section in the content areas in which they receive instruction.~~

~~5. 3. All students who transfer within a school division shall have their scores counted in the calculation of the school's accountability (accreditation) rating. Students who transfer into a Virginia school from home instruction, another Virginia school division, another state, or another country, in grades kindergarten through 8 shall be expected to take all applicable SOL tests or other additional tests approved by the board as outlined in 8 VAC 20-131-110 B. If the transfer takes place after the 20th instructional day following the opening of school, the scores on these tests may be used in calculating school accountability (accreditation) ratings.~~

~~6. 4. Students who transfer into a Virginia middle or high school from home instruction, or from another state or country, and enroll in a course for which there is an end-of-course SOL test, shall be expected to take the test or other~~

additional tests for that course approved by the board as outlined in 8 VAC 20-131-110 B. If the transfer takes place after 20 instructional hours per course have elapsed following the opening of school or beginning of the semester, if applicable, the scores on those tests may be used in calculating school accountability (accreditation) ratings in the year the transfer occurs.

~~7. 5. Students who enroll on the first day of school and subsequently transfer to a school outside of the division for a total amount of instructional time equal to or exceeding 50% of a current school year or semester, whether the transfer was a singular or multiple occurrence, and return during the same school year shall be expected to take any applicable SOL test. The scores of those tests may be used in calculating the school accountability (accreditation) rating in the year in which the transfers occur.~~

~~8. The scores of LEP and transfer students will be used in the calculation of a school's accountability (accreditation) rating if it will benefit the school.~~

~~9. 6. The board may alter the inclusions and exclusions from the accountability accreditation calculations by providing adequate notice to local school boards.~~

~~E. The Board of Education may enact special provisions related to the administration and use of any SOL test or tests in a content area as applied to these regulations.~~

~~F. As a prerequisite to the awarding of an accreditation rating as defined in 8 VAC 20-131-300, each new or existing school shall document, in a manner prescribed by the board, the following: (i) the division's promotion/retention policies developed in accordance with the requirements of 8 VAC 20-131-30, (ii) compliance with the requirements to offer courses that will allow students to complete the graduation requirements in 8 VAC 20-131-50, (iii) the ability to offer the instructional program prescribed in 8 VAC 20-131-70 through 8 VAC 20-131-100, (iv) the leadership and staffing requirements of 8 VAC 20-131-210 through 8 VAC 20-131-240, and (v) the facilities and safety provisions of 8 VAC 20-131-260.~~

8 VAC 20-131-290. Procedures for certifying accreditation eligibility.

A. Schools will be accredited under these standards annually based, *in part*, on compliance with the preaccreditation criteria described in 8 VAC 20-131-280 F.

B. To be eligible for accreditation, the principal of each school and the division superintendent shall ~~certify~~ report to the Department of Education:

1. The extent to which each school continues to meet standards reported as met in the previous year described in 8 VAC 20-131-280 F.

2. That the SOL have been fully incorporated into the school division's curriculum in all accreditation-eligible schools and the SOL material is being taught to all students eligible to take the SOL tests. This shall be certified ~~in writing to the board no later than July 1 of every year,~~ by each school division superintendent *as part of the preaccreditation eligibility determination process.*

3. Actions taken to correct any noncompliance issues cited in the previous year.

The principal of each school and the division superintendent shall submit preaccreditation eligibility reports in a manner prescribed by the board to the Department of Education. Failure to submit the reports on time will constitute grounds for denying accreditation to the school.

C. In keeping with provisions of the Standards of Quality, and in conjunction with the six-year plan of the division, each school shall prepare and implement a biennial school plan which shall be available to students, parents, staff, and the public. Each biennial school plan shall be evaluated as part of the development of the next biennial plan. Schools may use other plans to satisfy the requirement for the biennial plan with prior written approval from the Department of Education.

D. With the approval of the local school board, local schools seeking to implement experimental or innovative programs, or both, that are not consistent with these standards shall submit a waiver request, on forms provided, to the board for evaluation and approval prior to implementation. The request must include the following:

1. Purpose and objectives of the experimental/innovative programs;
2. Description and duration of the programs;
3. Anticipated outcomes;
4. Number of students affected;
5. Evaluation procedures; and
6. Mechanisms for measuring goals, objectives, and student academic achievement.

Except as specified below, the board may grant, for a period up to five years, a waiver of these regulations that are not mandated by state or federal law or designed to promote health or safety. The board may grant all or a portion of the request. Waivers of requirements in 8 VAC 20-131-30, 8 VAC 20-131-50, 8 VAC 20-131-70, and 8 VAC 20-131-280 through 8 VAC 20-131-340 shall not be granted, and no waiver may be approved for a program which would violate the provisions of the Standards of Quality.

8 VAC 20-131-300. Application of the standards.

A. Schools that meet the preaccreditation requirements prescribed in 8 VAC 20-131-280 F shall be assigned one of the following ratings as described in this section:

- ~~1. Earned During Academic Years Ending in 2000 through 2003:~~
 - ~~a. Fully Accredited;~~
 - ~~b. Provisionally Accredited/Meets State Standards;~~
 - ~~c. Provisionally Accredited/Needs Improvement;~~
 - ~~d. Accredited with Warning in (specified academic area or areas);~~

~~e. Conditionally Accredited.~~

~~2. Earned During Academic Years Ending in 2004 and 2005:~~

~~a. Fully Accredited;~~

~~b. Accredited with Warning in (specified academic area or areas);~~

~~c. Conditionally Accredited.~~

~~3. Earned During Academic Years Ending in 2006 and Beyond:~~

~~a. 1. Fully Accredited;~~

~~b. 2. Accredited with Warning in (specified academic area or areas);~~

~~c. 3. Accreditation Denied;~~

~~d. 4. Conditionally Accredited;~~

~~e. Accreditation Withheld/Improving School Near Accreditation (not to be used after academic year ending in 2009).~~

B. Compliance with the student academic achievement expectations shall be documented to the board directly through the reporting of the results of student performance on SOL tests and other alternative means of assessing student academic achievement as outlined in 8 VAC 20-131-110 B. Compliance with other provisions of these regulations will be documented in accordance with procedures prescribed by the board.

C. Accreditation ratings defined.

1. Fully accredited.

a. *For school years 2004-05 through 2008-09*, a school will be rated Fully Accredited when its eligible students meet the pass rate of 70% in each of the four core academic areas except, ~~effective with ratings earned in the academic year 2003-04 and beyond~~, the pass rates required shall be 75% in third ~~and through~~ fifth grade English and 50% in third grade science and history/social science. In schools housing grades kindergarten through 5, the English and mathematics pass rates for accreditation purposes shall be calculated for these grades as single rates by combining the scores of all third grade ~~and through~~ fifth grade SOL tests administered in English and by combining the scores of all third grade ~~and through~~ fifth grade SOL tests administered in mathematics.

b. ~~During the transition period covering ratings earned during 1999-2000 through 2002-03, in schools housing grades kindergarten through 5, the science and history/social science pass rates for accreditation purposes shall be calculated by using the fifth grade scores alone, or by combining the scores of all SOL tests administered in grades 3 through 5 in science and by combining the scores of all SOL tests administered in grades 3 through 5 in history/social science, whichever is~~

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~~higher. If the third grade scores are combined with the fifth grade scores, the required passing rate shall be 70% for full accreditation. In schools housing grades kindergarten through 3, the accreditation rating shall be calculated using the English and mathematics scores only. For schools housing grade configurations where multiple pass rates apply, the results of the tests may be combined in each of the four core academic areas for the purpose of calculating the school's accreditation rating provided the school chooses to meet the higher pass rate.~~

~~c. With tests administered in the academic year 2009-10 for the accreditation ratings in school year 2010-11 and beyond, a school will be rated Fully Accredited when its eligible students meet the pass rate of 75% in English and the pass rate of 70% in mathematics, science, and history and social science.~~

~~d. For accreditation purposes, the pass rate will be calculated as single rates for each of the four core academic areas by combining all scores of all tests administered in each subject area.~~

~~2. Provisionally Accredited/Meets State Standards. For ratings earned during the academic years 1999-2000 through 2002-03, a school will be rated Provisionally Accredited/Meets State Standards when it has met the provisional accreditation benchmarks as defined in accordance with 8 VAC 20-131-320 but has not met the requirement to be rated Fully Accredited.~~

~~3. Provisionally Accredited/Needs Improvement. For ratings earned during the academic years 1999-2000 through 2002-03, a school will be rated Provisionally Accredited/Needs Improvement when it fails to meet the provisional accreditation benchmarks as defined in 8 VAC 20-131-320 in one or more academic areas.~~

~~4. 2. Accredited with Warning (in specific academic area or areas). a. For ratings earned during academic years ending in 1999-2000 through 2002-03, a school will be Accredited with Warning (in specific academic area or areas) if its pass-rate performance on SOL tests is 20 or more percentage points below any of the provisional accreditation benchmarks set forth in the appendix to these standards. b. For ratings earned during academic years 2003-04 and 2004-05, a school will be Accredited with Warning in (specific academic area or areas) if it does not meet the pass-rate requirements to be Fully Accredited. c. For ratings earned during academic years 2005-06 and beyond, A school will be Accredited with Warning in (specific academic area or areas) if it has achieved failed to achieve Fully Accredited status but has failed to meet the requirements to maintain that status in any one year. Following the academic year 2005-06, Such a school may remain in the Accredited with Warning status for no more than three consecutive years.~~

~~5. 3. Accreditation Denied. Based on a school's academic performance during academic years ending in 2006 and beyond, a school shall be rated Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited, except for schools rated Accredited with Warning as set~~

~~forth in subdivision 4 c of this subsection for the preceding three consecutive years or for three consecutive years anytime thereafter.~~

~~In any school division in which 1/3 or more of the schools have been rated Accreditation Denied, the superintendent shall be evaluated by the local school board with a copy of such evaluation submitted to the Board of Education no later than December 1 of each year in which such condition exists. In addition, the Board of Education may take action against the local school board as permitted by the Standards of Quality due to the failure of the local board to maintain accredited schools.~~

~~6. Accreditation Withhold/Improving School Near Accreditation. A school that has never met the requirements to be rated Fully Accredited by end of the academic year ending in 2006 may apply to the board for this accreditation designation. To be eligible, the school must meet the following criteria:~~

~~a. By the year ending in 2006, at least 70% of its students must have passed the applicable English SOL tests except at third and fifth grade where the requirement is 75%.~~

~~b. By the year ending in 2006, a combined pass rate of 60% of its students must have passed the SOL tests in the other three core academic areas.~~

~~c. In each academic area in which the pass rate is below the rate required to be rated Fully Accredited, the school's pass rate must have increased by at least 25 percentage points as compared to the pass rates on tests taken during the academic year ending in 1999.~~

~~To retain this rating, a school must continue to show annual improvement in each academic area in which the pass rate is below the rate required for full accreditation. This rating will cease to exist after the academic year ending in 2009.~~

~~7. 4. Conditionally Accredited. New schools that are comprised of students from one or more existing schools in the division will be awarded this status for one year pending an evaluation of the school's eligible students' performance on SOL tests or additional tests described in 8 VAC 20-131-110 B approved by the Board of Education to be rated Fully Accredited. This rating may also be awarded to a school that is being reconstituted in accordance with the provisions of 8 VAC 20-131-340 upon agreement by the Board of Education. A school awarded this rating under those circumstances will revert to a status of Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited by the end of the agreed upon term.~~

8 VAC 20-131-310. Action requirements for schools that are Accredited with Warning.

~~A. With such funds as are appropriated by the General Assembly, the Department of Education shall develop a school academic review process and monitoring plan designed to assist schools rated as Accredited with Warning. All procedures and operations for the academic review process shall be approved and adopted by the board.~~

B. Any school that is rated Accredited with Warning in English or mathematics ~~is expected to~~ shall adopt ~~an a research-based instructional method~~ *intervention* that has a proven track record of success at raising student achievement in those areas as appropriate.

C. The superintendent and principal shall certify in writing to the Board of Education that such ~~a method~~ *an intervention* has been adopted and implemented.

D. The board shall publish a list of recommended instructional ~~methods~~ *interventions*, which may be amended from time to time.

E. Adoption of instructional ~~methods~~ *interventions* referenced in subsections B and D of this section shall be funded by eligible local, state, and federal funds.

F. A three-year School Improvement Plan must be developed and implemented, based on the results of an academic review of each school that is rated Accredited with Warning upon receipt of notification of the awarding of this rating and receipt of the results of the academic review. The plan:

1. Shall be developed with the assistance of parents and teachers and made available to the public;
2. Must include the components outlined in subsection G of this section; and
3. Must be approved by the division superintendent and the local school board and be designed to assist the school in meeting the student achievement standard to be Fully Accredited as outlined in 8 VAC 20-131-300.

G. The improvement plan shall include the following:

1. A description of how the school will meet the ~~provisional accreditation benchmarks, or the~~ requirements to be Fully Accredited, for each of the years covered by the plan;
2. Specific measures for achieving and documenting student academic improvement;
3. A description of the amount of time in the school day devoted to instruction in the core academic areas;
4. Instructional practices designed to remediate students who have not been successful on SOL tests;
5. Intervention strategies designed to prevent further declines in student performance;
6. Staff development needed;
7. Strategies to involve and assist parents in raising their child's academic performance;
8. The need for flexibility or waivers to state or local regulations to meet the objectives of the plan; and
9. A description of the manner in which local, state, and federal funds are used to support the implementation of the components of this plan.

As part of its approval of the school improvement plan, the board may grant a local school board a waiver from the

requirements of any regulations promulgated by the board when such a waiver is available.

H. The school improvement plan and related annual reports submitted to the board shall provide documentation of the continuous efforts of the school to achieve the requirements to become rated Fully Accredited. The board shall adopt and approve all policies and formats for the submission of annual reports under this section. The reports shall be due no later than October 1 of the school year.

8 VAC 20-131-320. Provisional accreditation benchmarks. (Repealed.)

~~The board will set the minimum acceptable pass rates required for a school to achieve the rating of Provisionally Accredited/Meets State Standards in the academic years 1999-2003. These benchmarks are outlined in the appendix to these standards.~~

8 VAC 20-131-325. Recognitions and rewards for school accountability performance.

A. Schools may be recognized by the Board of Education in accordance with ~~procedures~~ *guidelines* it shall establish. Such recognition may include:

1. Public announcements recognizing individual schools;
2. Tangible rewards;
3. Waivers of certain board regulations;
4. Exemptions from certain reporting requirements; or
5. Other commendations deemed appropriate to recognize high achievement.

In addition to board recognition, local school boards shall adopt policies to recognize individual schools through public announcements, media releases, participation in community activities for input purposes when setting policy relating to schools and budget development, as well as other appropriate recognition.

B. A school that maintains a passing rate on SOL tests or other additional tests approved by the board as outlined in 8 VAC 20-131-110 B of ~~80% or above~~ *95% in the four core academic areas for two consecutive years* may, upon application to the Department of Education, receive a waiver from ~~some or all provisions of the following regulations and reporting requirements for a period of up to three years:~~

~~8 VAC 20-131-80. Instructional program in elementary schools. (clock hour requirement only)~~

~~8 VAC 20-131-90. Instructional program in middle schools. (clock hour requirement only)~~

~~8 VAC 20-131-100. Instructional program in secondary schools.~~

~~8 VAC 20-131-110. Standard and verified units of credit. (clock hour requirement only)~~

~~8 VAC 20-131-120. Summer school. (clock hour requirement only)~~

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~~8 VAC 20-131-130. Elective courses.~~

~~8 VAC 20-131-140. College preparation programs and opportunities for postsecondary credit.~~

~~8 VAC 20-131-150. Standard school year and school day.~~

~~8 VAC 20-131-190. Library media, materials and equipment.~~

~~8 VAC 20-131-200. Extracurricular and other school activities.~~

~~8 VAC 20-131-210. Role of the principal.~~

~~8 VAC 20-131-220. Role of professional teaching staff.~~

~~8 VAC 20-131-230. Role of support staff.~~

~~8 VAC 20-131-240. Administrative and support staff; staffing requirements.~~

annual accreditation. A school receiving such a waiver shall be Fully Accredited for a three-year period. However, such school shall continue to annually submit documentation in compliance with the preaccreditation requirements described in 8 VAC 20-131-280 F.

C. Schools may be eligible to receive the Governor's Award for Outstanding ~~Improvement~~ Achievement. This award will be given to schools in each classification defined in ~~8 VAC 20-131-280 B~~ rated below Fully Accredited that exceed the improvement levels defined in ~~8 VAC 20-131-320~~ by 10 percentage points or more in one year during the school years 2000-01 through 2002-03. In addition, any school that raises its rating from Accredited with Warning to Fully Accredited in one year will receive this award when it was 10 percentage points or more below the performance level to be rated Fully Accredited significantly increase the achievement of students within student subgroups in accordance with guidelines prescribed by the Board of Education.

8 VAC 20-131-330. Waivers.

Waivers of some of the requirements of ~~this chapter~~ these regulations may be granted by the Board of Education based on submission of a request from the division superintendent and chairman of the local school board. The request shall include documentation of the need for the waiver. In no event will waivers be granted to the requirements of Part III (8 VAC 20-131-30 et seq.) of ~~this chapter~~ these regulations.

8 VAC 20-131-340. Academic reviews, special provisions and sanctions.

A. ~~Beginning with the 2000-01 school year,~~ Schools rated Accredited with Warning must undergo an academic review in accordance with guidelines adopted by the board and prepare a school improvement plan as required by 8 VAC 20-131-310.

B. ~~The board may enact special provisions related to the administration and use of any SOL test or tests in a content area as applied to this chapter for any period during which the SOL content in that area is being revised and phased in.~~ Any school rated Accreditation Denied in accordance with 8 VAC 20-131-300 shall be subject to sanctions prescribed by the Board of Education and affirmed through a memorandum of understanding between the Board of Education and the local school board. The memorandum of understanding shall be entered into no later than 30 days after the opening of school.

The memorandum of understanding may include but not be limited to:

1. Submitting status reports detailing implementation of corrective actions to the Board of Education. The status reports shall be signed by the school principal, division superintendent, and the chair of the local school board. The Board of Education may require the school principal, division superintendent, and the chair of the local school board to appear before the board to present such status reports.

2. Undergoing an educational service delivery and management review. The Board of Education shall prescribe the content of such review and approve the reviewing authority retained by the school division.

3. Employing a turnaround specialist credentialed by the state to address those conditions at the school that may impede educational progress and effectiveness and academic success.

C. Any school rated Accreditation Denied shall provide parents of enrolled students and other interested parties with the following:

1. Written notice of the school's accreditation rating within 30 calendar days of the notification of the rating from the Department of Education;

2. A copy of the school division's proposed corrective action plan, including a timeline for implementation, to improve the school's accreditation rating; and

3. An opportunity to comment on the division's proposed corrective action plan.

Such public comment shall be received and considered by the school division prior to finalizing the school division's corrective action plan and memorandum of understanding with the Board of Education.

D. As an alternative to the memorandum of understanding outlined in subsection B of this section, a local school board may choose to enter into an agreement with the Board of Education to reconstitute a school rated Accreditation Denied. The reconstitution agreement may include any of the provisions of subsection B of this section along with one or more of the following actions:

1. Replacing all or a majority of the administrative staff and a substantial percentage of the instructional staff;

2. Hiring a private or nonprofit management firm from a Board of Education reviewed list; or

3. Converting the school to a charter school in accordance with § 22.1-212.6 of the Code of Virginia, with consideration given to collaboration with an institution of higher education or other suitable entity.

If a local school board chooses to reconstitute a school, it may apply for an accreditation rating of Conditionally Accredited as provided for in 8 VAC 20-131-300 D 6. The Conditionally Accredited rating may be extended for a period not to exceed three years if the school is making progress toward a rating of Fully Accredited in accordance with the terms of the

agreement with the Board of Education. The school will revert to a status of Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited by the end of the term of the agreement.

E. The local school board may choose to close a school rated Accreditation Denied or to combine such school with a higher performing school in the division.

F. A local school board that has any school with the status of Accreditation Denied shall annually report each school's progress toward meeting the requirements to be rated Fully Accredited to the Board of Education. The local board shall submit such report in a manner prescribed by the Board of Education no later than October 1 of each year. Such reports on each school's progress shall be included in the Board of Education's annual report on the condition and needs of public education to the Governor, and the General Assembly submitted on November 15 of each year.

G. G. Any school in violation of ~~this chapter~~ these regulations shall be subject to appropriate action by the Board of Education including, but not limited to, the ~~adjustment or withdrawal~~ withholding or denial of a school's accreditation.

H. A school's accreditation rating may be withheld by action of the Board of Education for any school found to be in violation of test security procedures pursuant to § 22.1-19.1 of the Code of Virginia.

I. The Board of Education may exercise its authority to seek school division compliance with school laws pursuant to relevant provisions of the Code of Virginia when any school within a division is rated Accreditation Denied.

VA.R. Doc. No. R05-142; Filed November 9, 2005, 9:54 a.m.



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Titles of Regulations: 9 VAC 5-20. General Provisions (Rev. D04) (amending 9 VAC 5-20-206).

9 VAC 5-40. Existing Stationary Sources (Rev. D04) (amending 9 VAC 5-40-300, 9 VAC 5-40-5060, 9 VAC 5-40-5200, 9 VAC 5-40-5700, 9 VAC 5-40-5720, 9 VAC 5-40-5750, 9 VAC 5-40-6970, 9 VAC 5-40-7050, 9 VAC 5-40-7120, 9 VAC 5-40-7140, 9 VAC 5-40-7210, 9 VAC 5-40-7240, 9 VAC 5-40-7250, 9 VAC 5-40-7260, 9 VAC 5-40-7270, 9 VAC 5-40-7300, 9 VAC 5-40-7330, 9 VAC 5-40-7360, 9 VAC 5-40-7800, 9 VAC 5-40-7880).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110 and 182 of the Clean Air Act; 40 CFR Part 51.

Public Hearing Date: January 12, 2006 - 10 a.m.
Public comments may be submitted until January 30, 2006.
(See Calendar of Events section for additional information)

Agency Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510, or e-mail gegraham@deq.virginia.gov.

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. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Purpose: The purpose of 9 VAC 5-20-206 is to list those areas in which additional emission standards are applicable in order to attain and maintain air quality standards that are designed for the protection of public health and welfare.

The purpose of the VOC emissions standards is to limit emissions of air pollution that contribute to ambient air concentrations of ground-level ozone to the level necessary for (i) the protection of public health and welfare and (ii) the attainment and maintenance of the air quality standards.

These amendments are being made to modify the VOC and NO_x emission control areas so that they include all of the areas that have been designated as nonattainment, thereby extending to those areas the benefit of those VOC emission standards that are designed to limit ground-level ozone formation, thereby better protecting the public health and welfare in those areas.

Substance: The VOC and NO_x emissions control areas designated in 9 VAC 5-20-206 are being amended so that those regulations that are used to enforce control measures designed to attain the ozone air quality standard are implemented within the new ozone nonattainment areas. A new Fredericksburg VOC and NO_x Emissions Control Area is being created that consists of the County of Spotsylvania and the City of Fredericksburg. The Richmond VOC and NO_x Emissions Control Areas are being expanded to include the County of Prince George and the City of Petersburg. The Hampton Roads VOC and NO_x Emissions Control Areas are being expanded to include the counties of Gloucester and Isle of Wight.

Many of the Chapter 40 VOC emission standards will be extended into the new eight-hour nonattainment areas automatically when the VOC emissions control areas in 9 VAC 5-20-206 are amended. For new affected facilities subject to these rules, compliance with the VOC emission standards is automatically required by 9 VAC 5-40-20 to be achieved no later than 90 days after the effective date of the amendment except for sources that require certain physical or process changes to comply, in which case compliance is required no later than one year after the effective date of the amendment. These automatically extended rules include:

Article 5 Synthesized Pharmaceutical Products Manufacturing Operations

Article 6 Rubber Tire Manufacturing Operations

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- Article 11 Petroleum Refinery Operations
- Article 24 Solvent Metal Cleaning Operations Using Non-Halogenated Solvents
- Article 25 Volatile Organic Compound Storage and Transfer Operations
- Article 26 Large Appliance Coating Application Systems
- Article 27 Magnet Wire Coating Application Systems
- Article 28 Automobile and Light Duty Truck Coating Application Systems
- Article 29 Can Coating Application Systems
- Article 30 Metal Coil Coating Application Systems
- Article 31 Paper and Fabric Coating Application Systems
- Article 32 Vinyl Coating Application Systems
- Article 33 Metal Furniture Coating Application Systems
- Article 34 Miscellaneous Metal Parts and Products Coating Application Systems
- Article 35 Flatwood Paneling Coating Application Systems
- Article 37 Petroleum Liquid Storage and Transfer Operations
- Article 39 Asphalt Paving Operations

Other Chapter 40 regulations are being amended to apply (or not apply) within the appropriate VOC emissions control areas:

Chapter 40, Article 4 is being amended to ensure that VOC Reasonable Available Control Technique (RACT) is not automatically required of all large VOC sources in the new areas that were included in Richmond VOC Emissions Control Area to make it correspond with the expanded Richmond (marginal) 8-hour Ozone Nonattainment Area.

Chapter 40, Article 36 is being amended to provide exemptions for small publication and packaging printing rotogravure, and flexographic printing operations with a potential to emit less than 100 tons of VOC per year within all VOC emissions control areas other than the Northern Virginia VOC Emissions Control Area instead of just in the Richmond and Hampton Roads VOC Emissions Control Areas.

Chapter 40, Article 42 (Portable Fuel Containers), Article 48 (Mobile Equipment Repair and Refinishing), Article 49 (Architectural and Industrial Maintenance Coatings), and Article 50 (Consumer Products) are being amended so that the provisions also apply in the Richmond VOC Emissions Control Area and in the new Fredericksburg VOC Emissions Control Area instead of just in the Northern Virginia VOC Emissions Control Area.

Chapter 40, Article 53 is being amended to apply to lithographic printing operations in all VOC emissions control areas instead of just in the Northern Virginia and Richmond VOC Emissions Control Areas. The regulation is also being amended to provide exemptions for small facilities with a potential to emit less than 100 tons of VOC per year in the newly applicable VOC emissions control areas (i.e. the

Hampton Roads, Western and Fredericksburg VOC Emissions Control Areas).

The 90-day/one-year compliance schedule of 9 VAC 5-40-20 also applies to new affected facilities that are being made subject to VOC emission standards under Article 36. Persons affected by the extension of the provisions of Articles 42, 48, 49, and 50 to the Richmond and Fredericksburg VOC Emission Control Areas must comply by January 1, 2008. Compliance for affected facilities now subject to VOC emission standards under Article 53 will be required no later than one year after the effective date of the amendment.

Issues: Public: The primary advantage to the public is that the adoption of these regulations will significantly decrease emissions of VOCs and the resultant formation of ground-level ozone within the new eight-hour ozone nonattainment areas, thus benefiting public health and welfare. The regulated community may suffer some adverse financial impact as a result of these amendments. There may be some facilities that will have to install or upgrade emissions control equipment. Some gas stations will have to install and test vapor recovery systems. There will be some additional emission control requirements and increased costs associated with the manufacture and distribution of compliant coatings and consumer products. These increased costs may be passed on to the public in the form of price increases.

Department: The department will benefit from a better understanding of air emissions from these areas, and will benefit from more accurate long- and short-term air quality planning though the state overall. There is a disadvantage to the department in that more sources will have to be inspected for noncompliant products, resulting in an increased workload.

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 State Air Pollution Control Board (the board) proposes to revise Chapters 20 and 40 of the Regulations for the Control and Abatement of Air Pollution (9 VAC 5-20 and 9 VAC 5-40). Major changes include:

1. The volatile organic compounds (VOC) and NO_x emission control areas designated in 9 VAC 5-20-206 will be expanded in responding to the expansion of the new 8-hour ozone nonattainment areas. The new Fredericksburg VOC and NO_x Emission Control Area is established that consists of the County of Spotsylvania and the City of Fredericksburg. The Richmond VOC and NO_x Emission

Control Area is being expanded to include the County of Prince George and the City of Petersburg. The Hampton Roads VOC and NO_x Emission Control Area is being expanded to include the counties of Gloucester and Isle of Wight.

2. Some regulatory rules in Chapter 40 of the Regulations for the Control and Abatement of Air Pollution (regulations) that currently apply to certain emission control areas will be expanded to other areas. Specifically, Article 42 (Portable Fuel Containers), Article 48 (Mobile Equipment Repair and Refinishing), Article 49 (Architectural and Industrial Maintenance Coatings), and Article 50 (Consumer Products), which currently apply in the Northern Virginia Emission Control Area only, will be expanded to apply in the Richmond and Fredericksburg areas as well. Article 53 (Lithographic Printing) will be expanded to apply in all VOC emission control areas instead of just the Northern Virginia and Richmond areas.

3. The board also proposes to amend some of the Chapter 40 rules that apply to certain VOC and NO_x emission control areas to manage the extension of applicability of these provisions with coherence and consistency. For example, Article 4 (General Process Operations) is being amended to ensure that VOC Reasonable Available Control Technique (RACT) is not required from large VOC sources in the newly added areas within the Richmond VOC Emissions Control Area. Article 36 (Packaging and Publishing Rotogravure Printing, and Flexographic Printing) is being amended to add appropriate exemptions for small facilities in those VOC emissions control areas that currently have no such exemptions. Article 37 (Storage or Transfer of Petroleum Liquids) is being amended to remove applicability redundancies resulting from this change and a previous amendment that added the Western VOC Emissions Control Areas.

Estimated economic impact. Ground-level or "bad" ozone is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen (NO_x) and volatile organic compounds (VOC) in the presence of sunlight. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO_x and VOC.

The federal Clean Air Act requires the Environmental Protection Agency (EPA) to prescribe primary and secondary air quality standards to protect public health and public welfare, respectively, for each air pollutant for which air quality criteria were issued before the enactment of the Clean Air Act in 1970. These standards are known as the National Ambient Air Quality Standards (NAAQS). Each state is required to adopt and submit to the EPA a plan (the state implementation plan or SIP) that provides for the implementation, maintenance, and enforcement of NAAQS within each air quality control region in the state.

Areas that do not meet the ozone NAAQS are designated as ozone nonattainment areas as opposed to attainment or unclassifiable areas. Nonattainment areas are further classified as marginal, moderate, serious, severe, and

extreme, and are subject to more stringent measures as the classification moves from marginal nonattainment to extreme nonattainment.¹ The state regulations establish VOC and NO_x emissions control areas to provide the legal mechanism to define the geographic areas in which Virginia implements control measures to attain and maintain the air quality standards for ozone. The emissions control areas may or may not coincide with the nonattainment areas, depending on the necessity of the planning requirements.

The original ozone air quality standard was a 1-hour standard. Three VOC and NO_x emissions control areas, Northern Virginia, Hampton Roads, and Richmond, were established in Virginia in order to implement control measures to attain the 1-hour ozone air quality standard. On April 15, 2004, EPA promulgated its decision as to the 8-hour ozone NAAQS and some of the planning requirements. The new 8-hour ozone nonattainment areas became effective on June 15, 2004, together with the 1-hour standard. The 8-hour standard replaced the 1-hour standard on June 15, 2005. Accordingly, the board promulgated the state 8-hour ozone nonattainment areas that took effect on August 25, 2004. In order to implement control measures to attain and maintain the air quality standards for ozone, the board proposes to expand the VOC and NO_x emissions control areas (9 VAC 5-20-206) and extend the geographic applicability of the VOC and NO_x regulatory rules in Chapter 40 of the regulations into the new 8-hour nonattainment areas.²

The proposed regulation will expand the VOC and NO_x emission control areas designated in 9 VAC 5-20-206. The new Fredericksburg VOC and NO_x Emission Control Area is being established that consists of the County of Spotsylvania and the City of Fredericksburg. The Richmond VOC and NO_x Emission Control Area is being expanded to include the County of Prince George and the City of Petersburg, and the Hampton Roads VOC and NO_x Emission Control Area is being expanded to include the counties of Gloucester and Isle of Wight. Most of the Chapter 40 VOC emission standards apply to VOC and NO_x emission control areas designated in 9 VAC 5-20-206 and will be extended automatically to include these newly added areas when the VOC emissions control areas in 9 VAC 5-20-206 are amended. Part A of Table 1 provides a list of these Chapter 40 VOC rules.

¹ The Richmond Ozone Nonattainment Area was reclassified from moderate to marginal on November 3, 2004, which was effective since January 1, 2005, based on a decision by EPA.

² The western Virginia Emission Control Area, which was designated nonattainment for the 8-hour ozone standard, was added to the list of VOC and NO_x Emissions Control Area in March 2004 (Rev. N04), prior to the EPA's final decision regarding the 8-hour nonattainment areas.

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Table 1. Proposed Change in Applicability of the Regulatory Rules in Chapter 40

	#	Source Type	Article #	Applicability
A	1	Synthesized pharmaceutical product manufacturing	5	VOC emission control areas designated in 9 VAC 5-20-206 (some with exemption), applicability automatically expanded after 9VAC 5-20-206 is amended.
	2	Rubber tire manufacturing operations	6	
	3	Petroleum refineries operations	11	
	4	Solvent metal cleaning operations	24	
	5	VOC storage and transfer operations	25	
	6	Large appliance coating operations	26	
	7	Magnet wire coating operations	27	
	8	Automobile and light duty truck coating operations	28	
	9	Can coating operations	29	
	10	Metal coil coating operations	30	
	11	Paper and fabric coating operations	31	
	12	Vinyl coating operations	32	
	13	Metal furniture coating operations	33	
	14	Miscellaneous metal parts coating operations	34	
	15	Flatwood paneling coating operations	35	
	16	Packaging and publishing rotogravure printing, and flexographic printing	36	
	17	Petroleum Liquid Storage and Transfer Operations	37	
	18	Asphalt paving operations.	39	
B	19	Portable fuel containers	42	Currently apply to the Northern Virginia area (with exemption), will be expanded to the Richmond and Fredericksburg areas.
	20	Mobile equipment repair and refinishing	48	
	21	Architectural and Industrial Maintenance Coatings	49	
	22	Consumer product	50	
C	23	Lithographic printing	53	Currently apply to the Northern and Richmond areas (with exemption), will be expanded to all VOC areas

As a result of the amendment of 9 VAC 5-20-206, facilities in the newly added VOC control areas including Spotsylvania County, Prince George County, Gloucester County, Isle of Wight County and the cities of Fredericksburg and Petersburg (newly added VOC control areas), will be required to comply with the corresponding VOC rules no later than 90 days after the effective date of the amendment. Exceptions are given for sources that require certain physical or process changes to comply, in which case compliance is required no later than one year after the effective date of the amendment. Some facilities will have to install or upgrade emissions control equipment. Some gas stations will have to install and test vapor recovery systems. There will be some additional emission control requirements and increased costs associated with the manufacture and distribution of compliant coatings and consumer products.

The fifth column of Table 2 shows the projected source specific costs in the newly affected areas for some of the source types listed in part A of Table 1. According to Virginia Department of Environmental Quality, source-specific cost estimates were not determined for all the applicable source types because no facilities were identified for some of the source types. And, the source specific

costs provided in Table 2 are the maximum possible costs in the newly applicable areas, while the actual costs will depend on the size, type, and location of the facilities, the controls required, and how many of the control requirements have been already installed currently. Specifically, the projected total cost will be as much as \$65,000 to bring the facilities in synthesized pharmaceutical manufacturing into compliance. For petroleum transfer and storage operations including Stage I requirements for any applicable gasoline dispensing facilities, the projected cost could be as much as \$5,600,000 to bring all of the identified and unidentified facilities into compliance. Implementing Stage II requirements, in addition to the other petroleum transfer and storage operations requirements, at gasoline dispensing facilities in Prince George County and Petersburg may cost as much as \$200,000.³ The projected cost will be \$56,000 for paper and fabric coating operations, and \$110,000 for solvent metal cleaning operations. For asphalt paving operations, a total cost of \$39,000 is estimated for bringing the known facilities and any

³ Stage II regulations only apply within Northern Virginia and Richmond VOC Emission Control Areas. (9 VAC 5-40-5200)

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additional unidentified facilities into compliance. Large facilities in flexographic, packaging rotogravure and publication rotogravure printing with a potential to emit 100 tons or more of VOC per year will cost as much as \$73,000 to comply in the new added VOC control areas.

For those source types with no source specific costs available, the average cost per ton of VOC removal will be \$115,000 for miscellaneous parts coating operations and \$2,400 for the other source types (sixth column of Table 2), if any such facilities exist. The actual figure for each facility will vary widely depending on the source type, size, location, and controls required.

Table 2. Projected Cost of Implementing the Chapter 40 Rules in the Newly Applicable Areas

	#	Source Type	Article #	Projected Total Cost (\$)	Cost per Ton of Emission Reductions (\$/ton)
A	1	Synthesized pharmaceutical product manufacturing	5	65,000	2,400
	2	Rubber tire manufacturing operations	6		2,400
	3	Petroleum refineries operations	11		2,400
	4	Solvent metal cleaning operations	24	110,000	1,400
	5	VOC storage and transfer operations	25		2,400
	6	Large appliance coating operations	26		2,400
	7	Magnet wire coating operations	27		2,400
	8	Automobile and light duty truck coating operations	28		2,400
	9	Can coating operations	29		2,400
	10	Metal coil coating operations	30		2,400
	11	Paper and fabric coating operations	31	56,000	2,400
	12	Vinyl coating operations	32		2,400
	13	Metal furniture coating operations	33		2,400
	14	Miscellaneous metal parts coating operations	34		115,000
	15	Flatwood paneling coating operations	35		2,400
		16	Packaging and publishing rotogravure printing, and flexographic printing	36	73,000
17		Petroleum Liquid Storage and Transfer Operations	37	Stage I: 5,600,000; Stage II: 200,000 ⁴	2,400
18		Asphalt paving operations	39	39,000	121
B	20	Portable fuel containers	42	13,000	450
	21	Mobile equipment repair and refinishing	48	88,000	1,534
	22	Architectural and Industrial Maintenance Coatings	49	1,100,000	6,400
	23	Consumer products	50	84,000	800
C	24	Lithographic printing	53	1,300,000	2,000

⁴ Petroleum transfer and storage operations, including Stage I requirements for any applicable gasoline dispensing facilities could cost as much as \$5,600,000; Implementing Stage II requirements, in addition to the other petroleum transfer and storage operations requirements, at gasoline dispensing facilities in Prince George County and Petersburg may cost as much as \$200,000 more. (Stage II regulations only apply within Northern Virginia and Richmond VOC Emission Control Areas)

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The proposed regulation will also expand the applicability of some Chapter 40 rules from the Northern Virginia VOC Emissions Control Area to the Richmond and Fredericksburg VOC areas in addition to the Northern Virginia area. These rules, as listed in part B of Table 2, include Article 42 (Portable Fuel Containers), Article 48 (Mobile Equipment Repair and Refinishing), Article 49 (Architectural and Industrial Maintenance Coatings), and Article 50 (Consumer Products). Owners and operators of facilities that manufacture or distribute portable fuel containers, architectural and industrial maintenance coatings⁵ and certain categories of consumer products that contain VOC⁶ for sale within Spotsylvania County, Charles City County, Chesterfield County, Hanover County, Henrico County, Prince George County, and the cities of Fredericksburg, Colonial Heights, Hopewell, Richmond, and Petersburg will be affected. According to DEQ, the total costs associated with expanding the applicability of the VOC standards are predicted to be up to \$84,000 for consumer products, and \$1,100,000 for architectural, industrial and maintenance coating. The costs to the manufacturers of expanding the applicability of spillage requirements for portable fuel containers into the Richmond and Fredericksburg VOC Emissions Control Areas are expected to be up to \$13,000. And the total cost associated with expanding the applicability of the VOC limits for mobile repair and refinishing operations to facilities in the Fredericksburg and Richmond VOC Emissions Control Areas could be as much as \$88,000.

The Lithographic Printing regulation (Article 53) in Chapter 40 of the regulations, which currently apply only within Northern Virginia and Richmond VOC Emission Control Areas, will be expanded to apply in all VOC emission control areas. Owners and operators of lithographic printing facilities with a potential to emit 100 tons of VOC per year or more may be affected in Spotsylvania County, Prince George County, Gloucester County, Isle of Wight County, James City County, York County, Botetourt County, Frederick County, Roanoke County and the cities of Fredericksburg, Petersburg, Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg. The projected total cost to bring the identified lithographic printing facilities into compliance could be as much as \$1,300,000. The actual figure, again, will vary widely depending on the size and location of the facility, the controls required, and how many of the requirements have been installed currently.

The board also proposes to amend some of the Chapter 40 rules that apply to certain VOC and NO_x emission control areas to manage the extension of applicability with coherence and consistency. For example, 9 VAC 5-40-300 (Article 4, General Process Operations) is being amended to ensure that RACT is not required from large VOC sources in the newly added localities in the Richmond VOC Emissions Control Area -- Prince George Country and Petersburg City.

⁵ Architectural and industrial maintenance coatings include, but not limited to, paints, varnishes, sealers, primers, and stains.

⁶ Examples of consumer products that contain VOC are adhesives, air fresheners, deodorants, cleaning supplies, degreasers, pesticides, and hair products.

Article 4 currently applies to the Northern Virginia and Richmond Emissions Control Areas designated in 9 VAC 5-20-206. With the addition of Prince George County and Petersburg to the Richmond VOC Emissions Control Area, VOC RACT would normally automatically apply to all large existing sources in the County of Prince George and the City of Petersburg. However, the Richmond Ozone nonattainment Area was reclassified from moderate to marginal on November 3, 2004, and this reclassification became effective from January 1, 2005. According to DEQ, EPA only requires existing sources in nonattainment areas that are classified as moderate and above to implement VOC RACT. Since currently there is no EPA requirement that requires Virginia to do VOC RACT in these newly added areas, Article 4 is being amended to ensure that large existing facilities in Prince George County and Petersburg city will not be automatically required to do VOC RACT before the EPA publishes new guidance on the requirements for nonattainment areas. This amendment will not change the requirements for facilities in the newly added areas and therefore will not have any economic impact.

Article 36 (Packaging and Publishing Rotogravure Printing, and Flexographic Printing) will be amended to add appropriate exemptions for small facilities with a potential to emit less than 100 tons of VOC per year in the Western Virginia Area (Botetourt County, Frederick County, Roanoke County and the cities of Roanoke, Salem and Winchester). Article 36 applies to all the VOC emission control areas designated in 9 VAC 5-20-206 with small facilities exempted from compliance. According to DEQ, currently the small facilities in the Western Virginia Area with a potential to emit less than 100 tons of VOC per year are not required to comply but were not exempted from compliance when the Western Virginia Emission Control Area was added to the list of VOC and NO_x emissions control areas in March 2004. The proposed change of the language will only technically exempt compliance of these facilities without causing any economic effect.

In sum, the expansion of the applicability of the Chapter 40 rules listed in Table 1 will cause a projected total cost of as much as \$8,728,000, not including the potential cost for those categories whose projected source specific costs are not available. The actual cost, however, may be only a fraction of this number depending on how many of the requirements have been fulfilled currently. The increased costs will reduce profit for the businesses and may be passed on to the public in the form of price increases.

On the other hand, the proposed change in the extension of applicability will significantly decrease emissions of VOCs and therefore reduce the level of ground level ozone within the new eight-hour ozone nonattainment areas, thus benefiting public health and welfare. According to EPA, exposure to ozone at the ground level can cause a number of respiratory problems such as irritation of the respiratory system, reduced operation of the lungs, inflammation and damage to the cells lining the lungs, and aggravation of existing lung problems. Repeated ozone exposure can cause permanent damage to children's developing lungs and accelerate the decline in lung function with age in adults. Thus, reducing the level of ozone will provide economic benefits in the future in terms of

respiratory health problems and fatalities prevented (reflected in lower health care and other costs) and increased productivity. Levy, Carrothers, Tuomisto, Hammitt and Evans (2001) studied the public health benefits of reduced ozone concentrations in Houston, Texas, and estimated that the annual monetary value of health benefits from reducing ozone concentrations in Houston is approximately \$10 per person per microgram per cubic meter (24-hour average) reduced (95% confidence interval, \$0.70-\$40). In a study of ozone reductions in the Los Angeles Air Basin, Smith, Sieg, Banzhaf and Walsh (2003) indicated that the estimated annual general equilibrium benefits in 2000 and 2010 associated with the ozone reductions due to continuing the policies mandated under the 1990 Clean Air Act Amendments range from \$33 to \$2,400 annually per household (in 1990 dollars).

Table 3 shows the estimated VOC emission reductions for some of the source types provided by DEQ. The estimated VOC emission reductions for the other source types are not available because there is no inventory data. The proposed regulatory action will reduce VOC emissions by as much as 3,916 tons per year. Since the relationship between ozone formation and VOC and NOx emissions is nonlinear and must be modeled, it is not possible to predict local changes in the maximum ambient air concentration of ozone without extensive and time-consuming modeling. Thus the total benefits resulting from these VOC reductions cannot be calculated in monetary terms. Therefore it is unknown whether the total benefit would exceed the maximum estimated total cost of the VOC emission reductions as proposed.

Table 3. Estimated VOC Emission Reductions in the Newly Applicable Areas

Source Type	Article #	Estimated Emission Reductions in the Newly Affected Areas (Tons/Year)
Synthesized pharmaceutical product manufacturing	5	27
Solvent metal cleaning operations	24	79
Paper and fabric coating operations	31	23
Packaging and publishing rotogravure printing, and flexographic printing	36	37
Petroleum Liquid Storage and Transfer Operations	37	2412 ⁷
Asphalt Paving	39	322
Portable Fuel Containers	42	28
Mobile Equipment Repair and Refinishing	48	57
Architectural and Maintenance Coatings	49	178
Consumer Products	50	105
Lithographic printing	53	648

Businesses and entities affected. The proposed regulation will affect the owners and operators of the facilities in the categories listed in Table 1 in the newly affected areas. For example, some facilities will have to install or upgrade emissions control equipment. Some gas stations will have to install and test vapor recovery systems. Manufacturers of portable fuel containers, architectural coatings and consumer products will have to ensure that the products they produce for sale in the newly applicable areas comply with the VOC limits specified in the corresponding regulations. Distributors

and retail outlets are required to distribute or sell the products that meet with the VOC standards. Table 4 shows the number of businesses that might be affected for some of the source types.⁸ According to DEQ, the number of businesses that are going to be affected is not available for the other source types due to lack of inventory and size of the businesses. Customers will also be affected because part of the increased cost will be passed on to them in the form of price increases.

⁷ As much as 2,330 tons per year from the various petroleum liquid storage and transfer operations in the affected areas, excluding Stage II gasoline dispensing requirements. As much as 82 tons per year from implementing Stage II gasoline dispensing requirements in Petersburg and Prince George County.

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Table 4. Number of Businesses to be Affected

Source Type	Article #	Number of Businesses to be Affected
Synthesized pharmaceutical product manufacturing	5	1
Solvent metal cleaning operations	24	significant but unknown number ⁹
Paper and fabric coating operations	31	1
Packaging and publishing rotogravure printing, and flexographic printing	36	7
Petroleum Liquid Storage and Transfer Operations	37	88 ¹⁰
Asphalt paving operations.	39	4
Portable fuel containers	42	Manufacturers: 7;
Architectural and Industrial Maintenance Coatings	49	Other facilities: 1081 ¹¹
Consumer product	50	
Mobile equipment repair and refinishing	48	114 ¹²
Lithographic printing	53	7

Localities particularly affected. The proposed regulation will only affect localities in the newly applicable areas. Specifically, facilities in part A of Table 1 in Spotsylvania County, Prince George County, Gloucester County, Isle of Wight County and the cities of Fredericksburg and Petersburg will be affected. Facilities in part B of Table 1 in Richmond and Fredericksburg VOC Emission Control Areas will be required to comply with the corresponding regulations. Also affected are facilities in Lithographic printing in all VOC emission control areas other than Northern Virginia.

Projected impact on employment. The proposed regulation is likely to have a negative impact on employment. The increased cost for the businesses in the newly applicable areas to comply with the regulations will reduce their profits and could result in people being laid off at the facilities. There might also be a migration from the facilities in the newly applicable areas to the current applicable areas, since those in the newly applicable areas will lose their current advantage due to noncompliance. Moreover, firms may choose to move to or locate in localities that remain attainment areas.

Effects on the use and value of private property. The proposed regulation is likely to have a negative impact on

the use and value of private properties in the newly applicable areas because of the increased costs and reduced profits for the businesses affected. On the other hand, the proposed regulation will significantly reduce the amount of ground level ozone in the newly applicable areas and therefore may have a positive impact on the value of the residential properties in these areas.

Small businesses: costs and other effects. Small businesses in the newly applicable areas, if not exempted, will be required to comply with the corresponding rules and therefore incur an increase in cost. For example, gas stations in the newly applicable areas will be affected mainly by three of the Chapter 40 regulations. Firstly, gas stations in Prince George County and Petersburg City will be required to install Stage II vapor recovery system, as a result of the automatic expansion of applicability of Article 37 to the newly applicable VOC control areas. The estimated cost of installing the Stage II controls will be between \$24,000 and \$41,000 for an existing service station.¹³ Secondly, gas stations in Richmond and Fredericksburg VOC Emission Control Areas that sell portable fuel containers will be required to sell only certain types that meet with the VOC limits in the Portable Fuel Containers Regulations as a result of expansion of the applicability of Article 42. According to Virginia Petroleum

⁹ There are likely to be a significant but unknown number of businesses with small, unregistered solvent cleaning operations associated with other business operations such as automobile repair shops, metal-working shops, and certain types of coating operations, which may be affected.

¹⁰ This is the number as of 2001. 55 gasoline dispensing stations were registered in Spotsylvania County, Gloucester County, Isle of Wight County and the city of Fredericksburg, 23 gasoline dispensing stations registered in Prince George County and the city of Petersburg.

¹¹ Other facilities include distributors, retail outlets and contractors. This number is provided by DEQ by searching the Virginia Employment Commission database.

¹² Provided by DEQ by searching the Virginia Employment Commission database.

Council, gas cans that "lock in" vapors cost about \$17-20 and a standard portable gas container may cost \$3-5. Since the service stations only sell the containers infrequently, this impact will not be big. Finally, as a result of expanded applicability of Article 50, convenience stores in the Richmond and Fredericksburg VOC Emission Control Areas that sell the consumer products will be required to sell only those that meet with the VOC standards in the

Consumer Product Regulation. However, part of the price difference will be passed on to the consumers.

Table 5 shows the number of small businesses that are going to be affected in some of the source types. According to DEQ, the number of small businesses that are going to be affected is not available for the other source types due to lack of inventory and size of the businesses.

Table 5. Number of Small Businesses to be Affected

Source Type	Article #	Number of Small Businesses to be Affected
Synthesized pharmaceutical product manufacturing	5	1
Solvent metal cleaning operations	24	significant but unknown number ¹⁴
Paper and fabric coating operations	31	1
Packaging and publishing rotogravure printing, and flexographic printing	36	7
Petroleum Liquid Storage and Transfer Operations	37	88 ¹⁵
Asphalt paving operations.	39	4
Portable fuel containers	42	Manufacturers: 7;
Architectural and Industrial Maintenance Coatings	49	Other facilities: 1081 ¹⁶
Consumer product	50	
Mobile equipment repair and refinishing	48	114 ¹⁷
Lithographic printing	53	7

By the Clean Air Act, once the nonattainment areas are defined, each state is obligated to submit a SIP demonstrating the control measures in areas designated as nonattainment under the 8-hour ozone standard. The control measures contained in SIPs usually fall into two categories: those mandated by the Act or federal government and those selected at the discretion of the state. The proposed regulatory change is being initiated to meet a specific requirement of the Clean Air Act, where the state does not have discretion. Moreover, as an alternative regulatory change, a cap-and-trade program will require more resources and time to develop and implement. So there will be no alternative method that will have a smaller adverse impact.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

Currently, Chapter 40 of the Regulations for the Control and Abatement of Air Pollution contains a number of rules used to enforce control measures designed to attain and maintain the ozone air quality standard. The geographic applicability of these rules is defined by establishing VOC and NO_x emissions control areas (in a list located in 9 VAC 5-20-206 of Chapter 20).

These rules are being expanded into the new eight-hour ozone nonattainment areas. Accordingly, 9 VAC 5-20-206 is being amended to establish new Fredericksburg NO_x and VOC Emissions Control Areas and to expand the Richmond and Hampton Roads VOC and NO_x Emissions Control Areas to include those counties and cities in the corresponding new eight-hour ozone nonattainment areas that were not previously listed in 9 VAC 5-20-206.

¹⁴ There are likely to be a significant but unknown number of businesses with small, unregistered solvent cleaning operations associated with other business operations such as automobile repair shops, metal-working shops, and certain types of coating operations, which may be affected.

¹⁵ This is the number as of 2001. 55 gasoline dispensing stations were registered in Spotsylvania County, Gloucester County, Isle of Wight County and the city of Fredericksburg, 23 gasoline dispensing stations registered in Prince George County and the city of Petersburg.

¹⁶ Other facilities include distributors, retail outlets and contractors. This number is provided by DEQ by searching the Virginia Employment Commission database.

¹⁷ Provided by DEQ by searching the Virginia Employment Commission database.

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Most of these Chapter 40 rules contain, in the applicability section, the following statement: "The provisions of this article apply to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9 VAC 5-20-206." Therefore the provisions of these rules will automatically apply within all of the new VOC emissions control areas.

Some Chapter 40 rules (specifically, Articles 4, 36, 37 and 53) have provisions that apply only to certain existing VOC and NO_x emissions control areas. Each of these rules are being amended individually in order to manage the extension of applicability of these provisions to the additional VOC and NO_x emission control areas with coherence and consistency. Article 4 is being amended to ensure that VOC RACT is not required from large VOC sources in the new areas within the expanded Richmond VOC Emissions Control Area. Article 36 (Packaging and Publishing Rotogravure Printing, and Flexographic Printing) is being amended to add appropriate exemptions for small facilities in those VOC emissions control areas that currently have no such exemptions. Article 37 (Storage or Transfer of Petroleum Liquids) is being amended to remove applicability redundancies resulting from this change and a previous amendment that added the Western VOC Emissions Control Area. Article 53 (Lithographic Printing) is being amended to apply in all VOC emissions control areas instead of just in the Northern Virginia and Richmond VOC Emissions Control Areas. Article 53 is also being amended to provide appropriate exemptions for small facilities in the newly applicable VOC emissions control areas.

Other Chapter 40 regulations were originally adopted to apply only within the Northern Virginia VOC Emissions Control Area. Most of these rules will be expanded to apply in the Richmond and Fredericksburg eight-hour ozone nonattainment areas. Accordingly, the following Chapter 40 regulations are being amended to apply within the Richmond and Fredericksburg VOC Emissions Control Areas in addition to the Northern Virginia VOC Emissions Control Area: Article 42 (Portable Fuel Containers), Article 48 (Mobile Equipment Repair and Refinishing), Article 49 (Architectural and Industrial Maintenance Coatings), and Article 50 (Consumer Products).

For most of the facilities that will be subject to new or more stringent VOC emission standards as a result of this amendment, compliance is automatically required by 9 VAC 5-40-20 to be achieved either within 90 days or one year after the effective date of the amendment, depending on whether or not the source is required to make certain physical or process changes to the facility to comply. For affected facilities that will be subject to new or more stringent VOC emission standards under Article 53, compliance will be required no later than one year after the effective date of the amendment. Persons affected by the extension of the provisions of Articles 42, 48, 49 and 50 to the Richmond and Fredericksburg VOC Emission Control Areas must comply by January 1, 2008.

PART II. AIR QUALITY PROGRAMS.

9 VAC 5-20-206. Volatile organic compound and nitrogen oxides emissions control areas.

Emissions control areas are geographically defined below by locality for the pollutants indicated.

1. Volatile organic compounds.

a. Northern Virginia Emissions Control Area.

Arlington County	Alexandria City
Fairfax County	Fairfax City
Loudoun County	Falls Church City
Prince William County	Manassas City
Stafford County	Manassas Park City

b. Fredericksburg Emissions Control Area.

Spotsylvania County	Fredericksburg City
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~~b~~. c. Richmond Emissions Control Area.

Charles City County	Colonial Heights City
Chesterfield County	Hopewell City
Hanover County	Petersburg City
Henrico County	Richmond City
Prince George County	

~~e~~. d. Hampton Roads Emissions Control Area.

Gloucester County	Norfolk City
Isle of Wight County	Poquoson City*
James City County*	Portsmouth City
York County*	Suffolk City
Chesapeake City	Virginia Beach City
Hampton City	Williamsburg City
Newport News City	

~~d~~. e. Western Virginia Emissions Control Area.

Botetourt County	Roanoke City
Frederick County	Salem City
Roanoke County	Winchester City

2. Nitrogen oxides.

a. Northern Virginia Emissions Control Area.

Arlington County	Alexandria City
Fairfax County	Fairfax City
Loudoun County	Falls Church City
Prince William County	Manassas City
Stafford County	Manassas Park City

b. Fredericksburg Emissions Control Area.

Spotsylvania County	Fredericksburg City
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~~b~~. c. Richmond Emissions Control Area.

Charles City County	Colonial Heights City
Chesterfield County	Hopewell City
Hanover County	Petersburg City
Henrico County	Richmond City
Prince George County	

6- d. Hampton Roads Emissions Control Area.

Gloucester County	Norfolk City
Isle of Wight County	Poquoson City
James City County	Portsmouth City
York County	Suffolk City
Chesapeake City	Virginia Beach City
Hampton City	Williamsburg City
Newport News City	

6- e. Western Virginia Emissions Control Area.

Botetourt County	Roanoke City
Frederick County	Salem City
Roanoke County	Winchester City

PART II.
EMISSION STANDARDS.

ARTICLE 4.
EMISSION STANDARDS FOR GENERAL PROCESS
OPERATIONS (RULE 4-4).

9 VAC 5-40-300. Standard for volatile organic compounds.

A. No owner or other person shall cause or permit to be discharged from any affected facility any volatile organic compound emissions in excess of that resultant from using reasonably available control technology.

B. The provisions of this section apply to all facilities that (i) are within a stationary source in the Northern Virginia or Richmond Emissions Control Area (see 9 VAC 5-20-206) and (ii) are within a stationary source that has a theoretical potential to emit 25 tons per year or greater in the Northern Virginia Emissions Control Area or 100 tons per year or greater in the Richmond Emissions Control Area. *For the purposes of this section only, the Richmond Emissions Control Area does not include Prince George County and Petersburg City.* Theoretical potential to emit shall be based on emissions at design capacity or maximum production and maximum operating hours (8,760 hours/year) before add-on controls, unless the facility is subject to state and federally enforceable permit conditions which limit production rates or hours of operation. Emissions from all facilities, including facilities exempt from any other emission standard for volatile organic compounds in this chapter, shall be added together to determine theoretical potential to emit.

C. For facilities subject to the provisions of this section, the owners shall within three months of the effective date of this emission standard (i) notify the board of their applicability status, (ii) commit to making a determination as to what constitutes reasonably available control technology for the facilities and (iii) provide a schedule acceptable to the board for making this determination and for achieving compliance with the emission standard as expeditiously as possible but not later than the following dates:

1. For facilities in the Northern Virginia Emissions Control Area with a theoretical potential to emit 50 tons per year or greater, May 31, 1995.
2. For facilities in the Northern Virginia Emissions Control Area with a theoretical potential to emit 25 tons per year or greater, but less than 50 tons per year, May 31, 1996.

3. For facilities in the Richmond Emissions Control Area with a theoretical potential to emit 100 tons per year or greater, May 31, 1995.

ARTICLE 36.
*EMISSION STANDARDS FOR FLEXOGRAPHIC,
PACKAGING ROTOGRAVURE, AND PUBLICATION
ROTOGRAVURE PRINTING LINES (RULE 4-36).*

9 VAC 5-40-5060. Applicability and designation of affected facility.

A. Except as provided in subsections C, D, and E of this section, the affected facility to which the provisions of this article apply is each flexographic, packaging rotogravure, or publication rotogravure printing line which uses a substrate other than a textile.

B. The provisions of this article apply only to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9 VAC 5-20-206.

C. Exempted from the provisions of this article are flexographic, packaging rotogravure, and publication rotogravure facilities in the Northern Virginia Volatile Organic Compound Emissions Control Area whose potential to emit is less than 25 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. All volatile organic compound emissions from printing inks and cleaning solutions shall be considered in applying the exemption levels specified in this subsection.

D. Exempted from the provisions of this article are flexographic, packaging rotogravure, and publication rotogravure facilities in ~~the Richmond and Hampton Roads~~ all volatile organic compound emissions control areas, *other than the Northern Virginia Volatile Organic Compound Emissions Control Area*, whose potential to emit is less than 100 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. All volatile organic compound emissions from printing inks and cleaning solutions shall be considered in applying the exemption levels specified in this subsection.

E. The provisions of this article do not apply to the following:

1. Printing processes used exclusively for determination of product quality and commercial acceptance provided:
 - a. The operation is not an integral part of the production process;
 - b. The emissions from all product quality printing processes do not exceed 400 pounds in any 30 day period; and
 - c. The exemption is approved by the board.
2. Lithography or letterpress printing.
3. Electrostatic duplication.

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ARTICLE 37.

EMISSION STANDARDS FOR PETROLEUM LIQUID STORAGE AND TRANSFER OPERATIONS (RULE 4-37).

9 VAC 5-40-5200. Applicability and designation of affected facility.

A. Except as provided in subsection C of this section, the affected facility to which the provisions of this article apply is each operation involving the storage or transfer of petroleum liquids or both.

B. Except as provided in subdivisions 1, 2 and 3 through 4 of this subsection, the provisions of this article apply to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9 VAC 5-20-206.

1. The emission standards in 9 VAC 5-40-5220 C, D, E, F and G shall not apply to affected facilities in the following localities: Botetourt County, Frederick County, and Winchester City.

2. The emission standard in 9 VAC 5-40-5220 F shall apply only to affected facilities in the Northern Virginia and Richmond Volatile Organic Compound Emissions Control Areas.

~~3. The emission standard in 9 VAC 5-40-5220 E shall apply only to affected facilities in the ozone nonattainment areas designated in 9 VAC 5-40-204, maintenance areas designated in 9 VAC 5-20-203, and the following localities: Roanoke County, Roanoke City, and Salem City.~~

~~4. 3. The emission standard in 9 VAC 5-40-5220 C shall apply to affected facilities in Bedford County.~~

C. The provisions of this article do not apply to affected facilities using 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 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).

D. The burden of proof of eligibility for exemption from this article is on the owner. Owners seeking such an exemption shall maintain adequate records of average monthly throughput and furnish these records to the board upon request.

ARTICLE 42.

EMISSION STANDARDS FOR PORTABLE FUEL CONTAINER SPILLAGE IN THE NORTHERN VIRGINIA VOLATILE ORGANIC COMPOUND EMISSIONS CONTROL AREA (RULE 4-42).

9 VAC 5-40-5700. Applicability.

A. Except as provided in subsections C through H of this section, the provisions of this article apply to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers or spouts.

B. The provisions of this article apply only to sources and persons in the Northern Virginia, *Fredericksburg and Richmond* Volatile Organic Compounds Emissions Control ~~area~~ Areas designated in 9 VAC 5-20-206.

C. The provisions of this article do not apply to any portable fuel container or spout manufactured for shipment, sale, and use outside of the Northern Virginia, *Fredericksburg and Richmond* Volatile Organic Compound Emissions Control ~~area~~ Areas.

D. This article does not apply to a manufacturer or distributor who sells, supplies, or offers for sale a portable fuel container or spout that does not comply with the emission standards specified in 9 VAC 5-40-5720, as long as the manufacturer or distributor can demonstrate that: (i) the portable fuel container or spout is intended for shipment and use outside of the Northern Virginia, *Fredericksburg and Richmond* Volatile Organic Compound Emissions Control ~~area~~ Areas; and (ii) that the manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout is not distributed within the Northern Virginia, *Fredericksburg and Richmond* Volatile Organic Compound Emissions Control ~~area~~ Areas. This subsection does not apply to portable fuel containers or spouts that are sold, supplied, or offered for sale to retail outlets.

E. This article does not apply to safety cans meeting the requirements of 29 CFR Part 1926 Subpart F.

F. This article does not apply to portable fuel containers with a nominal capacity less than or equal to one quart.

G. This article does not apply to rapid refueling devices with nominal capacities greater than or equal to four gallons, provided such devices are designed either (i) to be used in officially sanctioned off-highway motorcycle competitions, (ii) to create a leak-proof seal against a stock target fuel tank, or (iii) to operate in conjunction with a receiver permanently installed on the target fuel tank.

H. This article does not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

I. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to business/governmental entities/individuals.

9 VAC 5-40-5720. Standard for volatile organic compounds.

A. No person shall sell, supply, offer for sale, or manufacture for sale any portable fuel container that at the time of sale or manufacture does not meet all of the following standards for spill-proof systems:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

3. Has only one opening for both filling and pouring.

4. Provides a fuel flow rate and fill level of:

a. Not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or

(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto and on the accompanying package, if any; or

b. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or

c. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

5. Does not exceed a permeation rate of 0.4 grams per gallon per day.

6. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

B. No person shall sell, supply, offer for sale, or manufacture for sale any spout that at the time of sale or manufacture does not meet all of the following standards for spill-proof spouts:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

3. Provides a fuel flow rate and fill level of:

a. Not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or

(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto; or

b. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or

c. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

4. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

C. The test procedures for determining compliance with the standards in this section are set forth in 9 VAC 5-40-5760. The manufacturer of portable fuel containers or spouts shall perform the tests for determining compliance as set forth in 9 VAC 5-40-5760 to show that its product meets the standards of this section prior to allowing the product to be offered for sale. The manufacturer shall maintain records of these compliance tests for as long as the product is available for sale and shall make those test results available within 60 days of request.

D. Compliance with the standards in this section does not exempt spill-proof systems or spill-proof spouts from compliance with other applicable federal and state statutes and regulations such as state fire codes, safety codes, and other safety regulations, nor will the board test for or determine compliance with such other statutes or regulations.

E. Notwithstanding the provisions of subsections A and B of this section, a portable fuel container or spout manufactured before ~~January 1, 2005~~ the applicable compliance date specified in 9 VAC 5-40-5750 A, may be sold, supplied, or offered for sale after ~~January 1, 2005~~ the applicable compliance date, if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

9 VAC 5-40-5750. Compliance schedules.

A. Affected persons shall comply with the provisions of this article as expeditiously as possible but in no case later than:

1. January 1, 2005, in the Northern Virginia VOC Emissions Control Area; or

2. January 1, 2008, in the Fredericksburg and Richmond VOC Emissions Control Areas.

B. Any person who cannot comply with the provisions of this article by the date specified in subsection A of this section, due to extraordinary reasons beyond that person's reasonable control, may apply in writing to the board for a waiver. The waiver application shall set forth:

1. The specific grounds upon which the waiver is sought;

2. The proposed date by which compliance with the provisions of this article will be achieved; and

3. A compliance report detailing the methods by which compliance will be achieved.

C. No waiver may be granted unless all of the following findings are made:

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1. That, due to reasons beyond the reasonable control of the applicant, required compliance with this article would result in extraordinary economic hardship;

2. That the public interest in mitigating the extraordinary hardship to the applicant by issuing the waiver outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the waiver; and

3. That the compliance report proposed by the applicant can reasonably be implemented and shall achieve compliance as expeditiously as possible.

D. Any approval of a waiver shall specify a final compliance date by which compliance with the requirements of this article shall be achieved. Any approval of a waiver shall contain a condition that specifies the increments of progress necessary to assure timely compliance and such other conditions that the board finds necessary to carry out the purposes of this article.

E. A waiver shall cease to be effective upon the failure of the party to whom the waiver was granted to comply with any term or condition of the waiver.

F. Upon the application of any person, the board may review, and for good cause, modify or revoke a waiver from requirements of this article.

ARTICLE 48.
EMISSION STANDARDS FOR MOBILE EQUIPMENT
REPAIR AND REFINISHING OPERATIONS ~~IN THE~~
~~NORTHERN VIRGINIA VOLATILE ORGANIC COMPOUND~~
EMISSION CONTROL AREA (RULE 4-48).

9 VAC 5-40-6970. Applicability and designation of affected facility.

A. Except as provided in subsection C of this section, the affected facility to which the provisions of this article apply is each mobile equipment repair and refinishing operation. Certain provisions also apply to each person providing or selling affected coatings.

B. The provisions of this article apply only to sources and persons in the Northern Virginia, *Fredericksburg and Richmond* Volatile Organic Compounds Emissions Control ~~area~~ Areas designated in 9 VAC 5-20-206.

C. The provisions of this article do not apply under any of the following circumstances:

1. The mobile equipment repair and refinishing operation is subject to Article 28 (9 VAC 5-40-3860 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Automobile and Light Duty Truck Coating Application Systems).
2. The mobile equipment repair and refinishing operation is subject to Article 34 (9 VAC 5-40-4760 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems).
3. The person applying the coatings does not receive compensation for the application of the coatings.
4. The mobile equipment repair and refinishing operations uses coatings required to meet military specifications

(MILSPEC) where no other existing coating can be used that meets the provisions of this article.

9 VAC 5-40-7050. Compliance schedule.

Affected persons *and facilities* shall comply with the provisions of this article as expeditiously as possible but in no case later than:

1. January 1, 2005, in the Northern Virginia VOC Emissions Control Area; or
2. January 1, 2008, in the Fredericksburg and Richmond VOC Emissions Control Areas.

ARTICLE 49.
EMISSION STANDARDS FOR ARCHITECTURAL AND
INDUSTRIAL MAINTENANCE COATINGS ~~IN THE~~
~~NORTHERN VIRGINIA VOLATILE ORGANIC COMPOUND~~
EMISSION CONTROL AREA (RULE 4-49).

9 VAC 5-40-7120. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to any person who supplies, sells, offers for sale, or manufactures any architectural coating for use, as well as any person who applies or solicits the application of any architectural coating.

B. The provisions of this article apply only to ~~sources and~~ persons in the Northern Virginia, *Fredericksburg and Richmond* Volatile Organic Compound Emissions Control ~~area~~ Areas designated in 9 VAC 5-20-206.

C. The provisions of this article do not apply to:

1. Any architectural coating that is sold or manufactured for use exclusively outside of the Northern Virginia, *Fredericksburg and Richmond* Volatile Organic Compounds Emission Control ~~Area~~ Areas or for shipment to other manufacturers for reformulation or repackaging.
2. Any aerosol coating product.
3. Any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less.

D. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

9 VAC 5-40-7140. Standard for volatile organic compounds.

A. Except as provided in this section, no person shall (i) manufacture, blend, or repackage for sale, (ii) supply, sell, or offer for sale, or (iii) solicit for application or apply any architectural coating with a VOC content in excess of the corresponding limit specified in Table 4-49A.

B. If anywhere on the container of any architectural coating, or any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or any person acting on behalf of a manufacturer, any representation is made that indicates that the coating meets

the definition of or is recommended for use for more than one of the coating categories listed in Table 4-49A, then the most restrictive VOC content limit shall apply. This provision does not apply to the following coating categories:

- Lacquer coatings (including lacquer sanding sealers);
- Metallic pigmented coatings;
- Shellacs;
- Fire-retardant coatings;
- Pretreatment wash primers;
- Industrial maintenance coatings;
- Low-solids coatings;
- Wood preservatives;
- High-temperature coatings;
- Temperature-indicator safety coatings;
- Antenna coatings;
- Antifouling coatings;
- Flow coatings;
- Bituminous roof primers; and
- Specialty primers, sealers, and undercoaters.

Table 4-49A.
VOC Content Limits for Architectural Coatings

Limits are expressed in grams of VOC per liter¹ of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water, exempt compounds, or colorant added to tint bases. "Manufacturers maximum recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

Coating Category	VOC Content Limit
Flat Coatings	100
Nonflat Coatings	150
Nonflat High Gloss Coatings	250
Specialty Coatings	530
Antenna Coatings	530
Antifouling Coatings	400
Bituminous Roof Coatings	300
Bituminous Roof Primers	350
Bond Breakers	350
Clear Wood Coatings	
• Clear Brushing Lacquers	680
• Lacquers (including lacquer sanding sealers)	550
• Sanding Sealers (other than lacquer sanding sealers)	350
• Varnishes	350
Concrete Curing Compounds	350
Dry Fog Coatings	400

Extreme durability coating	400
Faux Finishing Coatings	350
Fire-Resistive Coatings	350
Fire-Retardant Coatings	
• Clear	650
• Opaque	350
Floor Coatings	250
Flow Coatings	420
Form-Release Compounds	250
Graphic Arts Coatings (Sign Paints)	500
High-Temperature Coatings	420
Industrial Maintenance Coatings	340
Low-Solids Coatings	120
Magnesite Cement Coatings	450
Mastic Texture Coatings	300
Metallic Pigmented Coatings	500
Multi-Color Coatings	250
Pretreatment Wash Primers	420
Primers, Sealers, and Undercoaters	200
Quick-Dry Enamels	250
Quick-Dry Primers, Sealers-and Undercoaters	200
Recycled Coatings	250
Roof Coatings	250
Rust Preventative Coatings	400
Shellacs	
• Clear	730
• Opaque	550
Specialty Primers, Sealers, and Undercoaters	350
Stains	250
Swimming Pool Coatings	340
Swimming Pool Repair and Maintenance Coatings	340
Temperature-Indicator Safety Coatings	550
Traffic Marking Coatings	150
Waterproofing Sealers	250
Waterproofing Concrete/Masonry Sealers	400
Wood Preservatives	350

C. A coating manufactured prior to ~~January 1, 2005~~ the applicable compliance date specified in 9 VAC 5-40-7210, may be sold, supplied, or offered for sale ~~until December 31, 2007~~ for two years following the applicable compliance date. In addition, a coating manufactured before ~~January 1, 2005~~ the applicable compliance date specified in 9 VAC 5-40-7210, may be applied at any time, both before and after ~~January 1, 2005~~ the applicable compliance date, so long as the coating complied with the standards in effect at the time the coating was manufactured. This subsection does not apply to any coating that does not display the date or date code required by subdivision 1 of 9 VAC 5-40-7150.

D. All architectural coating containers used to apply the contents therein to a surface directly from the container by pouring, siphoning, brushing, rolling, padding, ragging, or other means, shall be closed when not in use. These architectural coatings containers include, but are not limited to, drums, buckets, cans, pails, trays, or other application

¹ Conversion factor: one pound of VOC per gallon (U.S.) = 119.95 grams per liter.

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containers. Containers of any VOC-containing materials used for thinning and cleanup shall also be closed when not in use.

E. No person who applies or solicits the application of any architectural coating shall apply a coating that contains any thinning material that would cause the coating to exceed the applicable VOC limit specified in Table 4-49A.

F. No person shall apply or solicit the application of any rust preventive coating for industrial use, unless such a rust preventive coating complies with the industrial maintenance coating VOC limit specified in Table 4-49A.

G. For any coating that does not meet any of the definitions for the specialty coatings categories listed in Table 4-49A, the VOC content limit shall be determined by classifying the coating as a flat coating or a nonflat coating, based on its gloss, as defined in 9 VAC 5-40-7130 C, and the corresponding flat or nonflat coating limit shall apply.

H. Notwithstanding the provisions of subsection A of this section, up to 10% by volume of VOC may be added to a lacquer to avoid blushing of the finish during days with relative humidity greater than 70% and temperature below 65 degrees Fahrenheit, at the time of application, provided that the coating contains acetone and no more than 550 grams of VOC per liter of coating, less water and exempt compounds, prior to the addition of VOC.

9 VAC 5-40-7210. Compliance schedules.

Affected persons shall comply with the provisions of this article as expeditiously as possible but in no case later than:

1. January 1, 2005, in the Northern Virginia VOC Emissions Control Area; or
2. January 1, 2008, in the Fredericksburg and Richmond VOC Emissions Control Areas.

ARTICLE 50.

EMISSION STANDARDS FOR CONSUMER PRODUCTS IN THE NORTHERN VIRGINIA VOLATILE ORGANIC COMPOUND EMISSIONS CONTROL AREA (RULE 4-50).

9 VAC 5-40-7240. Applicability.

A. Except as provided in 9 VAC 5-40-7250, the provisions of this article apply to those persons who sell, supply, offer for sale, or manufacture for sale any consumer product that contains volatile organic compounds (VOCs) as defined in 9 VAC 5-10-20.

B. The provisions of this article apply throughout the Northern Virginia, *Fredericksburg and Richmond* Volatile Organic Compound Emissions Control ~~area~~ Areas designated in 9 VAC 5-20-206.

C. For purposes of this article, the term "supply" or "supplied" does not include internal transactions within a business or governmental entity. The term only applies to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

9 VAC 5-40-7250. Exemptions.

A. This article shall not apply to any consumer product manufactured in the ~~Northern Virginia~~ *applicable* volatile organic compound emissions control ~~area~~ *areas designated in 9 VAC 5-40-7240* for shipment and use outside of ~~this area~~ *those areas*.

B. The provisions of this article shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale a consumer product that does not comply with the VOC standards specified in 9 VAC 5-40-7270 A, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the ~~Northern Virginia~~ *applicable* volatile organic compound emissions control ~~area~~ *areas designated in 9 VAC 5-40-7240*, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the ~~Northern Virginia~~ *those applicable* volatile organic compound emissions control ~~area~~ *areas*. This subsection does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in the ~~Northern Virginia~~ *those applicable* volatile organic compound emissions control ~~area~~ *areas*.

C. The medium volatility organic compound (MVOC) content standards specified in 9 VAC 5-40-7270 A for antiperspirants or deodorants shall not apply to ethanol.

D. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to fragrances up to a combined level of 2.0% by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2.0% by weight contained in any antiperspirant or deodorant.

E. The requirements of 9 VAC 5-40-7270 A for antiperspirants or deodorants shall not apply to those volatile organic compounds that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20 degrees Centigrade.

F. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to any LVP-VOC.

G. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to air fresheners that are composed entirely of fragrance, less compounds not defined as VOCs or exempted under subsection F of this section.

H. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

I. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to adhesives sold in containers of one fluid ounce or less.

J. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to bait station insecticides. For the purpose of this section, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5.0% active ingredients.

K. A person who cannot comply with the requirements set forth in 9 VAC 5-40-7270 because of extraordinary reasons beyond the person's reasonable control may apply in writing to the board for a waiver.

1. The application shall set forth:
 - a. The specific grounds upon which the waiver is sought, including the facts that support the extraordinary reasons that compliance is beyond the applicant's reasonable control;
 - b. The proposed dates by which compliance with the provisions of 9 VAC 5-40-7270 will be achieved; and
 - c. A compliance report reasonably detailing the methods by which compliance will be achieved.

2. Upon receipt of an application containing the information required in subdivision 1 of this subsection, the board will hold a public hearing to determine whether, under what conditions, and to what extent, a waiver from the requirements in 9 VAC 5-40-7270 is necessary and will be permitted. A hearing shall be initiated no later than 75 days after receipt of a waiver application. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the Virginia Register. At least 30 days prior to the hearing, the waiver application shall be made available to the public for inspection. Information submitted to the board by a waiver applicant may be claimed as confidential, and such information will be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60. The board may consider such confidential information in reaching a decision on an exemption application. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

3. No waiver shall be granted unless all of the following findings are made:

- a. That, because of reasons beyond the reasonable control of the applicant, requiring compliance with 9 VAC 5-40-7270 would result in extraordinary economic hardship;
- b. That the public interest in mitigating the extraordinary hardship to the applicant by issuing the waiver outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the waiver; and
- c. That the compliance report proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

4. Any waiver may be issued as an order of the board. The waiver order shall specify a final compliance date by which the requirements of 9 VAC 5-40-7270 will be achieved. Any waiver order shall contain a condition that specifies increments of progress necessary to assure timely compliance and such other conditions that the board, in consideration of the testimony received at the hearing, finds

necessary to carry out the purposes of the Virginia Air Pollution Control Law and the regulations of the board.

5. A waiver shall cease to be effective upon failure of the party to whom the waiver was granted to comply with any term or condition of the waiver order.

6. Upon the application of anyone, the board may review and for good cause modify or revoke a waiver from requirements of 9 VAC 5-40-7270. Modifications and revocations of waivers are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

L. The requirements of 9 VAC 5-40-7300 A shall not apply to consumer products registered under FIFRA.

9 VAC 5-40-7260. 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 meaning given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10), unless otherwise required by context.

C. Terms defined.

"ACP" or "alternative control plan" means any emissions averaging program approved by the board pursuant to the provisions of this article.

"ACP agreement" means the document signed by the board that includes the conditions and requirements of the board and that allows manufacturers to sell ACP products pursuant to the requirements of this article.

"ACP emissions" means the sum of the VOC emissions from every ACP product subject to an ACP agreement approving an ACP, during the compliance period specified in the ACP agreement, expressed to the nearest pound of VOC and calculated according to the following equation:

$$\text{ACP Emissions} = (\text{Emissions})_1 + (\text{Emissions})_2 + K + (\text{Emissions})_N$$

$$\text{Emissions} = \frac{(\text{VOC Content}) \times (\text{Enforceable Sales})}{100}$$

where

1,2,...N = each product in an ACP up to the maximum N.

Enforceable sales = (see definition in this section).

VOC content = one of the following:

1. For all products except for charcoal lighter material products:

where

$$\text{VOC Content} = \frac{((B - C) \times 100)}{A}$$

where

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A = total net weight of unit (excluding container and packaging).

B = total weight of all VOCs per unit.

C = total weight of all exempted VOCs per unit, as specified in 9 VAC 5-40-7250.

2. For charcoal lighter material products only:

$$\text{VOC Content} = \frac{(\text{Certified Emissions} \times 100)}{\text{Certified Use Rate}}$$

where

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

"ACP limit" means the maximum allowable ACP emissions during the compliance period specified in an ACP agreement approving an ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$\text{ACP Limit} = (\text{Limit})_1 + (\text{Limit})_2 + K + (\text{Limit})_N$$

where

$$\text{Limit} = \frac{(\text{ACP Standard}) \times (\text{Enforceable Sales})}{100}$$

where

Enforceable sales = (see definition in this section).

ACP standard = (see definition in this section).

1,2,...N = each product in an ACP up to the maximum N.

"ACP product" means any consumer product subject to the VOC standards specified in 9 VAC 5-40-7270 A, except those products that have been exempted as innovative products under 9 VAC 5-40-7290.

"ACP reformulation" or "ACP reformulated" means the process of reducing the VOC content of an ACP product within the period that an ACP is in effect to a level that is less than the current VOC content of the product.

"ACP standard" means either the ACP product's pre-ACP VOC content or the applicable VOC standard specified in 9 VAC 5-40-7270 A, whichever is the lesser of the two.

"ACP VOC standard" means the maximum allowable VOC content for an ACP product, determined as follows:

1. The applicable VOC standard specified in 9 VAC 5-40-7270 A for all ACP products except for charcoal lighter material;

2. For charcoal lighter material products only, the VOC standard for the purposes of this article shall be calculated according to the following equation:

$$\text{VOC Standard} = \frac{(0.020 \text{ pound VOC per start} \times 100)}{\text{Certified Use Rate}}$$

where

0.020 = the certification emissions level for the product, as specified in 9 VAC 5-40-7270 E.

Certified use rate = (see definition in this section).

"Adhesive" means any product that is used to bond one surface to another by attachment. Adhesive does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. For contact adhesive only, adhesive also does not include units of product, less packaging, which consist of more than one gallon. In addition, for construction, panel, and floor covering adhesive and general purpose adhesive only, adhesive does not include units of product, less packaging, which consist of more than one pound and consist of more than 16 fluid ounces. The package size limitations do not apply to aerosol adhesives.

"Adhesive remover" means a product designed exclusively for the removal of adhesives, caulk, and other bonding materials from either a specific substrate or a variety of substrates.

"Aerosol adhesive" means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

"Aerosol cooking spray" means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food or both.

"Aerosol product" means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. Aerosol product does not include pump sprays.

"Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal or plant crop. Agricultural use does not include the sale or use of pesticides in properly labeled packages or containers that are intended for home use, use in structural pest control, industrial use, or institutional use. For the purposes of this definition only:

1. "Home use" means use in a household or its immediate environment.

2. "Structural pest control" means a use requiring a license under the applicable state pesticide licensing requirement.

3. "Industrial use" means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites.

4. "Institutional use" means use within the perimeter of, or on property necessary for the operation of, buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

"Air freshener" means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors or freshening, cleaning, scenting, or deodorizing the air. Air fresheners do not include products that are used on the human body, products that function primarily as cleaning products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional or industrial disinfectants when offered for sale

solely through institutional and industrial channels of distribution. Air fresheners do include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

"All other carbon-containing compounds" means all other compounds that contain at least one carbon atom and are not an "exempt compound" or an "LVP-VOC."

"All other forms" means all consumer product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, all other forms include, but are not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

"Alternative control plan" or "ACP" means any emissions averaging program approved by the board pursuant to the provisions of this article.

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap which is designed to reduce the level of microorganisms on the skin through germicidal activity. Antimicrobial hand or body cleaner or soap includes, but is not limited to, antimicrobial hand or body washes or cleaners, food handler hand washes, healthcare personnel hand washes, preoperative skin preparations, and surgical scrubs. Antimicrobial hand or body cleaner or soap does not include prescription drug products, antiperspirants, astringent or toner, deodorant, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent or medicated toner, and rubbing alcohol.

"Antiperspirant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.

"Architectural coating" means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

"ASTM" means the American Society for Testing and Materials.

"Astringent or toner" means any product not regulated as a drug by the United States Food and Drug Administration that is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include any hand, face, or body cleaner or soap product, medicated astringent or medicated toner, cold cream, lotion, or antiperspirant.

"Automotive brake cleaner" means a cleaning product designed to remove oil, grease, brake fluid, brake pad material, or dirt from motor vehicle brake mechanisms.

"Automotive hard paste wax" means an automotive wax or polish that is:

1. Designed to protect and improve the appearance of automotive paint surfaces;
2. A solid at room temperature; and
3. Contains no water.

"Automotive instant detailer" means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

"Automotive rubbing or polishing compound" means a product designed primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

"Automotive wax, polish, sealant, or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces. Automotive wax, polish, sealant, or glaze includes, but is not limited to, products designed for use in auto body repair shops and drive-through car washes, as well as products designed for the general public. Automotive wax, polish, sealant, or glaze does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. Automotive windshield washer fluid does not include fluids placed by the manufacturer in a new vehicle.

"Bathroom and tile cleaner" means a product designed to clean tile or surfaces in bathrooms. Bathroom and tile cleaners do not include products specifically designed to clean toilet bowls or toilet tanks.

"Bug and tar remover" means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish: (i) biological residues, such as insect carcasses and tree sap and (ii) road grime, such as road tar, roadway paint markings, and asphalt.

"CARB" means the California Air Resources Board.

"Carburetor or fuel-injection air intake cleaners" means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. Carburetor or fuel-injection air intake cleaners do not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

"Carpet and upholstery cleaner" means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, and the interior of motor vehicles or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon, or other synthetic fabrics. Carpet and upholstery cleaners include, but are not limited to, products

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that make fabric protectant claims. Carpet and upholstery cleaners do not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Certified emissions" means the emissions level for products approved under 9 VAC 5-40-7270 E, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9 VAC 5-20-21), expressed to the nearest 0.001 pound VOC per start.

"Certified use rate" means the usage level for products approved under 9 VAC 5-40-7270 E, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, expressed to the nearest 0.001 pound certified product used per start.

"Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. Charcoal lighter material does not include any of the following:

1. Electrical starters and probes,
2. Metallic cylinders using paper tinder,
3. Natural gas,
4. Propane, or
5. Fat wood.

"Colorant" means any pigment or coloring material used in a consumer product for an aesthetic effect or to dramatize an ingredient.

"Compliance period" means the period of time, not to exceed one year, for which the ACP limit and ACP emissions are calculated and for which compliance with the ACP limit is determined, as specified in the ACP agreement approving an ACP.

"Construction, panel, and floor covering adhesive" means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

1. Structural and building components that include, but are not limited to, beams, trusses, studs, paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard, etc.), ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, and flooring or subflooring; or
2. Floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles and other types of tiles, and artificial grass.

Construction, panel, and floor covering adhesive does not include floor seam sealer.

"Consumer" means a person who purchases or acquires a consumer product for personal, family, household, or

institutional use. Persons acquiring a consumer product for resale are not consumers for that product.

"Consumer product" means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products, but does not include other paint products, furniture coatings, or architectural coatings.

"Contact adhesive" means an adhesive that:

1. Is designed for application to both surfaces to be bonded together,
2. Is allowed to dry before the two surfaces are placed in contact with each other,
3. Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other, and
4. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

Contact adhesive does not include rubber cements that are primarily intended for use on paper substrates.

"Container or packaging" means the part or parts of the consumer or institutional product that serve only to contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. Containers or packaging include any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed, or attached.

"Contact person" means a representative that has been designated by the responsible ACP party for the purpose of reporting or maintaining information specified in the ACP agreement approving an ACP.

"Crawling bug insecticide" means an insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders. Crawling bug insecticide does not include products designed to be used exclusively on humans or animals or a house dust mite product. For the purposes of this definition only:

1. "House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.
2. "House dust mite" means mites that feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

"Date-code" means the day, month, and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

"Deodorant" means a product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

"Device" means an instrument or contrivance (other than a firearm) that is designed for trapping, destroying, repelling, or mitigating a pest or other form of plant or animal life (other than human and other than bacteria, virus, or other microorganism on or in living human or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

"Disinfectant" means a product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the FIFRA. Disinfectant does not include any of the following:

1. Products designed solely for use on humans or animals,
2. Products designed for agricultural use,
3. Products designed solely for use in swimming pools, therapeutic tubs, or hot tubs, or
4. Products that, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

"Distributor" means a person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

"Double phase aerosol air freshener" means an aerosol air freshener with the liquid contents in two or more distinct phases that require the product container to be shaken before use to mix the phases, producing an emulsion.

"Dry cleaning fluid" means a nonaqueous liquid product designed and labeled exclusively for use on:

1. Fabrics that are labeled "for dry clean only," such as clothing or drapery; or
2. S-coded fabrics.

Dry cleaning fluid includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. Dry cleaning fluid does not include spot remover or carpet and upholstery cleaner. For the purposes of this definition, "S-coded fabric" means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the American Furniture Manufacturers Association Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (see 9 VAC 5-20-21).

"Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without

leaving a wax or silicone based coating. Dusting aid does not include products that consist entirely of compressed gases for use in electronic or other specialty areas.

"Electronic cleaner" means a product designed specifically for the removal of dirt, grease, or grime from electrical equipment such as electric motors, circuit boards, electricity panels, and generators.

"Enforceable sales" means the total amount of an ACP product sold for use in the ~~Northern Virginia~~ *applicable* volatile organic compound emissions control ~~area~~ *areas designated in 9 VAC 5-40-7240* during the applicable compliance period specified in the ACP agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

"Enforceable sales record" means a written, point-of-sale record or another board-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the ~~Northern Virginia~~ *applicable* volatile organic compound emissions control ~~area~~ *areas designated in 9 VAC 5-40-7240* during the applicable compliance period can be accurately documented. For the purposes of this article, enforceable sales records include, but are not limited to, the following types of records:

1. Accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;
2. Accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method that can be used to verify data composing such summaries is submitted by the responsible ACP party and approved by the board; and
3. Other accurate product sales records acceptable to the board.

"Engine degreaser" means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

"Exempt compound" means acetone, ethane, methyl acetate, parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene), or perchloroethylene (tetrachloroethylene).

"Fabric protectant" means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. Fabric protectant does not include waterproofers, products designed for use solely on leather, or products designed for use solely on fabrics which are labeled "for dry clean only" and sold in containers of 10 fluid ounces or less.

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. Facial cleaner or soap includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms. Facial cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or

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toner, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Fat wood" means pieces of wood kindling with high naturally-occurring levels of sap or resin that enhance ignition of the kindling. Fat wood does not include kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136-136y).

"Flea and tick insecticide" means an insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. Flea and tick insecticide does not include products that are designed to be used exclusively on humans or animals and their bedding.

"Flexible flooring material" means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

"Floor polish or wax" means a wax, polish, or other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. Floor polish or wax does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

"Floor seam sealer" means a product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers or by dissolving or emulsifying the polish or wax. Floor wax stripper does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

"Flying bug insecticide" means an insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. Flying bug insecticide does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or a moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

"Furniture maintenance product" means a wax, polish, conditioner, or other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. Furniture maintenance products do not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers, and lacquers.

"Furniture coating" means a paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

"Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

"General purpose adhesive" means a nonaerosol adhesive designed for use on a variety of substrates. General purpose adhesive does not include:

1. Contact adhesives,
2. Construction, panel, and floor covering adhesives,
3. Adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls), or
4. Adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General purpose cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. General purpose cleaner includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

"General purpose degreaser" means a product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. General purpose degreaser does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish or cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are (i) sold exclusively to establishments which manufacture or construct goods or commodities; and (ii) labeled "not for retail sale." Solvent cleaning tanks or related equipment includes, but is not limited to, cold cleaners, vapor degreasers, conveyORIZED degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

"General-use hand or body cleaner or soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. General-use hand or body cleaner or soap includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. General-use hand or body cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass. Glass cleaner does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, and photocopying machines.

"Gross sales" means the estimated total sales of an ACP product in the ~~Northern Virginia~~ *applicable volatile organic compound emissions control area areas designated in 9 VAC 5-40-7240* during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party demonstrates to the satisfaction of the board will provide an accurate sales estimate:

1. Apportionment of national or regional sales of the ACP product to sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the ~~Northern Virginia volatile organic compound emissions control area's~~ *current population of the applicable volatile organic compound emissions control areas designated in 9 VAC 5-40-7240*; or

2. Another documented method that provides an accurate estimate of the total current sales of the ACP product.

"Hair mousse" means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

"Hair shine" means a product designed for the primary purpose of creating a shine when applied to the hair. Hair shine includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. Hair shine does not include hair spray, hair mousse, hair styling gel or spray gel, or products whose primary purpose is to condition or hold the hair.

"Hair styling gel" means a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

"Hair spray" means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure that will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

"Heavy-duty hand cleaner or soap" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. Heavy-duty hand cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Herbicide" means a pesticide product designed to kill or retard a plant's growth, but excludes products that are (i) for agricultural use, or (ii) restricted materials that require a permit for use and possession.

"High volatility organic compound" or "HVOC" means a volatile organic compound that exerts a vapor pressure greater than

80 millimeters of mercury (mm Hg) when measured at 20 degrees Centigrade.

"Household product" means a consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by people, including the immediate surroundings.

"Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

1. For agricultural use;
2. For a use which requires a structural pest control license under applicable state laws or regulations; or
3. Restricted materials that require a permit for use and possession.

"Insecticide fogger" means an insecticide product designed to release all or most of its content as a fog or mist into indoor areas during a single application.

"Institutional product" or "industrial and institutional (I&I) product" means a consumer product that is designed for use in the maintenance or operation of an establishment that:

1. Manufactures, transports, or sells goods or commodities, or provides services for profit; or
2. Is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional product does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

"Label" means written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon a consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

"Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance.

"Laundry starch product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. Laundry starch product includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and garden insecticide" means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

"Liquid" means a substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a

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Material is a Liquid or a Solid" (see 9 VAC 5-20-21). Liquid does not include powders or other materials that are composed entirely of solid particles.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. Lubricant does not include automotive power steering fluids; products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes; two-cycle oils or other products designed to be added to fuels; products for use on the human body or animals; or products that are:

1. Sold exclusively to establishments which manufacture or construct goods or commodities, and
2. Labeled "not for retail sale."

"LVP content" means the total weight, in pounds, of LVP-VOC in an ACP product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

"LVP-VOC" means a chemical compound or mixture that contains at least one carbon atom and meets one of the following:

1. Has a vapor pressure less than 0.1 mm Hg at 20 degrees Centigrade, as determined by CARB Method 310 (see 9 VAC 5-20-21);
2. Is a chemical compound with more than 12 carbon atoms, or a chemical mixture composed solely of compounds with more than 12 carbon atoms, and the vapor pressure is unknown;
3. Is a chemical compound with a boiling point greater than 216 degrees Centigrade, as determined by CARB Method 310 (see 9 VAC 5-20-21); or
4. Is the weight percent of a chemical mixture that boils above 216 degrees Centigrade, as determined by CARB Method 310 (see 9 VAC 5-20-21).

For the purposes of the definition of LVP-VOC, "chemical compound" means a molecule of definite chemical formula and isomeric structure, and "chemical mixture" means a substrate composed of two or more chemical compounds.

"Manufacturer" means a person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

"Medicated astringent or medicated toner" means a product regulated as a drug by the United States Food and Drug Administration that is applied to the skin for the purpose of cleaning or tightening pores. Medicated astringent or medicated toner includes, but is not limited to, clarifiers and substrate-impregnated products. Medicated astringent or medicated toner does not include hand, face, or body cleaner or soap products, astringent or toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

"Medium volatility organic compound" or "MVOC" means a volatile organic compound that exerts a vapor pressure

greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20 degrees Centigrade.

"Metal polish or cleanser" means a product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. To "improve the appearance" means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. Metal polish or cleanser includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. Metal polish or cleanser does not include automotive wax, polish, sealant, or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

"Missing data days" means the number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data to the board, as specified in the ACP agreement.

"Mist spray adhesive" means an aerosol that is not a special purpose spray adhesive and which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

"Multi-purpose dry lubricant" means a lubricant that is:

1. Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("teflon") on surfaces, and
2. Designed for general purpose lubrication, or for use in a wide variety of applications.

"Multi-purpose lubricant" means a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. Multi-purpose lubricant does not include multi-purpose dry lubricants, penetrants, or silicone-based multi-purpose lubricants.

"Multi-purpose solvent" means an organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing, or dissolving other organic materials. Multi-purpose solvent includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific, or other laboratories. Multi-purpose solvent does not include solvents used in cold cleaners, vapor degreasers, conveyORIZED degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

"Nail polish" means a clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats, and top coats.

"Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.

"Nonaerosol product" means a consumer product that is not dispensed by a pressurized spray system.

"Noncarbon containing compound" means a compound that does not contain carbon atoms.

"Nonresilient flooring" means flooring of a mineral content that is not flexible. Nonresilient flooring includes but is not limited to terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

"Nonselective terrestrial herbicide" means a terrestrial herbicide product that is toxic to plants without regard to species.

"One-product business" means a responsible ACP party that sells, supplies, offers for sale, or manufactures for use in the ~~Northern Virginia~~ applicable volatile organic compound emissions control ~~area~~ areas designated in 9 VAC 5-40-7240:

1. Only one distinct ACP product, sold under one product brand name, which is subject to the requirements of 9 VAC 5-40-7270; or
2. Only one distinct ACP product line subject to the requirements of 9 VAC 5-40-7270, in which all the ACP products belong to the same product category and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

"Oven cleaner" means a cleaning product designed to clean and to remove dried food deposits from oven walls.

"Paint" means a pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

"Paint remover or stripper" means a product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. Paint remover or stripper does not include multi-purpose solvents, paint brush cleaners, products designed and labeled exclusively to remove graffiti, and hand cleaner products that claim to remove paints and other related coatings from skin.

"Penetrant" means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. Penetrant does not include multi-purpose lubricants that claim to have penetrating qualities but are not labeled primarily to loosen bonded parts.

"Pesticide" means and includes a substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating a pest, or a substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term "pesticide" will not include a substance, mixture of substances, or device that the U.S. Environmental Protection Agency does not consider to be a pesticide.

"Pre-ACP VOC content" means the lowest VOC content of an ACP product between January 1, 1990, and the date on which

the application for a proposed ACP is submitted to the board, based on the data obtained from accurate records available to the board that yields the lowest VOC content for the product.

"Principal display panel" means that part of a label that is so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.

"Product brand name" means the name of the product exactly as it appears on the principal display panel of the product.

"Product category" means the applicable category that best describes the product as listed in this section.

"Product line" means a group of products of identical form and function belonging to the same product category.

"Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

"Pump spray" means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger, or other actuator.

"Reconcile or reconciliation" means to provide sufficient VOC emission reductions to completely offset shortfalls generated under the ACP during an applicable compliance period.

"Reconciliation of shortfalls plan" means the plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the board pursuant to 9 VAC 5-40-7280 B 1 g (10).

"Responsible party" means the company, firm, or establishment which is listed on the product's label. If the label lists two companies, firms, or establishments, the responsible party is the party that the product was "manufactured for" or "distributed by," as noted on the label.

"Responsible ACP party" means the company, firm, or establishment which is listed on the ACP product's label. If the label lists two or more companies, firms, or establishments, the responsible ACP party is the party that the ACP product was "manufactured for" or "distributed by," as noted on the label.

"Restricted materials" means pesticides established as restricted materials under the Virginia Pesticide Control Act (§ 3.1-249.27 et seq. of the Code of Virginia).

"Retailer" means a person who sells, supplies, or offers consumer products for sale directly to consumers.

"Retail outlet" means an establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

"Roll-on product" means an antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

Proposed Regulations

"Rubber and vinyl protectant" means a product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. Rubber and vinyl protectant does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Rubbing alcohol" means a product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

"Sealant and caulking compound" means a product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. Sealant and caulking compound does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear or paintable or water resistant caulking compounds; floor seam sealers; products designed exclusively for automotive uses; or sealers that are applied as continuous coatings. Sealant and caulking compound also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. For the purposes of this definition only, "removable caulking compounds" means a compound that temporarily seals windows or doors for three- to six-month time intervals; and "clear or paintable or water resistant caulking compounds" means a compound that contains no appreciable level of opaque fillers or pigments, transmits most or all visible light through the caulk when cured, is paintable, and is immediately resistant to precipitation upon application.

"Semisolid" means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

"Shaving cream" means an aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor or other wet-shaving system, in the removal of facial or other bodily hair.

"Shortfall" means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. Shortfall does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

"Silicone-based multi-purpose lubricant" means a lubricant that is:

1. Designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane, and
2. Designed and labeled for general purpose lubrication, or for use in a wide variety of applications.

Silicone-based multi-purpose lubricant does not include products designed and labeled exclusively to release manufactured products from molds.

"Single phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

"Small business" means any stationary source that: is owned or operated by a person that employs 100 or fewer individuals; is a small business concern as defined in the federal Small Business Act; is not a major stationary source; does not emit 50 tons or more per year of any regulated pollutant; and emits less than 75 tons per year of all regulated pollutants.

"Solid" means a substance or mixture of substances which, either whole or subdivided (such as the particles composing a powder), is not capable of visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9 VAC 5-20-21).

"Special purpose spray adhesive" means an aerosol adhesive that meets any of the following definitions:

1. "Mounting adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, or other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.
2. "Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates. "Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least 5%, by weight, of plasticizer content. A plasticizer is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9 VAC 5-20-21) or from product formulation data.
3. "Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.
4. "Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.
5. "Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.
6. "Laminate repair or edgebanding adhesive" means an aerosol adhesive designed for:
 - a. The touch-up or repair of items laminated with high pressure laminates (e.g., lifted edges, delaminates, etc.); or
 - b. The touch-up, repair, or attachment of edgebanding materials, including but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition, "high pressure laminate" means sheet materials that consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265 degrees Fahrenheit and at pressures between 1,000 and 1,400 psi.

7. "Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200-275 degrees Fahrenheit.

"Spot remover" means a product designed to clean localized areas or remove localized spots or stains on cloth or fabric, such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. Spot remover does not include dry cleaning fluid, laundry prewash, carpet and upholstery cleaner, or multi-purpose solvent.

"Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Stick product" means an antiperspirant or a deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

"Structural waterproof adhesive" means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water and that conforms with the definition in the federal consumer products regulation, 40 CFR Part 59, Subpart C.

"Surplus reduction" means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in 9 VAC 5-40-7280 F 3, surplus reduction does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

"Surplus trading" means the buying, selling, or transfer of surplus reductions between responsible ACP parties.

"Terrestrial" means to live on or grow from land.

"Tire sealant and inflation" means a pressurized product that is designed to temporarily inflate and seal a leaking tire.

"Total maximum historical emissions" or "TMHE" means the total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP party has failed to provide the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + K + (MHE)_N$$

$$MHE = \frac{\text{Highest VOC Content} \times \text{Highest Sales}}{100 \times 365} \times \text{Missing Data Days}$$

where

Highest VOC content = the maximum VOC content which the ACP product has contained in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible

ACP party has provided all required VOC Content data (for the entire compliance period), as specified in the ACP agreement.

Highest sales = the maximum one-year gross sales of the ACP product in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.

Missing Data Days = (see definition in this section).

1, 2, ..., N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to submit the required enforceable sales or VOC content data as specified in the ACP agreement.

"Type A propellant" means a compressed gas such as CO sub2 , N sub2 , N sub2 O, or compressed air that is used as a propellant and is either incorporated with the product or contained in a separate chamber within the product's packaging.

"Type B propellant" means a halocarbon that is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C propellant" means a propellant that is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means an aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, or firewall of motor vehicles to prevent the formation of rust or to deaden sound. Undercoating includes, but is not limited to, rubberized, mastic, or asphaltic products.

"Usage directions" means the text or graphics on the product's principal display panel, label, or accompanying literature which describes to the end user how and in what quantity the product is to be used.

"VOC content" means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to 9 VAC 5-40-7340 B and C.

For charcoal lighter material products only,

$$VOC \text{ Content} = \frac{\text{Certified Emissions} \times 100}{\text{Certified Use Rate}}$$

where

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

"Volatile organic compound" or "VOC" means volatile organic compound as defined in 9 VAC 5-10-20.

Proposed Regulations

"Wasp and hornet insecticide" means an insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects or their hiding place.

"Waterproof" means a product designed and labeled exclusively to repel water from fabric or leather substrates. Waterproof does not include fabric protectants.

"Wax" means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as carnauba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

"Web spray adhesive" means an aerosol adhesive which is not a mist spray or special purpose spray adhesive.

"Wood floor wax" means wax-based products for use solely on wood floors.

"Working day" means a day between Monday through Friday, inclusive, except for federal holidays.

9 VAC 5-40-7270. Standard for volatile organic compounds.

A. Except as provided in 9 VAC 5-40-7250, 9 VAC 5-40-7280, and 9 VAC 5-40-7290, no person shall (i) sell, supply, or offer for sale a consumer product manufactured on or after ~~July 1, 2005~~ *the applicable compliance date specified in 9 VAC 5-40-7330*, or (ii) manufacture for sale a consumer product on or after ~~July 1, 2005~~ *the applicable compliance date specified in 9 VAC 5-40-7330*, that contains volatile organic compounds in excess of the limits specified in Table 4-50A.

TABLE 4-50A

Product Category: Percent VOC by Weight

Adhesives

Aerosol

Mist spray: 65%

Web spray: 55%

Special purpose spray adhesives

Mounting, automotive engine compartment, and flexible vinyl: 70%

Polystyrene foam and automotive headliner: 65%

Polyolefin and laminate repair/Edgebanding: 60%

Contact: 80%

Construction, panel, and floor covering: 15%

General purpose: 10%

Structural waterproof: 15%

Air fresheners

Single-phase aerosols: 30%

Double-phase aerosols: 25%

Liquids/Pump sprays: 18%

Solids/Gels: 3%

Antiperspirants

Aerosol: 40% HVOC/10% MVOC

Nonaerosol: 0% HVOC/10% MVOC

Automotive brake cleaners: 45%

Automotive rubbing or polishing compound: 17%

Automotive wax, polish, sealant, or glaze

Hard paste waxes: 45%

Instant detailers: 3%

All other forms: 15%

Automotive windshield washer fluids: 35%

Bathroom and tile cleaners

Aerosols: 7%

All other forms: 5%

Bug and tar remover: 40%

Carburetor or fuel-injection air intake cleaners: 45%

Carpet and upholstery cleaners

Aerosols: 7%

Nonaerosols (dilutables): 0.1%

Nonaerosols (ready-to-use): 3.0%

Charcoal lighter material: see subsection E of this section.

Cooking spray, aerosols: 18%

Deodorants

Aerosol: 0% HVOC/10% MVOC

Nonaerosol: 0% HVOC/0% MVOC

Dusting aids

Aerosols: 25%

All other forms: 7%

Engine degreasers

Aerosol: 35%

Nonaerosol: 5%

Fabric protectants: 60%

Floor polishes/Waxes

Products for flexible flooring materials: 7%

Products for nonresilient flooring: 10%

Wood floor wax: 90%

Floor wax strippers, nonaerosol: see 9 VAC 5-40-7270 G

Furniture maintenance products

Aerosols: 17%

All other forms except solid or paste: 7%

General purpose cleaners

Aerosols: 10%

Nonaerosols: 4%

General purpose degreasers

Aerosols: 50%

Nonaerosols: 4%

Glass cleaners

Aerosols: 12%

Nonaerosols: 4%

Hair mousses: 6%

Hair shines: 55%

Hair sprays: 55%

Hair styling gels: 6%

Heavy-duty hand cleaner or soap: 8%

Insecticides

Crawling bug (aerosol): 15%

Crawling bug (all other forms): 20%

Flea and tick: 25%

Flying bug (aerosol): 25%

Flying bug (all other forms): 35%

Foggers: 45%

Lawn and garden (all other forms): 20%

Lawn and garden (nonaerosol): 3%

Wasp and hornet: 40%

Laundry prewash

Aerosols/Solids: 22%

All other forms: 5%

Laundry starch products: 5%

Metal polishes and cleansers: 30%

Multi-purpose lubricant (excluding solid or semi-solid products): 50%

Nail polish remover: 75%

Nonselective terrestrial herbicide, nonaerosols: 3%

Oven cleaners

Aerosols/Pump sprays: 8%

Liquids: 5%

Paint remover or strippers: 50%

Penetrants: 50%

Rubber and vinyl protectants

Nonaerosols: 3%

Aerosols: 10%

Sealants and caulking compounds: 4%

Shaving creams: 5%

Silicone-based multi-purpose lubricants (excluding solid or semi-solid products): 60%

Spot removers

Aerosols: 25%

Nonaerosols: 8%

Tire sealants and inflators: 20%

Undercoatings, aerosols: 40%

B. No person shall sell, supply, offer for sale, or manufacture for sale an antiperspirant or a deodorant that contains a compound that has been defined as a toxic pollutant in 9 VAC 5-60-210 C.

C. Provisions follow concerning products that are diluted prior to use.

1. For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the limits specified in Table 4-50A shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, "minimum

recommended dilution" shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

2. For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with a VOC solvent prior to use, the limits specified in Table 4-50A shall apply to the product only after the maximum recommended dilution has taken place.

D. For those consumer products that are registered under FIFRA, the effective date of the VOC standards is ~~July 1, 2006~~ *one year after the applicable compliance date specified in 9 VAC 5-40-7330.*

E. The following requirements shall apply to all charcoal lighter material products:

1. ~~Effective July 1, 2005~~ *as of the applicable compliance date specified in 9 VAC 5-40-7330*, no person shall (i) sell, supply, or offer for sale a charcoal lighter material product manufactured on or after ~~July 1, 2005~~ *the applicable compliance date* or (ii) manufacture for sale a charcoal lighter material product unless at the time of the transaction:

a. The manufacturer can demonstrate to the board's satisfaction that they have been issued a currently effective certification by CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, § 94509(h), of Title 17 of the California Code of Regulations (see 9 VAC 5-20-21). This certification remains in effect for as long as the CARB certification remains in effect. A manufacturer claiming such a certification on this basis must submit to the board a copy of the certification decision (i.e., the Executive Order), including all conditions established by CARB applicable to the certification.

b. The manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification pursuant to subdivision 2 of this subsection.

c. The charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP agreement issued pursuant to subdivision 2 of this subsection.

d. The product usage directions for the charcoal lighter material are the same as those provided to the board pursuant to subdivision 2 c of this subsection.

2. Provisions follow concerning certification requirements.

a. No charcoal lighter material formulation shall be certified under this subdivision unless the applicant for certification demonstrates to the board's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9 VAC 5-20-21). The provisions relating to LVP-VOC in 9 VAC 5-40-7250 F and 9 VAC 5-40-7260 C shall not apply to a charcoal lighter material subject to the requirements of 9 VAC 5-40-7270 A and E.

Proposed Regulations

b. The board may approve alternative test procedures which are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9 VAC 5-20-21).

c. A manufacturer or distributor of charcoal lighter material may apply to the board for certification of a charcoal lighter material formulation in accordance with this subdivision. The application shall be in writing and shall include, at a minimum, the following:

(1) The results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21); and

(2) The exact text or graphics that will appear on the charcoal lighter material's principal display panel, label, or accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21) for that product, unless:

(a) The charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes, or

(b) The charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.

(3) For a charcoal lighter material which meets the criteria specified in subdivision 2 c (2) (a) of this subsection, the usage instructions provided to the board will accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21) for that product.

(4) Physical property data, formulation data, or other information required by the board for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified on the ACP agreement issued pursuant to subdivision 2 e of this subsection.

d. Within 30 days of receipt of an application, the board will advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within 30 days of receipt of additional information, the board will advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.

e. If the board finds that an application meets the requirements of subdivision 2 of this subsection, then an ACP agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to insure that the requirements of this subsection are met. The board will act on a complete

application within 90 days after the application is deemed complete.

3. For charcoal lighter material for which certification has been granted pursuant to subdivision 2 of this subsection, the applicant for certification shall notify the board in writing within 30 days of: (i) a change in the usage directions, or (ii) a change in product formulation, test results, or other information submitted pursuant to subdivision 2 of this subsection which may result in VOC emissions greater than 0.020 pound of VOC per start.

4. If the board determines that a certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal which are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21) and the statistical analysis procedures contained therein, the board will revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start. Modifications and revocations of certifications are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

F. Requirements for aerosol adhesives.

1. The standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in 9 VAC 5-40-7250 and 9 VAC 5-40-7290, no person shall sell, supply, offer for sale, use or manufacture for sale an aerosol adhesive which, at the time of sale, use, or manufacture, contains VOCs in excess of the specified standard.

2. a. In order to qualify as a "special purpose spray adhesive," the product must meet one or more of the definitions specified in 9 VAC 5-40-7260 C, but if the product label indicates that the product is suitable for use on a substrate or application not listed in 9 VAC 5-40-7260 C, then the product shall be classified as either a "web spray adhesive" or a "mist spray adhesive."

b. If a product meets more than one of the definitions specified in 9 VAC 5-40-7260 C for "special purpose spray adhesive," and is not classified as a "web spray adhesive" or "mist spray adhesive" under subdivision 2 a of this subsection, then the VOC limit for the product shall be the lowest applicable VOC limit specified in 9 VAC 5-40-7270 A.

3. Effective ~~July 1, 2005~~ *as of the applicable compliance date specified in 9 VAC 5-40-7330*, no person shall (i) sell, supply, or offer for sale an aerosol adhesive manufactured on or after ~~July 1, 2005~~ *the applicable compliance date*, or (ii) manufacture for sale an aerosol adhesive that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

4. All aerosol adhesives must comply with the labeling requirements specified in 9 VAC 5-40-7300 D.

G. *Effective as of the applicable compliance date specified in 9 VAC 5-40-7330*, no person shall sell, supply, offer for sale,

or manufacture for use a floor wax stripper unless the following requirements are met:

1. The label of each nonaerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3.0% by weight or less.
2. If a nonaerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12% by weight or less.
3. The terms "light build-up," "medium build-up" or "heavy build-up" are not specifically required, as long as comparable terminology is used.

H. For a consumer product for which standards are specified under subsection A of this section, no person shall sell, supply, offer for sale, or manufacture for sale a consumer product which contains any of the following ozone-depleting compounds:

- CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane);
- CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);
- CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);
- CFC-115 (chloropentafluoroethane), halon 1211 (bromochlorodifluoromethane);
- halon 1301 (bromotrifluoromethane), halon 2402 (dibromotetrafluoroethane);
- HCFC-22 (chlorodifluoromethane), HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);
- HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);
- HCFC-141b (1,1-dichloro-1-fluoroethane), HCFC-142b (1-chloro-1,1-difluoroethane);
- 1,1,1-trichloroethane; or
- carbon tetrachloride.

I. The requirements of subsection H of this section shall not apply to an existing product formulation that complies with Table 4-50A or an existing product formulation that is reformulated to meet Table 4-50A, provided the ozone-depleting compound content of the reformulated product does not increase.

J. The requirements of subsection H of this section shall not apply to ozone-depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

9 VAC 5-40-7300. Administrative requirements.

A. Each manufacturer of a consumer product subject to 9 VAC 5-40-7270 shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured or a code indicating such date. The date or code shall be located on the container or inside the cover or cap so that it is readily observable or obtainable (by

simply removing the cap or cover) without disassembling a part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than the effective date of the applicable standard specified in 9 VAC 5-40-7270 A. No person shall erase, alter, deface, or otherwise remove or make illegible a date or code from a regulated product container without the express authorization of the manufacturer. The requirements of this provision shall not apply to products containing no VOCs or containing VOCs at 0.10% by weight or less.

B. If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to 9 VAC 5-40-7270, an explanation of the code must be filed with the board upon request by the board.

C. Notwithstanding the definition of "product category" in 9 VAC 5-40-7260 C, if anywhere on the principal display panel of a consumer product, a representation is made that the product may be used as or is suitable for use as a consumer product for which a lower VOC limit is specified in 9 VAC 5-40-7270 A, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners and antiperspirant or deodorant products.

D. Provisions follow concerning additional labeling requirements for aerosol adhesives.

1. In addition to the requirements specified in subsections A and C of this section and in 9 VAC 5-40-7360, both the manufacturer and responsible party for each aerosol adhesive product subject to this article shall ensure that all products clearly display the following information on each product container which is manufactured on or after ~~July 4, 2005~~ the applicable compliance date specified in 9 VAC 5-40-7330.

a. The aerosol adhesive category as specified in 9 VAC 5-40-7270 A or an abbreviation of the category shall be displayed;

b. (1) The applicable VOC standard for the product that is specified in 9 VAC 5-40-7270 A, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the board, as provided in 9 VAC 5-40-7280;

(2) If the product is included in an alternative control plan approved by the board, and the product exceeds the applicable VOC standard specified in 9 VAC 5-40-7270 A, the product shall be labeled with the term "ACP" or "ACP product";

(3) If the product is classified as a special purpose spray adhesive, the applicable substrate or application or an abbreviation of the substrate or application that qualifies the product as special purpose shall be displayed;

(4) If the manufacturer or responsible party uses an abbreviation as allowed by this subsection, an explanation of the abbreviation must be filed with the board before the abbreviation is used.

2. The information required in subdivision A 1 of this section shall be displayed on the product container such that it is

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readily observable without removing or disassembling a portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing product packaging.

3. No person shall remove, alter, conceal, or deface the information required in subdivision 1 of this subsection prior to final sale of the product.

9 VAC 5-40-7330. Compliance schedules.

Affected persons shall comply with the provisions of this article as expeditiously as possible but in no case later than:

1. July 1, 2005, in the Northern Virginia VOC Emissions Control Area; or
2. January 1, 2008, in the Fredericksburg and Richmond VOC Emissions Control Areas.

9 VAC 5-40-7360. Notification, records and reporting.

A. The provisions of subsections D, E, F, and H of 9 VAC 5-40-50 (Notification, records and reporting) apply. The other provisions of 9 VAC 5-40-50 do not apply.

B. Upon 90 days written notice, the board may require a responsible party to report information for a consumer product the board may specify, including, but not limited to, all or part of the following information:

1. The name of the responsible party and the party's address, telephone number, and designated contact person;
2. A claim of confidentiality made pursuant to applicable state confidentiality requirements;
3. The product brand name for each consumer product subject to registration and, upon request by the board, the product label;
4. The product category to which the consumer product belongs;
5. The applicable product forms listed separately;
6. An identification of each product brand name and form as a "Household Product," "I&I Product," or both;
7. Separate sales in pounds per year, to the nearest pound, and the method used to calculate sales for each product form;
8. For registrations submitted by two companies, an identification of the company which is submitting relevant data separate from that submitted by the responsible party. All registration information from both companies shall be submitted by the date specified in this subsection;
9. For each product brand name and form, the net percent by weight of the total product, less container and packaging, composed of the following, rounded to the nearest one-tenth of a percent (0.1%):
 - a. Total exempt compounds;
 - b. Total LVP-VOCs that are not fragrances;

c. Total all other carbon-containing compounds that are not fragrances;

d. Total all noncarbon-containing compounds;

e. Total fragrance;

f. For products containing greater than 2.0% by weight fragrance:

- (1) The percent of fragrances that are LVP-VOCs; and
- (2) The percent of fragrances that are all other carbon-containing compounds;

g. Total paradichlorobenzene;

10. For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

- a. Each exempt compound; and
- b. Each LVP-VOC that is not a fragrance;

11. If applicable, the weight percent composed of propellant for each product;

12. If applicable, an identification of the type of propellant.

C. In addition to the requirements of subdivision B 10 of this section, the responsible party shall report to the board the net percent by weight of each ozone-depleting compound which is:

1. Listed in 9 VAC 5-40-7270 H; and
2. Contained in a product subject to registration under subsection A of this section in an amount greater than 1.0% by weight.

D. All information submitted by responsible parties pursuant to this section shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60.

E. Provisions follow concerning special reporting requirements for consumer products that contain perchloroethylene or methylene chloride.

1. The requirements of this subsection shall apply to all responsible parties for consumer products that are subject to 9 VAC 5-40-7270 A and contain perchloroethylene or methylene chloride. For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains 1.0% or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

2. For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall report the following information for products sold during each calendar year, beginning with the year ~~2005~~ of the applicable compliance date specified in 9 VAC 5-40-7330, and ending with the year 2010:

- a. The product brand name and a copy of the product label with legible usage instructions;

- b. The product category to which the consumer product belongs;
 - c. The applicable product form, listed separately;
 - d. For each product form listed in subdivision 2 c of this subsection, the total sales during the calendar year, to the nearest pound (exclusive of the container or packaging), and the method used for calculating sales;
 - e. The weight percent, to the nearest 10%, of perchloroethylene and methylene chloride in the consumer product;
3. The information specified in subdivision 2 of this subsection shall be reported for each calendar year by March 1 of the following year. The first report shall be due on March 1, 2006, for calendar year 2005 of the calendar year following the year of the applicable compliance date specified in 9 VAC 5-40-7330. A new report is due on March 1 of each year thereafter, until March 1, 2011, when the last report is due.

ARTICLE 53.
EMISSION STANDARDS FOR LITHOGRAPHIC PRINTING
PROCESSES (RULE 4-53).

9 VAC 5-40-7800. Applicability and designation of affected facility.

- A. Except as provided in subsections C, D, and E of this section, the affected facility to which the provisions of this article apply is each lithographic printing process which uses a substrate other than a textile.
- B. The provisions of this article apply only to sources of volatile organic compounds in ~~the Northern Virginia or Richmond~~ volatile organic compound emissions control Area areas designated in 9 VAC 5-20-206.
- C. Exempted from the provisions of this article are facilities in the Northern Virginia Volatile Organic Compound Emissions Control Area whose potential to emit is less than 10 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. All volatile organic compound emissions from printing inks, coatings, cleaning solutions, and fountain solutions shall be considered in applying the exemption levels specified in this subsection.
- D. Exempted from the provisions of this article are facilities in ~~the Richmond~~ all volatile organic compound emissions control Area areas, other than the Northern Virginia Volatile Organic Compound Emissions Control Area, whose potential to emit is less than 100 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. All volatile organic compound emissions from printing inks, coatings, cleaning solutions, and fountain solutions shall be considered in applying the exemption levels specified in this subsection.
- E. The provisions of this article do not apply to the following:

- 1. Printing processes used exclusively for determination of product quality and commercial acceptance provided:

- a. The operation is not an integral part of the production process;
 - b. The emissions from all product quality printing processes do not exceed 400 pounds in any 30 day period; and
 - c. The exemption is approved by the board.
- 2. Photoprocessing, typesetting, or imagesetting equipment using water-based chemistry to develop silver halide images.
 - 3. Platemaking equipment using water-based chemistry to remove unhardened image-producing material from an exposed plate.
 - 4. Equipment used to make blueprints.
 - 5. Any sheet-fed offset lithographic press with a cylinder width of 26 inches or less.

9 VAC 5-40-7880. Compliance.

- A. The provisions of 9 VAC 5-40-20 (Compliance) apply.
- B. All affected facilities *in the Northern Virginia and Richmond VOC Emissions Control Areas* shall be in compliance with the provisions of this rule ~~within two years following~~ by April 1, ~~1996~~ 1998.
- C. All affected facilities *in VOC emission control areas, other than the Northern Virginia and Richmond VOC Emissions Control Areas, shall be in compliance with the provisions of this rule by [insert date one year after the effective date]*.

VA.R. Doc. No. R05-66; Filed November 7, 2005, 2:12 p.m.

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Title of Regulation: **9 VAC 5-40. Existing Stationary Sources (amending 9 VAC 5-40-5600, 9 VAC 5-40-5610, 9 VAC 5-40-5630, 9 VAC 5-40-5631, and 9 VAC 5-40-5641).**

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

Public Hearing Date: January 12, 2006 - 10 a.m.
Public comments may be submitted until January 30, 2006.
(See Calendar of Events section for additional information)

Agency Contact: Mary L. Major, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, or e-mail mlmajor@deq.virginia.gov.

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

Purpose: The purpose of the regulation is (i) to limit or, in some instances, prohibit open burning and to establish requirements to restrict emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) during the peak ozone season to the level necessary for the protection of

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public health and welfare; and (ii) to provide guidance to local governments on the adoption of ordinances to regulate open burning. The proposed amendments are being made to reduce emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) from open burning and special incineration devices in Virginia's emissions control areas in order to attain and maintain the federal health-based air quality standard for ozone.

Substance:

1. Prohibit the use of special incineration devices during the summer burning ban. (A special incineration device is a pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.)
2. Expand the summer burning ban from three months to five.
3. Expand the summer ban into the new volatile organic compound emissions control areas.
4. Resolved definition conflicts between the regulations of the Waste Management Board and this regulation.
5. Integrated air curtain destructor requirements with incinerator rules of the board.

Issues: Public: The summertime ban will facilitate progress towards attaining the emissions reduction goals of the ozone attainment plans, thus providing a mechanism to remedy both a public welfare problem and a public health problem. The summertime ban on burning in the volatile organic compound emissions control areas will have a positive health effect for the Virginians in those areas who suffer from some form of respiratory ailment. On the other hand, Virginians outside these areas may suffer more than they currently do if their local governments fail to take upon themselves the responsibility for developing control programs for open burning. However, the summertime ban may exacerbate a problem with illegal stump dumps in localities just outside of the volatile organic compound emissions control areas. Contractors that are not permitted to burn will incur significant additional costs for disposal during the summertime ban months. This, in turn, may result in efforts to find "less expensive" means of disposal; and unfortunately, the adjacent, more rural counties that don't have fire marshals may incur the additional problems of illegal dumps.

Department: The regulation will provide the department with an essential tool for managing the frequent open burning conducted throughout the Commonwealth, particularly in suburban areas, in that if the Commonwealth did not take responsibility for the maintenance of the air quality standards, citizens might force local governments to enforce standards within each community to ensure maintenance of the quality of life. While the regulation results in some inconsistency between volatile organic compound emissions control areas and other areas, the Commonwealth's failure to act might exacerbate the inconsistency and impose an additional financial burden upon local governments. The department will be able to devote its scarce resources to control programs more directly linked to the attainment of legally mandated standards and will thus save both staff time and money. The

department will also benefit from the consistency between the regulations of the board and those of the Waste Management Board. The department will experience no disadvantages by the implementation of this regulation.

Department of Planning and Budget's Economic Impact

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 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 extend the seasonal restriction on open burning activities to areas that are classified as Volatile Organic Compound (VOC) emissions control areas in 2004 and expand the restriction from June, July, and August to include May and September. In addition, the regulations will amend some of the definitions in order to achieve consistency with the waste management regulations.

Estimated economic impact. These rules regulate open burning activities by nonresidential entities in the Commonwealth. These regulations allow open burning of construction waste, debris waste, and demolition waste, but place seasonal restrictions on such activities. These regulations also provide model rules for localities wishing to adopt certain restrictions in lieu of relying on the state's regulatory program. The proposed amendments will change two important aspects of the open burning restrictions. First, the proposed rules will expand the seasonal ban on open burning to new areas that have become VOC control areas under the new eight-hour ozone standard. Second, the seasonal restriction will be increased from three months to five months.

The new areas that have become VOC control areas under the new eight-hour ozone standard in 2004 include the counties of Gloucester, Isle of Wight, Prince George, Spotsylvania and cities of Fredericksburg and Petersburg. The total population living in these areas is estimated to be about 267,800. This represents a 6.0% increase in the current population covered under the seasonal restriction provisions of these rules. The proposed changes will make these additional localities subject to those provisions.

Open burning is one of the most convenient and cheapest methods for disposing of nonresidential debris. However, combustion emissions from land-clearing debris create health and safety risks. Of particular concern are the emissions of Volatile Organic Compounds (VOC) and nitrogen oxides (NO_x) created by open burning. Significant emissions of VOC and NO_x are observed in tests conducted to evaluate the

contribution of open burning of land-clearing debris.¹ VOC and NO_x emissions, once created, contribute to ozone pollution in the presence of sunlight. Because ozone pollution is high in summer months, seasonal restrictions are placed on open burning activities. Thus, seasonal restriction of open burning in newly classified VOC areas under the eight-hour standard should help Virginia achieve its nonattainment targets and contribute to air quality and human health.

However, seasonal restrictions on open burning also create compliance costs that must be absorbed by land clearing and landscaping businesses. In general, open burning restrictions would not cause a business to cease operations completely, but would create some additional costs. These costs may stem from the storage of nonresidential debris until it can be burned during nonrestricted months, landfill costs, or rescheduling of activities that produce debris in nonrestricted months. There is not sufficient data to estimate the size of the additional compliance costs that may be introduced by the proposed expansion of areas subject to open burning restrictions.

In addition, the proposed rules will expand the seasonal burning ban from June, July, and August to include May and September. This change will affect all of the VOC emissions control areas including the newly expanded areas. The nature of the costs and benefits of expanding the seasonal ban by two months will be similar. However, the sizes of the benefits and costs are probably different. For example, the air quality benefits from restricting open-burning activities in cooler months are probably less than they are in hotter months because of the role of sunlight in creation of ozone. Also, the compliance costs would increase at an increasing rate as additional months are added to the seasonal ban. In the absence of data, the net impact of decreasing benefits and increasing costs cannot be assessed at this time.

One of the unintended consequences of the proposed changes may be an increase in the illegal dumping activities in the affected localities. As compliance costs increase either because of being subject to seasonal burning ban, or because of increased length of time open burning cannot be practiced, regulated entities would look into possible cost avoiding strategies that may promote illegal dumping if enforcement is lacking.

Another unintended economic effect of the proposed changes is a decrease in the permit revenues collected by localities to allow open burning. The localities in the areas that will be subject to open burning restrictions during the summer months will likely experience a decrease in permit fees as such activities will not be allowed. There is no available estimate on the size of the fiscal impact on these localities. The localities in areas that will be subject to two additional months of open burning restrictions will also suffer from loss of permit revenues. According to the department, one affected locality reported about 61 fewer commercial burning permits will be issued causing approximately \$24,000 revenue loss for that locality.

Remaining changes are mainly clarifications of language and changing definitions to achieve consistency with the waste management regulations. These changes are not expected produce any significant economic effects other than improving the clarity of regulations.

Businesses and entities affected. The proposed regulations may particularly affect up to 32,507 contractors in Virginia.

Localities particularly affected. The new VOC control areas under the new eight-hour ozone standard include counties of Gloucester, Isle of Wight, Prince George, Spotsylvania and cities of Fredericksburg and Petersburg. Expansion of the seasonal burning ban from June, July, and August to include May and September will affect both one-hour and eight-hour VOC control areas. Localities subject to one-hour VOC control areas include counties of Arlington, Fairfax, Loudoun, Prince William, Stafford, Charles City, Chesterfield, Hanover, James City, York, Botetourt, Frederick, Roanoke, and cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park, Colonial Heights, Hopewell, Richmond, Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg, Roanoke, Salem, and Winchester.

Projected impact on employment. To the extent the compliance costs associated with open burning restrictions in new areas discourage land clearing activities, there may be a negative impact on employment. However, affected entities are more likely to schedule their land clearing activities around the seasonal open burning ban. If so, the primary impact on employment would be seasonal: a decrease in demand for labor during seasonal ban and an increase in demand for labor during nonrestricted months.

Effects on the use and value of private property. The compliance costs created by open burning ban in new areas and by the extension of ban by two months would reduce the profitability of contractor businesses involved in land clearing activities and reduce their net worth. However, whether the size of compliance costs would be significant or not is not known.

Small businesses: costs and other effects. The majority of contractors that may be affected by the proposed changes are expected to be small businesses. The proposed regulations are not expected to create any significant administrative costs, but there is likely to be an increase in compliance costs. The significance of the additional costs will depend on how affected entities respond to the proposed changes. There is no available data to assess what the significance of the additional compliance costs will be.

Small businesses: alternative method that minimizes adverse impact. At this time, there does not appear to be a better alternative to minimize the adverse impact on small businesses to achieve the air quality standards of the Commonwealth.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

¹ United States Environmental Protection Agency, January 1997, "Evaluation of Emissions from the Open Burning of Land-Clearing Debris."

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Summary:

The proposed amendments provide for the control of open burning and use of special incineration devices and specify the materials that may and may not be burned, the conditions under which burning may occur, and the legal responsibilities of the person conducting the burning. The proposed amendments permit open burning or the use of special incineration devices for disposal of clean-burning construction waste, debris waste, and demolition waste but provides for a seasonal restriction during June, July, and August in the Northern Virginia, Richmond, and Hampton Roads volatile organic compound (VOC) emissions control areas. The proposed amendments also provide a model local ordinance for cities and counties that wish to adopt their own legally enforceable mechanisms to control burning in lieu of relying on the state's regulatory program.

Modifications have also been made to ensure the regulation is consistent with existing incinerator regulations of the board and waste management regulations.

9 VAC 5-40-5600. Applicability.

A. Except as provided in ~~subsection~~ subsections C and D of this section, the provisions of this article apply to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article do not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted an otherwise valid ordinance (under the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law) regulating such burning in all or any part of the locality.

D. The provisions of this article do not apply to air curtain incinerators subject to the provisions of (i) Article 45 (9 VAC 5-40-6250 et seq.), 46 (9 VAC 5-40-6550 et seq.), or 54 (9 VAC 5-40-7950 et seq.) of 9 VAC 5 Chapter 40 or (ii) Subparts Eb, AAAA or CCCC of 40 CFR Part 60.

9 VAC 5-40-5610. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined:

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

"Automobile graveyard" means any lot or place ~~which that~~ is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and ~~which that~~ it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste ~~which does not produce emissions of greater than 40% opacity when burned and which that~~ is not prohibited to be burned under this article and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Clean wood" means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include: (i) yard waste, or (ii) construction, renovation, or demolition wastes (for example, railroad ties and telephone poles).

"Commercial waste" means all solid waste generated by establishments engaged in business operations *other than manufacturing or construction*. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Construction waste" means solid waste ~~which that~~ is produced or generated during construction ~~of structures, remodeling, or repair of pavements, houses, commercial buildings and other structures~~. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means ~~stumps, wood, brush, and leaves from land-clearing operations~~ wastes resulting from land-clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste ~~which that~~ is produced by the destruction of structures and their foundations and includes the same materials as construction waste.

"Garbage" means ~~rotting animal and vegetable matter accumulated by a household in the course of ordinary day-to-day living~~ readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means ~~refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristics may;~~ a "hazardous waste" as described in 9 VAC 20-60, Hazardous Waste Management Regulations.

- ~~a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or~~
- ~~b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.~~

"Household refuse waste" means ~~waste material and trash normally accumulated by a household in the course of ordinary day-to-day living~~ any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

"Industrial waste" means ~~all waste generated on the premises of manufacturing and industrial operations such as, but not limited to, those carried on in factories, processing plants, refineries, slaughter houses, and steel mills~~ any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"Junkyard" means an establishment or place of business ~~which~~ that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part I (9 VAC 20-80-10 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Opening burning" means the ~~burning of any matter in such a manner that the products resulting from combustion are~~

~~emitted directly into the atmosphere without passing through a stack, duct or chimney~~ combustion of solid waste without:

- a. Control of combustion air to maintain adequate temperature for efficient combustion;
- b. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
- c. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain ~~destructors~~ incinerators and over draft incinerators.

"Refuse" means ~~trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resultant from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management and emergency operations~~ all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste ~~which~~ that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris and nonhazardous industrial solid waste. See Part I (9 VAC 20-80-10 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means a ~~an~~ open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means ~~untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings.~~ Wood waste does not include:

- 1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail,

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institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. *Construction, renovation, or demolition wastes.*

3. *Clean lumber.*

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

9 VAC 5-40-5630. Permissible open burning.

Open burning or the use of special incineration devices is permitted in the following instances provided the provisions of subsections B through G of 9 VAC 5-40-5620 are met:

1. Upon the request of an owner or a responsible civil or military public official, the board may approve open burning or the use of special incineration devices under controlled conditions for the elimination of a hazard ~~which that~~ constitutes a threat to the public health, safety or welfare and ~~which that~~ cannot be remedied by other means consonant with the circumstances presented by the hazard. Such uses of open burning or the use of special incineration devices may include, but are not limited to, the following:

a. Destruction of deteriorated or unused explosives and munitions on government or private property when other means of disposal are not available. *Hazardous waste permits may be required under the provisions of 9 VAC 20-60.*

b. Disposal of debris caused by floods, tornadoes, hurricanes or other natural disasters where alternate means of disposal are not economical or practical and when it is in the best interest of the citizens of the Commonwealth. *Solid waste management permits may be required under the provisions of 9 VAC 20-80.*

c. *Disposal of animal or plant life that is infested, or reasonably believed to be infested, by a pest or disease in order (i) to suppress, control, or eradicate an infestation or pest; (ii) to prevent or retard the spread of an infestation or pest; or (iii) to prevent further disease transmission or progression.*

2. Open burning is permitted for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel with clearance from the local fire fighting authority. The designated official in charge of the training shall notify and obtain the approval of the regional director prior to conducting the training exercise. Training schools where permanent facilities are installed for fire fighting instruction are exempt from this notification requirement. *Buildings that have not been demolished may be burned under the provisions of this subdivision only.*

3. Open burning or the use of special incineration devices is permitted for the destruction of classified military documents under the supervision of the designated official.

4. Open burning is permitted for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers provided the materials specified in subsections B and C of 9 VAC 5-40-5620 are not burned.

5. In urban areas, open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In nonurban areas, open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.

6. Open burning is permitted for the disposal of household ~~refuse~~ waste by homeowners or tenants, provided that no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.

7. Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack. Use of a flare or flare stack for the destruction of hazardous waste or commercial/industrial waste is allowed provided written approval is obtained from the board and the facility is in compliance with Article 3 (9 VAC 5-40-160 et seq.) of this chapter and Article 3 (9 VAC 5-50-160 et seq.) of 9 VAC 5 Chapter 50. Permits issued under 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.) may be used to satisfy the requirement for written approval. *This activity must be consistent with the provisions of 9 VAC 20-60.*

8. Open burning or the use of special incineration devices is permitted for disposal of clean burning ~~construction waste,~~ and debris waste, ~~and demolition waste resulting from property maintenance,~~ from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other ~~clearing operations.~~

~~Buildings which have not been demolished may be burned only as provided in subdivision 2 of this section. Open burning or the use of special incineration devices for the purpose of such disposal is prohibited in the Northern Virginia Volatile Organic Compounds Emissions Control Area (see 9 VAC 5-20-206) during June, July, and August. As of January 1, 2000, open burning for the purpose of such disposal is prohibited in the Richmond and Hampton Roads Volatile Organic Compounds Emissions Control Areas volatile organic compounds emissions control areas (see 9 VAC 5-20-206) during May, June, July, and August, and September.~~

9. Open burning is permitted for forest management and agriculture practices approved by the board (see 9 VAC 5-40-5631), provided the following conditions are met:

a. The burning shall be at least 1000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted.

b. The burning shall be attended at all times.

10. Open burning or the use of special incineration devices is permitted for disposal of clean burning ~~construction waste, and debris waste, and demolition waste~~ on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning ~~or the use of special incineration devices~~ for the purpose of such disposal is prohibited in the ~~Northern Virginia Volatile Organic Compounds Emissions Control Area (see 9 VAC 5-20-206) during June, July, and August. As of January 1, 2000, open burning for the purpose of such disposal is prohibited in the Richmond and Hampton Roads Volatile Organic Compounds Emissions Control Areas~~ *volatile organic compounds emissions control areas* (see 9 VAC 5-20-206) during ~~May, June, July, and August, and September.~~

9 VAC 5-40-5631. Forest management and agricultural practices.

A. Open burning is permitted in accordance with subsections B and C of this section provided the provisions of subsections B through G of 9 VAC 5-40-5620 are met.

B. Open burning may be used for the following forest management practices provided the burning is conducted in accordance with the Department of Forestry's smoke management plan:

1. To reduce forest fuels and minimize the effect of wild fires.
2. To control undesirable growth of hardwoods.
3. To control disease in pine seedlings.
4. To prepare forest land for planting or seeding.
5. To create a favorable habitat for certain species.
6. To remove dead vegetation for the maintenance of railroad, highway and public utility right-of-way.

C. In the absence of other means of disposal, open burning may be used for the following agricultural practices:

1. To destroy undesirable *or diseased* vegetation.
2. To clear orchards and orchard prunings.
3. To destroy fertilizer and chemical containers.
4. To denature seed and grain ~~which that~~ may no longer be suitable for agricultural purposes.
5. To prevent loss from frost or freeze damage.
6. To create a favorable habitat for certain species.
7. To destroy strings and plastic ground cover remaining in the field after being used in growing staked tomatoes.

9 VAC 5-40-5641. Local ordinances on open burning.

A. General.

1. If the governing body of any locality wishes to adopt an ordinance governing open burning within its jurisdiction, the

ordinance must first be approved by the board (see § 10.1-1321 B of the Code of Virginia).

2. In order to assist local governments in the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model.

3. If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is filed with the department upon its adoption by the local government.

4. If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.

5. Local ordinances ~~which that~~ have been approved by the board prior to April 1, 1996, remain in full force and effect as specified by their promulgating authorities.

B. Establishment and approval of local ordinances varying from the model.

1. Any local governing body proposing to adopt or amend an ordinance relating to open burning ~~which that~~ differs from the model local ordinance in subsection C of this section shall first obtain the approval of the board for the ordinance or amendment as specified in subdivision A 4 of this section. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.

b. Adequate local resources will be committed to enforcing the proposed local ordinance.

c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

d. If a waiver from any provision of Article 40 (9 VAC 5-40-5600 et seq.) of 9 VAC 5 Chapter 40 has been requested under 9 VAC 5-40-5640, the language of the ordinance shall achieve the objective of the provision from which the waiver is requested.

2. Approval of any local ordinance may be withdrawn if the board determines that the local ordinance is less strict than state regulations or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months of the effective date of the amended state regulations.

4. Local ordinances are a supplement to state regulations. Any provisions of local ordinances ~~which that~~ have been approved by the board and are more strict than state regulations shall take precedence over state regulations

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within the respective locality. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

5. A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

- a. A public hearing is held prior to granting the variance;
- b. The public is notified of the application for a variance by notice in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and
- c. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

6. 9 VAC 5-20-60 shall not apply to local ordinances concerned solely with open burning.

C. Model Ordinance.

ORDINANCE NO. (000)

Section (000-1). Title. This article shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

Section (000-2). Purpose. The purpose of this article is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This article is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

Section (000-3). Definitions. For the purpose of this article and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meaning given them in this section.

A. "Automobile graveyard" means any lot or place ~~which that~~ is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and ~~which that~~ it would not be economically practical to make operative, are placed, located or found.

B. "Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

~~B.~~ C. "Clean burning waste" means waste ~~which does not produce dense smoke when burned and~~ that is not prohibited to be burned under this ordinance ~~and that consists only of~~ (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

D. "Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated

by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

E. "Clean wood" means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include: (i) yard waste or (ii) construction, renovation, or demolition wastes (for example, railroad ties and telephone poles).

~~G.~~ F. "Construction waste" means solid waste ~~which that~~ is produced or generated during construction ~~of structures, remodeling, or repair of pavements, houses, commercial buildings and other structures.~~ Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

~~D.~~ G. "Debris waste" means ~~stumps, wood, brush, and leaves from land-clearing operations~~ wastes resulting from land-clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

~~E.~~ H. "Demolition waste" means that solid waste ~~which that~~ is produced by the destruction of structures and their foundations and includes the same materials as construction waste.

~~F.~~ I. "Garbage" means ~~rotting animal and vegetable matter accumulated by a household in the course of ordinary day to day living~~ readily putrescible discarded materials composed of animal, vegetable or other organic matter.

~~G.~~ J. "Hazardous waste" means ~~refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristics may:~~ a "hazardous waste" as described in 9 VAC 20-60, Hazardous Waste Management Regulations.

~~1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or~~

~~2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed~~

~~H.~~ K. "Household refuse waste" means ~~waste material and trash normally accumulated by a household in the course of ordinary day to day living~~ any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

~~I.~~ L. "Industrial waste" means ~~all waste generated on the premises of manufacturing and industrial operations such as, but not limited to, those carried on in factories, processing~~

~~plants, refineries, slaughter houses, and steel mills any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.~~

~~J. M. "Junkyard" means an establishment or place of business which that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.~~

~~K. N. "Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) for further definitions of these terms.~~

~~L. O. "Local landfill" means any landfill located within the jurisdiction of a local government.~~

~~M. P. "Open burning" means the burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney combustion of solid waste without:~~

- ~~a. Control of combustion air to maintain adequate temperature for efficient combustion;~~
- ~~b. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and~~
- ~~c. Control of the combustion products' emission.~~

~~N. Q. "Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain destructors incinerators and over draft incinerators.~~

~~O. R. "Refuse" means trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resulting from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management and emergency operations all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean-up of spills or contamination or other discarded materials.~~

~~P. S. "Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping~~

containers or drums, and specifically including automobile graveyards and junkyards.

~~Q. T. "Sanitary landfill" means an engineered land burial facility for the disposal of household waste which that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris and nonhazardous industrial solid waste. See Solid Waste Management Regulations (9 VAC 20-80-40 et seq.) for further definitions of these terms.~~

~~R. U. "Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.~~

~~S. V. "Special incineration device" means a an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.~~

~~W. "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:~~

- ~~1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.~~
- ~~2. Construction, renovation, or demolition wastes.~~
- ~~3. Clean lumber.~~

~~X. "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.~~

Section (000-4). Prohibitions on open burning.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the

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purpose of a salvage operation or for the disposal of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries ~~which~~ *that* may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9 VAC 5 Chapter 70 (9 VAC 5-70-10 et seq.) or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Section (000-5). Exemptions. The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

A. Open burning for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel;

B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;

C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

D. Open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and

E. Open burning for the destruction of classified military documents.

Section (000-6). Permissible open burning.

A. Open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the conditions are met:

1. The burning takes place on the premises of the private property; (and)
2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; (and

3. No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road¹.

B. Open burning is permitted for the disposal of household ~~refuse~~ waste by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;
2. Animal carcasses or animal wastes are not burned;
3. Garbage is not burned; (and)
4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; (and
5. No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road².

C. Open burning is permitted for disposal of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations ~~which~~ *that* may be approved by (designated local official), provided the following conditions are met:

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);
2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;
3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;
4. The burning shall be conducted at the greatest distance practicable from highways and air fields,
5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;
6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and
7. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

D. Open burning is permitted for disposal of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas provided that the following conditions are met:

¹ This provision shall be included in ordinances for urban areas. It may be included in ordinances for non-urban areas.

² This provision shall be included in ordinances for urban areas. It may be included in ordinances for non-urban areas.

1. The burning shall take place on the premises of a local sanitary landfill ~~which~~ *that* meets the provisions of the regulations of the Virginia Waste Management Board,
2. The burning shall be attended at all times;
3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning ~~construction~~ waste, clean burning debris waste, or clean burning demolition waste;
4. All reasonable effort shall be made to minimize the amount of material that is burned;
5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and (designated local official); no other site shall be used without the approval of these officials. (Designated local official) shall be notified of the days during which the burning will occur.

(E. (Sections 000-6 A through D notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during June, July, or August.³)

Section (000-7). Permits.

A. When open burning of debris waste (Section 000-6 C) or open burning of debris on the site of a local landfill (Section 000-6 D) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (designated local official) prior to the burning. Such a permit may be granted only after confirmation by (designated local official) that the burning can and will comply with the provisions of this ordinance and any other conditions ~~which~~ *that* are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by (designated local official).

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (designated local official), such permits to be granted only after confirmation by (designated local official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met ~~which~~ *that* are deemed necessary by (designated local official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.

3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If (designated local official) determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.

4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.

5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

6. The use of special incineration devices shall be allowed only for the disposal of debris waste, clean burning construction waste, and clean burning demolition waste.

(C. An application for a permit under Section 000-7 A or 000-7 B shall be accompanied by a processing fee of \$----.⁴)

Section (000-8). Penalties for violation.

A. Any violation of this ordinance is punishable as a Class I misdemeanor. (See § 15.1-901 of the Code of Virginia.)

B. Each separate incident may be considered a new violation.

VA.R. Doc. No. R05-24; Filed November 7, 2005, 2:13 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: 9 VAC 20-85. Regulations Governing Management of Coal Combustion Byproducts (amending 9 VAC 20-85-20, 9 VAC 20-85-30, 9 VAC 20-85-40, and 9 VAC 20-85-60 through 9 VAC 20-85-170).

Statutory Authority: § 10.1-1402 of the Code of Virginia, 42 USC § 6941 and 40 CFR Part 257.

Public Hearing Date: January 9, 2006 - 10 a.m.

Public comments may be submitted until January 27, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Michael Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4327, or e-mail mjdieter@deq.virginia.gov.

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board (board) to issue regulations as may be necessary to carry out its powers and duties required by the Virginia Waste Management Act.

³ This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be included in ordinances for jurisdictions outside these areas.

⁴ The fee stipulation in this section is optional at the discretion of the jurisdiction.

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Section 10.1-1406.2 contains provisions for exemptions pertaining to the use of coal ash at facilities regulated by DMME.

The regulation provides special provisions for the proper use and placement of coal combustion byproducts (CCB), or coal ash, which is one of the numerous solid wastes otherwise covered in the Virginia Solid Waste Management Regulations (VSWMR), 9 VAC 20-80.

Purpose: This regulation establishes procedures for the proper management of coal combustion byproducts (CCB) in construction projects. The regulations govern the use, reuse and reclamation of coal combustion byproducts. The regulations establish appropriate standards for siting, design, construction and operation of projects using CCB.

The regulation allows for the use of CCB in structural fills and mined land reclamation projects.

It establishes minimum standards for all persons who use, reuse, or reclaim the CCB by applying it or placing it on the land and to owners and operators of coal mining facilities that accept CCB for mined land reclamation or mine refuse disposal on sites permitted by the Virginia Department of Mines Minerals and Energy. The regulation contains provisions regarding the siting of projects, the design and construction of run-off and cover systems, and closure of projects involving CCB. It also provides minimum requirements for operation of the site.

The Virginia Solid Waste Management Regulations were recently modified to allow fossil fuel combustion products when mixed with CCB to be used in the same manner as CCB. Provisions for fossil fuel combustion products should also be reflected in the regulations governing CCB as well.

Substance: Definitions of "fossil fuel combustion products" and "waste derived fuel product" have been incorporated into the regulations.

References contained within the regulation to the use of "coal combustion byproducts" and "fossil fuel combustion products" under the provisions of the other regulations including the VSWMR have been updated where necessary.

The compaction specifications in 9 VAC 20-85-90 have been eliminated and the regulations have been modified to require the placement of fossil fuel combustion products as specified by a professional engineer. 9 VAC 20-85-80 has been modified to require the submission of the engineering specifications as part of the application package. 9 VAC 20-85-120 has been modified to require documentation that materials have been placed according to the specification in the final site report.

The administrative requirements in 9 VAC 20-85-150 have been updated to provide a completeness review and approval of the submission by the department.

Issues: By implementing these regulatory provisions, both the Coal Combustion Byproduct Regulations and the Virginia Solid Waste Management Regulations will allow the use of fossil fuel combustion products in a consistent manner.

The advantages to the Commonwealth include allowing the use of ash from fossil fuel combustion products in the same manner that coal combustion byproducts are used and eliminate the need for a variance petition to use fossil fuel combustion products under the provision of this regulation. In addition, the regulation promotes the use of waste materials and helps preserve landfill space.

No disadvantages are expected as a result of these amendments.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Waste Management Board (the board) proposes to amend the regulation governing the management of coal combustion byproducts (CCB). Specifically, provisions of the current regulation that enumerate generic compaction requirements for CCB have been removed and a provision directing that an engineer submit project compaction specifications based on intended use of the building site has been proposed. Project engineers will also be required to submit certification that projects have been completed according to these specifications. The proposed regulation requires that the Department of Environmental Quality (DEQ) evaluate all project documentation within 30 days of submission and allows placement of fossil fuel combustion products to begin after that evaluation is complete. In addition, the proposed regulation will allow fuel combustion products to be used under the same conditions and in the same manner as CCB.

The board is also considering proposals to either remove provisions in the Virginia Solid Waste Management Regulation (VSWMR) that govern coal ash and consolidate these provisions into the regulation governing management coal combustion byproducts or to eliminate the CCB regulation entirely and consolidate all provisions therein with the VSWMR.

Estimated economic impact. Fossil fuel combustion products are the residuals left after coal, oil, natural gas, petroleum coke or a mixture of coal and other fuels¹ are burned to produce electricity or steam. Fly ash, bottom ash, boiler slag, and flue gas control waste are the residuals from this generation process. These residuals can be used as a

¹ Waste derived fuel product, auto shredder fluff, wood waste, coal mill rejects, peat, tall oil, tire derived fuel, deionizer resins and used oil are considered to be other fuels and may be co-burned with coal as long as coal comprises at least 50% of the fuel volume.

drainage medium and stabilized road base/sub-base for road construction and provide a stable base for building when used at construction sites. They have also been used in Virginia as a structural fill and contouring medium for a golf course in the Tidewater area. There are numerous additional uses for CCB and fuel combustion products that are governed by provisions of the VSWMR and, as such, will not be affected by this proposed regulatory change. All of these uses, both those regulated under VSWMR and under the regulation governing management of CCB, divert for good purpose materials that would otherwise end up in landfills. Given that over 90 million tons of fossil fuel combustion byproducts are produced in the US each year, and well over 2 million tons are produced in Virginia, any cost effective steps that the Commonwealth can take to facilitate that diversion will benefit the public at large as well as the buyers and sellers of these products.

Current regulation lists compaction specifications to which all CCB and fuel combustion projects must adhere. These specifications include a specific maximum depth in which layers of CCB may be laid as well as a minimum density to which these layers must be compacted. The proposed regulation removes the codified compaction specifications and adds language requiring project engineers to submit project distinct compaction specifications to DEQ during the application process. This will allow businesses to develop CCB and fuel combustion product sites using the specifications that they find are most appropriate for the site and the project's intended use. This change will add some cost to the application process since unique project specifications will take extra time to develop and submit. DEQ estimates that the cost of adding the generation of site specifications to the work a site engineer already does will add \$1,000 to \$2,500 to the cost of a CCB project. This cost will be offset by the greater flexibility businesses will have to undertake projects using CCB or fuel combustion products for which the generic specifications would have been inadequate. The regulatory change will likely increase demand for CCB and other fuel combustion products as more varied uses for these products will now be allowed. It will also limit the legal exposure that the regulatory agency would be subject to should a project built using specifications mandated in regulation fail.

The board proposes that site engineers also be required to affirm that their project was finished using the compaction specifications submitted during the application process. Regulatory provisions that currently govern closure criteria for CCB project sites require project engineers to submit a signed statement that affirms that the project has been completed in accordance with design plans. The proposed regulatory change will not impose a substantive burden because engineers will just be adding language to an already required statement.

The proposed regulation mandates that DEQ evaluate applications submitted to the agency within 30 days. Although DEQ already responds very quickly to these types of applications, this requirement will provide protection against lengthy and costly delays in the application approval process if there is a problem with response time in the future.

In addition, the board proposes to change regulatory language so that businesses need not obtain a variance in order to use fuel combustion products. Under the proposed regulation, CCB and fuel combustion products are both defined as fossil fuel combustion products and are subject to the same rules of use and permit application process. This proposed change will have no effect on the environmental safeguards that users of either CCB or fuel combustion products must ensure; it will eliminate a layer of administrative requirements that currently constrains the use of, and would tend to suppress the demand for, fuel combustion products.

This change will reduce permit application costs for businesses who wish to use fuel combustion products by the amount of the filing fees that run between \$1,000 and \$2,000. Businesses will also save the value of time that would have been spent filling out and filing the separate application for variance. DEQ estimates that the variance filing process takes approximately half a day of clerical work to finish. The proposed regulatory change will tend to lower the cost of using fuel combustion products that will tend to increase demand for these products.

If this proposed regulatory change leads to increased demand for fuel combustion products, producers of those products will benefit in several ways. Immediately, increased sales of fuel combustion products will increase revenue. Additionally, increased sales will mean less unsold fuel combustion products that would then take up landfill space. This will lower disposal costs for producers and also slow the rate at which current landfills reach capacity and decrease the rate at which new landfills will need to be developed. Both increased revenue and decreased costs will raise profits for producers of fuel combustion products. Additionally, the public at large is better off when these products are used in ecologically safe projects rather than becoming part of the Commonwealth's solid waste stream.

In short, the proposed regulation will tend to encourage the use of fossil fuel combustion products that will have positive economic implications for all affected parties.

Toward the same end of encouraging use of CCB by simplifying regulation, it makes sense to consolidate all regulations that address the use of fossil fuel combustion products to make them easier to find. This can be better accomplished by pulling the provisions for coal ash out of the VSWMR and placing them in the separate regulation governing management of fossil fuel combustion by-products than it would be by forcing interested parties to search through the entire VSWMR to find the relevant provisions. It is worth noting also that this approach would tend to produce more benefits than would incorporating all regulation into the VSWMR as that incorporation would have the effect of labeling byproducts as waste that could stigmatize and suppress their socially and economically beneficial use.

Businesses and entities affected. Both producers of CCB and fuel combustion products and entities who wish to purchase and use those products will benefit from the decreased regulatory burden outlined in the proposed regulation. DEQ has evaluated, on average, 1 application for CCB projects per year since current regulation was introduced in 1995. During that time period, 6 projects have been approved. A variance to

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use fuel combustion products was needed in 1 of those 6 projects.

Localities particularly affected. All localities in Virginia will be affected by the proposed regulation.

Projected impact on employment. To the extent that a more streamlined regulatory scheme and application process encourages more projects using CCB and fuel combustion products, the proposed regulation will tend to increase employment in the construction sector. To the extent that CCB and fuel combustion products are used rather than landfilled, employment in the landfill industry will be slightly suppressed. The proposed regulation is likely to have a positive net effect on employment in the Commonwealth.

Effects on the use and value of private property. The proposed regulation will increase the value of property in the Commonwealth in several ways. Most immediately, the proposed regulation will save businesses that want to use fuel combustion products the fees (\$1,000 to \$2,000) associated with, as well as the time spent, filing an application for variance. DEQ estimates that the paperwork associated with filing a variance takes approximately 3 to 4 hours to fill out and file.

Additionally, sold CCB and fuel combustion products are not being added to the solid waste stream of the companies, such as Dominion Power, that produce them. This will tend to slow the rate at which these companies' landfills reach capacity and will also reduce the need for new landfills. So, in addition to the revenue raised by selling CCB and fuel combustion products, these companies can reduce their operating costs, and boost their profits. To the extent that the proposed regulation will reduce the need for new landfill space, the value of land adjacent to possible landfill sites will not be degraded.

Small businesses: reporting, recordkeeping, & administrative costs. Small businesses that want to use fuel combustion products will save \$1,000 to \$2,000 in fees associated with variance application and will also save the half day of staff time needed to fill out and file variance paperwork.

Small businesses: alternative method that minimizes adverse impact. The proposed regulation will decrease the compliance burden on the regulated community.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The proposed amendments modify, add, and repeal definitions; establish procedures for the use, reuse, and reclamation of coal combustion byproducts (CCB); establish appropriate standards for siting, design, construction, and operation of projects using CCB; and update the regulation to recognize fossil fuel combustion products that will eliminate the need for a variance petition without detrimental impact to human health or the environment.

9 VAC 20-85-20. Definitions.

In addition to the definitions incorporated by reference, the following words and terms shall have, for the purpose of this chapter, the following meanings:

"ASTM" means the American Society for Testing and Materials.

"CCB" means coal combustion byproducts.

~~"CCB site" means all land and structures, other appurtenances, and improvements on them used to manage CCB by the methods included in either 9 VAC 20-85-40 A or B.~~

"Closure" means the act of securing a ~~CCB fossil fuel combustion products~~ site pursuant to the requirements of this chapter.

"Coal combustion byproducts" means residuals, including fly ash, bottom ash, boiler slag, and flue gas emission control waste produced by coal-fired electrical or steam generating units.

"Director" means the Director of the Department of Environmental Quality or the Director of the Department of Mines, Minerals and Energy depending on the context.

"Fossil fuel combustion products" means coal combustion byproducts as defined in this regulation, coal combustion byproducts generated at facilities with fluidized bed combustion technology, petroleum coke combustion byproducts, byproducts from the combustion of oil, byproducts from the combustion of natural gas, and byproducts from the combustion of mixtures of coal and "other fuels" (i.e., co-burning of coal with "other fuels" where coal is at least 50% of the total fuel). For purposes of this definition, "other fuels" means waste-derived fuel product, auto shredder fluff, wood wastes, coal mill rejects, peat, tall oil, tire-derived fuel, deionizer resins, and used oil.

"Fossil fuel combustion products site" means all land and structures, other appurtenances, and improvements on them used to manage fossil fuel combustion products by the methods included in either 9 VAC 20-85-40 A or B.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff.

"Speculatively accumulated material" means any material that is accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. ~~CCB Fossil fuel combustion products~~ are not being accumulated speculatively when they can be used, reused, or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the accumulated ~~CCB fossil fuel combustion products~~ are being removed from the storage annually.

"TCLP" means a chemical analytical procedure described in the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-10 ~~et seq.~~

"Waste derived fuel product" means a solid waste or combination of solid wastes that have been treated (altered physically, chemically, or biologically) to produce a fuel

product with a minimum heating value of 5,000 BTU/lb. Solid wastes used to produce a waste derived fuel product must have a heating value, or act as binders, and may not be added to the fuel for the purpose of disposal. Waste ingredients may not be listed or characteristic hazardous wastes. The fuel product must be stable at ambient temperature, and not degraded by exposure to the elements. This material may not be "Refuse Derived Fuel (RDF)" as defined in 9 VAC 5-40-890.

9 VAC 20-85-30. Purpose.

The purpose of this chapter is to provide for the use of fossil fuel combustion products including coal combustion byproducts (CCB) and to establish appropriate standards for siting, design, construction, operation, and administrative procedures pertaining to their use, reuse, or reclamation.

9 VAC 20-85-40. Applicability.

A. This chapter applies to all persons who use, reuse, or reclaim ~~CCB~~ fossil fuel combustion products by applying them to or placing them on land in a manner other than addressed in the Virginia Solid Waste Management Regulations, 9 VAC 20-80-150 and 9 VAC 20-80-160. 9 VAC 20-80-150 provides for the beneficial use of waste materials such as fossil fuel combustion products, and 9 VAC 20-80-160 provides for conditional exemptions from regulation for fossil fuel combustion products.

B. This chapter establishes minimum standards for the owners or operators of coal mining facilities that accept CCB for mine reclamation or mine refuse disposal on a mine site permitted by the Virginia Department of Mines, Minerals and Energy (DMME) unless otherwise exempt under 9 VAC 20-80-160 B of the Solid Waste Management Regulations. If the permit issued by the DMME in accordance with the Virginia Surface Mining Regulations, 4 VAC 25-130-700.1 et seq., specifies the applicable conditions set forth in Parts III and IV of this chapter, the permittee is exempt from this chapter.

C. Conditions of applicability are as follows:

1. Persons using ~~CCB~~ fossil fuel combustion products other than in a manner prescribed under this chapter, or managing ~~CCB~~ fossil fuel combustion products containing any constituent at a level exceeding levels set forth in Table 1 in Part IV of this chapter, shall manage their waste in accordance with all applicable provisions of the Virginia Solid Waste Management Regulations, 9 VAC 20-80-40 et seq.;

2. Materials which are accumulated speculatively, materials which are not utilized in a manner described in the operation plan required by 9 VAC 20-85-90 of this chapter, and off-specification materials which cannot be utilized or reprocessed to make them usable shall be managed in accordance with all appropriate provisions of the Virginia Solid Waste Management Regulations, 9 VAC 20-80-40 et seq.; and

3. Storage, stockpiling, and other processing or handling of ~~CCB~~ fossil fuel combustion products, which may need to occur prior to their final placement or use, reuse, or reclamation, shall be in a manner necessary to protect human health and safety and the environment. For projects

permitted by the DMME, the storage, stockpiling, or handling of CCB shall be managed in accordance with the Virginia Surface Mining Regulations, 4 VAC 25-130-700.1 et seq.

9 VAC 20-85-60. Enforcement and appeals.

A. All administrative enforcement and appeals taken from actions of the director relative to the provisions of this chapter shall be governed by the Virginia Administrative Process Act (~~§ 9-6-44:4~~ 2.2-4000 et seq. of the Code of Virginia).

B. The owner or operator of the ~~CCB~~ fossil fuel combustion products site who violates any provision of this chapter will be considered to be operating an unpermitted facility as provided for in 9 VAC 20-80-90 of the Solid Waste Management Regulations and shall be required to either obtain a permit as required by Part VII or close under Part V of this chapter.

C. The requirement to obtain a permit or to close the project shall not preclude additional action for remediation or enforcement, including (without limitations) the assessment of civil charges or civil penalties, as is otherwise authorized by law.

9 VAC 20-85-70. Locational restrictions.

~~Coal combustion byproducts~~ Fossil fuel combustion products used, reused, or reclaimed on or below ground shall not be placed:

1. In areas subject to base floods unless it can be shown that ~~CCB~~ fossil fuel combustion products can be protected from inundation or washout and that flow of water is not restricted;
2. With the vertical separation between the ~~CCB~~ fossil fuel combustion products and the maximum seasonal water table or bedrock less than two feet;
3. Closer than:
 - a. 100 feet of any perennial stream,
 - b. 100 feet of any water well (other than a monitoring well) in existence at the onset of the project,
 - c. 25 feet of a bedrock outcrop, unless the outcrop is properly treated to minimize infiltration into fractured zones,
 - d. 100 feet of a sinkhole, or
 - e. 25 feet from any property boundary or, in the case of projects permitted by the DMME, 25 feet from the permit boundary. (NOTE: All distances are to be measured in the horizontal plane.)
4. In wetlands, unless applicable federal, state and local permits are obtained; and
5. On the site of an active or inactive dump, unpermitted landfill, lagoon, or similar facility, even if such facility is closed.

9 VAC 20-85-80. Design and construction.

This section prescribes design and construction standards for ~~CCB~~ fossil fuel combustion products sites. The owner or

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operator of such a site shall ~~prepare~~ *submit* appropriate design plans, *specifications* and a design report that address, at a minimum, the requirements contained in this section.

1. A survey benchmark shall be identified and its location referenced on drawings and maps of the site.

2. During construction and filling, off-site runoff shall be diverted around the use, reuse or reclamation areas. The uncovered active ~~CCB fossil fuel combustion products~~ fill areas shall be graded to a maximum slope of 5.0% and a smooth surface maintained to provide for sheet flow runoff and to prevent dusting. Runoff from the use, reuse or reclamation area shall be controlled and contained by use of diversion ditches, sediment traps, berms or collection ponds in accordance with the site erosion control plan. The use, reuse, or reclamation projects shall be designed to divert surface water run on from a 25-year, 24-hour storm event. For projects permitted by the DMME, the standards for runoff, grading, and runoff shall be in accordance with the Coal Surface Mining Reclamation Regulations, 4 VAC 25-130-700.1 et seq.

3. Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Side slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper side slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management units shall be supported by necessary calculations and included in the design report.

4. The finished top slope shall be at least 2.0% to prevent ponding of water, except where covered by a building, a paved roadway, a paved parking surface, paved walkways or sidewalks, or similar structures.

5. *Specifications prepared by a registered professional engineer shall be provided that indicate the criteria for the placement of the fossil fuel combustion products based on the intended use of the site. Specifications will include lab and field testing to be performed, testing frequency based on the nature and source of the materials, and the required performance of the material based on the intended use of the site. All test methods will be in accordance with ASTM.*

~~5.~~ 6. Upon reaching the final grade, the placed material shall be covered in accordance with the requirements of Article 4 of this part.

9 VAC 20-85-90. Operations.

The owner or operator of a ~~CCB fossil fuel combustion products~~ site shall prepare an operation plan. At a minimum, the plan shall address the requirements contained in this section.

1. Tracking of mud or ~~CCB fossil fuel combustion products~~ onto public roads from the site shall be controlled at all times to minimize nuisances.

2. The addition of any solid waste including but not limited to hazardous, infectious, construction, debris, demolition, industrial, petroleum-contaminated soil, or municipal solid waste to ~~CCB fossil fuel combustion products~~ is prohibited. This prohibition does not apply to solid wastes from the

extraction, beneficiation and processing of ores and minerals conditionally exempted under 9 VAC 20-80-160 A 2 of the Solid Waste Management Regulations.

3. Fugitive dust shall be controlled at the site so it does not constitute nuisances or hazards.

4. After preparing the subbase, ~~CCB fossil fuel combustion products~~ shall be placed in ~~no greater than 12-inch layers. The CCB shall then be compacted to a minimum 95% of the maximum dry density achievable at its optimum moisture content in accordance with the Standard Proctor method, ASTM test designation D 698, or to a minimum of 80% relative density as determined by ASTM test designation D 4254 for coal combustion bottom ash and boiler slag. Field compaction tests shall be taken for each 5,000 cubic yards placed uniformly and compacted to standards, including *insitu density, compaction effort and relative density as specified by a registered professional engineer based on the intended use of the fossil fuel combustion products.* The placement and compaction of CCB on coal mine sites shall be subject to the applicable requirements of the Coal Surface Mining Reclamation Regulations, 4 VAC 25-130-700.1 et seq.~~

5. A surface run on and runoff control program shall be implemented to control and reduce the infiltration of surface water through the ~~CCB fossil fuel combustion products~~ and to control the runoff from the placement area to other areas and to surface waters.

6. Runoff shall not be permitted to drain or discharge into surface waters except when in accordance with 9 VAC 25-10-10 et seq., of the State Water Control Board, or otherwise approved by the department.

7. ~~CCB Fossil fuel combustion products~~ site development shall be in accordance with the Virginia Erosion and Sediment Control Regulations, 4 VAC 50-30-~~10 et seq.~~, or the Coal Surface Mining Reclamation Regulations, 4 VAC 25-130-700.1 et seq., as applicable.

9 VAC 20-85-100. General.

Upon reaching the final grade, the owner or operator of a ~~CCB fossil fuel combustion products~~ site shall close his project in a manner that minimizes the need for further maintenance.

9 VAC 20-85-110. Exemptions from the closure requirements.

A. An owner or operator of a site that constructs a building, a paved roadway, a paved parking surface, paved walkways and sidewalks, or other similar structures on top of the fill within a reasonable time period of reaching the final grade not to exceed 12 months shall be exempt from the requirements of this article for the portions of the ~~CCB fossil fuel combustion products~~ site directly under the construction area.

B. An operator of a coal mine site permitted by the DMME who is reclaiming a site in conformance with the Coal Surface Mining Reclamation Regulations, 4 VAC 25-130-700.1 et seq., shall be exempt from the closure requirements contained in the section.

9 VAC 20-85-120. Closure criteria.

A. The owner or operator shall install a final cover system that is designed and constructed to:

1. Minimize infiltration through the closed ~~CCB fossil fuel combustion products~~ site by the use of an infiltration layer that contains a minimum 12 inches of earthen material; and
2. Minimize erosion of the final cover by the use of an erosion control layer that contains a minimum of six inches of earthen material and is capable of sustaining the growth of indigenous plant species or plant species adapted to the area.

B. The use of the property after closure shall not disturb the integrity of the final cover, unless the purpose of the disturbance is to construct buildings, paved roadways, paved parking surfaces, paved walkways and sidewalks, or other similar facilities.

C. Within 90 days after placement of the final cover is complete, the owner or operator shall submit:

1. To the local land recording authority, a survey plat prepared by a professional land surveyor registered by the Commonwealth, indicating the location and dimensions of the placement areas. The plat filed with the local land recording authority shall contain a note, prominently displayed, which states the owner's or operator's future obligation to restrict disturbance of the site.
2. To the department, a statement signed by a registered professional engineer that construction has been completed in accordance with the design plans, *specifications, and the design report* and a report prepared ~~to satisfy and certified by a registered professional engineer documenting that the requirements of 9 VAC 20-85-80 and closure has been performed in accordance with closure plan prepared under 9 VAC 20-85-130 have been met.~~

9 VAC 20-85-130. Closure plan and amendment of plan.

A. The owner or operator of the ~~CCB fossil fuel combustion products~~ site shall have a written closure plan. This plan shall identify the steps necessary to completely close the site. The plan shall include, at least, a schedule for final closure including, as a minimum, the anticipated date when ~~CCB fossil fuel combustion products~~ will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates.

B. The owner or operator may amend his plan at any time during the active life of the project. The owner or operator shall so amend his plan any time changes in operating plans or project design affect the closure plan.

C. At any time during the operating life of the project, the plan shall be made available to the department upon request of the director.

9 VAC 20-85-140. Time allowed for closure.

The owner or operator shall complete closure activities in accordance with the closure plan and within six months after receiving the final volume of ~~CCB fossil fuel combustion products~~. The director may approve a longer closure period if

the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that he has taken all necessary steps to eliminate any significant threat to human health and the environment from the unclosed but inactive project.

9 VAC 20-85-150. General.

A. Notwithstanding any provisions of Part VII of the Virginia Solid Waste Management Regulations, 9 VAC 20-80-~~40 et seq.~~, the owner or operator of a site which manages only ~~CCB fossil fuel combustion products~~ allowed under 9 VAC 20-85-40 shall not be required to have a solid waste management facility permit, neither must a ~~CCB fossil fuel combustion products~~ facility operator certified by the Board for Waste Management Facility Operators directly supervise operations at the site, if the owner or operator at least 30 days prior to initial placement of ~~CCB fossil fuel combustion products~~:

1. Provides the director a certification that he has legal control over the ~~CCB fossil fuel combustion products~~ site for the project life and the closure period. For the purposes of this section, on a coal mine site permitted by the DMME, demonstration of legal right to enter and begin surface coal mining and reclamation operations shall constitute compliance with the provisions of this section.
2. With the exception of projects permitted by the DMME, provides the director the certification from the governing body of the county, city, or town in which the ~~CCB fossil fuel combustion products~~ site is to be located that the location and operation of the ~~CCB fossil fuel combustion products~~ site are consistent with all applicable ordinances.
3. Provides the director with a general description of the intended use, reuse, or reclamation of ~~CCB fossil fuel combustion products~~. Such description will include:
 - a. A description of the nature, purpose and location of the ~~CCB fossil fuel combustion products~~ site, including a topographic map showing the site area and available soils, and geological maps. The description shall include an explanation of how ~~CCB fossil fuel combustion products~~ will be stored prior to use, reuse or reclamation, if applicable;
 - b. The estimated beginning and ending dates for the operation;
 - c. An estimate of the volume of the ~~CCB fossil fuel combustion products~~ to be utilized; and
 - d. A description of the proposed type of ~~CCB fossil fuel combustion products~~ to be used, reused or reclaimed, including physical and chemical characteristics of the ~~CCB fossil fuel combustion products~~. The chemical description shall contain the results of TCLP analyses for the constituents shown in Table 1. The description shall also contain a statement that the project will not manage ~~CCB fossil fuel combustion products~~ that contain any constituent at a level exceeding those shown in the table.

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TABLE 1.
LIST OF CONSTITUENTS AND MAXIMUM LEVELS.

Constituent	Level, mg/lit
Arsenic	5.0
Barium	100
Cadmium	1.0
Chromium	5.0
Lead	5.0
Mercury	0.2
Selenium	1.0
Silver	5.0

4. Provides the director with a certification by a professional engineer licensed to practice by the Commonwealth that the project meets the locational restrictions of 9 VAC 20-85-70. Such certificate shall contain no qualifications or exemptions from the requirements.

5. Furnishes to the director a certificate signed by a professional engineer licensed to practice by the Commonwealth that the project has been designed in accordance with the standards of 9 VAC 20-85-80 if applicable. Such certificate shall contain no qualifications or exceptions from the requirements and plans.

6. Submits to the director an operational plan describing how the standards of 9 VAC 20-85-80 will be met.

7. Submits to the director a closure plan describing how the standards of Article 4 of Part III of this chapter will be met, if applicable.

8. Submits to the director a signed statement that the owner or operator shall allow authorized representatives of the Commonwealth, upon presentation of appropriate credentials, to have access to areas in which the activities covered by this chapter will be, are being, or have been conducted to ensure compliance.

B. The materials submitted under the provisions of subsection A of this section will be evaluated for completeness within 30 days of receipt by the department. Placement of the fossil fuel combustion products may begin after the director has determined that the materials submitted address the requirements of subsection A of this section.

9 VAC 20-85-160. Project modifications.

The owner or operator of a ~~CGB~~ fossil fuel combustion products site may modify the design and operation of the project by furnishing the department a new certificate required by subdivision A 5 of 9 VAC 20-85-150 and a new operational plan required by subdivision 6 of 9 VAC 20-85-150. Whenever modifications in the design or operation of the project affect the provisions of the closure plan, the owner or operator shall prepare an amended plan in accordance with the requirements of Article 4 of Part III of this chapter.

9 VAC 20-85-170. Applicability.

The director may grant a variance from any requirement contained in Part III of this chapter to the owner or operator of the ~~CGB~~ fossil fuel combustion products site if he demonstrates to the satisfaction of the director that granting the variance will not result in an additional risk to the public

health or the environment beyond the risk which would be imposed without the variance.

DOCUMENTS INCORPORATED BY REFERENCE

~~STANDARD Proctor Method.~~

~~Test Designation D698, ASTM.~~

~~Test Designation D4254, ASTM.~~

VA.R. Doc. No. R05-25; Filed November 7, 2006, 2:12 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-120. Waivered Services: Home and Community-Based Services Mental Retardation Waiver (amending 12 VAC 30-120-211, 12 VAC 30-120-213, 12 VAC 30-120-215, 12 VAC 30-120-217, 12 VAC 30-120-219, 12 VAC 30-120-221, 12 VAC 30-120-223, 12 VAC 30-120-225, 12 VAC 30-120-227, 12 VAC 30-120-229, 12 VAC 30-120-231, 12 VAC 30-120-233, 12 VAC 30-120-237, 12 VAC 30-120-241, 12 VAC 30-120-245, 12 VAC 30-120-247, 12 VAC 30-120-249; repealing 12 VAC 30-120-243).**

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 January 27, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680, or e-mail teja.stokes@dmas.virginia.gov.

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

42 CFR 430.25 permits states to operate, consistent with federal approval, programs that waive certain basic overarching Medicaid requirements. The broad overarching requirements that can be waived are the coverage of a service across the entire state, comparability of amount, duration, and scope of services (coverage of the same service for all persons within an eligibility category); and freedom of choice of providers.

This regulatory action is a response to item 326.PP of the 2004 Virginia Appropriation Act.

Purpose: The purpose of this regulatory action is to conform the agency's regulations to recent federally approved changes

to this waiver program that have resulted from the federally required waiver renewal process. This program provides supportive services in the homes and communities of persons with diagnoses of mental retardation or children younger than the age of six years who are at risk of developmental delay. This program permits these individuals to remain in their homes and communities rather than being institutionalized in Intermediate Care Facilities for the Mentally Retarded. All federal home and community-based waiver programs must be renewed every five years as required by federal law.

Substance: The sections that are affected by this action are 12 VAC 30-120-211 through 12 VAC 30-120-249.

DMAS formed an MR Waiver Advisory Committee consisting of family members, advocates, providers and state agencies to assist with completing the renewal process. The MR Waiver Advisory Committee recommended changes to the waiver based on their experiences and input from others they represented. The waiver application submitted to the Centers for Medicare and Medicaid Services (CMS) reflected these recommendations as agreed to by DMAS and DMHMRSAS.

The original MR Waiver application expired on September 15, 2004. In an effort to streamline processes and make all of Virginia's waivers operate on a state fiscal year, Virginia submitted a request to CMS with this renewal to make the renewal date effective on July 1, 2004.

CMS approved the renewal of this waiver and completed its review of the MR Waiver in July 2004. The renewal included required changes to the MR Waiver that were included in the currently effective emergency regulations and are now addressed in this proposed regulation.

In general, regulation changes include the following:

1. Added language to clarify the definitions of companion services and environmental modifications and changed the definition of "facilitator" to "services facilitator."
2. Added language regarding the transfer of children enrolled in the MR Waiver to the IFDDS waiver who reach the age of six but do not have a diagnosis of mental retardation.
3. Revised the situations that are considered at-risk for crisis stabilization services.
4. Added language to clarify that crisis supervision is a component of crisis stabilization.
5. Changed the due date for submission of the crisis stabilization individual service plan to the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) to within 72 hours of "the requested start date of authorization."
6. Clarified that direct care staff of personal care/respite care agencies and DMHMRSAS licensed services must pass a DMHMRSAS approved test.
7. Added language clarifying when modifications to an individual's work site may be approved to the service description of environmental modifications.

8. Added definitions of center-based and noncenter-based prevocational services.

9. Defined criteria for receiving prevocational services at the intensive level.

10. Changed the service description of nursing to indicate that the services to be offered through skilled nursing must be those that do not meet the home health criteria. In addition, skilled nursing through the waiver may be used as consultation for nurse delegation as appropriate and oversight of direct care staff as appropriate.

11. Revised the limit of individual supported employment in recognition that the service is delivered in hourly units.

12. Reorganized 12 VAC 30-120-215 to present information in chronological order.

13. Combined the personal care and respite sections as the requirements are similar.

14. Included information on the consumer-directed option under companion services and the personal assistance and respite services sections. Previously, this information had been included in a separate section.

Issues: The primary advantage of these proposed regulations is that they allow individuals with mental retardation to live as independently as possible in the community by providing to individuals services in their homes and communities rather than in an institution. The proposed changes in this regulation seek to improve the operations of the program by providing further clarification on available services and the necessary requirements to provide for the health, safety, and welfare of the individuals receiving services.

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

Department of Planning and Budget's Economic Impact

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 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 mainly clarify definitions and requirements in this regulation to reflect what is followed in practice. One of the proposed changes slightly broadens the type of situations that are considered at-risk for crisis stabilization services.

Estimated economic impact. Almost all of the proposed changes are clarifications of the definitions and the requirements in this regulation. None of the proposed clarifications are expected to create any significant economic

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impact other than making these regulations more accessible to and understandable by the public. Improved clarity of the regulations, however, could provide some economic benefits in terms of avoided confusions and costs that may be associated.

One of the proposed changes slightly broadens the type of situations that are considered at-risk for crisis stabilization services. Currently, in order to receive crisis stabilization services, a recipient must be at risk of disruption of community status. The proposed language will allow provision of crisis stabilization services if there is an immediate threat of losing a community service. The proposed broader scope of situations that allows provision of crisis stabilization services may increase expenditures depending on the number of new cases under the revised criteria. However, increased utilization of crisis stabilization services may also prevent these cases requiring institutionalization and provide some cost savings. Even though there may be some additional costs and benefits associated with this particular change, they are not expected to be significant.

Businesses and entities affected. These regulations affects approximately 750 mental retardation waiver providers and up to 6,751 individuals that may receive waiver services.

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

Projected impact on employment. The proposed regulations are not anticipated to have any significant impact on employment.

Effects on the use and value of private property. No significant impact of the use and value of private property is expected.

Small businesses: costs and other effects. All of the 750 mental retardation waiver providers could be defined as small businesses. However, none of the proposed changes are likely to create any additional costs for these providers.

Small businesses: alternative method that minimizes adverse impact. The proposed regulations are not expected to create any adverse affect on small businesses.

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 30-120: Waiver Services: Home and Community-Based Services – Mental Retardation Waiver. The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The Department of Medical Assistance Services (DMAS) was directed by the 2004 Virginia Appropriation Act to renew the Mental Retardation (MR) Waiver by submitting a home and community-based waiver application to the Centers for Medicare and Medicaid Services (CMS). DMAS formed an MR Waiver Advisory Committee consisting of family members, advocates, providers and state agencies to

assist with completing the renewal process. The proposed permanent regulations reflect the changes to the MR Waiver Application as approved by CMS in July 2004. In general the changes include (i) reorganization of individual eligibility section to present information in chronological order; (ii) clarification of definitions, service descriptions and limitations, and individual eligibility and provider requirements; (iii) revision of criteria for crisis stabilization and the due date for submission of paperwork for preauthorization; (iv) change in the limit for individual models of supported employment to reflect an accurate limit for hourly units; (v) clarification of education requirements for providers of day support, prevocational, and supported employment services; and (vi) the addition of definitions of center-based and noncenter-based services under prevocational services and criteria for prevocational services at an intensive level.

12 VAC 30-120-211. Definitions.

"Activities of daily living" or "ADL" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Appeal" means the process used to challenge adverse actions regarding services, benefits and reimbursement provided by Medicaid pursuant to 12 VAC 30-110 and 12 VAC 30-20-500 through 12 VAC 30-20-560.

"Assistive technology" or "AT" means specialized medical equipment and supplies to include devices, controls, or appliances, specified in the consumer service plan but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and nondurable medical equipment not available under the Medicaid State Plan.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county under Chapter 15 (§ 37.1-242 et seq.) of Title 37.1 of the Code of Virginia that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the locality that it serves.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Case management" means the assessing and planning of services; linking the individual to services and supports identified in the consumer service plan; assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the individual; enhancing community integration; making collateral contacts to promote the implementation of the consumer service plan and community integration; monitoring to assess ongoing progress and ensuring services are

delivered; and education and counseling that guides the individual and develops a supportive relationship that promotes the consumer service plan.

"Case manager" means the individual on behalf of the community services board or behavioral health authority possessing a combination of mental retardation work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities, ~~at entry level,~~ as established by the Department of Medical Assistance Services in 12 VAC 30-50-450.

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities ~~or cities and counties~~ under Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Companion" means, for the purpose of these regulations, a person who provides companion services.

"Companion services" means nonmedical care, support, and socialization, provided to an adult (age 18 and over). The provision of companion services does not entail hands-on ~~nursing~~ care. It is provided in accordance with a therapeutic goal in the consumer service plan and is not purely diversional in nature.

"Comprehensive assessment" means the gathering of relevant social, psychological, medical and level of care information by the case manager and is used as a basis for the development of the consumer service plan.

"Consumer-directed ~~services model~~" means services for which the individual or family/caregiver is responsible for hiring, training, supervising, and firing of the staff.

"Consumer-directed (CD) services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the Consumer-Directed Services Individual Service Plan, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed companion, personal assistance, and respite services.

"Consumer service plan" or "CSP" means documents addressing needs in all life areas of individuals who receive mental retardation waiver services, and is comprised of individual service plans as dictated by the individual's health care and support needs. The individual service plans are incorporated in the CSP by the case manager.

"Crisis stabilization" means direct intervention to persons with mental retardation who are experiencing serious psychiatric or behavioral challenges that jeopardize their current community living situation, by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent other out-of-home placement. This service shall be designed to stabilize the individual and strengthen the current living situation so the individual can be supported in the community during and beyond the crisis period.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMHMRSAS staff" means persons employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level.

"Developmental risk" means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through existing diagnostic and evaluative criteria.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or family/caregiver, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"Enroll" means that the individual has been determined by the case manager to meet the eligibility requirements for the MR Waiver and DMHMRSAS has verified the availability of a MR Waiver slot for that individual.

"Entrepreneurial model" means a small business employing eight or fewer individuals who have disabilities on a shift and usually involves interactions with the public and with coworkers without disabilities.

"Environmental modifications" means physical adaptations to a house, place of residence, ~~or primary vehicle or work site~~ (when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act) that are necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual.

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"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines that prescribe preventive and treatment services for Medicaid-eligible children as defined in 12 VAC 30-50-130.

~~"Facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the Consumer-Directed Services Individual Service Plan, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed companion, personal assistance, and respite services.~~

"Fiscal agent" means an agency or organization within DMAS or contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed personal assistance, respite, and companion services.

"Health Planning Region" or "HPR" means the federally designated geographical area within which health care needs assessment and planning takes place, and within which health care resource development is reviewed.

"Health, welfare, and safety standard" means that an individual's right to receive a waiver service is dependent on a finding that the individual needs the service, based on appropriate assessment criteria and a written individual service plan *and that services can safely be provided in the community.*

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to § 1915(c) of the Social Security Act to be offered to persons with mental retardation and children younger than age six who are at developmental risk who would otherwise require the level of care provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR.)

"ICF/MR" means a facility or distinct part of a facility certified by the Virginia Department of Health, as meeting the federal certification regulations for an Intermediate Care Facility for the Mentally Retarded and persons with related conditions. These facilities must address the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, and must provide active treatment.

"Individual" means the person receiving the services or evaluations established in these regulations.

"Individual service plan" or "ISP" means the service plan related solely to the specific waiver service. Multiple ISPs help to comprise the overall consumer service plan.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

"ISAR" means the Individual Service Authorization Request and is the DMAS form used by providers to request prior authorization for MR waiver services.

"Mental retardation" or "MR" means mental retardation as defined by the American Association on Mental Retardation (AAMR).

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and DMHMRSAS, and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of an individual's request for services until all required information is received by DMHMRSAS.

"Personal assistance services" means assistance with activities of daily living, instrumental activities of daily living, access to the community, self-administration of medication, or other medical needs, and the monitoring of health status and physical condition.

"Personal assistant" means a person who provides personal assistance services.

"Personal emergency response system (PERS)" is an electronic device that enables certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

"Preauthorized" means that an individual service has been approved by DMHMRSAS prior to commencement of the service by the service provider for initiation and reimbursement of services.

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage.

"Qualified mental retardation professional" means a professional possessing: (i) at least one year of documented experience working directly with individuals who have mental retardation or developmental disabilities; (ii) a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession, if applicable.

"Residential support services" means support provided in the individual's home by a DMHMRSAS-licensed residential provider or a DSS-approved provider of adult foster care services. This service is one in which training, assistance, and supervision is routinely provided to enable individuals to maintain or improve their health, to develop skills in activities of daily living and safety in the use of community resources, to adapt their behavior to community and home-like environments, to develop relationships, and participate as citizens in the community.

"Respite services" means services provided to individuals who are unable to care for themselves, furnished on a short-term

basis because of the absence or need for relief of those unpaid persons normally providing the care.

"Services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the Consumer-Directed Services Individual Service Plan, providing employee management training, and completing ongoing review activities as required by DMAS for services with an option of a consumer-directed model. These services include companion, personal assistance, and respite services.

"Skilled nursing services" means services that are ordered by a physician and required to prevent institutionalization, that are not otherwise available under the State Plan for Medical Assistance and that are provided by a licensed registered professional nurse, or by a licensed practical nurse under the supervision of a licensed registered professional nurse, in each case who is licensed to practice in the Commonwealth.

"Slot" means an opening or vacancy of waiver services for an individual.

"State Plan for Medical Assistance" or "Plan" means the ~~regulations~~ Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supported employment" means work in settings in which persons without disabilities are typically employed. It includes training in specific skills related to paid employment and the provision of ongoing or intermittent assistance and specialized supervision to enable an individual with mental retardation to maintain paid employment.

"Support plan" means the report of recommendations resulting from a therapeutic consultation.

"Therapeutic consultation" means activities to assist the individual, family/caregivers, staff of residential support, day support, and any other providers in implementing an individual service plan.

12 VAC 30-120-213. General coverage and requirements for MR waiver services.

A. Waiver service populations. Home and community-based waiver services shall be available through a § 1915(c) of the Social Security Act waiver for the following individuals who have been determined to require the level of care provided in an ICF/MR.

1. Individuals with mental retardation; or
2. Individuals younger than the age of six who are at developmental risk. At the age of six years, these individuals must have a diagnosis of mental retardation to continue to receive home and community-based waiver services specifically under this program.

Mental Retardation (MR) Waiver recipients who attain the age of six years of age, who are determined to not have a diagnosis of mental retardation, and who meet all IFDDS Waiver eligibility criteria, shall be eligible for transfer to the IFDDS Waiver effective up to their seventh birthday. Psychological evaluations confirming diagnoses must be

completed less than one year prior to transferring to the IFDDS Waiver. These recipients transferring from the MR Waiver will automatically be assigned a slot in the IFDDS Waiver, subject to the approval of the slot by CMS. The case manager will submit the current Level of Functioning Survey, CSP and psychological evaluation to DMAS for review. Upon determination by DMAS that the individual is appropriate for transfer to the IFDDS Waiver, the case manager will provide the family with a list of IFDDS Waiver case managers. The case manager will work with the selected IFDDS Waiver case manager to determine an appropriate transfer date and submit a DMAS-122 to the local DSS. The MR Waiver slot will be held by the CSB until the child has successfully transitioned to the IFDDS Waiver. Once the child has successfully transitioned, the CSB will reallocate the slot.

B. Covered services.

1. Covered services shall include: residential support services, day support, supported employment, personal assistance (both consumer and agency-directed), respite services (both consumer and agency-directed), assistive technology, environmental modifications, skilled nursing services, therapeutic consultation, crisis stabilization, prevocational services, personal emergency response systems (PERS), and companion services (both consumer and agency-directed.)

2. These services shall be appropriate and necessary to maintain the individual in the community. Federal waiver requirements provide that the average per capita fiscal year expenditures under the waiver must not exceed the average per capita expenditures for the level of care provided in Intermediate Care Facilities for the Mentally Retarded under the State Plan that would have been provided had the waiver not been granted.

3. *Waiver services shall not be furnished to individuals who are inpatients of a hospital, nursing facility, ICF/MR, or inpatient rehabilitation facility. Individuals with mental retardation who are inpatients of these facilities may receive case management services as described in 12 VAC 30-50-450. The case manager may recommend waiver services that would promote exiting from the institutional placement; however, these services shall not be provided until the individual has exited the institution.*

~~3.~~ 4. Under this § 1915(c) waiver, DMAS waives § 1902(a)(10)(B) of the Social Security Act related to comparability.

C. *Requests for increased services.* All requests for increased waiver services by MR Waiver recipients will be reviewed under the health, welfare, and safety standard. This standard assures that an individual's right to receive a waiver service is dependent on a finding that the individual needs the service, based on appropriate assessment criteria and a written ISP and that services can safely be provided in the community.

D. Appeals. Individual appeals shall be considered pursuant to 12 VAC 30-110-10 through 12 VAC 30-110-380. Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-560.

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E. Urgent criteria. The CSB/BHA will determine, from among the individuals included in the urgent category, who should be served first, based on the needs of the individual at the time a slot becomes available and not on any predetermined numerical or chronological order.

1. The urgent category will be assigned when the individual is in need of services because he is determined to meet one of the criteria established in subdivision 2 of this subsection. Assignment to the urgent category may be requested by the individual, his legally responsible relative, or primary caregiver. The urgent category may be assigned only when the individual, the individual's spouse, or the parent of an individual who is a minor child would accept the requested service if it were offered. Only after all individuals in the Commonwealth who meet the urgent criteria have been served can individuals in the nonurgent category be served. Individuals in the nonurgent category are those who meet the diagnostic and functional criteria for the waiver, including the need for services within 30 days, but who do not meet the urgent criteria. In the event that a CSB/BHA has a vacant slot and does not have an individual who meets the urgent criteria, the slot can be held by the CSB/BHA for 90 days from the date it is identified as vacant, in case someone in an urgent situation is identified. If no one meeting the urgent criteria is identified within 90 days, the slot will be made available for allocation to another CSB/BHA in the Health Planning Region (HPR). If there is no urgent need at the time that the HPR is to make a regional reallocation of a waiver slot, the HPR shall notify DMHMRSAS. DMHMRSAS shall have the authority to reallocate said slot to another HPR or CSB/BHA where there is unmet urgent need. Said authority must be exercised, if at all, within 30 days from receiving such notice.

2. Satisfaction of one or more of the following criteria shall indicate that the individual should be placed on the urgent need of waiver services list:

- a. Both primary caregivers are 55 years of age or older, or if there is one primary caregiver, that primary caregiver is 55 years of age or older;
- b. The individual is living with a primary caregiver, who is providing the service voluntarily and without pay, and the primary caregiver indicates that he can no longer care for the individual with mental retardation;
- c. There is a clear risk of abuse, neglect, or exploitation;
- d. ~~One~~ A primary caregiver, ~~or both caregivers,~~ has a chronic or long-term physical or psychiatric condition or conditions which significantly limits the abilities of the primary caregiver or caregivers to care for the individual with mental retardation;
- e. Individual is aging out of publicly funded residential placement or otherwise becoming homeless (exclusive of children who are graduating from high school); or
- f. The individual with mental retardation lives with the primary caregiver and there is a risk to the health or safety of the individual, primary caregiver, or other

individual living in the home due to either of the following conditions:

- (1) The individual's behavior or behaviors present a risk to himself or others which cannot be effectively managed by the primary caregiver even with generic or specialized support arranged or provided by the CSB/BHA; or
- (2) There are physical care needs (such as lifting or bathing) or medical needs that cannot be managed by the primary caregiver even with generic or specialized supports arranged or provided by the CSB/BHA.

F. Reevaluation of service need and utilization review. *Case managers shall complete reviews and updates of the CSP and level of care as specified in 12 VAC 30-120-215 D.* Providers shall meet the documentation requirements as specified in 12 VAC 30-120-217 B.

~~1. The consumer service plan (CSP).~~

~~a. The CSP shall be developed by the case manager mutually with the individual, the individual's family/caregiver, other service providers, consultants, and other interested parties based on relevant, current assessment data. The CSP development process identifies the services to be rendered to individuals, the frequency of services, the type of service provider or providers, and a description of the services to be offered. The ISP from each waiver service provider shall be incorporated into the CSP. Only services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.~~

~~b. The case manager is responsible for continuous monitoring of the appropriateness of the individual's services and revisions to the CSP as indicated by the changing needs of the individual. At a minimum, the case manager must review the CSP every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.~~

~~c. Any modification to the amount or type of services in the CSP must be authorized by DMHMRSAS or DMAS.~~

~~2. Review of level of care.~~

~~a. The case manager shall complete a comprehensive assessment annually, in coordination with the individual, family/caregiver, and service providers. If warranted, the case manager shall coordinate a medical examination and a psychological evaluation for the individual. The reassessment shall include an update of the level of care and functional assessment instrument and any other appropriate assessment data. The CSP shall be revised as appropriate.~~

~~b. A medical examination must be completed for adults based on need identified by the individual, family/caregiver, provider, case manager, or DMHMRSAS staff. Medical examinations and screenings for children must be completed according to the recommended frequency and periodicity of the EPSDT program.~~

~~e. A psychological evaluation or standardized developmental assessment for children under six years of age must reflect the current psychological status (diagnosis), adaptive level of functioning, and cognitive abilities. A new psychological evaluation shall be required whenever the individual's functioning has undergone significant change and is no longer reflective of the past psychological evaluation.~~

~~3. Case manager must request an updated DMAS-122 form from DSS annually and forward a copy of the updated DMAS-122 form to all service providers when obtained.~~

12 VAC 30-120-215. Individual eligibility requirements.

A. Individuals receiving services under this waiver must meet the following requirements. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy. Virginia has elected to cover the optional categorically needy groups under 42 CFR 435.211, 435.217, and 435.230. The income level used for 42 CFR 435.211, 435.217 and 435.230 is 300% of the current Supplemental Security Income payment standard for one person.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care criteria. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based waiver services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the deductions listed below:

a. For individuals to whom § 1924(d) applies and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual, which is equal to the SSI payment for one person. As of January 1, 2002, due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee,

the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.)

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the plan.

b. For individuals to whom § 1924(d) does not apply and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual, which is equal to the SSI payment for one person. As of January 1, 2002, due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.)

(2) For an individual with a dependent child or children, an additional amount for the maintenance needs of the child or children, which shall be equal to the Title XIX medically needy income standard based on the number of dependent children.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the State Medical Assistance Plan.

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3. The following four criteria shall apply to all mental retardation waiver services:

a. Individuals qualifying for mental retardation waiver services must have a demonstrated ~~clinical~~ need for the service resulting in significant functional limitations in major life activities. The need for the service must arise from either (i) an individual having a diagnosed condition of mental retardation or (ii) a child younger than six years of age being at developmental risk of significant functional limitations in major life activities;

b. The CSP and services that are delivered must be consistent with the Medicaid definition of each service;

c. Services must be recommended by the case manager based on a current functional assessment using a DMHMRSAS approved assessment instrument and a demonstrated need for each specific service; and

d. Individuals qualifying for mental retardation waiver services must meet the ICF/MR level of care criteria.

~~B. Assessment and authorization of home and community-based waiver services enrollment.~~

1. To ensure that Virginia's home and community-based waiver programs serve only individuals who would otherwise be placed in an ICF/MR, home and community-based *waiver* services shall be considered only for individuals who are eligible for admission to an ICF/MR with a diagnosis of mental retardation, or who are under six years of age and at developmental risk. *For the case manager to make a recommendation for waiver services, MR Waiver services must be determined to be an appropriate service alternative to delay or avoid placement in an ICF/MR, or promote exiting from either an ICF/MR placement or other institutional placement. Home and community-based waiver services shall be the critical service that enables the individual to remain at home and in the community rather than being placed in an ICF/MR.*

2. The case manager shall recommend the individual for home and community-based *waiver* services after completion of a comprehensive assessment of the individual's needs and available supports. *This assessment process for home and community-based waiver services by the case manager is mandatory before Medicaid will assume payment responsibility of home and community-based waiver services. The comprehensive assessment includes:*

a. Relevant medical information based on a medical examination completed no earlier than 12 months prior to the initiation of waiver services;

b. The case manager's functional assessment that demonstrates a need for each specific service. The functional assessment must be a DMHMRSAS approved assessment completed no earlier than 12 months prior to enrollment;

c. The level of care required by applying the existing DMAS ICF/MR criteria (12 VAC 30-130-430 et seq.) completed no more than six months prior to enrollment. The case manager determines whether the individual

meets the ICF/MR criteria with input from the individual, family/caregivers, and service and support providers involved in the individual's support in the community; and

d. A psychological evaluation that reflects the current psychological status (diagnosis), current cognitive abilities, and current adaptive level of functioning of the individuals. ~~The comprehensive assessment includes relevant medical, social, level of care and psychological data, and identifies all services received by the individual. Medical examinations and social assessments shall be current, completed prior to the individual's entry to the waiver, and no earlier than 12 months prior to beginning waiver services. Psychological evaluations or standardized developmental evaluations for children under the age of six years must reflect the current psychological status (diagnosis), current cognitive abilities, and current adaptive level of functioning of the individuals.~~

~~3. An essential part of the case manager's assessment process shall be determining the level of care required by applying the existing DMAS ICF/MR criteria (12 VAC 30-130-430 et seq.).~~

~~4. The case manager shall complete the assessment, determine whether the individual meets the ICF/MR criteria and develop the CSP with input from the individual, family/caregivers, and service and support providers involved in the individual's support in the community. Completion of this assessment process for home and community-based waiver services by the case manager is mandatory before Medicaid will assume payment responsibility of home and community-based waiver services. For the case manager to make a recommendation for waiver services, MR Waiver services must be determined to be an appropriate service alternative to delay or avoid placement in an ICF/MR, or promote exiting from either an ICF/MR placement or inappropriate institutional placement.~~

~~5. 3. The case manager shall provide the individual and family/caregiver with the choice of MR waiver services or ICF/MR placement, choice of needed services available under the MR waiver, including agency or consumer directed services, and explore alternative settings and services to provide the services needed by the individual. A CSP shall be developed for the individual based on the assessment of needs as reflected in the level of care and functional assessment instruments and the individual's, family/caregiver's preferences.~~

~~4. The case manager shall send the appropriate forms to DMHMRSAS to enroll the individual in the MR Waiver or, if no slot is available, to place the individual on the waiting list. DMHMRSAS shall only enroll the individual if a slot is available. If no slot is available, the individual's name will be placed on either the urgent or nonurgent statewide waiting list until such time as a slot becomes available. Once notification has been received from DMHMRSAS that the individual has been placed on either the urgent or nonurgent waiting list, the case manager must notify the individual in writing within 10 working days of his placement on either list, and offer appeal rights. The case manager~~

will contact the individual or family/caregiver at least annually to provide the choice between institutional placement and waiver services while the individual is on the waiting list.

~~6. The case manager must submit the results of the comprehensive assessment and a recommendation to the DMHMRSAS staff for final determination of ICF/MR level of care and authorization for community-based services. DMHMRSAS will communicate in writing to the case manager whether the recommended services have been approved and the amounts and type of services authorized or if any have been denied. Medicaid will not pay for any home and community-based waiver services delivered prior to the authorization date approved by DMHMRSAS if prior authorization is required.~~

7. Mental retardation waiver services may be recommended by the case manager only if:

a. The individual is Medicaid eligible as determined by the local office of the Department of Social Services;

b. The individual has a diagnosis of mental retardation as defined by the American Association on Mental Retardation, or is a child under the age of six at developmental risk, who would in the absence of waiver services, require the level of care provided in an ICF/MR facility the cost of which would be reimbursed under the Plan;

c. The contents of the individual service plans are consistent with the Medicaid definition of each service; and

d. The individual requesting waiver services is not receiving such services while an inpatient of a nursing facility, an ICF/MR, or hospital.

~~8. All consumer service plans are subject to approval by DMAS. DMAS shall be the single state agency authority responsible for the supervision of the administration of the MR waiver and is responsible for conducting utilization review activities. DMAS has contracted with DMHMRSAS for recommendation of preauthorization of waiver services.~~

C. Waiver approval process: *authorizing and* accessing services.

1. Once the case manager has determined an individual meets the functional criteria for mental retardation (MR) waiver services, has determined that a slot is available, and that the individual has chosen ~~this service~~ *MR waiver services*, the case manager shall submit enrollment information to DMHMRSAS to confirm level of care eligibility and the availability of a slot. DMHMRSAS shall only enroll the individual if a slot is available.

2. If no slot is available, the individual's name will be placed on either the urgent or nonurgent statewide waiting list until such time as a slot becomes available. Once notification has been received from DMHMRSAS that the individual has been placed on either the urgent or nonurgent waiting list, the case manager must notify the individual in writing within 10 working days of his placement on either list, and offer appeal rights.

~~3.~~ 2. Once the individual has been enrolled by DMHMRSAS, the case manager will submit a DMAS-122 along with a written confirmation from DMHMRSAS of level of care eligibility, to the local DSS to determine financial eligibility for the waiver program and any patient pay responsibilities.

3. After the case manager has received written notification of Medicaid eligibility by DSS and written *confirmation of* enrollment from DMHMRSAS, the case manager shall inform the individual or family/caregiver so that the CSP can be developed. The individual or individual's family/caregiver will meet with the case manager within 30 calendar days to discuss the individual's needs and existing supports, and to develop a CSP that will establish and document the needed services. *The case manager shall provide the individual and family/caregiver with choice of needed services available under the MR Waiver, alternative settings and providers. A CSP shall be developed for the individual based on the assessment of needs as reflected in the level of care and functional assessment instruments and the individual's and family/caregiver's preferences. The CSP development process identifies the services to be rendered to individuals, the frequency of services, the type of service provider or providers, and a description of the services to be offered.*

4. The individual or case manager shall contact chosen service providers so that services can be initiated within 60 days of receipt of enrollment confirmation from DMHMRSAS. *The service providers in conjunction with the individual, individual's family/caregiver and case manager will develop ISPs for each service. A copy of these plans will be submitted to the case manager. The case manager will review and ensure the ISP meets the established service criteria for the identified needs prior to submitting to DMHMRSAS for prior authorization. The ISP from each waiver service provider shall be incorporated into the CSP. Only services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.*

5. If services are not initiated by the provider within 60 days, the case manager must submit written information to DMHMRSAS requesting more time to initiate services. A copy of the request must be provided to the individual or the individual's family/caregiver. DMHMRSAS has the authority to approve the request in 30-day extensions or deny the request to retain the waiver slot for that individual. DMHMRSAS shall provide a written response to the case manager indicating denial or approval of the extension. DMHMRSAS shall submit this response within 10 working days of the receipt of the request for extension.

~~4. The service providers will develop Individual Service Plans (ISP) for each service and will submit a copy of these plans to the case manager. The case manager will review and ensure the ISP meets the established service criteria for the identified needs and forward the required documentation to DMHMRSAS for prior authorization. DMHMRSAS shall, within 10 working days of receiving all supporting documentation, review and approve, pend for more information, or deny the individual service requests.~~

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~~5. The case manager will monitor the service providers' ISPs to ensure that all providers are working toward the identified goals of the affected individuals.~~

~~6. Case managers will be required to conduct monthly onsite visits for all MR waiver individuals residing in DSS-licensed assisted living facilities or approved adult foster care placements.~~

6. The case manager must submit the results of the comprehensive assessment and a recommendation to the DMHMRSAS staff for final determination of ICF/MR level of care and authorization for community-based services. DMHMRSAS shall, within 10 working days of receiving all supporting documentation, review and approve, pend for more information, or deny the individual service requests. DMHMRSAS will communicate in writing to the case manager whether the recommended services have been approved and the amounts and type of services authorized or if any have been denied. Medicaid will not pay for any home and community-based waiver services delivered prior to the authorization date approved by DMHMRSAS if prior authorization is required.

7. MR Waiver services may be recommended by the case manager only if:

a. The individual is Medicaid eligible as determined by the local office of the Department of Social Services;

b. The individual has a diagnosis of mental retardation as defined by the American Association on Mental Retardation, *Mental Retardation: Definition, Classification, and System of Supports*, 10th Edition, 2002, or is a child under the age of six at developmental risk, and would in the absence of waiver services, require the level of care provided in an ICF/MR the cost of which would be reimbursed under the Plan; and,

c. The contents of the individual service plans are consistent with the Medicaid definition of each service.

8. All consumer service plans are subject to approval by DMAS. DMAS is the single state agency authority responsible for the supervision of the administration of the MR Waiver.

D. Reevaluation of service need.

1. The consumer service plan (CSP).

a. The CSP shall be developed annually by the case manager with the individual, the individual's family/caregiver, other service providers, consultants, and other interested parties based on relevant, current assessment data.

b. The case manager is responsible for continuous monitoring of the appropriateness of the individual's services and revisions to the CSP as indicated by the changing needs of the individual. At a minimum, the case manager must review the CSP every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

c. Any modification to the amount or type of services in the CSP must be preauthorized by DMHMRSAS or DMAS.

2. Review of level of care.

a. The case manager shall complete a reassessment annually in coordination with the individual, family/caregiver, and service providers. The reassessment shall include an update of the level of care and functional assessment instrument and any other appropriate assessment data. If warranted, the case manager shall coordinate a medical examination and a psychological evaluation for the individual. The CSP shall be revised as appropriate.

b. A medical examination must be completed for adults based on need identified by the individual, family/caregiver, provider, case manager, or DMHMRSAS staff. Medical examinations and screenings for children must be completed according to the recommended frequency and periodicity of the EPSDT program.

c. A new psychological evaluation shall be required whenever the individual's functioning has undergone significant change and is no longer reflective of the past psychological evaluation. A psychological evaluation or standardized developmental assessment for children under six years of age must reflect the current psychological status (diagnosis), adaptive level of functioning, and cognitive abilities.

3. The case manager will monitor the service providers' ISPs to ensure that all providers are working toward the identified goals of the affected individuals.

4. Case managers will be required to conduct monthly onsite visits for all MR waiver individuals residing in DSS-licensed assisted living facilities or approved adult foster care placements.

5. The case manager must obtain an updated DMAS-122 form from DSS annually, designate a collector of patient pay when applicable and forward a copy of the updated DMAS-122 form to all service providers and the consumer-directed fiscal agent if applicable.

12 VAC 30-120-217. General requirements for home and community-based participating providers.

A. Providers approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS and DMHMRSAS, in writing, of any change in the information that the provider previously submitted to DMAS and DMHMRSAS;

2. Assure freedom of choice to individuals in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid program at the time the service or services were performed;

3. Assure the individual's freedom to refuse medical care, treatment and services;

4. Accept referrals for services only when staff is available to initiate services and perform such services on an ongoing basis;

5. Provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d et seq.), which prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC§ 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;

6. Provide services and supplies to individuals of the same quality and in the same mode of delivery as provided to the general public;

7. Submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS payment methodology from the individual's authorization date for the waiver services;

8. Use program-designated billing forms for submission of charges;

9. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided;

a. In general, such records shall be retained for at least ~~five~~ six years from the last date of service or as provided by applicable state or federal laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

10. ~~The provider agrees~~ Agree to furnish information on request and in the form requested to DMAS, DMHMRSAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement;

11. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid;

12. Pursuant to 42 CFR Part 431, Subpart F, 12 VAC 30-20-90, and any other applicable state or federal law, ~~all providers shall~~ hold confidential and use for authorized DMAS or DMHMRSAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits, the data is necessary for the functioning of the DMAS in conjunction with the cited laws;

13. *Notify DMAS of change of ownership.* When ownership of the provider changes, DMAS shall be notified at least 15 calendar days before the date of change;

14. *For all facilities covered by § 1616(e) of the Social Security Act in which home and community-based waiver services will be provided shall, be in compliance with applicable standards that meet the requirements for board and care facilities.* Health and safety standards shall be monitored through the DMHMRSAS' licensure standards or through DSS-approved standards for adult foster care providers;

15. Suspected abuse or neglect. Pursuant to §§ 63.2-1509 and 63.2-1606 of the Code of Virginia, if a participating provider knows or suspects that a home and community-based waiver service individual is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately from first knowledge to the local DSS adult or child protective services worker and to DMHMRSAS Offices of Licensing and Human Rights as applicable; and

16. ~~Adherence~~ *Adhere to the provider participation agreement and the DMAS provider service manual.* In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider participation agreements and in the DMAS provider manual.

B. Documentation requirements.

1. The case manager must maintain the following documentation for utilization review by DMAS for a period of not less than ~~five~~ six years from each individual's last date of service:

a. The comprehensive assessment and all CSPs completed for the individual;

b. All ISPs from every provider rendering waiver services to the individual;

c. All supporting documentation related to any change in the CSP;

d. All related communication with the individual, family/caregiver, consultants, providers, DMHMRSAS, DMAS, DSS, DRS or other related parties; and

e. An ongoing log that documents all contacts made by the case manager related to the individual and family/caregiver.

2. The service providers must maintain, for a period of not less than ~~five~~ six years from the individual's last date of

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service, documentation necessary to support services billed. Utilization review of individual-specific documentation shall be conducted by DMAS staff. This documentation shall contain, up to and including the last date of service, all of the following:

- a. All assessments and reassessments.
- b. All ISP's developed for that individual and the written reviews.
- c. An attendance log that documents the date services were rendered and the amount and type of services rendered.
- d. Appropriate data, contact notes, or progress notes reflecting an individual's status and, as appropriate, progress or lack of progress toward the goals on the ISP.
- e. Any documentation to support that services provided are appropriate and necessary to maintain the individual in the home and in the community.

C. An individual's case manager shall not be the direct staff person or the immediate supervisor of a staff person who provides MR Waiver services for the individual.

12 VAC 30-120-219. Participation standards for home and community-based waiver services participating providers.

A. Requests for participation will be screened to determine whether the provider applicant meets the basic requirements for participation.

B. For DMAS to approve provider agreements with home and community-based waiver providers, the following standards shall be met:

1. For services that have licensure and certification requirements, licensure and certification requirements pursuant to 42 CFR 441.302;
2. Disclosure of ownership pursuant to 42 CFR 455.104 and 455.105; and
3. The ability to document and maintain individual case records in accordance with state and federal requirements.

C. The case manager must inform the individual of all available waiver providers in the community in which he desires services and he shall have the option of selecting the provider of his choice from among those providers meeting the individual's needs.

D. DMAS shall be responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for participation agreement renewal with DMAS to provide home and community-based waiver services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's participation agreement, may result in a written request from DMAS for a corrective action plan that details the steps the provider must take and the length of time permitted to achieve full compliance with the plan to correct the deficiencies that have been cited.

E. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification. DMAS may terminate at will a provider's participation agreement on 30 days written notice as specified in the DMAS participation agreement. DMAS may also immediately terminate a provider's participation agreement if the provider is no longer eligible to participate in the program. Such action precludes further payment by DMAS for services provided to individuals subsequent to the date specified in the termination notice.

F. A provider shall have the right to appeal adverse action taken by DMAS. *Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-560* ~~Adverse actions may include, but shall not be limited to, termination of the provider agreement by DMAS, and retraction of payments from the provider by DMAS for noncompliance with applicable law, regulation, policy, or procedure. All disputes regarding provider reimbursement or termination of the agreement by DMAS for any reason shall be resolved through administrative proceedings conducted at the office of DMAS in Richmond, Virginia. These administrative proceedings and judicial review of such administrative proceedings shall be conducted pursuant to the Virginia Administrative Process Act, Chapter 40 (§ 2-2-4000 et seq.) of Title 2.2 of the Code of Virginia, the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia, and duly promulgated regulations. Court review of final agency determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act.~~

G. Section 32.1-325 of the Code of Virginia mandates that "any such Medicaid agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states or Washington, DC, must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider agreement. In addition, termination of a provider participation agreement will occur as may be required for federal financial participation.

H. Case manager's responsibility for the Individual Information Form (DMAS-122). It shall be the responsibility of the case management provider to notify DMHRSAS and DSS, in writing, when any of the following circumstances occur. Furthermore, it shall be the responsibility of DMHRSAS to update DMAS, as requested, when any of the following events occur:

1. Home and community-based waiver services are implemented.
2. A recipient dies.
3. A recipient is discharged from all MR waiver services.
4. Any other circumstances (including hospitalization) that cause home and community-based waiver services to cease or be interrupted for more than 30 days.
5. A selection by the individual or family/caregiver of a different community services board/behavioral health authority providing case management services.

I. Changes or termination of services. ~~It is the DMHMRSAS staff's responsibility to~~ shall authorize changes to an individual's CSP based on the recommendations of the case management provider. Providers of direct service are responsible for modifying their individual service plans ISPs with the involvement of the individual or family/caregiver, and submitting ~~it~~ ISPs to the case manager any time there is a change in the individual's condition or circumstances which may warrant a change in the amount or type of service rendered. The case manager will review the need for a change and may recommend a change to the ISP to the DMHMRSAS staff. DMHMRSAS will review and approve, deny, or pend for additional information regarding the requested change to the individual's ISP, and communicate this to the case manager within 10 working days of receiving all supporting documentation regarding the request for change or in the case of an emergency, within ~~72 hours~~ three working days of receipt of the request for change.

The individual or family/caregiver will be notified, in writing, of the right to appeal the decision or decisions to reduce, terminate, suspend or deny services pursuant to DMAS client appeals regulations, Part I (12 VAC 30-110-10 et seq.) of 12 VAC 30-110. The case manager must submit this notification to the individual in writing within 12 days of the decision. All CSPs are subject to approval by the Medicaid agency.

1. In a nonemergency situation, the participating provider shall give the individual or family/caregiver and case manager 12 days written notification of the provider's intent to discontinue services. The notification letter shall provide the reasons and the effective date the provider is discontinuing services. The effective date shall be at least 12 days from the date of the notification letter. The individual is not eligible for appeal rights in this situation and may pursue services from another provider.

2. In an emergency situation when the health and safety of the individual, other individuals in that setting, or provider personnel is endangered, the case manager and DMHMRSAS must be notified prior to discontinuing services. The 12- day written notification period shall not be required. If appropriate, the local DSS adult protective services or child protective services and DMHMRSAS Offices of Licensing and Human Rights must be notified immediately.

3. In the case of termination of home and community-based waiver services by the CSB/BHA, DMHMRSAS or DMAS staff, individuals shall be notified of their appeal rights by the case manager pursuant to Part I (12 VAC 30-110-10 et seq.) of 12 VAC 30-110. The case manager shall have the responsibility to identify those individuals who no longer meet the level of care criteria or for whom home and community-based waiver services are no longer an appropriate alternative.

12 VAC 30-120-221. Assistive technology.

A. Service description. Assistive technology (AT) is the specialized medical equipment and supplies including those devices, controls, or appliances, specified in the consumer service plan but not available under the State Plan for Medical

Assistance, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of such items.

B. Criteria. In order to qualify for these services, the individual must have a demonstrated need for equipment or modification for remedial or direct medical benefit primarily in the individual's home, vehicle, community activity setting, or day program to specifically serve to improve the individual's personal functioning. This shall encompass those items not otherwise covered under the State Plan for Medical Assistance. AT shall be covered in the least expensive, most cost-effective manner.

C. Service units and service limitations. Assistive technology is available to individuals who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. ~~A maximum limit of \$5,000 may be reimbursed per CSP year. The combined total of assistive technology items and labor related to these items may not exceed \$5,000 per CSP year.~~ Costs for assistive technology cannot be carried over from year to year and must be preauthorized each CSP year. AT shall not be approved for purposes of convenience of the caregiver or restraint of the individual. An independent professional consultation must be obtained from staff knowledgeable of that item for each AT request prior to approval by DMHMRSAS. All AT must be preauthorized by DMHMRSAS each CSP year. ~~Any Equipment/supplies/technology not available through a as durable medical equipment provider through the State Plan may be purchased and billed to DMAS for Medicaid reimbursement as assistive technology as long as the request for equipment/supplies/technology is documented and justified in the individual's ISP, recommended by the case manager, and authorized by DMHMRSAS preauthorized by DMHMRSAS, and provided in the least expensive, most cost-effective manner.~~

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, assistive technology shall be provided by a DMAS-enrolled Durable Medical Equipment provider or a DMAS-enrolled CSB/BHA with a MR Waiver provider agreement to provide assistive technology. The provider documentation requirements are as follows:

1. The appropriate ISAR form, to be completed by the case manager, may serve as the ISP, provided it adequately documents the need for the service, the process to obtain this service (contacts with potential vendors or contractors, or both, of service, costs, etc.), and the time frame during which the service is to be provided. This includes a separate notation of evaluation or design, or both, labor, and supplies or materials, or both. The ISP/ISAR must include documentation of the reason that a rehabilitation engineer is needed, if one is to be involved. A rehabilitation engineer may be involved if disability expertise is required that a general contractor will not have. The ISAR must be submitted to DMHMRSAS for authorization to occur;

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2. Written documentation regarding the process and results of ensuring that the item is not covered by the State Plan for Medical Assistance as durable medical equipment and supplies and that it is not available from a DME-provider when purchased elsewhere;

3. Documentation of the recommendation for the item by a qualified professional;

4. Documentation of the date services are rendered and the amount of service needed;

5. Any other relevant information regarding the device or modification;

6. Documentation in the case management record of notification by the designated individual or individual's representative of satisfactory completion or receipt of the service or item; and

7. Instructions regarding any warranty, repairs, complaints, or servicing that may be needed.

12 VAC 30-120-223. Companion services (agency-directed model).

A. Service description. Companion services provide nonmedical care, socialization, or support to an adult (age 18 or older). Companions may assist or support the individual with such tasks as meal preparation, community access and activities, laundry and shopping, but do not perform these activities as discrete services. Companions may also perform light housekeeping tasks. This service is provided in accordance with a therapeutic goal in the CSP and is not purely diversional in nature. *This service may be provided either through an agency-directed or a consumer-directed model.*

B. Criteria.

1. In order to qualify for companion services, the individual shall have demonstrated a need for assistance with IADLs, light housekeeping, community access, *reminders for medication self-administration or support to assure safety.* The provision of companion services does not entail hands-on ~~nursing~~ care.

2. *Individuals choosing the consumer-directed option must receive support from a CD services facilitator and meet requirements for consumer direction as described in 12 VAC 30-120-225.*

C. Service units and service limitations.

1. The unit of service for companion services is one hour and the amount that may be included in the ISP shall not exceed eight hours per 24-hour day. There is a limit of 8 hours per 24-hour day for companion services, either agency or consumer-directed or combined.

2. A companion shall not be permitted to provide the care associated with ventilators, continuous tube feedings, or suctioning of airways.

3. *The hours authorized are based on individual need. No more than two unrelated individuals who live in the same home are permitted to share the authorized work hours of the companion.*

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, companion service providers must meet the following qualifications:

1. Companion services ~~provider shall include providers.~~

a. *Agency-directed model: must be licensed by DMHMRSAS-licensed as a residential services providers, DMHMRSAS-licensed service provider, supportive residential services providers, DMHMRSAS-licensed service provider, day support service providers, DMHMRSAS-licensed provider, or respite service providers, and DMAS-enrolled provider or meet the DMAS criteria to be a personal care/respite care providers provider.*

b. *Consumer-directed model: a service facilitator meeting the requirements found in 12 VAC 30-120-225.*

2. Companion qualifications. ~~Providers must employ staff to provide companion services who~~ Companions must meet the following requirements:

a. Be at least 18 years of age;

b. Possess basic reading, writing, and math skills;

c. Be capable of following an ISP with minimal supervision;

d. Submit to a criminal history record check *within five days from the date of employment.* The companion will not be compensated for services provided to the individual if the records check verifies the companion has been convicted of crimes described in § 37.1-183.3 of the Code of Virginia;

e. Possess a valid Social Security number; and

f. Be capable of aiding in instrumental activities of daily living.

3. Companion service providers may not be the ~~parents of individuals who are minors or the individual's spouse.~~ Other family members living under the same roof as the individual being served may not provide companion services unless there is objective written documentation as to why there are no other providers available to provide the service. Companion services shall not be provided by adult foster care/family care providers or any other paid caregivers. This service shall not be provided in congregate settings by staff employed by the congregate provider.

4. Family members who are reimbursed to provide companion services must meet the companion qualifications.

5. *For the agency-directed model, companions will be employees of providers that will have participation agreements with DMAS to provide companion services. Providers will be required to have a companion services supervisor to monitor companion services. The supervisor must have a bachelor's degree in a human services field and at least one year of experience working in the mental retardation field, or be an LPN or an RN with at least one*

year of experience working in the mental retardation field. An LPN or RN must have a current license or certification to practice nursing in the Commonwealth within his or her profession.

6. The ~~provider supervisor or services facilitator~~ must conduct an initial home visit prior to initiating companion services to document the efficacy and appropriateness of services and to establish an individual service plan for the individual. The ~~provider supervisor or services facilitator~~ must provide follow-up home visits to monitor the provision of services quarterly *under the agency-directed model* and semi-annually (every six months) *under the consumer-directed model* or as often as needed.

7. Required documentation in the individual's record. The provider or services facilitator must maintain a record of each individual receiving companion services. At a minimum these records must contain:

a. An initial assessment completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation;

b. ~~The ISP goals, objectives, and activities.~~ An ISP containing the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports, or both;

(2) The services to be rendered and the schedule of services to accomplish the above outcomes;

c. Documentation that the ISP goals, objectives, and activities ~~must be~~ have been reviewed by the provider or services facilitator quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver.

~~e.~~ d. All correspondence to the individual, family/caregiver, case manager, DMAS, and DMHRSAS;

~~e.~~ e. Contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual;

~~e.~~ f. The companion services supervisor or services facilitator must document in the individual's record in a summary note following significant contacts with the companion and ~~quarterly~~ home visits with the individual that occur at least quarterly *under the agency-directed model* and at least semi-annually *under the consumer-directed model*:

(1) Whether companion services continue to be appropriate;

(2) Whether the plan is adequate to meet the individual's needs or changes are indicated in the plan;

(3) The individual's satisfaction with the service; and

(4) The presence or absence of the companion during the supervisor's visit;

(5) Any suspected abuse, neglect, or exploitation and to whom it was reported; and

(6) Any hospitalization or change in medical condition, functioning, or cognitive status.

g. A copy of the most recently completed DMAS-122. The provider or services facilitator must clearly document efforts to obtain the completed DMAS-122 from the case manager.

~~f.~~ All h. Agency-directed provider companion records. The In addition to the above requirements, the companion record for agency-directed providers must contain:

(1) The specific services delivered to the individual by the companion, dated the day of service delivery, and the individual's responses;

(2) The companion's arrival and departure times;

(3) The companion's weekly comments or observations about the individual to include observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

(4) The companion's and individual's or family/caregiver's weekly signatures recorded on the last day of service delivery for any given week to verify that companion services during that week have been rendered.

~~g.~~ A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 from the case manager.

i. Consumer-directed model companion record. In addition to the above requirements, the companion record for service facilitation providers must contain:

(1) The services facilitator's dated notes documenting any contacts with the individual, family/caregiver, and visits to the individual's home;

(2) Documentation of all training provided to the companion on behalf of the individual or family/caregiver;

(3) Documentation of all employee management training provided to the individual or family/caregiver, including the individual's or family/caregiver's receipt of training on their responsibility for the accuracy of the companion's timesheets; and

(4) All documents signed by the individual or the individual's family/caregiver that acknowledge the responsibilities as the employer.

12 VAC 30-120-225. Consumer-directed services: ~~personal assistance, companion, and respite model of service delivery.~~

~~A. Service definition.~~

~~1. Consumer-directed personal assistance services is hands-on care of either a supportive or health-related nature and may include, but is not limited to, assistance with activities of daily living, access to the community, monitoring~~

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~~of self-administration of medication or other medical needs, monitoring health status and physical condition, and work-related personal assistance. When specified, such supportive services may include assistance with instrumental activities of daily living (IADLs). Personal assistance does not include either practical or professional nursing services or those practices regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Subtitle III of Title 54.1 of the Code of Virginia, as appropriate.~~

~~2. Consumer-directed respite services are specifically designed to provide temporary, periodic, or routine relief to the unpaid primary caregiver of an individual. Respite services include, but are not limited to, assistance with personal hygiene, nutritional support, and environmental support. This service may be provided in the individual's home or other community settings.~~

~~3. Consumer-directed companion services provide nonmedical care, socialization, or support to an adult (age 18 and older). Companions may assist or support the individual with such tasks as meal preparation, community access and activities, laundry and shopping, but do not perform these activities as discrete services. Companions may also perform light housekeeping tasks. This service is provided in accordance with a therapeutic goal in the CSP and is not purely diversional in nature.~~

~~4. DMAS shall either provide for fiscal agent services or contract for the services of a fiscal agent for consumer-directed personal assistance services, consumer-directed companion services, and consumer-directed respite services. The fiscal agent will be reimbursed by DMAS to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle responsibilities for the individual for employment taxes. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.~~

A. Criteria.

~~1. The MR Waiver has three services, companion, personal assistance, and respite, which may be provided through a consumer-directed model.~~

~~2. Individuals who choose the consumer-directed model must have the capability to hire and train their own personal assistants or companions and supervise the assistant's or companion's performance. If an individual is unable to direct his own care or is under 18 years of age, a family/caregiver may serve as the employer on behalf of the individual.~~

~~3. The individual, or if the individual is unable, then family/caregiver, shall be the employer in this service, and therefore shall be responsible for hiring, training, supervising, and firing assistants and companions. Specific employer duties include checking of references of personal assistants/companions, determining that personal assistants/companions meet basic qualifications, training assistants/companions, supervising the assistant's/companion's performance, and submitting~~

~~timesheets to the fiscal agent on a consistent and timely basis. The individual or family/caregiver must have a back-up plan in case the assistant/companion does not show up for work as expected or terminates employment without prior notice.~~

~~5. 4. Individuals choosing consumer-directed models of service delivery services must receive support from a CD services facilitator. This is not a separate waiver service, but is required in conjunction with consumer-directed personal assistance, respite, or companion services. The CD service facilitator will be responsible for assessing the individual's particular needs for a requested CD service, assisting in the development of the ISP, providing training to the individual and family/caregiver on his responsibilities as an employer, and providing ongoing support of the consumer-directed models of services. The CD service services facilitator cannot be the individual, the individual's case manager, direct service provider, spouse, or parent of the individual who is a minor child, or a family/caregiver employing the assistant/companion. If an individual enrolled in consumer-directed services has a lapse in service facilitation services for more than 60 consecutive days, the case manager must notify DMHMRSAS and the consumer-directed services will be discontinued.~~

~~5. DMAS shall provide for fiscal agent services for consumer-directed personal assistance services, consumer-directed companion services, and consumer-directed respite services. The fiscal agent will be reimbursed by DMAS to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle the responsibilities of employment taxes for the individual. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.~~

B. Criteria.

~~1. In order to qualify for consumer-directed personal assistance services, the individual must demonstrate a need for personal assistance in activities of daily living, community access, self-administration of medication, or other medical needs, or monitoring health status or physical condition.~~

~~2. Consumer-directed respite services may only be offered to individuals who have an unpaid caregiver living in the home that requires temporary relief to avoid institutionalization of the individual. Respite services are designed to focus on the need of the unpaid caregiver for temporary relief and to help prevent the breakdown of the unpaid caregiver due to the physical burden and emotional stress of providing continuous support and care to the individual.~~

~~3. The inclusion of consumer-directed companion services in the CSP shall be appropriate when the individual has a demonstrated need for assistance with IADLs, community access and activities, self-administration of medication, or support to assure safety.~~

~~4. Individuals who are eligible for consumer-directed services must have the capability to hire and train their own~~

~~personal assistants or companions and supervise the assistant's or companion's performance. If an individual is unable to direct his own care or is under 18 years of age, a family/caregiver may serve as the employer on behalf of the individual.~~

~~5. The individual, or if the individual is unable, then a family/caregiver, shall be the employer in this service, and therefore shall be responsible for hiring, training, supervising, and firing assistants and companions. Specific employer duties include checking of references of personal assistants/companions, determining that personal assistants/companions meet basic qualifications, training assistants/companions, supervising the assistant's/companion's performance, and submitting timesheets to the fiscal agent on a consistent and timely basis. The individual or family/caregiver must have a back-up plan in case the assistant/companion does not show up for work as expected or terminates employment without prior notice.~~

~~C. Service units and service limitations.~~

~~1. The unit of service for consumer directed respite services is one hour. Consumer directed respite services are limited to a maximum of 720 hours per calendar year. Individuals who receive consumer directed respite and agency directed respite services may not receive more than 720 hours combined.~~

~~2. No more than two unrelated individuals who live in the same home are permitted to share the authorized work hours of the assistant or companion.~~

~~3. The unit of service for consumer directed personal assistance services is one hour. Each individual must have a back-up plan in case the assistant does not show up for work as expected or terminates employment without prior notice. Consumer directed personal assistance is not available to individuals who receive congregate residential services or live in assisted living facilities.~~

~~4. The unit of service for consumer directed companion services is one hour. The amount of consumer directed companion time must be included in the ISP. The amount of companion services included in the ISP may not exceed eight hours per 24-hour day. There is a limit of 8 hours per 24-hour day for consumer directed services, either as a stand-alone service or combined with agency directed services. A companion shall not be permitted to provide the care associated with ventilators, tube feedings, or suctioning of airways.~~

~~D. B. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, the CD services facilitator must meet the following qualifications:~~

~~1. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator shall have sufficient resources to perform the required activities. In addition, the CD services facilitator must have the ability to maintain and retain business and professional records~~

sufficient to document fully and accurately the nature, scope, and details of the services provided.

2. It is preferred that the CD services facilitator possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator have two years of satisfactory experience in a human service field working with persons with mental retardation. The facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills, and abilities must be documented on the provider's application form, found in supporting documentation, or be observed during a job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

a. Knowledge of:

(1) Types of functional limitations and health problems that may occur in persons with mental retardation, or persons with other disabilities, as well as strategies to reduce limitations and health problems;

(2) Physical assistance that may be required by people with mental retardation, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(3) Equipment and environmental modifications that may be required by people with mental retardation that ~~reduces~~ *reduce* the need for human help and improve safety;

(4) Various long-term care program requirements, including nursing home and ICF/MR placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal assistance, respite, and companion services;

(5) MR waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(6) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in service planning;

(7) Interviewing techniques;

(8) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed personal assistance, companion, and respite services, including hiring, training, managing, approving time sheets, and firing an assistant/companion;

(9) The principles of human behavior and interpersonal relationships; and

(10) General principles of record documentation.

b. Skills in:

(1) Negotiating with individuals, family/caregivers, and service providers;

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- (2) Assessing, supporting, observing, recording, and reporting behaviors;
 - (3) Identifying, developing, or providing services to individuals with mental retardation; and
 - (4) Identifying services within the established services system to meet the individual's needs.
- c. Abilities to:
- (1) Report findings of the assessment or onsite visit, either in writing or an alternative format for individuals who have visual impairments;
 - (2) Demonstrate a positive regard for individuals and their families;
 - (3) Be persistent and remain objective;
 - (4) Work independently, performing position duties under general supervision;
 - (5) Communicate effectively, orally and in writing; and
 - (6) Develop a rapport and communicate with persons of diverse cultural backgrounds.
3. If the CD services facilitator is not a RN, the CD services facilitator must inform the primary health care provider that services are being provided and request *skilled nursing or other* consultation as needed.
4. Initiation of services and service monitoring.
- a. For consumer-directed services, the CD services facilitator must make an initial comprehensive home visit to collaborate with the individual and family/caregiver to identify the needs, assist in the development of the ISP with the individual or family/caregiver, and provide employee management training. The initial comprehensive home visit is done only once upon the individual's entry into ~~the service consumer-directed models of service regardless of the number of consumer-directed models of services that an individual chooses to receive.~~ If ~~a waiver~~ an individual changes CD services facilitators, the new CD services facilitator must complete a reassessment visit in lieu of a comprehensive visit.
 - b. After the initial visit, the CD services facilitator will continue to monitor the companion or assistant ISP quarterly and on an as-needed basis. The CD services facilitator will review the utilization of consumer-directed respite services, either every six months or upon the use of 300 respite services hours, whichever comes first.
 - c. A face-to-face meeting with the individual must be conducted at least every six months to *reassess the individual's needs and to ensure appropriateness of any CD services received by the individual.*
5. During visits with the individual, the CD services facilitator must observe, evaluate, and consult with the individual or family/caregiver, and document the adequacy and appropriateness of consumer-directed services with regard to the individual's current functioning and cognitive status, medical *needs*, and social needs. ~~The CD services~~

~~facilitator's written summary of the visit must include, but is not necessarily limited to:~~

- ~~a. Discussion with the individual or family/caregiver whether the service is adequate to meet the individual's needs;~~
 - ~~b. Any suspected abuse, neglect, or exploitation and who it was reported to;~~
 - ~~c. Any special tasks performed by the assistant/companion and the assistant's/companion's qualifications to perform these tasks;~~
 - ~~d. Individual's or family/caregiver's satisfaction with the service;~~
 - ~~e. Any hospitalization or change in medical condition, functioning, or cognitive status; and~~
 - ~~f. The presence or absence of the assistant/companion in the home during the CD services facilitator's visit.~~
6. The CD services facilitator must be available to the individual by telephone.
7. The CD services facilitator must submit a criminal record check pertaining to the assistant/companion on behalf of the individual and report findings of the criminal record check to the individual or the family/caregiver and the program's fiscal agent. If the individual is a minor, the assistant/companion must also be screened through the DSS Child Protective Services Central Registry. Assistants/companions will not be reimbursed for services provided to the individual effective the date that the criminal record check confirms an assistant/companion has been found to have been convicted of a crime as described in § 37.1-183.3 of the Code of Virginia or if the assistant/companion has a confirmed record on the DSS Child Protective Services *Central* Registry. The criminal record check and DSS Child Protective Services *Central* Registry finding must be requested by the CD services facilitator ~~prior to beginning CD services within five calendar days of employment.~~
8. The CD services facilitator shall review timesheets during the face-to-face visits *or more often as needed* to ensure that the number of ISP-approved hours ~~are~~ is not exceeded. If discrepancies are identified, the CD services facilitator must discuss these with the individual to resolve discrepancies and must notify the fiscal agent.
9. The CD services facilitator must maintain a list of persons who are available to provide consumer-directed personal assistance, consumer-directed companion, or consumer-directed respite services.
10. The CD services facilitator must maintain records of each individual *as described in 12 VAC 30-120-223 and 12 VAC 30-120-233.* ~~At a minimum these records must contain:~~
- ~~a. Results of the initial comprehensive home visit completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation;~~

- b. ~~The ISP goals and activities. The companion or personal assistance ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and the results of these reviews submitted to the case manager. Respite ISP goals, objectives, and activities must be reviewed by the provider annually and every six months or when 300 service hours have been used. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual;~~
- e. ~~CD services facilitator's dated notes documenting any contacts with the individual, family/caregiver, and visits to the individual's home;~~
- d. ~~All correspondence to the individual, case manager, DMAS, and DMHMRSAS;~~
- e. ~~Records of contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual;~~
- f. ~~All training provided to the assistants/companions on behalf of the individual or family/caregiver;~~
- g. ~~All employee management training provided to the individual or family/caregiver, including the individual's or family/caregiver's receipt of training on their responsibility for the accuracy of the assistant's/companion's timesheets;~~
- h. ~~All documents signed by the individual or the individual's family/caregiver that acknowledge the responsibilities as the employer; and~~
- i. ~~A copy of the most recently completed DMAS-122. The facilitator must clearly document efforts to obtain the completed DMAS-122 from the case manager.~~
11. ~~For consumer directed personal assistance, consumer directed companion, and consumer directed respite services, individuals or family/caregivers will hire their own personal assistants/companions and manage and supervise their performance. The assistant/companion must meet the following requirements:~~
- a. ~~Be 18 years of age or older;~~
- b. ~~Have the required skills to perform consumer directed services as specified in the individual's supporting documentation;~~
- c. ~~Possess basic math, reading, and writing skills;~~
- d. ~~Possess a valid Social Security number;~~
- e. ~~Submit to a criminal records check and, if the individual is a minor, consent to a search of the DSS Child Protective Services Central Registry. The assistant/companion will not be compensated for services provided to the individual if either of these records checks verifies the assistant/companion has been convicted of crimes described in § 37.1-183.3 of the Code of Virginia or if the assistant/companion has a founded complaint confirmed by the DSS Child Protective Services Central Registry;~~
- f. ~~Be willing to attend training at the individual's or family/caregiver's request;~~
- g. ~~Understand and agree to comply with the DMAS MR waiver requirements; and~~
- h. ~~Receive periodic tuberculosis (TB) screening, cardiopulmonary resuscitation (CPR) training and an annual flu shot (unless medically contraindicated).~~
12. ~~Assistants/companions may not be the parents of individuals who are minors or the individuals' spouses. Payment may not be made for services furnished by other family/caregivers living under the same roof as the individual being served unless there is objective written documentation as to why there are no other providers available to provide the care. Companion services shall not be provided by adult foster care/family care providers or any other paid caregivers. This service shall not be provided in congregate settings by staff employed by the congregate provider.~~
13. ~~Family members who are reimbursed to provide consumer directed services must meet the assistant/companion qualifications.~~
14. ~~11. Upon the individual's request, the CD services facilitator shall provide the individual or family/caregiver with a list of persons who can provide temporary assistance until the assistant/companion returns or the individual is able to select and hire a new personal assistant/companion. If an individual is consistently unable to hire and retain the employment of an assistant/companion to provide consumer-directed personal assistance, companion, or respite services, the CD services facilitator will make arrangements with the case manager to have the services transferred to an agency-directed services provider or to discuss with the individual or family/caregiver other service options.~~

12 VAC 30-120-227. Crisis stabilization services.

A. Crisis stabilization services involve direct interventions that provide temporary intensive services and support that avert emergency psychiatric hospitalization or institutional placement of persons with mental retardation who are experiencing serious psychiatric or behavioral problems that jeopardize their current community living situation. Crisis stabilization services will include, as appropriate, neuro-psychiatric, psychiatric, psychological, and other functional assessments and stabilization techniques, medication management and monitoring, behavior assessment and positive behavioral support, and intensive service coordination with other agencies and providers. This service is designed to stabilize the individual and strengthen the current living situation, so that the individual remains in the community during and beyond the crisis period. These services shall be provided to:

1. Assist with planning and delivery of services and supports to enable the individual to remain in the community;
2. Train family/caregivers and service providers in positive behavioral supports to maintain the individual in the community; and

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3. Provide temporary crisis supervision to ensure the safety of the individual and others.

B. Criteria.

1. In order to receive crisis stabilization services, the individual must meet at least one of the following criteria:

- a. The individual is experiencing a marked reduction in psychiatric, adaptive, or behavioral functioning;
- b. The individual is experiencing extreme increase in emotional distress;
- c. The individual needs continuous intervention to maintain stability; or
- d. The individual is causing harm to self or others.

2. The individual must be at risk of at least one of the following:

- a. Psychiatric hospitalization;
- b. Emergency ICF/MR placement;
- c. ~~Disruption of community status (living arrangement, day placement, or school)~~ *Immediate threat of loss of a community service due to a severe situational reaction; or*
- d. Causing harm to self or others.

C. Service units and service limitations. Crisis stabilization services may only be authorized following a documented face-to-face assessment conducted by a qualified mental retardation professional.

1. The unit for each component of the service is one hour. This service may only be authorized in 15-day increments but no more than 60 days in a calendar year may be used. The actual service units per episode shall be based on the documented clinical needs of the individual being served. Extension of services, beyond the 15-day limit per authorization, may only be authorized following a documented face-to-face reassessment conducted by a qualified mental retardation professional.

2. Crisis stabilization services may be provided directly in the following settings (examples below are not exclusive):

- a. The home of an individual who lives with family, friends, or other primary caregiver or caregivers;
- b. The home of an individual who lives independently or semi-independently to augment any current services and supports;
- c. A community-based residential program to augment current services and supports;
- d. A day program or setting to augment current services and supports; or
- e. A respite care setting to augment current services and supports.

3. *Crisis supervision is an optional component of crisis stabilization in which one-to-one supervision of the individual in crisis is provided by agency staff in order to ensure the safety of the individual and others in the*

environment. Crisis supervision may be provided as a component of crisis stabilization only if clinical or behavioral interventions allowed under this service are also provided during the authorized period. Crisis supervision must be provided one-to-one and face-to-face with the individual. Crisis supervision, if provided as a part of this service, shall be separately billed in hourly service units.

4. Crisis stabilization services shall not be used for continuous long-term care. Room, board, and general supervision are not components of this service.

5. If appropriate, the assessment and any reassessments, shall be conducted jointly with a licensed mental health professional or other appropriate professional or professionals.

D. Provider requirements. In addition to the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, the following crisis stabilization provider qualifications apply:

1. Crisis stabilization services shall be provided by providers licensed by DMHMRSAS as a provider of outpatient services, residential, or supportive residential services, or day support services. The provider must employ or utilize qualified mental retardation professionals, licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to individuals with mental retardation who are experiencing serious psychiatric or behavioral problems. The qualified mental retardation professional shall have: (i) at least one year of documented experience working directly with individuals who have mental retardation or developmental disabilities; (ii) a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession;

2. To provide the crisis supervision component, ~~agencies~~ *providers* must be licensed by DMHMRSAS as providers of residential services, supportive residential services, or day support services;

3. Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving crisis stabilization services. At a minimum, the record must contain the following:

- a. Documentation of the face-to-face assessment and any reassessments completed by a qualified mental retardation professional;
- b. An ISP ~~which~~ *that* contains, at a minimum, the following elements:
 - (1) The individual's strengths, desired outcomes, required or desired supports;
 - (2) The individual's goals;
 - (3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

c. An ISP must be developed or revised and submitted to the case manager for submission to DMHMRSAS within 72 hours of ~~assessment or reassessment~~ *the requested start date for authorization*;

d. Documentation indicating the dates and times of crisis stabilization services, the amount and type of service or services provided, and specific information regarding the individual's response to the services and supports as agreed to in the ISP objectives; and

e. Documentation of qualifications of providers must be maintained for review by DMHMRSAS and DMAS staff.

12 VAC 30-120-229. Day support services.

A. Service description. Day support services shall include a variety of training, assistance, support, and specialized supervision for the acquisition, retention, or improvement of self-help, socialization, and adaptive skills. These services are typically offered in a nonresidential setting that allows peer interactions and community and social integration.

B. Criteria. For day support services, individuals must demonstrate the need for functional training, assistance, and specialized supervision offered primarily in settings other than the individual's own residence that allows an opportunity for being productive and contributing members of communities.

C. ~~Levels~~ *Types* of day support. The amount and type of day support included in the individual's service plan is determined according to the services required for that individual. There are two types of day support: center-based, which is provided primarily at one location/building, or noncenter-based, which is provided primarily in community settings. Both types of day support may be provided at either intensive or regular levels.

D. ~~Intensive level criteria.~~ *Levels of day support.* There are two levels of day support, intensive and regular. To be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) requires physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish his service goals; or (iii) requires extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

E. Service units and service limitations. Day support services are billed in units. *Units shall be defined as:*

1. One unit is 1 to 3.99 hours of service a day.
2. Two units are 4 to 6.99 hours of service a day.

3. *Three units are 7 or more hours of service a day.*

Day support cannot be regularly or temporarily provided in an individual's home or other residential setting (e.g., due to inclement weather or individual illness) without prior written approval from DMHMRSAS. Noncenter-based day support services must be separate and distinguishable from either residential support services or personal assistance services. There must be separate supporting documentation for each service and each must be clearly differentiated in documentation and corresponding billing. The supporting documentation must provide an estimate of the amount of day support required by the individual. Service providers are reimbursed only for the amount and ~~type of level 1~~ day support services included in the individual's approved ISP based on the setting, intensity, and duration of the service to be delivered. This service, ~~either as a stand-alone service or in combination with prevocational and supported employment services~~ shall be limited to 780 units per CSP year. *If this service is used in combination with prevocational and supported employment services, the combined total units for these services cannot exceed 780 units per CSP year.*

F. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, day support providers need to meet additional requirements.

1. The provider of day support services must be licensed by DMHMRSAS as a provider of day support services.

2. *In addition to licensing requirements*, day support staff must also have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations. *All providers of day support services must pass an objective, standardized test of skills, knowledge, and abilities approved by DMHMRSAS and administered according to DMHMRSAS' defined procedures.*

3. *Required documentation in the individual's record.* The provider agency must maintain records of each individual receiving services. At a minimum, these records must contain the following:

~~2.~~ a. A functional assessment ~~must be~~ conducted by the provider to evaluate each individual in the day support environment and community settings.

~~3.~~ b. An ISP ~~must be developed which~~ that contains, at a minimum, the following elements:

- ~~a.~~ (1) The individual's strengths, desired outcomes, required or desired supports and training needs;
- ~~b.~~ (2) The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;
- ~~c.~~ (3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;
- ~~d.~~ (4) A timetable for the accomplishment of the individual's goals and objectives as appropriate;

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e. (5) The estimated duration of the individual's needs for services; and

f. (6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

4. ~~c. Documentation must confirm~~ *confirming* the individual's attendance and amount of time in services and ~~provide~~ specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives. *An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units provided.*

~~a. The ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed with the individual receiving the services or his family/caregiver, and the results of the review submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver.~~

~~b. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units provided.~~

e. ~~d. Documentation must indicate~~ *indicating* whether the services were center-based or noncenter-based.

~~d. e. Documentation regarding transportation.~~ In instances where day support staff are required to ride with the individual to and from day support, the day support staff time can be billed as day support, provided that the billing for this time does not exceed 25% of the total time spent in the day support activity for that day. Documentation must be maintained to verify that billing for day support staff coverage during transportation does not exceed 25% of the total time spent in the day support for that day.

e. ~~f. If intensive day support services are requested, documentation must be present in the individual's record to indicate~~ *indicating* the specific supports and the reasons they are needed. For ongoing intensive day support services, there must be clear documentation of the ongoing needs and associated staff supports.

~~g. Documentation indicating that the ISP goals, objectives, and activities have been reviewed by the provider quarterly, annually, and more often as needed. The results of the review must be submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver.~~

f. ~~h. Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.~~

12 VAC 30-120-231. Environmental modifications.

A. Service description. Environmental modifications shall be defined as those physical adaptations to the home or vehicle, required by the individual's CSP, that are necessary to ensure

the health, welfare, and safety of the individual, or which enable the individual to function with greater independence and without which the individual would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the individual. ~~All services shall be provided in the individual's home in accordance with applicable federal, state, and local building codes and laws.~~ Modifications can be made to an automotive vehicle if it is the primary vehicle being used by the individual. *Modifications may be made to an individual's work site when the modification exceeds the reasonable accommodation requirements of the Americans with Disabilities Act.*

B. Criteria. In order to qualify for these services, the individual must have a demonstrated need for equipment or modifications of a remedial or medical benefit offered in an individual's *primary home or , primary vehicle used by the individual, community activity setting, or day program* to specifically improve the individual's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program.

C. Service units and service limitations. Environmental modifications shall be available to individuals who are receiving at least one other waiver service in addition to targeted mental retardation case management. A maximum limit of \$5,000 may be reimbursed per CSP year. Costs for environmental modifications shall not be carried over from CSP year to CSP year and must be prior authorized by DMHMRSAS for each CSP year. Modifications may not be used to bring a substandard dwelling up to minimum habitation standards. Excluded are those adaptations or improvements to the home that are of general utility, such as carpeting, roof repairs, central air conditioning, etc., and are not of direct medical or remedial benefit to the individual. Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act. Adaptations that add to the total square footage of the home shall be excluded from this service.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, environmental modifications must be provided in accordance with all applicable federal, state or local building codes and laws by contractors of the CSB/BHA or providers who have a participation agreement with DMAS who shall be reimbursed for the amount charged by said contractors. The following are provider documentation requirements:

1. An ISP that documents the need for the service, the process to obtain the service, and the time frame during which the services are to be provided. The ISP must include documentation of the reason that a rehabilitation engineer or specialist is needed, if one is to be involved;

2. Documentation of the time frame involved to complete the modification and the amount of services and supplies;
3. Any other relevant information regarding the modification;
4. Documentation of notification by the individual or family/caregiver of satisfactory completion of the service; and
5. Instructions regarding any warranty, repairs, complaints, and servicing that may be needed.

12 VAC 30-120-233. Personal assistance and respite services (agency-directed model).

A. Service description. *Services may be provided either through an agency-directed or consumer-directed model.*

1. Personal assistance services are provided to individuals in the areas of activities of daily living, instrumental activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition, and work-related personal assistance. ~~They~~ They may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. *When specified, such supportive services may include assistance with instrumental activities of daily living (IADLs). Personal assistance does not include either practical or professional nursing services or those practices regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate. This service does not include skilled nursing services with the exception of skilled nursing tasks that may be delegated pursuant to 18 VAC 90-20-420 through 18 VAC 90-20-460.*

2. *Respite services are supports for that which is normally provided by the family or other unpaid primary caregiver of an individual. These services are furnished on a short-term basis because of the absence or need for relief of those unpaid caregivers normally providing the care for the individuals.*

B. Criteria.

1. In order to qualify for ~~these~~ personal assistance services, the individual must demonstrate a need for assistance with activities of daily living, community access, self-administration of medications or other medical needs, or monitoring of health status or physical condition.
2. *Respite services may only be offered to individuals who have an unpaid primary caregiver living in the home who requires temporary relief to avoid institutionalization of the individual.*

C. Service units and service limitations.

1. The unit of service ~~for personal assistance services~~ is one hour.
2. Each individual must have a back-up plan in case the personal assistant does not show up for work as expected or terminates employment without prior notice.
3. Personal assistance is not available to individuals: (i) who receive *congregate* residential services or live in assisted

living facilities; (ii) who would benefit from personal assistance training and skill development; or (iii) who receive comparable services provided through another program or service.

4. *Respite services shall not be provided to relieve group home or assisted living facility staff where residential care is provided in shifts. Respite services shall not be provided by adult foster care/family care providers for an individual residing in that home. Training of the individual is not provided with respite services.*

5. *Respite services shall be limited to a maximum of 720 hours per calendar year. Individuals who are receiving services through both the agency-directed and consumer-directed model cannot exceed 720 hours per calendar year combined.*

6. *The hours authorized are based on individual need. No more than two unrelated individuals who live in the same home are permitted to share the authorized work hours of the assistant.*

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, personal assistance and respite providers must meet additional provider requirements:

1. ~~Personal assistance~~ Services shall be provided by:

a. *For the agency-directed model, an enrolled DMAS personal care/respite care provider or by a DMHMRSAS-licensed residential support services provider. In addition, respite services may be provided by a DMHMRSAS-licensed respite services provider or a DSS-approved foster care home for children or adult foster home provider. All personal assistants must pass the DMHMRSAS an objective standardized test of skills, knowledge, and abilities developed approved by DMHMRSAS and administered according to DMHMRSAS policies DMHMRSAS' defined procedures. For DMHMRSAS-licensed residential support providers, a residential supervisor will provide ongoing supervision of all personal assistants.*

b. *For consumer-directed model, a service facilitation provider meeting the requirements found in 12 VAC 30-120-225.*

2. *For DMHMRSAS-licensed residential or respite services providers, a residential supervisor will provide ongoing supervision of all assistants.*

~~2.~~ 3. For DMAS-enrolled personal care/respite care providers, the ~~personal assistance~~ provider must employ or subcontract with and directly supervise a RN or an LPN who will provide ongoing supervision of all ~~personal~~ assistants. The supervising RN or LPN must be currently licensed to practice nursing in the Commonwealth and have at least two years of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/MR or nursing facility.

~~a.~~ 4. The supervisor or services facilitator must make a home visit to conduct an initial assessment prior to the start

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of services for all individuals requesting personal assistance or respite services. The supervisor or services facilitator must also perform any subsequent reassessments or changes to the supporting documentation.

b. 5. The supervisor or services facilitator must make supervisory home visits as often as needed to ensure both quality and appropriateness of services. The minimum frequency of these visits is every 30 to 90 days *under the agency-directed model and semi-annually (every six months) under the consumer-directed model* depending on the individual's needs.

a. *When respite services are not received on a routine basis, but are episodic in nature, the supervisor or services facilitator is not required to conduct a supervisory visit every 30 to 90 days. Instead, the supervisor or services facilitator must conduct the initial home visit with the respite assistant immediately preceding the start of services and make a second home visit within the respite period.*

b. *When respite services are routine in nature and offered in conjunction with personal assistance, the supervisory visit conducted for personal assistance may serve as the supervisory visit for respite services. However, the supervisor must document supervision of respite services separately. For this purpose, the same individual record can be used with a separate section for respite services documentation.*

e. 6. Based on continuing evaluations of the assistant's performance and individual's needs, the supervisor or services facilitator shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.

d. 7. *Qualification of assistants.*

a. ~~The personal assistance provider must employ and directly supervise personal assistants who will provide direct service to individuals receiving personal assistance. Each assistant hired by the provider shall be evaluated by the provider to ensure compliance with minimum qualifications as required by the DMAS. Each assistant must:~~

- (1) Be 18 years of age or older *and possess a valid social security number;*
- (2) *For agency-directed model, be able to read and write English to the degree necessary to perform the tasks expected. For the consumer-directed model, possess basic math, reading and writing skills; and*
- (3) *Have the required skills to perform services as specified in the individual's ISP.*

b. *Additional requirements for DMAS-enrolled personal care/respite care providers.*

- (1) ~~Complete~~ *Assistants must complete* a training curriculum consistent with DMAS requirements. Prior to assigning an assistant to an individual, the provider must obtain documentation that the assistant has satisfactorily completed a training program consistent

with DMAS requirements. DMAS requirements may be met in one of three ways:

- (a) Registration as a certified nurse aide;
- (b) Graduation from an approved educational curriculum that offers certificates qualifying the student as a nursing assistant, geriatric assistance, or home health aide;
- (c) Completion of provider-offered training, which is consistent with the basic course outline approved by DMAS; *and*

~~(4) Be physically able to do the work;~~

~~(5) (2) Assistants must have a satisfactory work record, as evidenced by two references from prior job experiences, including no evidence of possible abuse, neglect, or exploitation of aged or incapacitated adults or children; and.~~

c. *Additional requirements for the consumer-directed option. The assistant must:*

(1) *Submit to a criminal records check and, if the individual is a minor, consent to a search of the DSS Child Protective Services Central Registry. The assistant will not be compensated for services provided to the individual if either of these records checks verifies the assistant has been convicted of crimes described in § 37.1-183.3 of the Code of Virginia or if the assistant has a founded complaint confirmed by the DSS Child Protective Services Central Registry;*

(2) *Be willing to attend training at the individual's or family/caregiver's request;*

(3) *Understand and agree to comply with the DMAS MR Waiver requirements; and*

(4) *Receive an annual tuberculosis (TB) screening, cardiopulmonary resuscitation (CPR) training and flu shot (unless medically contraindicated).*

~~3. Personal~~ 8. Assistants may not be the parents of individuals who are minors, or the individuals' spouses. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the service. Family members who are approved to be reimbursed for providing this service must meet the ~~personal~~ assistant qualifications.

~~4. 9.~~ Provider inability to render services and substitution of assistants (*agency-directed model*).

a. ~~When a personal~~ *an assistant is absent, the provider is responsible for ensuring that services continue to be provided to individuals. The provider may either provide another assistant, obtain a substitute assistant from another provider, if the lapse in coverage is to be less than two weeks in duration, or transfer the individual's services to another provider. The personal assistance provider that has the authorization to provide services to*

the individual must contact the case manager to determine if additional preauthorization is necessary.

b. If no other provider is available who can supply a substitute assistant, the provider shall notify the individual, family/caregiver and case manager so that the case manager may find another available provider of the individual's choice.

c. During temporary, short-term lapses in coverage not to exceed two weeks in duration, the following procedures must apply:

(1) The preauthorized ~~personal assistance~~ provider must provide the supervision for the substitute assistant;

(2) The provider of the substitute assistant must send a copy of the assistant's daily documentation signed by the individual or family/caregiver on his behalf and the assistant to the ~~personal assistance~~ provider having the authorization; and

(3) The preauthorized provider must bill DMAS for services rendered by the substitute assistant.

d. If a provider secures a substitute assistant, the provider agency is responsible for ensuring that all DMAS requirements continue to be met including documentation of services rendered by the substitute assistant and documentation that the substitute assistant's qualifications meet DMAS' requirements. The two providers involved are responsible for negotiating the financial arrangements of paying the substitute assistant.

~~5.~~ 10. Required documentation in the individual's record. The provider must maintain records regarding each individual receiving ~~personal assistance~~ services. At a minimum these records must contain:

a. An initial assessment completed by the supervisor or *services facilitator* prior to or on the date services are initiated;

b. An ISP, that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports;

(2) The individual's goals and objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives; and

(4) *For the agency-directed model*, the provider staff responsible for the overall coordination and integration of the services specified in the ISP.

c. The ISP goals, objectives, and activities must be reviewed by the ~~provider~~ *supervisor or services facilitator* quarterly, annually, and more often as needed modified as appropriate and results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual.

d. Dated notes of any contacts with the ~~personal~~ assistant, individual and family/caregiver during supervisory or *services facilitator* visits to the individual's home. The written summary of the supervision or *services facilitation* visits must include:

(1) Whether ~~personal assistance~~ services continue to be appropriate *and whether the ISP is adequate to meet the need or if changes are indicated in the ISP*;

(2) ~~Whether the ISP is adequate to meet the need or if changes are indicated in the ISP~~ *Any suspected abuse, neglect, or exploitation and to whom it was reported*;

(3) Any special tasks performed by the assistant and the assistant's qualifications to perform these tasks;

(4) The individual's satisfaction with the service;

(5) Any hospitalization or change in medical condition or functioning status;

(6) Other services received and their amount; and

(7) The presence or absence of the assistant in the home during the supervisor's visit.

e. All correspondence to the individual, family/caregiver, case manager, DMAS, and DMHMRSAS;

f. Reassessments and any changes to supporting documentation made during the provision of services;

g. Contacts made with family/caregivers, physicians, formal and informal service providers, and all professionals concerning the individual;

~~h.~~ *Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.*

~~h.~~ *i. For the agency-directed model*, all ~~personal~~ assistant records. The ~~personal~~ assistant record must contain:

(1) The specific services delivered to the individual by the assistant, dated the day of service delivery, and the individual's responses;

(2) The assistant's arrival and departure times;

(3) The assistant's weekly comments or observations about the individual to include observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

(4) The assistant's and individual's or family/caregiver's weekly signatures recorded on the last day of service delivery for any given week to verify that ~~personal assistance~~ services during that week have been rendered.

~~i.~~ ~~Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.~~

~~j.~~ *For the consumer-directed model*:

(1) *Documentation of all training provided to the assistants on behalf of the individual or family/caregiver*;

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(2) Documentation of all employee management training provided to the individual or family/caregiver, including the individual's or family/caregiver's receipt of training on their responsibility for the accuracy of the assistant's timesheets;

(3) All documents signed by the individual or the individual's family/caregiver that acknowledge the responsibilities as the employer.

12 VAC 30-120-237. Prevocational services.

A. Service description. Prevocational services are services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services, (excluding supported employment programs). Activities included in this service are not primarily directed at teaching specific job skills but at underlying habilitative goals such as accepting supervision, attendance, task completion, problem solving, and safety.

B. Criteria. In order to qualify for prevocational services, the individual shall have a demonstrated need for support in skills that are aimed toward preparation of paid employment that may be offered in a variety of community settings.

C. Service units and service limitations. Billing is for one unit of service.

1. Units shall be defined as:

- a. One unit is 1 to 3.99 hours of service a day.
- b. Two units are 4 to 6.99 hours of service a day.
- c. Three units are 7 or more hours of service a day.

~~This service, either as a stand-alone service or in combination with day support and supported employment services is limited to 780 units per CSP year. If this service is used in combination with day support and group-supported employment services, the combined total units for these services cannot exceed 780 units per CSP year.~~

2. Prevocational services can be provided in center- or noncenter-based settings. *Center-based means services are provided primarily at one location/building and noncenter-based means services are provided primarily in community settings. Both center-based or noncenter-based prevocational services may be provided at either regular or intensive levels.*

3. Prevocational services can be provided at either a regular or intensive level. For prevocational services to be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) require physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) have extensive disability-related difficulties and require additional, ongoing support to fully participate in programming and to accomplish service goals; or (iii) require extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are

required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

4. There must be documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA). If the individual is not eligible for g services through the IDEA, documentation is required only for lack of DRS funding. When services are provided through these sources, the ISP shall not authorize them as a waiver expenditure.

5. Prevocational services can only be provided when the individual's compensation is less than 50% of the minimum wage.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, prevocational providers must also meet the following qualifications:

1. The provider of prevocational services must be a vendor of extended employment services, long-term employment services, or supported employment services for DRS, or be licensed by DMHMRSAS as a provider of day support services.

2. Providers must ensure and document that persons providing prevocational services have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations. *All providers of prevocational services must pass an objective, standardized test of skills, knowledge, and abilities approved by DMHMRSAS and administered according to DMHMRSAS' defined procedures.*

~~2-~~ 3. Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving prevocational services. At a minimum, the records must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the prevocational environment and community settings.

b. An ISP, which contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports, and training needs;

(2) The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

~~3.~~ *c. Documentation indicating that the ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and that the results of these reviews have been submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver.*

~~4.~~ *d. Documentation ~~must confirm~~ confirming the individual's attendance, amount of time spent in services, and type of services rendered, and provide specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units provided.*

e. Documentation indicating whether the services were center-based or noncenter-based.

~~5.~~ *f. Documentation regarding transportation. In instances where prevocational staff are required to ride with the individual to and from prevocational services, the prevocational staff time can be billed for prevocational services, provided that billing for this time does not exceed 25% of the total time spent in prevocational services for that day. Documentation must be maintained to verify that billing for prevocational staff coverage during transportation does not exceed 25% of the total time spent in the prevocational services for that day.*

g. If intensive prevocational services are requested, documentation indicating the specific supports and the reasons they are needed. For ongoing intensive prevocational services, there must be clear documentation of the ongoing needs and associated staff supports.

h. Documentation indicating whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA).

~~6.~~ *i. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.*

12 VAC 30-120-241. Residential support services.

A. Service description. Residential support services consist of training, assistance or specialized supervision provided primarily in an individual's home or in a licensed or approved residence to enable an individual to acquire, retain, or improve the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

Service providers shall be reimbursed only for the amount and type of residential support services included in the individual's approved ISP. Residential support services shall be authorized in the ISP only when the individual requires these

services and these services exceed the services included in the individual's room and board arrangements for individuals residing in group homes, or, for other individuals, if these services exceed supports provided by the family/caregiver. Services will not be routinely reimbursed for a continuous 24-hour period.

B. Criteria.

1. In order for Medicaid to reimburse for residential support services, the individual shall have a demonstrated need for supports to be provided by staff who are paid by the residential support provider.

2. In order to qualify for this service in a congregate setting, the individual shall have a demonstrated need for continuous training, assistance, and supervision for up to 24 hours per day ~~provided by a DMHMRSAS licensed residential provider.~~

3. A functional assessment must be conducted to evaluate each individual in his home environment and community settings.

4. The residential support ISP must indicate the necessary amount and type of activities required by the individual, the schedule of residential support services, and the total number of projected hours per week of waiver reimbursed residential support.

C. Service units and service limitations. ~~Residential supports shall be reimbursed for time the residential support staff is working directly with the individual.~~ Total billing cannot exceed the authorized amount in the ISP. The provider must maintain documentation of the date and times that services were provided, and specific circumstances that prevented provision of all of the scheduled services.

1. This service must be provided on an individual-specific basis according to the ISP and service setting requirements;

2. Congregate residential support services may not be provided to any individual who receives personal assistance services under the MR Waiver or other residential services that provide a comparable level of care. Respite services may be provided in conjunction with in-home residential support services to unpaid caregivers.

3. Room, board, and general supervision shall not be components of this service;

4. This service shall not be used solely to provide routine or emergency respite for the family/caregiver with whom the individual lives; and

5. Medicaid reimbursement is available only for residential support services provided when the individual is present and when a qualified provider is providing the services.

D. Provider requirements.

1. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, the provider of residential services must have the appropriate DMHMRSAS residential license.

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2. Residential support services may also be provided in adult foster care homes approved by local DSS offices pursuant to state DSS regulations.

3. In addition to licensing requirements, persons providing residential support services are required to participate in training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for individuals with mental retardation and functional limitations. ~~All persons providing providers of residential support services must pass an objective, standardized test of skills, knowledge, and abilities developed approved by DMHMRSAS and administered according to DMHMRSAS policies DMHMRSAS' defined procedures.~~

4. Required documentation in the individual's record. The provider agency must maintain records of each individual receiving residential support services. At a minimum these records must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the residential environment and community settings.

b. An ISP containing the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports, or both, and training needs;

(2) The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

(3) The services to be rendered and the schedule of services to accomplish the above goals, objectives, and desired outcomes;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

c. The ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver.

d. Documentation must confirm attendance, the amount of time in services, and provide specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives.

e. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

~~12 VAC 30-120-243. Respite services (agency-directed model). (Repealed.)~~

~~A. Service description. Respite services are supports for that which is normally provided by the family or other unpaid primary caregiver of an individual. These services are furnished on a short-term basis because of the absence or need for relief of those unpaid caregivers normally providing the care for the individuals.~~

~~B. Criteria. Respite services may only be offered to individuals who have an unpaid primary caregiver living in the home who requires temporary relief to avoid institutionalization of the individual. Respite services are designed to focus on the need of the unpaid caregiver for temporary relief and to help prevent the breakdown of the unpaid caregiver due to the physical burden and emotional stress of providing continuous support and care to the individual.~~

~~C. Service units and service limitations. The unit of service is one hour. Respite services shall be limited to a maximum of 720 hours per calendar year. This service shall not be provided to relieve group home or assisted living facility staff where residential care is provided in shifts. Respite services shall not be provided by adult foster care/family care providers for an individual residing in that home. Training of the individual is not provided with respite services. Individuals who are receiving consumer-directed respite and agency-directed respite services cannot exceed 720 hours per calendar year combined.~~

~~D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, respite providers must meet the following qualifications:~~

~~1. Respite services shall be provided by a DMAS-enrolled personal care/respite care provider, a DMHMRSAS-licensed residential provider, a DMHMRSAS-licensed respite services provider, or a DSS-approved foster care home for children or adult foster home provider. For DMHMRSAS-licensed residential or respite services providers, a residential supervisor will provide ongoing supervision of all respite assistants.~~

~~2. For DMAS-enrolled personal care/respite care providers, the respite services provider must employ or subcontract with and directly supervise a RN or an LPN who will provide ongoing supervision of all respite assistants. The supervising RN or LPN must be currently licensed to practice nursing in the Commonwealth and have at least two years of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/MR or nursing facility.~~

~~a. The supervisor must make an initial assessment visit prior to the start of care for any individual requesting respite services. The supervisor must also perform any subsequent reassessments or changes to the supporting documentation; and~~

~~b. The supervisor must make supervisory visits as often as needed to ensure both quality and appropriateness of services;~~

~~(1) When respite services are received on a routine basis, the minimum acceptable frequency of these supervisory visits shall be every 30 to 90 days based on the needs of the individual;~~

~~(2) When respite services are not received on a routine basis, but are episodic in nature, the supervisor is not required to conduct a supervisory visit every 30 to 90 days. Instead, the supervisor must conduct the initial home visit with the respite assistant immediately preceding the start of services and make a second home visit within the respite period;~~

~~(3) When respite services are routine in nature and offered in conjunction with personal assistance, the 30- to 90-day supervisory visit conducted for personal assistance may serve as the supervisory visit for respite services. However, the supervisor must document supervision of respite services separately. For this purpose, the same individual record can be used with a separate section for respite services documentation;~~

~~e. Based on continuing evaluations of the assistants' performances and individuals' needs, the supervisor shall identify any gaps in the assistants' ability to function competently and shall provide training as indicated;~~

~~d. Basic qualifications for respite assistants include:~~

~~(1) Be at least 18 years of age or older;~~

~~(2) Be physically able to do the work;~~

~~(3) Have the ability to read and write in English to the degree necessary to perform the tasks expected;~~

~~(4) Have completed a training curriculum consistent with DMAS requirements. Prior to assigning an assistant to an individual, the provider must obtain documentation that the assistant has satisfactorily completed a training program consistent with DMAS requirements. DMAS requirements may be met in one of three ways:~~

~~(a) Registration as a certified nurse aide;~~

~~(b) Graduation from an approved educational curriculum which offers certificates qualifying the student as a nursing assistant, geriatric assistance, or home health aide; or~~

~~(c) Completion of provider-offered training, which is consistent with the basic course outline approved by DMAS.~~

~~(5) Have a satisfactory work record, as evidenced by two references from prior job experiences, including no evidence of possible abuse, neglect, or exploitation of aged or incapacitated adults or children;~~

~~3. Respite assistants may not be the parents of individuals who are minors, or the individuals' spouses. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the~~

~~care. Family members who are approved to provide paid respite services must meet the qualifications for respite assistants.~~

~~4. Inability to provide services and substitution of assistants.~~

~~a. When a respite assistant is absent, the provider is responsible for ensuring that services continue to individuals. The provider may provide another assistant, obtain a substitute assistant from another provider if the lapse in coverage is to be less than two weeks in duration, or transfer the individual's services to another provider. The respite provider that has the authorization to provide services to the individual must contact the case manager to determine if additional preauthorization is necessary.~~

~~b. If no other provider is available who can supply an assistant, the provider shall notify the individual, family/caregiver, and case manager so that the case manager can locate another available provider of the individual's choice.~~

~~c. During temporary, short term lapses in coverage, not to exceed two weeks in duration, a substitute assistant may be secured from another respite provider. Under these circumstances, the following requirements apply:~~

~~(1) The preauthorized respite services provider is responsible for providing the supervision for the substitute assistant;~~

~~(2) The provider of the substitute assistant must send a copy of the assistant's records signed by the individual or family/caregiver on his behalf and the substitute assistant to the respite provider having the authorization. All documentation of services rendered by the substitute assistant must be in the individual's record. The documentation of the substitute assistant's qualifications must also be obtained and recorded in the personnel files of the provider having individual care responsibility. The two providers involved are responsible for negotiating the financial arrangements of paying the substitute assistant; and~~

~~(3) Only the provider authorized for services may bill DMAS for services rendered by the substitute assistant.~~

~~d. Substitute assistants obtained from other providers may be used only in cases where no other arrangements can be made for individual respite services coverage and may be used only on a temporary basis. If a substitute assistant is needed for more than two weeks, the case must be transferred to another respite services provider that has the assistant capability to serve the individual or individuals.~~

~~5. Required documentation for individual's record. The provider must maintain records of each individual receiving respite services. These records must be separated from those of other services. At a minimum these records must contain:~~

~~a. Initial assessment completed prior to or on the date services are initiated and subsequent reassessments and~~

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changes to supporting documentation by the supervisor, if required;

b. An ISP, which contains, at a minimum, the following elements:

- ~~(1) The individual's strengths, desired outcomes, required or desired supports;~~
- ~~(2) The individual's goals;~~
- ~~(3) The estimated duration of the individual's needs for services and the amount of hours needed; and~~
- ~~(4) The provider staff responsible for the overall coordination and integration of the services specified in the ISP;~~

e. Dated notes documenting contacts with the respite services assistant and of supervisory visits to the individual's home when required. The supervisor must document in a summary note of the supervision visit:

- ~~(1) Whether respite services continue to be appropriate;~~
- ~~(2) Whether the service is adequate to meet the individual's needs or if changes need to be made;~~
- ~~(3) The individual's or family/caregiver's satisfaction with the service;~~
- ~~(4) Any hospitalization or change in medical condition or functioning status;~~
- ~~(5) Other services received and the amount;~~
- ~~(6) The presence or absence of the assistant in the home during the supervisor's visit; and~~
- ~~(7) Any special tasks performed by the assistant (e.g., assistance with bowel/bladder programs, range of motion exercises, etc.) and the assistant's qualifications to perform these tasks.~~

d. All correspondence to the individual, family/caregiver, case manager, DMAS, and DMHMRSAS;

e. Significant contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual;

f. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 from the case manager; and

g. Respite assistant record of services rendered and individual's responses. The assistant record must contain:

- ~~(1) The specific services delivered to the individual by the respite assistant and the individual's response;~~
- ~~(2) The arrival and departure time of the assistant for respite services only;~~
- ~~(3) Comments or observations about the individual. Assistant comments must include, at a minimum, observation of the individual's physical and emotional condition, daily activities, and the individual's responses to services rendered; and~~

~~(4) The signature of the assistant, individual, or family/caregiver as appropriate, for each respite event to verify that respite services have been rendered.~~

12 VAC 30-120-245. Skilled nursing services.

A. Service description. Skilled nursing services *that do not meet home health criteria* shall be provided for individuals with serious medical conditions and complex health care needs that require specific skilled nursing services that cannot be provided by non-nursing personnel. Skilled nursing may be provided in the individual's home or other community setting on a regularly scheduled or intermittent need basis. It may include consultation, *nurse delegation as appropriate*, *oversight of direct care staff as appropriate*, and training for other providers.

B. Criteria. In order to qualify for these services, the individual shall have demonstrated complex health care needs that require specific skilled nursing services ordered by a physician and that cannot be otherwise accessed under the Title XIX State Plan for Medical Assistance. The CSP must indicate that the service is necessary in order to prevent institutionalization and is not available under the State Plan for Medical Assistance.

C. Service units and service limitations. Skilled nursing services to be rendered by either registered or licensed practical nurses are provided in hourly units. The services must be explicitly detailed in an ISP and must be specifically ordered by a physician as medically necessary to prevent institutionalization.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, participating skilled nursing providers must meet the following qualifications:

1. Skilled nursing services shall be provided by either a DMAS-enrolled home care organization provider or home health provider, or by a registered nurse licensed by the Commonwealth or licensed practical nurse licensed by the Commonwealth (under the supervision of a registered nurse licensed by the Commonwealth), contracted or employed by DMHMRSAS-licensed day support, respite, or residential providers.
2. Skilled nursing services providers may not be the parents of individuals who are minors, or the individual's spouse. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the care. Family members who provide skilled nursing services must meet the skilled nursing requirements.
3. Foster care providers may not be the skilled nursing services providers for the same individuals to whom they provide foster care.
4. Required documentation. The provider must maintain a record that contains:

a. An ISP that contains, at a minimum, the following elements:

- (1) The individual's strengths, desired outcomes, required or desired supports;
- (2) The individual's goals;
- (3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;
- (4) The estimated duration of the individual's needs for services; and
- (5) The provider staff responsible for the overall coordination and integration of the services specified in the ISP;

b. Documentation of any training of family/caregivers or staff, or both, to be provided, including the person or persons being trained and the content of the training, consistent with the Nurse Practice Act;

c. Documentation of the determination of medical necessity by a physician prior to services being rendered;

d. Documentation of nursing license/qualifications of providers;

e. Documentation indicating the dates and times of nursing services and the amount and type of service or training provided;

f. Documentation that the ISP was reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual.

g. Documentation that the ISP has been reviewed by a physician within 30 days of initiation of services, when any changes are made to the ISP, and also reviewed and approved annually by a physician; and

h. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

12 VAC 30-120-247. Supported employment services.

A. Service description.

1. Supported employment services ~~is~~ *are provided in work settings in which* where persons without disabilities are employed. It is especially designed for individuals with developmental disabilities, including individuals with mental retardation, who face severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential.
2. Supported employment services are available to individuals for whom competitive employment at or above the minimum wage is unlikely without ongoing supports and who because of their disability need ongoing support to perform in a work setting.
3. Supported employment can be provided in one of two models. Individual supported employment shall be defined

as intermittent support, usually provided one-on-one by a job coach to an individual in a supported employment position. Group supported employment shall be defined as continuous support provided by staff to eight or fewer individuals with disabilities in an enclave, work crew, bench work, or entrepreneurial model. The individual's assessment and CSP must clearly reflect the individual's need for training and supports.

B. Criteria.

1. Only job development tasks that specifically include the individual are allowable job search activities under the MR waiver supported employment and only after determining this service is not available from DRS.
2. In order to qualify for these services, the individual shall have demonstrated that competitive employment at or above the minimum wage is unlikely without ongoing supports, and who because of his disability, needs ongoing support to perform in a work setting.
3. A functional assessment must be conducted to evaluate the individual in his work environment and related community settings.
4. The ISP must document the amount of supported employment required by the individual. Service providers are reimbursed only for the amount and type of supported employment included in the individual's ISP based on the intensity and duration of the service delivered.

C. Service units and service limitations.

1. Supported employment for individual job placement is provided in one hour units. This service, ~~when in combination with prevocational and day support,~~ is limited to ~~780 units per CSP year~~ *40 hours per week*.
2. Group models of supported employment (enclaves, work crews, bench work and entrepreneurial model of supported employment) will be billed at the unit rate. *For group models of supported employment, units shall be defined as:*
 - a. One unit is 1 to 3.99 hours of service a day.
 - b. Two units are 4 to 6.99 hours of service a day.
 - c. Three units are 7 or more hours of service a day.

This service is limited to 780 units per CSP year. ~~This service, either as a stand-alone service or in combination with prevocational and day support, is limited to 780 units per CSP year.~~ *If used in combination with prevocational and day support services, the combined total units for these services cannot exceed 780 units per CSP year.*

3. For the individual job placement model, reimbursement of supported employment will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the individual is in the supported employment situation.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, supported employment provider qualifications include:

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1. Supported employment shall be provided only by agencies that are DRS vendors of supported employment services;

2. *Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving supported employment services. At a minimum, the records must contain the following:*

a. *A functional assessment conducted by the provider to evaluate each individual in the supported employment environment and related community settings.*

b. *Documentation indicating individual ineligibility for supported employment services through DRS or IDEA ~~must be documented in the individual's record, as applicable.~~ If the individual is not eligible through IDEA, documentation is required only for the lack of DRS funding;*

~~3. There must be~~ c. An ISP that contains, at a minimum, the following elements:

a. (1) The individual's strengths, desired outcomes, required/desired supports and training needs;

b. (2) The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

c. (3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

d. (4) A timetable for the accomplishment of the individual's goals and objectives;

e. (5) The estimated duration of the individual's needs for services; and

f. (6) Provider staff responsible for the overall coordination and integration of the services specified in the plan.

4. d. The ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and the results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver.

5. e. In instances where supported employment staff are required to ride with the individual to and from supported employment activities, the supported employment staff time can be billed for supported employment provided that the billing for this time does not exceed 25% of the total time spent in supported employment for that day. Documentation must be maintained to verify that billing for supported employment staff coverage during transportation does not exceed 25% of the total time spent in supported employment for that day.

6. f. There must be a copy of the completed DMAS-122 in the record. Providers must clearly document efforts to obtain the DMAS-122 form from the case manager.

12 VAC 30-120-249. Therapeutic consultation.

A. Service description. Therapeutic consultation provides expertise, training and technical assistance in any of the following specialty areas to assist family members, caregivers, and other service providers in supporting the individual. The specialty areas are (i) psychology, (ii) behavioral consultation, (iii) therapeutic recreation, (iv) speech and language pathology, (v) occupational therapy, (vi) physical therapy, and (vii) rehabilitation engineering. The need for any of these services, is based on the individual's CSP, and provided to those individuals for whom specialized consultation is clinically necessary and who have additional challenges restricting their ability to function in the community. Therapeutic consultation services may be provided in the individual's home, and in appropriate community settings and are intended to facilitate implementation of the individual's desired outcomes as identified in his CSP.

B. Criteria. In order to qualify for these services, the individual shall have a demonstrated need for consultation in any of these services. Documented need must indicate that the CSP cannot be implemented effectively and efficiently without such consultation from this service.

1. The individual's therapeutic consultation ISP must clearly reflect the individual's needs, as documented in the social assessment, for specialized consultation provided to family/caregivers and providers in order to implement the ISP effectively.

2. Therapeutic consultation services may not include direct therapy provided to waiver individuals or monitoring activities, and may not duplicate the activities of other services that are available to the individual through the State Plan for Medical Assistance.

C. Service units and service limitations. The unit of service shall equal one hour. The services must be explicitly detailed in the ISP. Travel time, written preparation, and telephone communication are in-kind expenses within this service and are not billable as separate items. Therapeutic consultation may not be billed solely for purposes of monitoring. Only behavioral consultation may be offered in the absence of any other waiver service when the consultation is determined to be necessary to prevent institutionalization.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12 VAC 30-120-217 and 12 VAC 30-120-219, professionals rendering therapeutic consultation services shall meet all applicable state licensure or certification requirements. Persons providing rehabilitation consultation shall be rehabilitation engineers or certified rehabilitation specialists. Behavioral consultation may be performed by professionals based on the professionals' work experience, education, and demonstrated knowledge, skills, and abilities.

The following documentation is required for therapeutic consultation:

1. An ISP, that contains at a minimum, the following elements:

a. Identifying information:

- b. Targeted objectives, time frames, and expected outcomes; *and*
 - c. Specific consultation activities; ~~and~~.
- ~~4~~. 2. A written support plan detailing the *recommended* interventions or support strategies.
- ~~2~~. 3. Ongoing documentation of consultative services rendered in the form of contact-by-contact or monthly notes that identify each contact.
- ~~3~~. 4. If the consultation service extends beyond the one year, the ISP must be reviewed by the provider with the individual receiving the services and the case manager, and this written review must be submitted to the case manager, at least annually, or more as needed. If the consultation services extend three months or longer, written quarterly reviews are required to be completed by the service provider and are to be forwarded to the case manager. Any changes to the ISP must be reviewed with the individual or family/caregiver.
- ~~4~~. 5. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain a copy of the completed DMAS-122 from the case manager.
- ~~5~~. 6. A written support plan, detailing the interventions and strategies for providers and family/caregivers to use to better support the individual in the service; and
- ~~6~~. 7. A final disposition summary that must be forwarded to the case manager within 30 days following the end of this service.

DOCUMENTS INCORPORATED BY REFERENCE

AAMR Definition of Mental Retardation, Mental Retardation: Definition, Classification, and Systems of Supports, 10th Edition, 2002, American Association on Mental Retardation.

VA.R. Doc. No. R05-55; Filed November 8, 2005, 1:14 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 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

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

Title of Regulation: 4 VAC 15-20. Definitions and Miscellaneous: In General (adding 4 VAC 15-20-210).

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

Effective Date: January 1, 2006.

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

Summary:

The added section defines a list of "nonindigenous aquatic nuisance species" as black carp (*Mylopharyngodon piceus*), New Zealand mudsnail (*Potamopyrgus antipodarum*), and rusty crayfish (*Orconectes rusticus*).

4 VAC 15-20-210. Definitions; nonindigenous aquatic nuisance species.

A. In addition to the species already listed in § 29.1-571 of the Code of Virginia, the board hereby designates the following species as nonindigenous aquatic nuisance species pursuant to § 29.1-100 of the Code of Virginia.

1. Fish.
 - a. Black carp (*Mylopharyngodon piceus*).
2. Invertebrates.
 - a. New Zealand mudsnail (*Potamopyrgus antipodarum*).
 - b. Rusty crayfish (*Orconectes rusticus*).

B. It shall be unlawful to take, possess, transport, import, sell, or offer for sale within the Commonwealth any nonindigenous aquatic nuisance species except as authorized by law or regulation.

VA.R. Doc. No. R06-06; Filed November 9, 2005, 10:57 a.m.

Title of Regulation: 4 VAC 15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4 VAC 15-30-40).

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

Effective Date: December 1, 2005.

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

Summary:

The amendments (i) limit the importation, possession, and sale of the following nonnative aquatic species, including those designated as nonindigenous aquatic nuisance species: New Zealand mudsnail (*Potamopyrgus antipodarum*), quagga mussel (*Dreissena bugensis*), rusty crayfish (*Orconectes rusticus*), and Australian crayfish (*Cerax spp.*); (ii) allow anglers to legally take nonnative snakehead fish from the waters of the Commonwealth provided that they immediately kill the animal and notify the Department of Game and Inland Fisheries; and (iii) add the mute swan (*Cygnus olor*) to the list of bird species that are illegal to import, possess or sell in Virginia without a permit.

4 VAC 15-30-40. Importation requirements, possession and sale [~~of~~] nonnative (exotic) animals.

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed below and in 4 VAC 15-20-210 that the board finds and declares to be predatory or undesirable within the meaning and intent of § 29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia:

AMPHIBIANS:					
Order	Family	Genus/Species	Common Name		
Anura	Bufoiidae	Bufo marinus	Giant or marine toad*		
	Pipidae	Xenopus spp.	Tongueless or African clawed frog		
Caudata	Ambystomatidae	Ambystoma tigrum mavortium	Barred tiger salamander		
		A. t. diaboli	Gray tiger salamander		
		A. t. melanostictum	Blotched tiger salamander		
BIRDS:					
Order	Family	Genus/Species	Common Name		
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*		
Anseriformes	Anatidae	Cygnus olor	Mute swan		
FISH:					
Order	Family	Genus/Species	Common Name		
Cypriniformes	Catostomidae	Ictiobus bubalus	Smallmouth* buffalo		
		I. cyprinellus	Bigmouth* buffalo		
		I. niger	Black buffalo*		
	Characidae	Pygopristis spp. Pygocentrus spp. Rooseveltiella spp. Serrasalmo spp. Serrasalmus spp. Taddyella spp.		Piranhas	
			Cyprinidae	Aristichyhs nobilis	Bighead carp*
				Ctenopharyngodon idella	Grass carp or white amur
				Cyprinella lutrensis	Red shiner
				Hypophthalmichthys molitrix	Silver carp*
				Mylopharyngodom piceus	Black carp*
	Scardinius erythrophthalmus	Rudd			
	Tinca tinca	Tench*			
	Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tube-nose goby	
			Neogobius melanostomus	Round goby	
Perciformes	Channidae	Channa spp. Parachanna spp.	Snakeheads		
		Cichlidae	Tilapia spp.	Tilapia	
	Gymnocephalus cernuum		Ruffe*		
Siluriformes	Clariidae	All species	Air-breathing catfish		
Synbranchiformes	Synbranchidae	Monopterus albus	Swamp eel		
MAMMALS:					
Order	Family	Genus/Species	Common Name		
Artiodactyla	Suidae	All Species	Pigs or Hogs*		
	Cervidae	All Species	Deer*		
Carnivora	Canidae	All Species	Wild Dogs*, Wolves, Coyotes or Coyote hybrids, Jackals and Foxes		

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	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species (except <i>Mustela putorius furo</i>)	Weasels, Badgers,* Skunks and Otters Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
	Hyaenidae	All Species	Hyenas*
	Protelidae	<i>Proteles cristatus</i>	Aardwolf*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Leporidae	<i>Lepus europeaeus</i>	European hare
		<i>Oryctolagus cuniculus</i>	European rabbit
Rodentia		All species native to Africa	All species native to Africa
	Sciuridae	<i>Cynomys</i> spp.	Prairie dogs
MOLLUSKS:			
Order	Family	Genus/Species	Common Name
<i>Neotaenioglossa</i>	<i>Hydrobiidae</i>	<i>Potamopyrgus antipodarum</i>	<i>New Zealand mudsnail</i>
Veneroida	Dreissenidae	<i>Dreissena bugensis</i>	<i>Quagga mussel</i>
		<i>Dreissena polymorpha</i>	Zebra mussel
REPTILES:			
Order	Family	Genus/Species	Common Name
Squamata	Alligatoridae	All species	Alligators, caimans*
	Colubridae	<i>Boiga irregularis</i>	Brown tree snake*
	Crocodylidae	All species	Crocodiles*
	Gavialidae	All species	Gavials*
CRUSTACEANS:			
Order	Family	Genus/Species	Common Name
Decapoda	<i>Cambaridae</i>	<i>Orconectes rusticus</i>	<i>Rusty crayfish</i>
	<i>Parastacidae</i>	<i>Cherax</i> spp.	<i>Australian crayfish</i>

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A, a person, company or corporation possessing any nonnative (exotic) animal, designated with an asterisk (*) in subsection A, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years. This written declaration must include species name, common name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded with a seamless band.

D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A that may be used for personal use, in the manufacture of products, or used in scientific research, provided that such parts or products be packaged outside the

Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until its point of destination is reached. Documentation concerning the type and cost of the animal parts ordered, the

purpose and date of the order, point and date of shipping, and date of receiving shall be kept by the person, business or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of Game and Inland Fisheries.

E. Exception for certain mammals. Nonnative (exotic) mammals listed in subsection A, except members of the Cervidae family, African rodents, and prairie dogs, that are imported or possessed by dealers, exhibitors, transporters, and researchers who are licensed or registered by the United States Department of Agriculture under the Animal Welfare Act (7 USC §§2131 et seq.) will be deemed to be permitted pursuant to this section, provided that those individuals wanting to import such animals notify the department 24 hours prior to importation with a list of animals to be imported, a schedule of dates and locations where those animals will be

housed while in the Commonwealth, and a copy of the current license or licenses or registration or registrations from the U.S. Department of Agriculture, and further provided that such animals shall not be liberated within the Commonwealth.

F. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January 1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.

G. Exception for snakehead fish. Anglers may legally harvest snakehead fish of the family Channidea, provided that they immediately kill such fish and that they notify the department, as soon as practicable, of such actions.

H. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

VA.R. Doc. No. R06-07; Filed November 9, 2005, 10:58 a.m.

Title of Regulation: 4 VAC 15-90. Game: Deer (amending 4 VAC 15-90-293).

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

Effective Date: November 1, 2005

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

Summary:

The amendments (i) prohibit the importation of whole deer carcasses and specific carcass parts from deer Chronic Wasting Disease (CWD) positive states or from CWD positive Canadian provinces and (ii) require persons who import permitted deer parts to notify the department if they are notified of a positive CWD test.

4 VAC 15-90-293. Chronic Wasting Disease deer carcass importation restrictions.

A. No person shall import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from a state or Canadian province in which Chronic Wasting Disease has been found in free-ranging or captive deer, except that the following carcass parts may be imported and possessed:

- 1. Boned-out meat that is cut and wrapped,
2. Quarters or other portions of meat with no part of the spinal column or skull attached,
3. Hides or capes with no skull attached,

4. Clean (no meat or tissue attached) skull plates with antlers attached,

5. Antlers (with no meat or tissue attached),

6. Upper canine teeth (buglers, whistlers, or ivories), and

7. Finished taxidermy products.

A legible label shall be affixed to packages or containers containing the allowed carcass parts bearing the following information: the species of animal, the state or province from where the animal originated, and the name and address of the person who killed or owned the animal.

B. Any person who imports into Virginia any deer carcass or parts described in subsection A of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

VA.R. Doc. No. R06-11; Filed November 1, 2005, 11:07 a.m.

Title of Regulation: 4 VAC 15-380. Watercraft: Motorboat Numbering (amending 4 VAC 15-380-70; adding 4 VAC 15-380-71).

Statutory Authority: §§ 29.1-501, 29.1-502, 29.1-701, 29.1-701.1 and 29.1-735 of the Code of Virginia.

Effective Date: March 1, 2006.

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

Summary:

The amendments (i) create an exception, provided for in 4 VAC 15-380-71, to the requirement that a watercraft certificate of number is invalid when the watercraft is documented or required to be documented and (ii) allow the owner of a federally documented vessel otherwise exempt from Virginia motorboat numbering requirements to nonetheless apply for the issuance of motorboat registration decals, pay the same fees as prescribed in 4 VAC 15-380-120, and receive nontransferable decals that may be affixed to a window or windshield on the sides of the vessel.

4 VAC 15-380-70. When invalid; removal of numbers and surrender of certificate of number and certificate of title.

A. Certificate of number shall be invalid:

- 1. When the watercraft is documented, or required to be documented, except as provided for in 4 VAC 15-380-71;
2. Sixty days after the watercraft is no longer principally used in the Commonwealth;

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3. The owner loses his interest in the vessel through legal process; or

4. The certificate of number is cancelled and recalled by the department pursuant to § 29.1-702 D of the Code of Virginia.

When a certificate of number becomes invalid for any reason the person whose name appears on the certificate as owner shall remove the numbers from the vessel, and, within 15 days, surrender the invalid certificate to the department.

B. Certificate of title shall be invalid when:

1. A duplicate title is issued;
2. A new title is issued;
3. The watercraft is documented or required to be documented;
4. The watercraft is registered or titled in another state or country;
5. The title is altered to the point of significant information on the title being unreadable;
6. It appears proper payment has not been made for the certificate of title; or
7. The department ascertains the title has been issued improperly or erroneously.

When a certificate of title becomes invalid for any reason, the department is authorized to cancel and recall the certificate. If recalled by the department, the person whose name appears on the certificate as owner shall within 15 days surrender the invalid certificate to the department. Upon demand of any officer whose duty it is to enforce the game and inland fish laws, the person whose name appears on the certificate as owner shall present any recalled certificate immediately to the officer.

4 VAC 15-380-71. Registration decals issued to documented vessels; exception to display of numbers.

A. *The owner of a federally documented vessel otherwise exempt from motorboat numbering requirements pursuant to § 29.1-710 of the Code of Virginia may nonetheless request the issuance of motorboat registration decals. Upon application and payment of the same fees prescribed in 4 VAC 15-380-120, the department will issue nontransferable decals that may be affixed to a window or windshield on the sides of the vessel.*

B. *Vessels for which registration decals are requested and issued pursuant to subsection A of this section are not required to display the registration numbers of those decals.*

VA.R. Doc. No. R06-24; Filed November 9, 2005, 10:59 a.m.

* * * * *

Title of Regulation: 4 VAC 15-430. Watercraft: Safety Equipment Requirements (amending 4 VAC 15-430-60 and 4 VAC 15-430-160).

Statutory Authority: §§ 29.1-501, 29.1-502, 29.1-701, 29.1-701.1 and 29.1-735 of the Code of Virginia.

Effective Date: March 1, 2006.

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

Summary:

The amendments (i) require that a U.S. Coast Guard approved life jacket must be used in accordance with any requirements or restrictions on the approval label and (ii) require all hand-portable fire extinguishers, semiportable fire extinguishing systems, and fixed fire extinguishing systems for use aboard vessels, required to be of a type approved by the U.S. Coast Guard, to have an efficient charge and be in good and serviceable condition.

4 VAC 15-430-60. Personal flotation device condition; size and fit; approval marking.

It shall be unlawful to use a recreational vessel unless each PFD required by 4 VAC 15-430-30 or allowed by 4 VAC 15-430-40 is:

1. In serviceable condition as provided in 4 VAC 15-430-70;
2. Of an appropriate size and fit for the intended wearer, as marked on the approval label; ~~and~~
3. Legibly marked with its U.S. Coast Guard approval number; *and*
4. *Used in accordance with any requirements or restrictions on the approval label.*

4 VAC 15-430-160. Fire extinguishing equipment application and general provisions.

A. The provisions of this section through 4 VAC 15-430-210, with the exception of 4 VAC 15-430-200, shall apply to all vessels contracted for on or after November 19, 1952. Vessels contracted for prior to that date shall meet the requirements of 4 VAC 15-430-200.

B. Where equipment in this section is required to be of an approved type, such equipment requires the specific approval of the U.S. Coast Guard.

C. All hand-portable fire extinguishers, semiportable fire extinguishing systems, and fixed fire extinguishing systems shall be of a type approved by the U.S. Coast Guard *and shall have an efficient charge and be in good and serviceable condition [as referenced in 4 VAC 15-430-170].*

VA.R. Doc. No. R06-25; Filed November 9, 2005, 10:59 a.m.

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4 VAC 20-650. Establishment of Oyster Management Areas (amending 4 VAC 2-650-20).

Statutory Authority: §§ 28.2-210 and 28.2-507 of the Code of Virginia.

Effective Date: October 28, 2005.

Agency Contact: Kathy Leonard, Administrative and Program Specialist, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2120, FAX (757) 247-8101 or e-mail kathy.leonard@mrc.virginia.gov.

Summary:

The amendment changes the boundaries of the Wreck Shoal - James River Oyster Management Area.

4 VAC 20-650-20. Oyster replenishment management areas.

A. The following Oyster Management Area is established: ~~the Wreck Shoals - James River Bridge Oyster Management Area shall consist of all public oyster grounds located from Wreck Shoals; thence to a downriver line drawn from the south side of the river at Rainbow Farm Point to the channel buoy green #5; and thence to Blunt Point on the north side of the river. The upriver boundary for the Oyster Management Area shall be from Jail Point southwest to the southernmost corner of the Jail Island clean cull area then westerly to Channel Buoy 16 then southeasterly to the Channel Buoy 12, then southerly to Mogarts Beach. The Wreck Shoals - James River Oyster Management Area shall consist of all public oyster grounds within the boundaries as defined by: beginning at Corner 1 of Public Ground No.1 - Warwick County (Lat 37° 04.520'N, Lon 76° 33.7333'W - NAD 1983), thence southeasterly to Deep Creek Channel Marker "2" (Lat 37° 03.609'N, Lon 76° 32.102'W), thence south-southwesterly to James River Channel Marker "5" (Lat 37° 02.345'N, Lon 76° 32.769'W), thence southwesterly to the chimney of a beach house east of the Luter airstrip (Lat 37° 01.666'N, Lon 76° 35.136'W), thence northerly to James River Channel Marker "12" (Lat 37° 03.323'N, Lon 76° 35.169'W), thence northeasterly to Corner 190 of Plat File 16734 (Lat 37° 04.904'N, Lon 76° 34.254'W), thence southeasterly to Corner 1 of Public Ground 1 - Warwick County, the point of beginning.~~

B. Constructed oyster reefs include all reefs constructed and marked by a "no harvesting" ~~signs~~ sign provided by the Conservation and Replenishment Department.

VA.R. Doc. No. R06-100; Filed October 28, 2005, 2:16 p.m.

Title of Regulation: 4 VAC 20-751. Pertaining to the Setting and Mesh Size of Gill Nets (amending 4 VAC 20-751-20).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: November 1, 2005.

Agency Contact: Deborah Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail debbie.cawthon@mrc.virginia.gov.

Summary:

The amendment allows legally licensed fishermen to place, set, or fish any gill net with a stretch mesh size from five inches to six inches, within the defined restricted areas during the month of February. The amendment also modifies the prohibition of placing, setting, or fishing any gill net greater than six inches.

4 VAC 20-751-20. Gill net mesh sizes, restricted areas, and season.

A. From January 1 through March 25 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size between 3-3/4 inches and six inches within the restricted areas as set forth below, *except that during the month of February any legally licensed fisherman may place, set, or fish any gill net with a stretched mesh size from five inches to six inches within the restricted areas described in this subsection.* In addition, From March 26 through June 15 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size greater than six inches within the restricted areas set forth below, *except as described in 4 VAC 20-252-135:*

1. In James River, those tidal waters upstream of a line connecting Willoughby Spit and Old Point Comfort;
2. In Back River, those tidal waters upstream of a line connecting Factory Point and Plumtree Point;
3. In Poquoson River, those tidal waters upstream of a line connecting Marsh Point and Tue Point;
4. In York River, those tidal waters upstream of a line connecting Tue Point and Guinea Marshes;
5. In Mobjack Bay, those tidal waters upstream of a line connecting Guinea Marshes and New Point Comfort;
6. In Milford Haven, those tidal waters upstream of a line connecting Rigby Island and Sandy Point;
7. In Piankatank River, those tidal waters upstream of a line connecting Cherry Point and Stingray Point; and
8. In Rappahannock River, those tidal waters upstream of a line connecting Stingray Point to Windmill Point.

B. During the period May 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish more than 8,400 feet of gill net.

C. During the period May 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place,

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set, or fish any gill net in the Chesapeake Bay or in Virginia's portion of the Territorial Sea, that is made, set or fished in a tied-down manner, by connecting the net's head rope and foot rope with lines, which cause the net to form a pocket of webbing.

D. During the period June 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish any gill net with a stretched mesh greater than six inches in the Virginia portion of the Territorial Sea, south of a line connecting Smith Island Light and the three-mile limit line.

VA.R. Doc. No. R06-101; Filed November 1, 2005, 10:36 a.m.

Title of Regulation: 4 VAC 20-950. Pertaining to Black Sea Bass (amending 4 VAC 20-950-46, 4 VAC 20-950-48 and 4 VAC 20-950-49; adding 4 VAC 20-950-48.2).

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: November 1, 2005.

Agency Contact: Deborah Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail debbie.cawthon@mrc.virginia.gov.

Summary:

The amendments (i) establish additional criteria to allow a vessel to land black sea bass in Virginia; (ii) eliminate subsections that are no longer valid; (iii) allow a directed fishery permit holder to authorize an alternate vessel to land black sea bass on their quota, contingent upon meeting requirements that make the authorization lawful; and (iv) update the reporting requirements to include vessels that will obtain an alternative vessel authorization described in 4 VAC 20-950-48.2.

4 VAC 20-950-46. Directed fishery and bycatch fishery permits.

A. It shall be unlawful for any person to participate in the commercial black sea bass fishery, or to possess, harvest, or sell black sea bass, without first qualifying for and obtaining either a directed fishery permit or a bycatch fishery permit from the commission, as described, respectively, in subsections B and C of this section, *unless that person meets the requirements described in 4 VAC 20-950-48.2.*

B. A person shall be considered eligible for a directed commercial black sea bass fishery permit by satisfying all of the following eligibility criteria:

1. That person shall hold either a Commercial Fisherman Registration License or a Seafood Landing License in addition to a federal Black Sea Bass Moratorium Permit; *and*
2. That person shall have landed and sold in Virginia at least 10,000 pounds of black sea bass from July 1, 1997 through December 31, 2001.

C. A person shall be considered eligible for a bycatch commercial black sea bass fishery permit by satisfying all of the following eligibility criteria:

1. That person shall hold either a Commercial Fisherman Registration License or a Seafood Landing License, in addition to a federal Black Sea Bass Moratorium Permit; *and*
2. That person shall have landed and sold in Virginia at least one pound of black sea bass from July 1, 1997 through December 31, 2001.

~~D. No person shall possess more than one black sea bass permit.~~

~~E. Any permit described in this section must be in the possession of the permittee who is harvesting, possessing, or selling black sea bass. Failure of the permittee to have the appropriate permit in possession shall be a violation of this chapter.~~

4 VAC 20-950-48. Individual fishery quotas; bycatch limit; at sea harvesters; exceptions.

A. Each person possessing a directed fishery permit shall be assigned an individual fishery quota, in pounds, for each calendar year. A person's individual fishery quota shall be equal to that person's percentage of the total landings of black sea bass in Virginia from July 1, 1997, through December 31, 2001, multiplied by the directed commercial fishery black sea bass quota for the calendar year. Any directed fishery permittee shall be limited to landings in the amount of his individual fishery quota, in pounds, in any calendar year and it shall be unlawful for any permittee to exceed his individual fishery quota. In addition to the penalties prescribed by law, any overages of an individual's fishery quota shall be deducted from that permittee's individual fishery quota for the following year.

B. In the determination of a person's percentage of total landings, the commission shall use the greater amount of landings from either the National Marine Fisheries Service Dealer Weigh-out Reports or National Marine Fisheries Service Vessel Trip Reports that have been reported and filed as of November 26, 2002. If a person's percentage of the total landings of black sea bass is determined by using the Vessel Trip Reports as the greater amount, then the person shall provide documentation to the Marine Resources Commission to verify the Vessel Trip Reports as accurate. This documentation may include dealer receipts of sales or other pertinent documentation, and such documentation shall be submitted to the commission by December 1, 2004. In the event the commission is not able to verify the full amount of the person's Vessel Trip Reports for the qualifying period, the commission shall use the greater amount of landings, from either the Dealer Weigh-Out Reports or the verified portion of the Vessel Trip Reports to establish that person's share of the quota.

C. From January 1, 2005, to December 31, 2005, it shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, in any one day, more than 200 pounds of black sea bass, except that any person permitted in the bycatch fishery may possess aboard a

vessel, or land in Virginia, more than 200 pounds of black sea bass, in any one day, provided the total weight of black sea bass on board the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, Loligo squid and Atlantic mackerel on board the vessel. When it is projected and announced that 85% of the bycatch fishery quota has been taken, it shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, more than 200 pounds of black sea bass, except that any person permitted in the bycatch fishery may possess aboard a vessel, or land in Virginia, more than 200 pounds of black sea bass, in any one day, but not more than 1,000 pounds, provided the total weight of black sea bass aboard the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, Loligo squid and Atlantic mackerel on board the vessel.

D. It shall be unlawful for any person to transfer black sea bass from one vessel to another while at sea.

~~E. Any person who is the owner of more than one vessel on December 17, 2002, that qualifies for a directed commercial fishery black sea bass permit, may combine the vessels' individual fishery quotas onto one of the vessels. Such declaration to combine quotas shall be made prior to the start of the fishing season.~~

F. E. The commission sets aside 17,000 pounds of the annual commercial fishery black sea bass quota for distribution to all qualified applicants granted an exception by the commission from the requirements of 4 VAC 20-950-46 B based upon medical conditions, or other hardship, which limited the applicant's ability to fish for black sea bass during the qualifying period. In granting an exception, the commission will give preference to those applicants who can demonstrate the greater levels of participation in the black sea bass fishery during and after the qualifying period or document an apprenticeship or helper status in the black sea bass fishery. Any applicant who is granted an exception by the commission shall receive a portion of the 17,000 pounds; however, no portion shall exceed the lowest individual fishery quota, in pounds, at the beginning of the season. There shall be no transfer of quota received by applicants to the exception process for a period of five years after receipt of that quota. Any portion of the 17,000 pounds not allotted by the commission to the qualified applicants as of November 1 shall be added to the annual bycatch quota described in 4 VAC 20-950-47 B.

4 VAC 20-950-48.2. Alternate vessel authorization requirements.

A. Any person possessing a directed fishery permit may authorize an alternate vessel to harvest, possess and land any portion of his individual fishery quota, provided the following conditions are met:

1. The directed fishery permit holder has submitted a completed and notarized alternate vessel authorization form to the commission.
2. The alternate vessel named on the authorization form holds a federal Black Sea Bass Moratorium Permit and either a Virginia Seafood Landing License or the alternate

vessel's owner and operator holds a Commercial Fisherman Registration License.

3. *The alternate vessel authorization has been accepted and approved by the commissioner.*

4. *The alternate vessel maintains copies of the alternate vessel authorization form and the permit of the directed fishery quota owner at all times while serving as the alternate vessel.*

B. *No authorization for an alternate vessel to land black sea bass shall extend for more than 30 days from the date the commissioner approves the authorization. After 30 days, any unused portion of quota authorized for the alternate vessel shall revert to its directed fishery permit holder.*

4 VAC 20-950-49. Reporting requirements.

A. It shall be unlawful for any person permitted for the directed fishery, the bycatch fishery, or for an authorized alternate landing to fail to contact, within one hour of landing, the Marine Resources Commission's Law Enforcement Operations Division to report his name and the name of the vessel, his permit number, the location where catch will be offloaded, and the estimated weight of the landing of black sea bass.

B. It shall be unlawful for any person permitted for the directed fishery or, the bycatch fishery, or for an authorized alternate landing to fail to contact, within 24 hours of landing, the Marine Resources Commission's Interactive Voice Recording System to report his the name of the permit holder and the name of the vessel that landed the black sea bass, date of landing, his the permit number and the weight of black sea bass landed.

C. Any buyer of black sea bass from a directed fishery permittee or, a bycatch fishery permittee, or an authorized alternate landing vessel shall maintain records of all purchases for the current year and prior year and make those records available to the Marine Resources Commission upon request.

VA.R. Doc. No. R06-102; Filed November 1, 2005, 10:35 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

REGISTRAR'S NOTICE: The Department of Mines, Minerals and Energy is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 2, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. The Department of Mines, Minerals and Energy will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 4 VAC 25-10. Public Participation Guidelines (adding 4 VAC 25-10-90).

Statutory Authority: §§ 2.2-4007 and 45.1-161.3 of the Code of Virginia.

Effective Date: December 28, 2005.

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VA.R. Doc. No. R06-108; Filed November 7, 2005, 3:27 p.m.

Agency Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 North 9th Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237 or e-mail stephen.walz@dmme.virginia.gov.

TITLE 9. ENVIRONMENT

Summary:

The added section designates who is to perform the functions of agency secretary for the purpose of appeal of regulatory or case decisions.

4 VAC 25-10-90. Agency secretary for purpose of appeal.

For appeals of regulatory or case decisions, pursuant to Rule 2A:2 of the Rules of the Supreme Court of Virginia, the agency herein names individuals to perform the function of agency secretary.

1. For appeals relating to Chapter 14.2, 14.3, 14.4 or 18 of Title 45.1 of the Code of Virginia, the division head of the Division of Mines (Chief) shall perform the functions of agency secretary.
2. For appeals relating to Chapter 14.4:1, 14.5, 14.6, 16, 18.1 or 21 of Title 45.1 of the Code of Virginia, the division head of the Division of Mineral Mining (Division Director) shall perform the functions of agency secretary.
3. For appeals relating to Chapter 15.1 or 22.1 of Title 45.1 of the Code of Virginia, the division head of the Division of Gas and Oil (Division Director) shall perform the functions of agency secretary.
4. For appeals relating to Chapters 17 and 19 of Title 45.1 of the Code of Virginia, the division head of the Division of Mined Land Reclamation (Division Director) shall perform the functions of agency secretary.

9 VAC 25-720-50. Potomac-Shenandoah River Basin.

EDITOR'S NOTE: 9 VAC 25-720-50 A is not amended; therefore, the text is not set out. 9 VAC 25-720-50 B is stricken in its entirety and is not set out. New text for 9 VAC 25-720-50 B is set out below.

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Outfall No.	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAV-B02R	VA0023281	Monterey STP	001	West Strait Creek	3.85	CBOD ₅	11.4	KG/D
VAV-B08R	VA0065552	Opequon Water Reclamation Facility	001	Opequon Creek	32.66	BOD ₅ , JUN-NOV	207	KG/D
		AKA Winchester – Frederick Regional				CBOD ₅ , DEC-MAY	1514	KG/D
VAV-B14R	VA0025291	Fishersville Regional STP	001	Christians Creek	12.36	BOD ₅	182	KG/D
VAV-B23R	VA0060640	North River WWTF	001	North River	15.01	CBOD ₅ , JAN-MAY	1030	KG/D
	7.23.04	AKA Harrisonburg – Rockingham Reg. Sewer Auth.				CBOD ₅ , JUN-DEC TKN, JUN-DEC TKN, JAN-MAY	606 303 545	KG/D KG/D KG/D
VAV-B32R	VA0002160	INVISTA - Waynesboro	[044-001]	South River	25.3	BOD ₅	272	KG/D



STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-720. Water Quality Management Planning Regulation (amending 9 VAC 25-720-50).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1313(e)); 40 CFR Part 130.

Effective: December 28, 2005.

Agency Contact: Bryant Thomas, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3843, FAX (703) 583-3841, or e-mail bhthomas@deq.virginia.gov.

Summary:

The amendment to the Potomac-Shenandoah River Basin section (9 VAC 25-720-50 B) establishes a standard format for data presentation and updates the data and information contained in this portion of the regulation to provide consistency with the current VPDES permits.

Summary of Public Comments and Agency's Response: A summary of public comments and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

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		Formerly Dupont - Waynesboro						
VAV-B32R	VA0025151	Waynesboro STP	001	South River	23.54	CBOD ₅ CBOD ₅ , JUN-OCT	227 113.6	KG/D KG/D
VAV-B35R	VA0024732	Massanutten Public Service STP	001	Quail Run	5.07	BOD ₅	[37.85 75.7]	KG/D
VAV-B37R	VA0002178	Merck & Company	001	S.F. Shenandoah River	88.09	BOD ₅ AMMONIA, AS N	1570 645.9	KG/D KG/D
VAV-B49R	VA0028380	Stoney Creek Sanitary District STP	001	Stoney Creek	19.87	BOD ₅ , JUN-NOV	29.5	KG/D
VAV-B53R	VA0020982	Middletown STP	001	Meadow Brook	2.19	CBOD ₅	20.8	KG/D
VAV-B58R	VA0020532	Berryville STP	001	Shenandoah River	24.23	CBOD ₅	42.6	KG/D

EDITOR'S NOTE: Subsection C, which became effective November 16, 2005 (see 22:3 VA.R. 376-378 October 17, 2005), is not amended; therefore, the text is not set out.

VA.R. Doc. No. R04-121; Filed November 7, 2005, 2:13 P.M.

* * * * *

Title of Regulation: 9 VAC 25-720. Water Quality Management Planning Regulation (amending 9 VAC 25-720-80).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1313 (e)); 40 CFR Part 130.

Effective Date: December 28, 2005.

Agency Contact: Jason R. Hill, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6729, or e-mail jrhill@deq.virginia.gov.

Summary:

The amendment to the Roanoke River Basin section (9 VAC 25-720-80 B) establishes a standard format for data presentation and updates the data and information contained in this portion of the regulation to provide consistency with the current VPDES permits.

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.

9 VAC 25-720-80. Roanoke River Basin.

EDITOR'S NOTE: 9 VAC 25-720-80 A is not amended; therefore, the text is not set out. 9 VAC 25-720-80 B is stricken in its entirety and is not set out. The new text for 9 VAC 25-720-80 B is set out below.

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Outfall No.	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAW-L04R	VA0072389	Oak Ridge Mobile Home Park	001	Falling Creek UT	0.32	BOD ₅	0.85	KG/D
VAW-L04R	VA0025020	Roanoke City Regional Water Pollution Control Plant				TKN, APR-SEP	318	KG/D
						TKN, OCT-MAR	636	KG/D
			001	Roanoke River	201.81	BOD ₅	1173	KG/D
						TKN, APR-SEP	416	KG/D
						TKN, OCT-MAR	832	KG/D
			001	Roanoke River	201.81	BOD ₅	1173	KG/D
						TKN, APR-SEP	469	KG/D
						TKN, OCT-MAR	939	KG/D
VAW-L04R	VA0077895	Roanoke Moose Lodge	001	Mason Creek	7.79	BOD ₅ , JUN-SEP	0.24	KG/D
						TKN, JUN-SEP	0.09	KG/D
VAW-L07R	VA0020842	Bedford County School Board- Stewartsville Elementary School	001	Nat Branch, UT	0.59	BOD ₅	0.5	KG/D

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VAW-L14R	VA0029254	Ferrum Water and Sewage Auth. - Ferrum Sewage Treatment Plant	001	Storey Creek	9.78	BOD ₅	14.2	KG/D
VAW-L14R	VA0085952	Rocky Mount Town Sewage Treatment Plant	001	Pigg River	52	BOD ₅	133	KG/D
VAW-L14R	VA0076015	Ronile Incorporated	001	Pigg River	57.24	BOD ₅	14.8	KG/D
VAW-L21R	VA0063738	Bedford County School Board - Staunton River High School	001	Shoulder Run, UT	0.95	BOD ₅	1.8	KG/D
VAW-L21R	VA0020869	Bedford County School Board - Thaxton Elementary School	001	Wolf Creek, UT	0.35	BOD ₅	0.31	KG/D
VAW-L22R	VA0023515	Blue Ridge Regional Jail Auth. - Moneta Adult Detention Facility STP	001	Mattox Creek, UT	3.76	BOD ₅	1.66	KG/D
VAW-L25R	VA0020851	Bedford County School Board - Otter River Elementary School	001	Big Otter River, UT	1.15	BOD ₅	0.4	KG/D
VAW-L26R	VA0022390	Bedford City - Sewage Treatment Plant	001	Little Otter River	14.36	BOD ₅	52.8	KG/D
VAW-L26R	VA0020818	Bedford County School Board - Body Camp Elementary	001	Wells Creek, UT	2.22	BOD ₅	0.4	KG/D
VAW-L27R	VA0020826	Bedford County School Board - New London Academy	001	Buffalo Creek, UT	0.67	BOD ₅	0.39	KG/D
VAC-L29R	VA0031194	Briarwood Village Mobile Home Park STP	001	Smith Branch, UT	2.82	BOD ₅	1.3	KG/D
VAC-L35R	VA0023965	Campbell Co Util & Serv Auth. - Rustburg	001	Mollys Creek	17.81	BOD ₅	8.13	KG/D
VAC-L39R	VA0084433	Drakes Branch WWTP	001	Twitty's Creek	6.04	BOD ₅	6.4	KG/D
VAC-L39R	VA0024058	Keysville WWTP	001	Ash Camp Creek	7.63	CBOD ₅ , MAY-NOV	32.1	KG/D
						TKN, MAY-NOV	7.57	KG/D
VAC-L39R	VA0050822	Westpoint Stevens Inc Drakes Branch	001	Twittys Creek	7.22	BOD ₅	6.31	KG/D
VAW-L43R	VA0022985	Stuart Town - Sewage Treatment Plant	001	South Mayo River	30.78	BOD ₅	63.5	KG/D
VAW-L54R	VA0069345	Henry Co Public Service Auth. - Lower Smith River STP	001	Smith River	19.4	BOD ₅	257	KG/D
VAW-L54R	VA0025305	Martinsville City Sewage Treatment Plant	001	Smith River	22.69	BOD ₅	681	KG/D
VAC-L60R	VA0060593	Danville City - Northside	001	Dan River	53.32	BOD ₅	1907	KG/D
						TKN, JUN-OCT	1817	KG/D
[VAC-L66R	VA0020524	Town of Chatham STP	001	Cherrystone Creek	2.49	CBOD ₅ TKN	64.8 38.9	KG/D KG/D]
VAC-L75L	VA0020168	Clarksville WWTP	001	Blue Creek/John H. Kerr Reservoir	0.1	BOD ₅	59.5	KG/D
VAC-L77R	VA0076881	Chase City Regional WWTP	001	Little Bluestone Creek	13.67	CBOD ₅ , MAY-NOV	29.5	KG/D
						TKN, MAY-NOV	9.5	KG/D
VAC-L78R	VA0026247	Boydton WWTP	001	Coleman Creek	3.79	CBOD ₅ , MAY-NOV	17.7	KG/D
						TKN, MAY-NOV	4.1	KG/D
VAC-L79R	VA0069337	South Hill WWTP	001	Flat Creek	8.95	CBOD ₅ , APR-NOV	60.6	KG/D

VA.R. Doc. No. R04-123; Filed November 7, 2005, 2:14 p.m.

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Title of Regulation: 9 VAC 25-720. Water Quality Management Planning Regulation (amending 9 VAC 25-720-90).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC 1313 (e)); 40 CFR Part 130.

Effective Date: December 28, 2005.

Agency Contact: Nancy T. Norton, Department of Environmental Quality, 355 Deadmore Street, Abingdon, VA 24212, telephone (276) 676-4807, FAX (276) 676-4899, or e-mail ntnorton@deq.virginia.gov.

9 VAC 25-720-90. Tennessee - Big Sandy River Basin.

Summary:

The amendment to the Tennessee-Big Sandy River Basin section (9 VAC 25-720-90 B) establishes a standard format for data presentation and updates the data and information contained in this portion of the regulation to provide consistency with the current VPDES permits.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

EDITOR'S NOTE: 9 VAC 25-720-90 A is not amended; therefore, the text is not set out. 9 VAC 25-720-90 B is stricken in its entirety and is not set out. The new text for 9 VAC 25-720-90 B is set out below.

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Receiving Stream	River Mile	Outfall No.	Parameter Description	WLA	Units WLA
VAS-Q13R	VA0061913	Pound WWTP	Pound River	33.26	001	CBOD ₅ , JUN-NOV	28	KG/D
						CBOD ₅ , DEC-MAY	47	KG/D
						TKN, JUN-NOV	28	KG/D
VAS-Q14R	VA0026565	Clintwood WWTP	Cranes Nest River	9.77	001	BOD ₅	30	KG/D
VAS-O06R	VA0026531	Wolf Creek Water Reclamation Facility	Wolf Creek	7.26	001	CBOD ₅	249.8	KG/D
VAS-P01R	VA0026298	Tazewell WWTP	Clinch River	346.26	001	CBOD ₅ , JUN-NOV	76	KG/D
VAS-P03R	VA0021199	Richlands Regional WWTF	Clinch River	317.45	001	BOD ₅ , JUN-NOV	273	KG/D
VAS-P06R	VA0020745	Lebanon WWTP	Big Cedar Creek	5.22	001	BOD ₅	91	KG/D
VAS-P11R	VA0077828	Coeburn Norton Wise Regional WWTP	Guest River	7.56	001	CBOD ₅ , JUN-NOV	303	KG/D
						CBOD ₅ , DEC-MAY	379	KG/D
VAS-P15R	VA0029564	Duffield Industrial Park WWTP	North Fork Clinch River	21.02	001	BOD ₅	36	KG/D
VAS-P17R	VA0020940	Big Stone Gap Regional WWTP	Powell River	177.38	001	CBOD ₅ , JUN-NOV	110	KG/D

VA.R. Doc. No. R04-124; Filed November 7, 2005, 2:14 p.m.

Title of Regulation: 9 VAC 25-720. Water Quality Management Planning Regulation (amending 9 VAC 25-720-130).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1313 (e)); 40 CFR Part 130.

Effective Date: December 28, 2005.

Agency Contact: Jason R. Hill, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6729, or e-mail jrhill@deq.virginia.gov.

Summary:

The amendment to the New River Basin section (9 VAC 25-720-130 B) establishes a standard format for data

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presentation and updates the data and information contained in this portion of the regulation to provide consistency with the current VPDES permits.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

9 VAC 25-720-130. New River.

EDITOR'S NOTE: 9 VAC 25-720-130 A is not amended; therefore, the text is not set out. 9 VAC 25-720-130 B is stricken in its entirety and is not set out. The new text for 9 VAC 25-720-130 B is set out below.

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Receiving Stream	River Mile	Outfall No.	Parameter Description	WLA	Units WLA
VAS-N11R	VA0020281	Wytheville WWTP	Reed Creek	25.79	001	BOD ₅	360	KG/D
VAS-N15R	VA0089443	Hillsville WWTP	Little Reed Island Creed	25.12	001	CBOD ₅ , JAN-MAY CBOD ₅ , JUN-DEC	118 95	KG/D KG/D
VAW-N21R	VA0024040	Montgomery Co. PSA - Riner Town - Sewage Treatment Plant	Mill Creek	5.12	001	BOD ₅ TKN (N-KJEL)	7.5 1.9	KG/D KG/D
VAW-N22R	VA0060844	Blacksburg VPI Sanitation Auth. - Lower Stroubles Creek WWTP	New River	71.37	001	BOD ₅	818	KG/D
VAS-N36R	VA0025054	Bluefield Westside WWTP	Bluestone River	25.64	001	BOD ₅ , JUN-NOV BOD ₅ , DEC-MAY	130 260	KG/D KG/D
VAS-N36R	VA0062561	Tazewell County PSA - Falls Mills Hales Bottom STP	Bluestone River	22.49	001	BOD ₅	5.5	KG/D
VAS-N37R	VA0029602	Pocahontas STP	Laurel Fork	1.99	001	BOD ₅	17	KG/D
VAW-N21R	VA002040	MontgomeryCo.PSA – Riner Town – Sewage Treatment Pant	Mill Creek	5.12	001	BOD ₅ TKN (N-KJEL)	7.5 [1.9	KG/D KG/D]
VAW-N22R	VA0060844	Blacksburg VPI Sanitation Auth. - Lower Stroubles Creek WWTP	New River	71.37	001	BOD ₅	818	KG/D

VA.R. Doc. No. R04-125; Filed November 7, 2005, 2:14 p.m.

TITLE 11. GAMING

CHARITABLE GAMING BOARD

Title of Regulation: 11 VAC 15-22. Charitable Gaming Rules and Regulations (amending 11 VAC 15-22-10 through 11 VAC 15-22-120; adding 11 VAC 15-22-35).

Statutory Authority: §§ 2.2-2456, 18.2-340.15, 18.2-340.19, and 18.2-340.30 of the Code of Virginia.

Effective Date: January 1, 2006.

Agency Contact: Clyde E. Cristman, Director, James Monroe Building, 101 N. 14th Street, 17th Floor, Richmond, VA 23219-3684, telephone (804) 371-0603, FAX (804) 786-1079, or e-mail clyde.cristman@dca.virginia.gov.

Summary:

The amendments (i) establish a uniform use-of-proceeds requirement of 10% for all organizations permitted or

authorized to conduct charitable gaming and provides for additional flexibility to charitable gaming organizations in meeting this requirement; (ii) expand the definition of what constitutes a discount and specify that discounts provided by a charitable gaming organization in any given fiscal year not exceed 1.0% of the organization's previous year's gross receipts; (iii) reduce the maximum number of card faces that can be played per game on an electronic bingo machine from 72 to 54; (iv) increase the fee for tax exempt request reviews to \$500; (v) require charities to only use reporting forms issued or approved by the department; (vi) modify recordkeeping requirements; (vii) change the fiscal year for reporting purposes from October 1 through September 30 to the calendar year; (viii) provide that unused gaming supplies must either be returned to the supplier or turned into the department for disposal; (ix) remove the option of paying rent from the organization's general fund so that rent is only paid out of the organization's charitable gaming account; (x) eliminate the requirement that the amount attributable to rent, equipment or services provided by

the landlord be itemized in the lease or contract; (xi) establish rules for four new variations of bingo and raffle games (Decision Bingo, Lucky Seven, Treasure Chest, and Wingo); (xii) tighten requirements for the participation of minors in the operation, management, and conduct of charitable gaming; (xiii) increase the maximum value of complimentary food and beverages provided to volunteers working a bingo session from \$8 to \$15; (xiv) prohibit volunteers from playing bingo at any session they have worked once the session has begun; (xv) modify the notification requirements regarding the date, time, and location of charitable gaming events; and (xvi) make the regulation consistent with current practice and technology and with the Code of Virginia.

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.

PART I. DEFINITIONS.

11 VAC 15-22-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

~~"Address of record" means an address provided to the commission on a permit application or exempt notification form or the most recent address on the commission's files.~~

"Board" means the Virginia Charitable Gaming Board.

"Board of directors" means the board of directors, managing committee or other supervisory body of a qualified organization.

~~"Building" means a structure enclosed by continuous exterior walls regardless of the configuration of the interior walls.~~

~~"Bundled pull tabs" means certain pull tabs, commonly referred to as "jar tickets," "guppies," etc., which are taped or stapled together and sold as one unit.~~

"Calendar day" means the period of 24 consecutive hours commencing at 12:01 a.m. and concluding at midnight.

"Calendar week" means the period of seven consecutive calendar days commencing at 12:01 a.m. on Sunday and ending at midnight the following Saturday.

"Cash" means United States currency or coinage.

~~"CGC number" means a unique identification number issued by the commission.~~

~~"Commission" means the Virginia Charitable Gaming Commission.~~

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names such as

"Tear-open," or "Bonanza Bingo," "Bullseye" and "Fortune Card."

"Conduct" means the actions associated with the provision of a gaming operation during and immediately before or after the permitted activity, which may include, but not be limited to (i) selling bingo cards or packs, electronic devices, instant bingo or pull-tab cards, or raffle tickets; (ii) calling bingo games; (iii) distributing prizes; or (iv) any other services provided by volunteer workers.

"DCG number" means a unique identification number issued by the department.

"Daubing" means covering a square containing a number called with indelible ink or otherwise concealing the number on a card or an electronic facsimile of a card.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tab raffle or seal cards with the same serial number.

"Decision bingo" means a bingo game where the cost to a player to play is dependent on the number of balls called and the prize payout is in direct relationship to the number of participants and the number of balls called, but shall not exceed statutory prize limits for a regular bingo game.

"Department" means the Virginia Department of Charitable Gaming.

~~"Designator" means an object used in the number selection process, such as a ping pong ball, upon which bingo letters and numbers are imprinted.~~

"Director" means the Director of the Virginia Department of Charitable Gaming.

"Discount" means any reduction in cost of admission or game packs ~~via~~ or any other purchases through use of coupons, free packs or other similar methods.

"Disinterested player" means a player who is unbiased.

"Disposable paper card" means a nonreusable, paper bingo card manufactured with preprinted numbers.

"Door prize" means any prize awarded by the random drawing or random selection of a name or number ~~taken from any entry or admission ticket based solely on attendance at a gaming session.~~

"Electronic bingo device" means an electronic device ~~which that uses proprietary software or hardware, or in conjunction with commonly available software and computers,~~ displays facsimiles of bingo cards and allows a player to daub such cards.

~~"Electronic verification" means the verification of bingo by entering the free space number of the winning bingo card into computer equipment which contains preprogrammed software for this purpose.~~

~~"Equipment and video systems" includes equipment which facilitates the conduct of charitable gaming such as ball blowers, flashboards, TV monitors, cameras, smoke eaters, P.A. systems, tables and chairs, electronic verifiers and replacement parts for such equipment.~~

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"Fiscal year" or "annual reporting period" means the 12-month period beginning ~~October~~ *January 1 and ending December 31 of any given and ending September 30 of the following year.*

~~"501(c) organization" means any organization that is tax exempt under 26 USC § 501(c) (3), (4), (8), (10) or (19).~~

"Flare" means a piece of paper, cardboard or similar material ~~which~~ *that* bears printed information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, *serial number*, the number of prizes to be awarded and the specific prize amounts in a deal of instant bingo, pull-tab or seal cards.

"Free space number," "perm number," "center number," "card number" or "face number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

"Game program" means a written list of all games to be played ~~and~~ *including, but not limited to, the sales price of all bingo paper and electronic bingo devices, pack configuration*, prize amounts to be paid during a session for each game, ~~where~~ *and an indication whether* prize amounts are fixed or are based on attendance.

"Immediate family" means one's spouse, ~~mother, father, parent, son, daughter, child, brother, sister, sibling,~~ grandchild, grandparent, mother-in-law, or father-in-law or stepchild.

~~"Interested parties persons"~~ means the president, an officer or bingo manager of any qualified organization which is exempt or is a permit applicant or holds a permit or exempt authorization to conduct charitable gaming or the owner, director, officer or partner of an entity engaged in supplying charitable gaming supplies to organizations.

"IRS" means the United States Internal Revenue Service.

"Lucky Seven" means a bingo game as authorized in § 18.2-340.33 (9a) (b) of the Code of Virginia.

"Management" means the provision of oversight ~~and supervision~~ *of a gaming operation, which may include, but not be limited to, the responsibilities of applying for and maintaining a permit or authorization, compiling, submitting and maintaining required records and financial reports, and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.*

"Manufacturer" means a person who assembles from raw materials or subparts a completed piece of bingo or other charitable gaming equipment or supplies. "Manufacturer" also means a person who modifies, converts, adds or removes parts to or from bingo or other charitable gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

~~"Operating costs" means charitable gaming fund disbursements for reasonable and proper expenses incurred in the conduct of charitable gaming including, but not limited to, costs of publicizing the time, date and location of charitable gaming; utilities; rent; prizes;~~

~~professional fees; audit and administration or permit fees; and gaming supplies.~~

~~"Operation" or "conduct" means the authority for check writing, approval of expenses of charitable gaming funds, purchase of charitable gaming supplies, negotiation of contracts or leases, or service as a volunteer worker or assistant activities associated with production of a charitable gaming activity, which may include, but not be limited to (i) the direct on-site supervision of the conduct of charitable gaming; (ii) coordination of volunteers; and (iii) all responsibilities of charitable gaming designated by the organization's management.~~

"Owner" means any individual with financial interest of 10% or more in a supplier.

~~"Packet" "Pack" means sheets of bingo paper or electronic facsimiles assembled in the order of games to be played. This may or may not include specials, winner-take-all and jackpots, but shall not include any winner-take-all, Lucky Seven or raffle.~~

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

"Prize" means cash, merchandise, certificate or other item of value awarded to a winning player.

"Progressive seal card game" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

~~"Pull tabs" means individually prepackaged cards made completely of paper or paper products with winners being determined by the appearance of preprinted concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses.~~

~~"Random selection" or "randomly selected" means a process of selecting number designators to produce random numbers during a bingo game in which each designator or number in the remaining population has an equal chance or probability of being selected.~~

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number which contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter or symbol located on that board or placard.

~~"Selection device" means a device that is operated manually or mechanically to randomly select bingo numbers.~~

"Serial number" means a unique number printed by the manufacturer on each bingo card in a set ~~or~~ , each instant bingo or pull-tab card in a deal, *each electronic bingo device, or each door prize ticket.*

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards or bingo

hard cards. A 9000 series, for example, has 9000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted by a single qualified organization, or when approval for joint operation is obtained, by two or more qualified organizations that begins with the selection of the first ball for the first game and ends with the selection of the last ball for the last game.

"Set" means the bingo cards contained within each series number.

"Special permit" means a permit granted to a qualified organization to allow the organization to conduct more frequent operation of bingo games during carnivals, fairs or other similar public amusement events of limited duration.

"Treasure chest" means a raffle including a locked treasure chest containing a prize that a participant, selected through some other authorized charitable game, is afforded the chance to select from a series of keys a predetermined key that will open the locked treasure chest to win a prize.

"Use of proceeds" means the use of funds derived by an organization from its charitable gaming activities which are disbursed for those lawful religious, charitable, community or educational purposes. This includes expenses relating to the acquisition, construction, maintenance or repair of any interest in the real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes.

"WINGO" is a variation of a traditional bingo game that uses visual devices rather than a verbal caller and is played by hearing impaired persons.

PART II.

PERMITS, EXEMPT NOTIFICATIONS, REGISTRATION CERTIFICATES.

11 VAC 15-22-20. Eligibility for permit to conduct charitable gaming; when valid; permit requirements.

A. The conduct of charitable gaming is a privilege which that may be granted or denied by the ~~commission department~~. Except as provided in § 18.2-340.23 of the Code of Virginia, every eligible organization and volunteer fire department and rescue squad with anticipated gross gaming receipts of that exceed \$25,000 or more annually in any 12-month period shall obtain a permit or exempt authorization number from the ~~commission department~~ prior to the commencement of authorized charitable gaming activities. To be eligible for a permit an organization must meet all of the requirements of § 18.2-340.24 of the Code of Virginia.

B. Upon the organization's request and Pursuant to § 18.2-340.24 B of the Code of Virginia, the ~~commission department~~ shall review a tax exempt request submitted to the IRS for a tax exempt status determination and may issue an interim certification of tax-exempt status solely for the purpose of charitable gaming, conditioned upon a determination by the IRS. A nonrefundable fee of \$250 \$500 payable to the Treasurer of Virginia shall be charged for this review.

C. A permit or exempt authorization shall be valid only for activities, locations, days, dates and times as listed on the permit or exempt authorization.

D. In accordance with subdivision 1 of § 18.2-340.19 of the Code of Virginia, as a condition of receiving a permit or exempt authorization, the following a minimum percentage of 10% of charitable gaming gross receipts shall be used for (i) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized or (ii) those expenses relating to the acquisition, construction, maintenance or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes:

For the fiscal year beginning October 1, 1997:

For organizations with annual gross receipts less than \$150,000 4%

For organizations with annual gross receipts between \$150,000 and \$500,000 6%

For organizations with annual gross receipts over \$500,000 9%

For the fiscal year beginning October 1, 1998, and later fiscal years:

For organizations with annual gross receipts less than \$150,000 5%

For organizations with annual gross receipts between \$150,000 and \$500,000 10%

For organizations with annual gross receipts over \$500,000 12%

Unless an organization has derived no gross receipts in the prior fiscal year, the gross receipts of the most recently completed fiscal year shall be used to determine the applicable percentage for the use of proceeds requirement. An organization with no prior charitable gaming activity shall be subject to a 5.0% minimum use of proceeds requirement.

E. If an organization fails to meet the minimum use of proceeds requirement, its permit shall may be suspended or revoked based on the deficiency in use of proceeds according to the following schedule: However, the department shall not suspend or revoke the permit of any organization solely because of its failure to meet the required percentage without having first provided the organization with an opportunity to implement a corrective action plan. In such a case, the organization shall be afforded the opportunity to enter into a consent order with the department specifying the proposed corrective action and the timeframe to accomplish the plan.

DEFICIENCY	FIRST FAILURE	SECOND FAILURE
LESS THAN 2.0%	40 DAYS	20 DAYS
2.0 TO 5.0%	20 DAYS	40 DAYS
OVER 5.0%	30 DAYS	60 DAYS

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~~If an organization fails to meet the minimum use of proceeds requirement three times, its permit shall be revoked.~~

~~F. Notwithstanding the provisions of subsection E of this section, if an organization is within less than one percentage point of the minimum use of proceeds requirement for a given fiscal year, it may request a one-time approval to make up the deficiency (in dollars) in the following fiscal year. If such approval is granted, the deficiency will be added to the percentage requirement for the following year and the permit shall not be suspended. Failure to meet the required percentage in the year following such approval shall result in a 30-day suspension. An organization may request a temporary reduction in the predetermined percentage specified in subsection D of this section from the department. In reviewing such a request, the department shall consider such factors appropriate to and consistent with the purpose of charitable gaming, which may include, but not be limited to (i) the organization's overall financial condition; (ii) the length of time the organization has been involved in charitable gaming; (iii) the extent of the deficiency; and (iv) the progress that the organization has made in attaining the minimum percentage in accordance with a corrective action plan pursuant to subsection E of this section.~~

G. An organization whose permit is revoked for failure to comply with provisions set forth in subsection D of this section shall be eligible to reapply for a permit at the end of one year from the date of revocation. The ~~commission~~ department, at its discretion, may issue the permit if it is satisfied that the organization has made substantial changes to its management, operations or both.

11 VAC 15-22-30. Permit application and exempt notification process.

A. Organizations anticipating gross gaming receipts of ~~that exceed \$25,000 or more~~ (except volunteer fire departments and rescue squads) shall complete a ~~commission~~ department-prescribed application to request issuance or renewal of an annual permit to conduct charitable gaming. The application shall be accompanied by a nonrefundable fee payable to the Treasurer of Virginia in the amount of \$200. ~~The commission may also issue permits for periods of less than one year. Fees for such permits shall be prorated and rounded off to the nearest \$50 per quarter.~~

B. Volunteer fire departments and rescue squads anticipating gross receipts of ~~that exceed \$25,000 or more~~ shall file a ~~commission-prescribed~~ exempt notification on a form ~~prescribed by the department~~ to request an authorization to conduct charitable gaming.

C. The ~~commission~~ department may initiate action against any organization exempt from permit requirements when it reasonably believes the organization is not in compliance with the provisions of charitable gaming laws or applicable regulations, or both, of the ~~commission~~ board. The ~~commission~~ department may decline to issue an ~~exempt notification number authorization to conduct charitable gaming~~ to volunteer fire departments and rescue squads

failing to meet the requirements of § 18.2-340.23 of the Code of Virginia.

D. Permit holders requiring a special permit ~~pursuant to § 18.2-340.27 D of the Code of Virginia~~ shall convey their request in the ~~on a form of a letter to prescribed by the~~ ~~commission~~ department. There shall be a \$50 fee for special permits.

E. Permits and exempt authorizations shall be valid for a period of one year from the date of issuance or for a period specified on the permit or authorization. ~~The department may issue permits for periods of less than one year.~~

F. Permits shall be granted only after a background investigation of an organization or interested ~~parties~~ persons, or both, to ensure public safety and welfare as required by § 18.2-340.25 of the Code of Virginia. Investigations shall consider the nature, the age and severity and the potential harm to public safety and welfare of any criminal offenses. The investigation may include, but shall not be limited to, the following:

1. A search of Virginia criminal history records for ~~all officers the chief executive officer and chief financial officer~~ of the organization and ~~members who serve as game managers~~. Information and authorization to conduct these records checks shall be provided in the permit application. ~~In addition, the department shall require that the organization provides assurances that all other members involved in the management or operation of charitable gaming meet the requirements of subdivision 12 of § 18.2-340.33 of the Code of Virginia.~~ Applications may be denied if any game manager or officer has been convicted within ~~40~~ five years preceding the date of application for any:

- a. Felony involving fraud, theft or financial crimes; or
- b. Misdemeanor crimes involving moral turpitude, fraud, theft or financial crimes.

~~In addition, any felony conviction involving fraud, theft or financial crimes, regardless of age, may result in denial of application.~~

2. An inquiry as to whether the organization has been ~~investigated or examined~~ ~~granted tax-exempt status pursuant to § 501 (c)~~ by the Internal Revenue Service ~~in connection with charitable gaming activities during the previous three years.~~ and is in compliance with IRS annual filing requirements;

3. An inquiry as to whether the organization has entered into any contract with, or has otherwise employed for compensation, any persons for the purpose of organizing or managing, operating or conducting any charitable gaming activity-;

4. Inquiries into the finances and activities of an organization and the sources and uses of funds-; and

5. Inquiries into the level of community or financial support to the organization and the level of community involvement in the membership and management of the organization.

G. The permit application *for an organization that has not previously held a permit* shall include:

1. A list of members participating in the ~~conduct management or operation~~ of charitable gaming;
2. A copy of the articles of incorporation, bylaws, charter, constitution or other appropriate organizing document;
3. A copy of the determination letter issued by the IRS under § 501(c) of the Internal Revenue Code, if appropriate, or a letter from the national office of an organization indicating the applicant organization is in good standing and is currently covered by a group exemption ruling. *A letter of good standing is not required if the applicable national or state office has furnished the department with a listing of member organizations in good standing in the Commonwealth as of January 1 of each year and has agreed to promptly provide the department any changes to the listing as they occur,*
4. A copy of the organization's most recent annual financial statement and balance sheet, *or most recent Form 990 that has been filed with the IRS;*
5. A copy of the written lease or proposed written lease agreement and all other agreements if the organization rents or intends to rent a facility where bingo is or will be conducted. Information on the lease shall include name, address, phone number of the landlord, square footage and maximum occupancy of the building and the rental amount ~~by each category of equipment or property rented per session; and~~
6. An authorization by an officer or other appropriate official of an organization to permit the ~~commission~~ department to determine whether the organization has been investigated or examined by the Internal Revenue Service in connection with charitable gaming activities during the previous three years.

H. Copies of minutes of meetings of an organization and any contracts with landlords or suppliers to which the organization is, or may be a party, may be requested by the ~~commission~~ department prior to rendering a permitting decision.

~~I. Copies of amendments to an organization's articles of incorporation, bylaws, charter, constitution or other organizing document, as they occur, shall be submitted to the commission.~~

~~J. I. Organizations applying to renew a permit previously issued by the commission department shall submit articles of incorporation, bylaws, charter, constitution or other organizing document and IRS determination letter only if there are any amendments or changes to these documents that are directly related to the management, operation or conduct of charitable gaming. The most recent financial statements, information on officers and an IRS tax waiver form shall also be filed with a renewal application.~~

~~K. J. Organizations may request permits to conduct joint bingo games as provided in § 18.2-340.29 of the Code of Virginia and special permits as provided in § 18.2-340.27 of the Code of Virginia:~~

1. In the case of a joint game between a volunteer fire department or rescue squad and an organization not exempt from permit requirements, ~~both they~~ shall file the exempt notification form and permit application respectively. Benefits extended by ~~regulation~~ or the Code of Virginia *or these regulations* to a volunteer fire department or rescue squad shall not extend to a nonexempt organization ~~solely~~ due to operation of a joint game.

2. The nonrefundable permit fee for joint games shall be a total of \$200.

3. A single permit shall be issued in the names of both organizations conducting a joint game. All restrictions and prohibitions applying to single organizations shall apply to qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 of the Code of Virginia.

4. No charitable gaming shall be conducted prior to the issuance of a joint permit ~~or joint exemption number.~~

5. Applications for joint games shall include an explanation of the division of manpower, costs and proceeds for the joint game.

~~L. K. An organization wishing to permanently change dates, times or locations of its charitable gaming shall request a change in the permit. Change requests shall be made in writing on a form prescribed by the department at least 30 days in advance of the proposed effective date.~~

~~M. No more than six temporary~~ L. Changes in dates or , times or locations due to inclement weather, ~~special events or holidays~~ disasters, or other circumstances outside the organization's control may be made in a permit year without a permanent change in the permit. *The organization shall request such a change on a form prescribed by the department as soon as the necessity for the change is known.*

~~N. Change requests shall be made in writing at least 30 days in advance of the proposed effective date.~~

~~O. M. A nonrefundable fee of \$50, payable to the Treasurer of Virginia, shall be submitted with a request for a permanent permit change. The fee shall not be charged for temporary changes as described in subsection M L of this section or to changes in permits due to an addition or removal of a charitable gaming activity.~~

~~P. N. An organization located in the Northern Virginia Planning District may sell raffle tickets for a drawing to be held in another state in the United States provided:~~

1. The raffle is conducted by the organization in conjunction with a meeting outside the Commonwealth of Virginia or with another organization which is licensed to conduct raffles outside the Commonwealth of Virginia;

2. The raffle is conducted in accordance with *these regulations and the laws and regulations* of the state where the drawing is to be held; and

3. The portion of the proceeds derived from the sale of raffle tickets in the Commonwealth is reported to the ~~commission~~ department.

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O. Any permitted organization that ceases to conduct charitable gaming shall immediately notify the department in writing, return its permit to the department, and provide the department a report as to the disposition of all unused gaming supplies.

11 VAC 15-22-35. Suspension, revocation, or denial of permit or authorization.

A. Pursuant to § 18.2-340.20 of the Code of Virginia, the department may suspend, revoke, or deny the permit or authorization to conduct charitable gaming of any organization for cause including, but not limited to, any of the following reasons:

1. The organization is found to be in violation of or has failed to meet any of the requirements of the statutes or regulations governing the operation, management, and conduct of charitable gaming in the Commonwealth.
2. The organization is found to be not in good standing with its state or national organization.
3. The IRS revokes or suspends the organization's tax-exempt status.
4. The organization willfully and knowingly provides false information in its application for a permit or authorization to conduct charitable gaming.
5. The organization is found to have a member involved in the management, operation or conduct of its charitable gaming who has been convicted of any felony or any misdemeanor crime involving moral turpitude, fraud, theft or financial crime within the past five years.

B. In lieu of suspending, revoking or denying a permit or authorization to conduct charitable gaming, the department may afford an organization an opportunity to enter into a consent order specifying additional conditions or requirements as it may deem necessary to ensure an organization's compliance with the statutes and regulations governing the conduct of charitable gaming activities and may require that an organization participates in such training as is offered by the department.

C. If a permit or authorization is suspended, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that, prior to reinstatement of the permit or authorization, the organization shall submit a corrective action plan to address the conditions that resulted in the suspension.

PART III.

CONDUCT OF GAMES, RULES OF PLAY, ELECTRONIC BINGO.

11 VAC 15-22-40. Conduct of bingo, instant bingo and raffles.

A. Organizations subject to this chapter shall post their permit or exempt authorization at all times on the premises where charitable gaming is conducted.

B. No individual shall provide any information or engage in any conduct that alters or is intended to alter the outcome of any charitable game.

C. Individuals under 18 years of age may play bingo provided such persons are accompanied by a parent or legal guardian. It shall be the responsibility of the organization to ensure that such individuals are eligible to play. An organization's house rules may further limit the play of bingo or purchase raffle tickets by minors.

D. Individuals under the age of 18 may sell raffle tickets for a qualified organization raising funds for activities in which they are active participants.

E. No individual under the age of 18 may participate in the management, or operation or ~~conduct~~ of bingo games. Individuals 14 through 17 years of age may participate in the ~~conduct or operation~~ of a bingo game provided the organization permitted for charitable gaming obtains and keeps on file written parental consent from the parent or legal guardian and verifies the date of birth of such youth. *Individuals 11 through 13 years of age may only participate in the conduct of a bingo game provided they are accompanied by a parent or legal guardian.* An organization's house rules may further limit the involvement of minors in the ~~operation or~~ conduct of bingo games.

F. Immediate family members of bona fide members and surviving spouses of deceased bona fide members may participate as volunteer game workers.

G. All volunteer game workers, ~~including nonmember spouses,~~ shall have in their possession a picture identification, such as a driver's license or other government-issued identification, while participating in the management, operation or conduct of a bingo game.

H. ~~There shall be~~ A game manager or person in charge who is a bona fide member of the organization and is designated by the organization's management as the person responsible for the operation of the bingo game [during a particular session] shall be present any time a bingo game is conducted.

I. Organizations shall ensure that all charitable gaming equipment is in working order before charitable gaming activities commence.

J. Any organization selling bingo, instant bingo, ~~pull-tab~~ raffles or seal cards shall:

1. Maintain a supplier's invoice or a legible copy thereof at the location where the gaming is taking place and cards are sold. The original invoice or legible copy shall be stored in the same storage space as the ~~supply of pull tabs, instant bingo or seal cards.~~ gaming supplies. *All gaming supplies shall be stored in a secure area that has access limited only to bona fide members of the organization; and*
2. Pay for ~~instant bingo, pull-tab or seal card~~ all gaming supplies only by a check drawn on the charitable gaming account of the organization.

K. A volunteer working a bingo session may receive complimentary food and nonalcoholic beverages ~~for consumption~~ provided on premises, ~~provided~~ as long as the retail value of such food and beverages does not exceed ~~\$8.00~~ \$15 for each session.

~~L. Individuals employed by an organization to work in the private social quarters open only to members and guests may sell seal cards or pull-tab cards provided they are members who are not directly compensated for the sale of these products. Permitted organizations shall not commingle records, supplies or funds from permitted activities with those from pull-tabs sold in social quarters in accordance with § 18.2-340.26:1 of the Code of Virginia.~~

M. Individuals who are not members of an organization or are members who do not participate in any charitable gaming activities may be paid reasonable fees for preparation of *quarterly and annual* financial reports.

~~N. Except for individuals identified in subsections K and M of this section and individuals allowed by law to be compensated for providing assistance to organizations for the deaf and blind, No free packs, free electronic bingo devices, discounts or remuneration in any other form shall be provided directly or indirectly to volunteers, members of their family or individuals residing in their household. The reduction of tuition, dues or any fees or payments due as a result of a member or shareholder, or anyone in their household, working bingo games or raffles is prohibited.~~

O. Individuals providing security for an organization's charitable gaming activity shall not participate in the charitable gaming activity as a player and shall not be compensated with charitable gaming supplies or with rentals of electronic bingo devices.

P. No organization shall award any prize money or any merchandise valued in excess of the following amounts specified by the Code of Virginia:

- ~~1. No bingo door prize shall exceed \$25.~~
- ~~2. No regular bingo or special bingo game prize shall exceed \$100.~~
- ~~3. No instant bingo prize for a single card shall exceed \$500.~~
- ~~4. No bingo jackpot of any nature whatsoever shall exceed \$1,000 nor shall the total amount of bingo jackpot prizes awarded in any one calendar day exceed \$1,000.~~
- ~~5. No pull-tab card shall have a prize exceeding \$500.~~

~~The provisions of this subsection shall not apply to any bingo game in which all the gross receipts from players for that game up to \$1,000 are paid as prize money back to the players, provided there is no more than one such game per calendar day of play and the prize money from any such game does not exceed \$1,000, such games being commonly referred to as "winner take all" games.~~

Q. Multiple bingo sessions shall be permitted in a single premises as long as the sessions are distinct from one another and are not used to advertise or do not result in the awarding of more in prizes than is permitted for a single qualified organization. All leases for organizations to conduct charitable gaming in a single premises shall be for sessions separated by an interval of at least one hour during which no sales shall take place. *Bingo sales for the subsequent session may take place during the one-hour*

break once the building is cleared of all patrons and workers from the previous session.

~~R. Separate sessions at the same location shall require separate admission fees.~~

~~S. R. All bingo and instant bingo sales must occur within the time specified on the charitable gaming permit. In addition, instant bingo sales may occur as provided in subsection T of this section provided no such sales take place in the required one hour break between sessions.~~

~~T. S. Instant bingo cards shall only be sold in conjunction with a regular bingo session. No instant bingo sales shall take place more than two hours before or after a session. If multiple sessions are held at the same location, no *instant bingo* sales shall be conducted during the required one hour break between sessions. The ~~commission~~ department may take action if it believes that a regular bingo session is not legitimate or is being conducted in a manner such that instant bingo cards are not being sold in conjunction with a normal, regular bingo session.~~

~~U. T. Only *bona fide* volunteers a *volunteer game worker* of qualified organizations may rent, exchange or otherwise provide electronic bingo devices to players.~~

~~V. U. A qualified organization shall conduct only bingo games and raffles listed on a game program for that session. The program shall list all ~~games~~ and prize amounts. If the prize amounts are determined by attendance or at the end of a game, the game program shall list the attendance required for the prize amount or disclose that prizes shall be determined at the end of a game and the method for determining the prize amount. In such case, the organization shall announce the prize amount at the end of the game.~~

~~W. V. A qualified organization selling instant bingo or pull-tab cards shall post a flare provided by the manufacturer at the location where such cards are sold. All such sales and prize payouts shall be in accordance with the flare for that deal.~~

~~X. W. Only qualified organizations [, facilities in which qualified organizations play bingo and suppliers registered with the department,] shall advertise a bingo game. Providing players with information about bingo games through printed advertising is permitted, provided the name of the qualified organization shall be in a type size equal to or larger than the name of the premises, hall or the word "bingo." Printed advertisements shall identify the use of proceeds percentage reported in the past quarter or fiscal year.~~

~~Y. X. Raffles which award prizes based on a percentage of gross receipts shall use prenumbered tickets.~~

~~Z. Y. The following rules shall apply to ~~pull-tab~~ instant bingo dispensing devices:~~

- ~~1. A dispenser shall only be used at a location ~~owned or leased by~~ and time during which a qualified organization which holds a permit to conduct charitable gaming at that location. Only cards purchased by an organization to be~~

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used during the organization's charitable gaming activity shall be in the dispenser.

2. Keys to the dispensing area and coin/cash box shall be in the possession and control of the game manager or designee of the organization's board of directors at all times. Keys shall at all times be available at the location where the dispensing device is being used.

3. The game manager or designee shall provide keys access to a ~~commission representative~~ department agent for inspection upon request.

4. Only a volunteer game worker of an organization may stock the device, remove cash or pay winners' prizes.

Z. Organizations shall only purchase gaming supplies from a supplier who has a current certificate of registration issued by the department.

AA. An organization shall not alter bingo paper from its original form as invoiced from the supplier.

BB. The total amount of all discounts given by any organization during any fiscal year shall not exceed 1.0% of the organization's prior year gross receipts.

11 VAC 15-22-50. Rules of play.

A. ~~An~~ Each organization ~~may~~ shall adopt "house rules" regarding conduct of the game, ~~provided~~. Such rules ~~are~~ shall be consistent with the provisions of the law and this chapter. "House rules" shall be conspicuously posted or, at an organization's option, printed on the game program.

B. All players shall be physically present at the location where the balls for a bingo game are drawn to play the game or to claim a prize. Seal card prizes that can only be determined after a seal is removed or opened must be claimed within 30 days of the close of a deal. All other prizes must be claimed on the game date.

C. The following rules of play shall govern the sale of instant bingo and ~~pull-tab~~ seal cards:

~~1. Cards shall not be sold to the public from the original packing box or container. Cards from the original packing box or container shall be mixed thoroughly before being sold by volunteers, dispensing machines or from other containers.~~

~~2. 1.~~ No cards ~~which that~~ have been marked, defaced, altered, tampered with or otherwise constructed in a manner ~~which that~~ tends to deceive the public or affect the chances of winning or losing shall be placed into play.

~~3. 2.~~ Winning cards shall have the winning symbol or number defaced or punched immediately after redemption by the organization's authorized representative.

4. 3. An organization may commingle unsold *instant bingo* cards with no more than one additional deal. The practice of commingling deals shall be disclosed to the public via house rules or in a similar manner. *Seal card deals shall not be commingled.*

~~5. 4.~~ If a deal is not played to completion and unsold cards remain, the remaining cards shall be sold on the next date the same type of ticket is scheduled to be sold. If no future date is anticipated, the organization shall, after making diligent efforts to sell the entire deal, consider the deal closed or completed. The unsold cards shall be retained ~~in accordance with 11 VAC 15-22-70 for three years following the close of the fiscal year and shall not be opened.~~

~~6. 5.~~ All seal card games purchased shall contain the sign-up sheet, seals and the cards packaged together in each deal.

~~7. 6.~~ Progressive seal card prizes not claimed within 30 days shall be carried forward to the next progressive game in progress and paid to the next progressive game prize winner.

D. ~~Volunteers~~ Volunteer game workers may not play bingo at any session they have worked ~~provided they do not return to working a game after having played after the session has started.~~ ~~Volunteers~~ Volunteer game workers may not purchase directly or through others instant bingo, ~~pull-tab~~ or seal card products from organizations they assist on the day they have volunteered or from any deal they have helped sell, whichever is later.

E. Electronic bingo.

1. Electronic bingo devices may be used by bingo players in the following manner:

a. Players must input into the device each number called;

b. Players must notify the game operator or caller of a winning pattern of bingo by a means other than use of the electronic device;

c. Players are limited to playing a maximum of ~~72~~ 54 card faces per *device per game on each device*;

d. Electronic bingo devices shall not be reserved for players. Each player shall have an equal opportunity to use the available devices on a first come, first served basis;

e. Each ~~player using an~~ electronic bingo device shall ~~possess a printed representation of all faces played or to be played by the device or produce a player receipt with the organization name, date, time, location, sequential transaction or receipt number, number of electronic bingo cards played loaded, cost of electronic bingo cards loaded, date and time of the transaction, and device identification number. Images of cards or faces stored in an electronic device must be exact duplicates of the printed faces if faces are printed;~~

f. ~~Commission representatives~~ Department agents may examine and inspect any electronic bingo device and related system. Such examination and inspection shall include immediate access to the device and unlimited inspection of all parts and associated systems and may involve the removal of equipment from the game premises for further testing;

g. All electronic bingo devices must be programmed loaded or enabled for play on the premises where the game will be played;

h. All electronic bingo devices shall be rented or otherwise provided to a player only by an organization and no part of the proceeds of the rental of such devices shall be paid to a landlord, his employee, agent or member of his immediate family; and

i. If a player's call of a bingo is disputed by another player or if a ~~commission representative~~ department agent makes a request, one or more cards stored on an electronic bingo device shall be printed by the organization.

2. Players may exchange a defective electronic bingo device for another device provided a disinterested player verifies that the device is not functioning. A disinterested player shall also verify that no numbers called for the game in progress have been keyed into the replacement device prior to the exchange.

F. The following rules of play shall govern the conduct of raffles:

1. Before a prize drawing, each stub or other detachable section of each ticket sold shall be placed into a receptacle from which the winning tickets shall be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

2. All prizes shall be valued at fair market value.

G. The following rules shall apply to "decision bingo" games:

1. Decision bingo shall be played on bingo cards in the conventional manner.

2. Players shall enter a game by paying a predetermined amount for each card face in play.

3. After the calling of each set of three numbers, players wishing to continue playing shall pay an additional predetermined fee for each card in play.

4. The prize amount shall be the total of all fees not to exceed \$100. Any excess funds shall be retained by the organization.

5. The predetermined amounts in subdivisions 2 and 3 of this subsection shall be printed in the game program. The prize amount for a game shall be announced before the prize is paid to the winner.

H. The following rules shall apply to "treasure chest" games:

1. The organization shall list the treasure chest game on the bingo game program as a "Treasure Chest Raffle."

2. The organization shall have house rules posted that describe how the game is to be played.

3. The treasure chest participant shall only be selected through some other authorized charitable game at the same bingo session.

4. The organization shall account for all funds as treasure chest/raffle sales on the session reconciliation form.

5. If the player does not open the lock on the treasure chest, the game manager [or his designee] shall proceed to try every key until the correct key opens the treasure chest lock to show all players that one of the keys will open the lock.

I. The following rules shall apply to "Lucky Seven" games:

1. General rules.

a. A "Lucky Seven" bingo card shall have a single face where seven numbers shall be chosen.

b. A "Lucky Seven" sheet shall have multiple faces where seven numbers shall be chosen per face.

c. A player shall select seven numbers between the numbers of 1 and 75.

d. No duplicate numbers shall be played on a purchased face.

e. If a duplicate number appears on a face, then the card shall be void.

f. "Lucky Seven" shall be played on a bingo card or sheet, or electronic facsimile thereof.

g. "Lucky Seven" bingo paper (i.e., card(s) and sheet(s)) shall conform to the construction and randomization standards in the Charitable Gaming Supplier Regulations (11 VAC 15-31).

h. "Lucky Seven" shall be sold separately from the bingo card(s) or sheet(s) issued for any other bingo game.

i. "Lucky Seven" shall not be a part of any pack of any kind such as a convenience pack, super pack, etc.

j. The financial accounting for "Lucky Seven" must include separate accounting for the "Lucky Seven" sales and prize payouts as well as informational entries for each session that records the following for the progressive jackpot: beginning balance, additions to the progressive jackpot, payouts and ending balance that is to be carried over to the next session.

k. "Lucky Seven" shall be listed on the game program for the session it is played.

l. "Lucky Seven" game card(s) or sheet(s) pricing shall be listed on the game program.

m. The pricing of "Lucky Seven" bingo card(s) or sheet(s) shall be by the number of faces.

n. The price for a "Lucky Seven" bingo card or sheet face shall be the same regardless of the number of faces purchased by a player.

o. No discounts shall be allowed.

p. "Lucky Seven" paper shall not be given away as a door prize.

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q. There shall be no more than one "Lucky Seven" game per organization per calendar day.

r. No volunteer may play "Lucky Seven" at any session where he has worked.

s. The pricing for "Lucky Seven" faces shall remain constant from when the progressive jackpot is first started until the same jackpot has been won.

2. Progressive jackpot rules.

a. "Lucky Seven" shall begin with the calling of 16 random numbers by the game caller. These numbers will determine the winner of the "Lucky Seven" progressive jackpot. If the progressive jackpot has not been won during the session, then the maximum number of numbers called for the following session shall be increased by one number. This shall continue until the progressive jackpot has been won.

b. The amount of the progressive jackpot shall be announced prior to the game being played at the session. Multiple winners shall evenly split the progressive jackpot.

c. The initial progressive jackpot for the "Lucky Seven" game shall not exceed \$500.

d. The organization shall take into consideration the number of players at its sessions when deciding the starting amount for its progressive jackpot.

e. Any increase in the amount for the "Lucky Seven's" progressive jackpot game shall be 50% of the moneys received from the sales of "Lucky Seven" bingo card(s) or sheet(s) during the previous session for which the sales occurred or \$100 per session, whichever amount is less.

f. Once the progressive jackpot has reached \$5,000, the organization shall not add any additional money generated from the sales of its "Lucky Seven" bingo card(s) or sheet(s) from a session to the jackpot.

g. The amount of numbers needed to win the "Lucky Seven" progressive jackpot and the amount of the jackpot shall be posted in a conspicuous place inside the bingo hall.

h. Once the progressive jackpot has been won, the next progressive jackpot shall not start in excess of \$500.

3. Regular or special prize rules.

a. If the progressive jackpot has not been won during the session, then the game caller shall continue to call numbers at random until there is a verified bingo winner of the regular or special prize amount.

b. The regular or special prize amount shall be announced prior to the game being played. Multiple winners shall evenly split the regular or special prize.

c. The regular or special prize amount shall be 50% of the moneys received from the sales of "Lucky Seven"

bingo card(s) or sheet(s) during the current session or \$100, whichever amount is less.

d. The regular or special prize amount shall not be awarded when the progressive jackpot is won by a player.

J. The following rules shall apply to "WINGO":

1. "WINGO" shall be played only [~~by organizations~~] for the hearing impaired [players].

2. "WINGO" shall utilize a visual device such as an oversized deck of cards in place of balls selected from a blower.

3. A caller must be in an area visible to all players and shall randomly select cards or other visual devices one at a time and display them so that all players can see them.

4. The organization must have house rules for "WINGO" and the rules shall identify how players indicate that they have won.

5. All financial reporting shall be consistent with reporting for a traditional bingo game.

PART IV.

BANK ACCOUNTS, RECORDKEEPING, FINANCIAL REPORTING, AUDITS, FEES.

11 VAC 15-22-60. Bank accounts.

A. Qualified organizations shall maintain a ~~separate bank account for charitable gaming receipts~~ charitable gaming bank account that is separate from any other bank account and all gaming receipts shall be deposited into the charitable gaming bank account.

B. Disbursements for expenses other than prizes and reimbursement of meal expenses shall be made by check directly from a charitable gaming account ~~or from a general fund account of the organization~~ if charitable gaming funds are transferred to such an account.

C. All charitable gaming bank account records, including but not limited to monthly bank statements, canceled checks or facsimiles thereof, and reconciliations shall be maintained for three years following the close of a fiscal year ~~(September 30)~~.

D. All receipts from each session of bingo games and instant bingo shall be deposited by the second business day following the session at which they were received.

E. ~~Pull tab and~~ Raffle proceeds shall be deposited at least once every calendar week.

11 VAC 15-22-70. Recordkeeping.

A. In addition to the records required by § 18.2-340.30 D of the Code of Virginia, qualified organizations conducting bingo shall maintain a system of records [for a minimum of three years, unless otherwise specified] for each gaming session on forms prescribed by the department, or [~~electronic~~ reasonable] facsimiles of those forms approved by the department, that ~~documents and identifies~~ include:

1. Charitable gaming supplies purchased and used;

~~2. Charitable gaming supplies used~~ A session reconciliation form and an instant bingo reconciliation form completed and signed within 48 hours of the end of the session by the bingo manager;

3. All discounts provided;

~~4. Daily bingo reconciliation and instant bingo reconciliation~~ A reconciliation to account for cash received from floor workers for the sale of extra bingo sheets for any game;

5. Number of electronic bingo devices rented, unique serial numbers of such devices, number of faces sold by each unit and a summary report for each session to include date, time, location and detailed information on income and expenses;

~~6. Unused charitable gaming supplies that were destroyed. Destruction must be witnessed by two officers of the organization who shall sign and date the itemized list if the retail face value of supplies destroyed exceeds \$1,000 in a fiscal year. An admissions control system that provides a cross-check on the number of players in attendance and admission sales. This may include a ticket control system, cash register or any similar system;~~

7. All operating expenses including rent, advertising and security. Copies of invoices for all such expenses shall also be maintained;

8. Expected and actual receipts from games played on hard cards and number of games played on hard cards; and

9. A record of the name and address of each winner for all seal cards, pull tabs and instant bingo prizes of \$250 and over [along with in addition,] the winning ticket and seal card [shall be maintained for a minimum of 90 days after the session]; and

10. A record of all door prizes awarded.

B. Qualified organizations conducting raffles [, other than pull tabs or seal cards,] shall have a recordkeeping system to account for cash receipts, cash disbursements and raffle tickets purchased or sold and prizes awarded. All records shall be maintained for three years from the close of the fiscal year. The recordkeeping system shall include:

1. Invoices for the purchase of ~~pull tab~~ raffle cards which shall reflect the following information:

- a. Name and address of supplier;
- b. Name of purchaser;
- c. Date of purchase;
- d. Invoice price for each deal;
- e. Form number and name of card;
- f. Serial numbers;
- g. Quantity purchased; and
- h. Sales price of cards.

2. A record of cash receipts from raffle ticket sales (other than pull-tabs) by tracking the total number of tickets available for sale, the number issued to sellers, the number returned, the number sold and reconciliation of all raffle sales to receipts;

3. Serial numbers of ~~door prize~~ tickets for raffle sales initiated and concluded at a bingo game or sequentially numbered tickets which shall state the name, address and telephone number of the organization, the prize or prizes to be awarded, the date of the prize drawing or selection, the selling price of the raffle ticket and the charitable gaming permit or exempt authorization number;

4. Receipts for all raffle prizes valued at [~~\$500~~ \$600] or more on which prize winners must provide printed name, residence address and the amount and description of the prize received; and

5. Deposit records of the required weekly deposits of ~~pull tab~~ raffle receipts.

C. All raffle tickets (~~except for pull tab raffles~~) shall have a detachable section; be consecutively numbered with the detachable section having the same number; provide space for the purchaser's name, complete address and telephone number; and state the name and address of the organization, the prize or prizes to be awarded, the date, time and location of the prize drawing, and the selling price of the ticket and the charitable gaming permit or ~~exemption~~ authorization number. All such tickets shall be sequentially numbered. Winning tickets for prizes of \$500 and over and unsold tickets shall be maintained for three years from the close of the fiscal year.

~~D. Organizations shall maintain a complete set of records for each deal of pull tab cards sold and a reconciliation of cash to determine gross receipts and prizes paid. The reconciliation must be performed at the close of each deal unless all pull tabs are sold for the same price. In this event, a reconciliation shall be performed at least once every week. All unused charitable gaming supplies shall either be returned for refund to the original supplier in unopened original packaging in resalable condition as determined by the supplier or turned in to the department for destruction. The organization shall maintain a receipt for all such supplies returned to the supplier or turned in to the department.~~

~~E. Each organization shall prepare and maintain the following records for each session:~~

~~1. A session reconciliation form and an instant bingo reconciliation form completed and signed within 48 hours of the end of the session by the bingo manager;~~

~~2. An admissions control system that provides a cross-check on the number of players in attendance and admission sales. This may include a ticket control system, cash register or any similar system;~~

~~3. A reconciliation to account for cash received from floor workers for the sale of extra bingo sheets for any game; and~~

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~~4. A record of all discounts exceeding \$2.00 per person given to customers may be required from organizations whose discounts for the previous fiscal year exceeded 1.0% of that fiscal year's gross receipts.~~

~~F. Organizations may value winner take all sheets sold in game packs at a different price from the sale price of such sheets on the floor provided players are notified as to the value attached to sheets in the packs via the house rules.~~

11 VAC 15-22-80. Financial reporting, penalties, inspections and audits.

A. Each charitable gaming permit holder shall file an annual report of receipts and disbursements by ~~December~~ *March* 15 of each year on a form prescribed by the ~~commission~~ *department*. The annual report shall cover the activity for the fiscal year. Volunteer fire departments and rescue squads shall file a ~~commission-prescribed~~ resolution of their board of directors *on a form prescribed by the department* by ~~December~~ *March* 15 each year in lieu of the financial report.

B. The annual report shall be accompanied by the audit and administration fee as established by the ~~commission~~ *department* for the fiscal year unless the fee has been remitted with quarterly reports.

C. An organization desiring an extension to file annual reports for good cause shall pay the projected audit and administration fee by ~~December~~ *March* 15 and request the extension in writing *on a form prescribed by the department*.

D. *Unless exempted by § 18.2-340.23 of the Code of Virginia, qualified organizations realizing any gross gaming receipts in excess of \$50,000 in any calendar quarter shall file, in addition to its annual report, a quarterly report of receipts and disbursements on a form prescribed by the commission department as follows:*

QUARTER ENDING	DATE DUE
DECEMBER 31	MARCH 1
MARCH 31	JUNE 1
JUNE 30	SEPTEMBER 1
SEPTEMBER 30	DECEMBER 1
DECEMBER 31	MARCH 1

Quarterly reports shall be accompanied by the appropriate audit and administration fee. An annual financial report may ~~not~~ substitute for a quarterly report *if the organization has no further charitable gaming income during the remainder of the reporting period and the annual report is filed by the due date for the applicable calendar quarter.*

E. Organizations failing to file required reports, request an extension or make fee payments when due shall be charged a penalty of \$25 per day from the due date ~~up to a maximum of \$750 until such time as the required report is filed.~~

F. Any ~~other~~ qualified organization in possession of funds derived from charitable gaming (including those who have ceased operations) ~~as of September 30 of any year, regardless of when such funds may have been received or~~

whether it has a valid permit from the ~~commission~~ *department*, shall file an annual financial report *on a form prescribed by the department* on or before ~~December~~ *March* 15 of each year until such funds are depleted. *Volunteer fire departments and rescue squads that have ceased gaming but are still in possession of funds derived from charitable gaming shall file a resolution of their board of directors by March 15 each year, in lieu of the financial report, on a form prescribed by the department.* If an organization ceases the conduct of charitable gaming, it shall provide the ~~commission~~ *department* with the name of an individual who shall be responsible for filing financial reports. If no such information is provided, the president of an organization shall be responsible for filing reports until all charitable gaming proceeds are depleted.

G. If an organization has been identified through inspection, audit or other means as having deficiencies in complying with statutory or regulatory requirements or having ineffective internal controls, the ~~commission~~ *department* may impose restrictions or additional recordkeeping and financial reporting requirements.

~~H. The commission, at its option, may impose a penalty on any organization which fails to comply with provisions of the law or this chapter.~~

~~I. H.~~ Any records deemed necessary to complete an inspection, audit or investigation may be removed by the ~~commission~~ *department*, its employees or agents from the premises of an organization or any location where charitable gaming is conducted. The ~~commission~~ *department* shall provide a written receipt of such records at the time of removal.

11 VAC 15-22-90. Use of proceeds.

A. All payments by an organization intended as use of proceeds must be made by check written from the organization's charitable gaming account ~~or the organization's general fund account.~~

B. Use of proceeds payments may be made for scholarship funds or the future acquisition, construction, remodeling or improvement of real property or the acquisition of other equipment or vehicles to be used for religious, charitable, educational or community purposes. In addition, an organization may obtain ~~commission~~ *department* approval to establish a special fund account or an irrevocable trust fund for special circumstances. Transfers such as an account or an irrevocable trust fund may be included as a use of proceeds if the ~~commission-approved~~ payment is authorized by an organization's board of directors.

No payments made to such a special fund account shall be withdrawn for other than the specified purpose unless prior notification is made to the ~~commission~~ *department*.

C. Expenditures of charitable gaming funds for social or recreational activities or for events, activities or programs which are open primarily to an organization's members and their families shall not qualify as use of proceeds unless substantial benefit to the community is demonstrated.

D. Payments made to or on behalf of indigent or sick or deceased members or their immediate families shall be allowed as use of proceeds up to 1.0% of an organization's ~~prior year gross receipts~~ provided they are approved by the organization's board of directors and the need is documented. ~~Organizations may obtain prior commission approval to exceed the 1.0% limit in special cases.~~

E. Payments made directly for the benefit of an individual member, member of his family or person residing in his household shall not be allowed as a use of proceeds unless authorized by law or elsewhere in this chapter.

F. Use of proceeds payments by an organization shall not be made for any activity which is not permitted by federal, state or local laws or for any activity which attempts to influence or finance directly or indirectly political ~~parties~~ persons or committees or the election or reelection of any person who is or has been a candidate for public office.

G. Organizations shall ~~provide~~ maintain details of all use of proceeds ~~with the annual financial report disbursements for a minimum of three years and shall make this information available to the department upon request.~~

H. The ~~commission or its employees department~~ may disallow a use of proceeds payment to be counted against the minimum percentage referred to in 11 VAC 15-22-20 D.

If any payment claimed as use of proceeds is subsequently disallowed, an organization may be allowed additional time as specified by the ~~commission department~~ to meet minimum use of proceeds requirements.

PART V.
RENT.

11 VAC 15-22-100. Requirements regarding renting premises, agreements and landlord participation.

A. No organization shall rent or use any leased premises to conduct charitable gaming unless all terms for rental or use are set forth in a written agreement and signed by the parties thereto prior to the issuance of a permit to conduct charitable gaming. [*A qualified organization that leases a building or other premises that is utilized in whole or in part for the purpose of conducting charitable gaming more frequently than two calendar days in one calendar week shall only lease such premises directly from (i) a qualified organization that is exempt from taxation pursuant to § 501 (c) of the Internal Revenue Code or (ii) any county, city or town.*]

B. Organizations shall not make payments to a landlord except by check drawn on the organization's ~~general fund~~ or charitable gaming account.

C. No landlord, his agent or employee, member of his immediate family or person residing in his household shall make directly or indirectly a loan to any officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming of an organization in Virginia which leases its charitable gaming facility from the landlord.

D. No landlord, his agent or employee, a member of his immediate family or person residing in his household shall

make any direct or indirect payment to any officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming conducted at a facility rented from the landlord in Virginia unless the payment is authorized by the lease agreement and is in accordance with the law.

E. No landlord, his agent or employee, person residing in the same household or member of his immediate family shall, at charitable games conducted on the landlord's premises:

1. Participate in the management, operation or conduct of any charitable games;
2. Sell, lease or otherwise provide any bingo supplies including, but not limited to, bingo cards, pull-tab cards, markers or other game pieces; or
3. Require as a condition of the lease or contract that a particular manufacturer, distributor or supplier of bingo supplies be used by the organization.

"Bingo supplies" as used in this chapter shall not include glue and tape sold from concession stands or from a location physically separated from the location where bingo supplies are normally sold.

~~F. If equipment or services are included by a landlord in any lease or contract, the lease or contract shall itemize the amount attributable to the rent of the premises, equipment and each service to be provided by the landlord.~~

~~G. F.~~ No member of an organization involved in the management, operation or conduct of charitable gaming shall provide any services to a landlord or be remunerated in any manner by the landlord of the facility where an organization is conducting its charitable gaming.

PART VI.
FACT FINDING CONFERENCES AND HEARINGS.

11 VAC 15-22-110. Procedural rules for the conduct of fact-finding conferences and hearings.

A. Fact-finding conference; notification, appearance, conduct.

1. Unless automatic revocation or immediate suspension is required by law, no authorization or permit to conduct charitable gaming shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for a fact-finding conference, as set forth in § ~~9-6-14:14~~ 2.2-4019 of the Administrative Process Act.

2. If a basis exists for a refusal to renew a suspension or a revocation of a permit or authorization, the ~~commission~~ department shall notify, by certified mail or by hand delivery, the interested ~~parties~~ persons at the address of record maintained by the ~~commission~~ department.

3. Notification shall include the basis for the proposed action and afford interested ~~parties~~ persons the opportunity to present written and oral information to the ~~commission which~~ department that may have a bearing on the proposed action at a fact-finding conference. If

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there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations or suppliers who wish to waive their right to a conference shall notify the ~~commission~~ *department* at least 14 days before the scheduled conference.

4. If after consideration of evidence presented during an informal fact-finding conference, a basis for action still exists, the interested ~~parties~~ *persons* shall be notified in writing within 60 days of the fact-finding conference, via certified or hand-delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

B. Hearing; notification, appearance, conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend or revoke a permit or authorization, interested ~~parties~~ *persons* shall be notified by certified mail or hand delivery of the proposed action and of the opportunity for a hearing on the proposed action. If an organization desires to request a hearing, it shall notify the ~~commission~~ *department* within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to, or subsequent to, an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the organization is located. *If the parties agree*, hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference or similar technology, in order to expedite the hearing process.

D. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.

2. The ~~commission~~ *department* shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

E. Agency representation. The ~~executive secretary's~~ *director's* designee may represent the ~~commission~~ *department* in an informal conference or at a hearing.

PART VII. REPORTING VIOLATIONS.

11 VAC 15-22-120. Reporting violations.

A. Unless otherwise required by law, the identity of any individual who provides information to the ~~commission or its~~ *employees department or its agents* regarding alleged violations shall be held in strict confidence.

B. Any officer, director or game manager of a qualified organization shall immediately report to the ~~commission~~ *department* any information pertaining to the suspected misappropriation or theft of funds or any other violations of ~~the law~~ *charitable gaming statutes or these regulations*.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension or revocation of a charitable gaming permit or authorization.

D. Any officer, director or game manager of a qualified organization involved in the management, operation or conduct of charitable gaming shall immediately notify the ~~commission~~ *department* upon conviction of a felony or a crime of moral turpitude or a *crime involving fraud, theft or financial crimes*.

E. Failure to report information required by subsection D of this section by any officer, director or game manager of a qualified organization or supplier may result in the denial, suspension or revocation of a permit or authorization.

F. Any officer, director or game manager of a qualified organization involved in charitable gaming shall immediately report to the ~~commission~~ *department* any change the Internal Revenue Service makes in the tax status of the organization, or if it is a chapter of a national organization covered by a group tax exempt determination, the tax status of the national organization.

G. All organizations regulated by the ~~commission~~ *department* shall display prominently a poster advising the public of a phone number where complaints relating to charitable gaming may be made. Such posters shall be provided by the ~~commission~~ *department* to organizations at no charge.

NOTICE: The forms used in administering 11 VAC 15-22, Charitable Gaming Rules and Regulations, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Charitable Gaming Board, James Monroe Building, 101 N. 14th Street, 17th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Annual Financial Report for ~~Year Ending~~ *Year Ending* / / , CCG Fiscal October 1 - September 30, DCG Form #—101, rev. ~~9/19/97~~ 9/24/04.

2004 Exempt Organization Resolution, ~~eff. 11/97~~ DCG Form 101-E, rev. 9/24/04.

~~Bingo Games Raffles Quarterly Financial Report, GGC DCG Form #102, rev. 4/31/97 1/1/04.~~

~~Quarterly Supplemental, DCG Form 102-A, rev. 1/1/04.~~

~~Report of Sales to Charitable Gaming Organizations, CGC Bingo Session Reconciliation Summary, DCG Form #103, rev. 4/97 rev. 7/1/04.~~

~~Suggested Bingo Daily Reconciliation Form, CGC Bingo Admission Sales, DCG Form #104-A, rev. 4/97 rev. 7/1/04.~~

~~Floor Sales, DCG Form 104-B, rev. 7/1/04.~~

~~Decision Bingo Reconciliation, DCG Form 104-C, rev. 7/1/03.~~

~~Raffle or Treasure Chest Sales - (Bingo), DCG Form 104-D, rev. 7/1/03.~~

~~Suggested Instant Bingo/Seal Card Ticket Reconciliation Report, GGC DCG Form #105, rev. 4/97 rev. 9/1/04.~~

~~Instant Bingo/Seal Card Reconciliation Continuation Sheet, DCG Form 105-A, rev. 9/1/04.~~

~~Suggested Instant Bingo/Seal Card Reconciliation Report, CGC Storeroom Issue Sheet - Session, DCG Form #106, rev. 4/97 rev. 7/1/03.~~

~~List of Volunteer Workers, DCG Form 107, rev. 7/1/03.~~

~~Prize Payout Receipts, DCG Form 108, rev. 7/1/03.~~

~~Storeroom Inventory - Paper, DCG Form 109-A, rev. 7/1/03.~~

~~Storeroom Inventory - Instants, DCG Form 109-B, rev. 7/1/03.~~

~~Raffle Sales - (Non-Bingo), DCG Form 110, rev. 7/1/03.~~

~~Request for Extension for Filing the Annual Financial Report, GGC DCG Form #117, eff. 10/97 rev. 9/24/04.~~

~~Bingo/Raffle Application - New Applicants Only, GGC DCG Form #201(a), rev. 9/97 rev. 7/1/03.~~

~~Bingo/Raffle Application - Renewal Applicants Only, DCG Form 201, rev. 8/8/03.~~

~~Bingo/Raffle Renewal Application - Fraternal Order of Elks, DCG Form 201 (Elks), rev. 7/1/03.~~

~~Exempt Organization - Notification New, GGC DCG Form # 202, rev. 4/97 rev. 7/1/03.~~

~~Exempt Organization - Notification Renewal, GGC DCG Form #202(a), rev. 4/97 rev. 3/1/05.~~

~~Supplier Registration Certificate Application to Distribute Authorized Gambling Paraphernalia and Supplies, CGC Form #203, rev. 4/97.~~

~~Tax Information Disclosure Authorization, eff. 4/97 rev. 11/30/04.~~

~~Permit Amendment, rev. 8/1/03.~~

~~Gaming Personnel Information Update, rev. 7/1/03.~~

~~Report of Game Termination, rev. 8/8/03.~~

Title of Regulation: 11 VAC 15-31. Supplier Regulations (amending 11 VAC 15-31-10, 11 VAC 15-31-20, 11 VAC 15-31-30, 11 VAC 15-31-50, 11 VAC 15-31-60).

Statutory Authority: §§ 2.2-2456, 18.2-340.15, 18.2-340.19 and 18.2-340.34 of the Code of Virginia.

Effective Date: January 1, 2006.

Agency Contact: Clyde E. Cristman, Director, James Monroe Building, 101 N. 14th Street, 17th Floor, Richmond, VA 23219-3684, telephone (804) 371-0603, FAX (804) 786-1079, or e-mail clyde.cristman@dcg.virginia.gov.

Summary:

The amendments (i) impose additional testing requirements on manufacturers of pull-tab and instant bingo machines; (ii) prohibit suppliers, supplier agents, and employees of the supplier from participating in gaming conducted by the supplier's customers; (iii) reduce the maximum number of card faces that can be played per game on an electronic bingo machine from 72 to 54; (iv) clarify and add new definitions; (v) make technical adjustments to conform the regulation to federal requirements and the Code of Virginia; (vi) adjust requirements based on current law and industry standards; (vii) modify some of the requirements relating to the manufacture of electronic bingo devices; (viii) eliminate the provision allowing for the issuance of provisional supplier certificates; (ix) establish requirements for Lucky Seven, a new variation of bingo; (x) change the fiscal year for reporting purposes from October 1 through September 30 to the calendar year; and (xi) make other changes to conform the regulation to current practice and technology.

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.

11 VAC 15-31-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Address of record" means an address provided to the commission on a registration certificate application or the most recent address on the commission files.

"Agent" means any person authorized by a supplier to act for or in place of such supplier.

"Board" means the Virginia Charitable Gaming Board.

"Board of directors" means the board of directors, managing committee or other supervisory body of a qualified organization.

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~~"Bundled pull tabs" means certain pull tabs, commonly referred to as "jar tickets," "guppies," etc., which are taped or stapled together and sold as one unit.~~

~~"Calendar day" means the period of 24 consecutive hours commencing at 12:01 a.m. and concluding at midnight.~~

~~"Calendar week" means the period of seven consecutive calendar days commencing at 12:01 a.m. on Sunday and ending at midnight the following Saturday.~~

"Cash" means United States currency or coinage.

~~"CGC number" means a unique identification number issued by the commission.~~

~~"Commission" means the Virginia Charitable Gaming Commission.~~

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names such as "Tear-open," or "Bonanza Bingo," "Bullseye" and "Fortune Gard."

"Conduct" means the actions associated with the provisions of a gaming operation during and immediately before or after the permitted activity, which may include, but not be limited to (i) selling bingo cards or packs, electronic devices, instant bingo or pull-tab cards, or raffle tickets; (ii) calling bingo games; (iii) distributing prizes; or (iv) any other services provided by volunteer workers.

"DCG number" means a unique identification number issued by the department.

~~"Daubing" means covering a square containing a number called with indelible ink or otherwise concealing the number on a card or an electronic facsimile of a card.~~

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tab raffle or seal cards with the same serial number.

"Department" means the Virginia Department of Charitable Gaming.

"Designator" means an object used in the number selection process, such as a ping-pong ball, upon which bingo letters and numbers are imprinted.

"Director" means the Director of the Virginia Department of Charitable Gaming.

"Disposable paper card" means a nonreusable paper bingo card manufactured with preprinted numbers.

"Electronic bingo device" means an electronic device ~~which that uses proprietary software or hardware, or is used in conjunction with commonly available software and computers, to displays display~~ facsimiles of bingo cards and allows a player to daub such cards.

~~"Electronic verification" means the verification of bingo by entering the free space number of the winning bingo card into computer equipment which contains preprogrammed software for this purpose.~~

"Equipment and video systems" includes equipment which facilitates the conduct of charitable gaming such as ball blowers, flashboards, TV monitors, cameras, smoke eaters, P.A. systems, tables and chairs, electronic verifiers and replacement parts for such equipment.

"Fiscal year" or "annual reporting period" means the 12-month period beginning ~~October~~ *January 1 and ending December 31* of any given year ~~and ending September 30 of the following year.~~

"Flare" means a piece of paper, cardboard or similar material which bears printed information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, *serial number*, the number of prizes to be awarded and the specific prize amounts in a deal of instant bingo, pull-tab or seal cards.

~~"Free space number," "perm number," "center number," "card number" or "face number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.~~

~~"Game program" means a written list of all games to be played and prize amounts to be paid during a session for each game, where prize amounts are fixed or are based on attendance.~~

"Immediate family" means one's spouse, ~~mother, father parent, son, daughter child, brother, sister sibling,~~ grandchild, grandparent, mother-in-law, or father-in-law or stepchild.

"Interested ~~parties persons~~" means the owner, director, officer or partner of an entity engaged in supplying charitable gaming supplies to organizations.

"Management" means the provision of oversight ~~and supervision of a gaming operation, which may include, but not be limited to, the responsibilities of applying for and maintaining a permit or authorization; compiling, submitting and maintaining required records and financial reports; and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.~~

"Manufacturer" means a person ~~who or entity that~~ assembles from raw materials or subparts a completed piece of bingo or other charitable gaming equipment or supplies. "Manufacturer" also means a person ~~who or entity that~~ modifies, converts, adds or removes parts to or from bingo or other charitable gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

~~"Operation" or "conduct" means the authority for check writing, approval of expenses of charitable gaming funds, purchase of charitable gaming supplies, negotiation of contracts or leases, or services as a volunteer worker or assistant activities associated with production of a charitable gaming activity, which may include, but not be limited to (i) the direct on-site supervision of the conduct of charitable gaming, (ii) coordination of volunteers, or (iii) all responsibilities of charitable gaming designated by the organization's management.~~

"Owner" means any individual with financial interest of 10% or more in a supplier.

"~~Packet~~" "~~Pack~~" means sheets of bingo paper or *electronic facsimiles* assembled in the order of games to be played. This may ~~or may not~~ include specials, ~~winner take-alls~~ and jackpots *but shall not include any winner-take-all, Lucky Seven or raffle.*

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

"Prize" means cash, merchandise, certificate or other item of value awarded to a winning player.

"Progressive seal card ~~game~~" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"~~Pull tabs~~" means ~~individually prepackaged cards made completely of paper or paper products with winners being determined by the appearance of preprinted concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses.~~

"~~Random selection~~" or "~~randomly selected~~" means ~~a process of selecting number designators to produce random numbers during a bingo game in which each designator or number in the remaining population has an equal chance or probability of being selected.~~

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number which contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter or symbol located on that board or placard.

"Selection device" means a manually or mechanically operated device to randomly select bingo numbers.

"Serial number" means a unique number printed by the manufacturer on each bingo card in a set ~~of~~, each instant bingo or pull-tab card in a deal, *each electronic bingo device or each door prize ticket.*

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards or bingo hard cards. A 9000 series, for example, has 9000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted ~~by a single qualified organization, or when approval for joint operation is obtained, by two or more qualified organizations,~~ that begins with the selection of the first ball for the first game and ends with the selection of the last ball for the last game.

"~~Set~~" means ~~the bingo cards contained within each series number.~~

11 VAC 15-31-20. Suppliers of charitable gaming supplies: application, qualifications, suspension,

revocation or refusal to renew certificate; maintenance and production of records.

A. Prior to providing any charitable gaming supplies, a supplier shall submit an application on a form prescribed by the ~~commission department~~ and receive a registration certificate. A \$500 application fee payable to the Treasurer of Virginia is required. ~~Provisional registration certificates valid for no more than 180 days may be issued by the commission if the background investigation is not completed.~~ *In addition, a supplier must be authorized to conduct business in the Commonwealth of Virginia, which may include, but not be limited to, registration with the State Corporation Commission, the Department of Taxation, and the Virginia Employment Commission.* The actual cost of background investigations for a registration certificate may be billed by the ~~commission department~~ to an applicant. The ~~commission department~~ shall act on an application within 90 days of the date of the application.

B. The ~~commission department~~ may refuse to register a supplier or may suspend or revoke a registration certificate if an officer, director, employee, agent or owner:

1. Is operating without a valid license, permit or certificate as a supplier or manufacturer in any state in the United States;
2. Fails or refuses to recall a product as directed by the ~~commission department~~;
3. Conducts business with unauthorized entities *or is not authorized to conduct business* in the Commonwealth of Virginia;
4. Has been convicted of ~~a crime of moral turpitude or has violated the gambling laws of any state or province in the United States or Canada~~ *or pleaded nolo contendere to any crime as specified by § 18.2-340.34 B of the Code of Virginia; has had any license, permit certificate or other authority related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the Commonwealth in any other jurisdiction; or has failed to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth.* As this provision relates to employees or agents, it shall only apply to individuals involved in sales to or solicitations of customers in the Commonwealth of Virginia; ~~or~~
5. *Fails to notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action relating to charitable gaming or the distribution of charitable gaming supplies involving or concerning the supplier, any officers or directors, employees, agent, or owner during the term of its registration certificate;*
6. *Fails to provide to the department upon request a current Letter for Company Registration on file with the U.S. Department of Justice - Gambling Devices Registration Unit, if required in accordance with The Gambling Devices Act of 1962, 15 USC §§ 1171-1178, for any device that it sells, distributes, services or maintains in the Commonwealth of Virginia; or*

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5. 7. Has been engaged in conduct that would compromise the ~~commission's~~ *department's* objective of maintaining the highest level of integrity in charitable gaming.

C. A supplier shall not sell, offer to sell or otherwise provide charitable gaming supplies for use by anyone in the Commonwealth of Virginia other than to an organization with a permit or ~~exemption number~~ *authorization* from the ~~commission~~ *department* or another registered supplier. However, a supplier may:

1. Sell charitable gaming supplies to an organization ~~which~~ *that* expects to gross ~~less than \$25,000 or less~~ in a ~~fiscal year~~ *any 12-month period*, *providing that the amount of such purchase would not be reasonably expected to produce more than \$25,000 in gross sales.* For each such organization, the supplier shall maintain the name, address and telephone number. The supplier shall also obtain a written *and signed* statement from an officer or game manager of such organization confirming that gross receipts are expected to be ~~less than \$25,000 or less~~. Such statement shall be dated and kept on file for three years from the end of a fiscal year.

2. Sell bingo cards, ~~and paper and related supplies~~ to persons or entities other than qualified organizations provided such supplies shall not be sold or otherwise provided for use in charitable gaming activities regulated by the ~~commission~~ *department* or in unlawful gambling activities. *For each such sale, the supplier shall maintain the name, address and telephone number of the purchaser. The supplier shall also obtain a written statement from the purchaser verifying that such supplies will not be used in charitable gaming or any unlawful gambling activity. Such statement shall be dated and kept on file for three years from the end of a fiscal year.* Payment for such sales in excess of \$50 shall be accepted in the form of a check. ~~Suppliers shall maintain records of these sales and provide them to the commission upon request.~~

3. *Sell pull-tabs and seal cards to organizations for use only upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which the pull-tabs or seal cards are sold is open only to members and their guests as authorized by § 18.2-340.26:1 of the Code of Virginia. Each such sale shall be accounted for separately and the accompanying invoice shall be clearly marked: "For Use in Social Quarters Only."*

All such sales shall be documented pursuant to subsection H of this section and reported to the department pursuant to subsection J of this section. This provision shall not apply to the sale to landlords of equipment and video systems as defined in this chapter. Equipment and video systems shall not include dispensing devices and electronic bingo devices.

D. A supplier shall not sell, offer to sell or otherwise provide charitable gaming supplies to any individual or organization in the Commonwealth of Virginia unless the charitable gaming supplies are purchased or obtained from a

manufacturer or another registered supplier. ~~No supplier shall accept payment for the sale of charitable gaming supplies in the Commonwealth except by a check drawn on the charitable gaming or general fund account. This requirement shall not apply to sales of \$50 or less made under subdivision C 2 of this section and to sales by one registered supplier to another.~~ Suppliers may take back for credit and resell supplies received from an organization with a permit or exempt authorization which has ceased charitable gaming or is returning supplies not needed.

E. ~~No supplier, supplier's agent, or employee, member of the supplier's immediate family or person residing in the same household as a supplier may be involved in the management, operation or conduct of charitable gaming of any customer of the supplier in the Commonwealth of Virginia. No member of a supplier's immediate family or person residing in the same household as a supplier may be involved in the management, operation or conduct of charitable gaming of any customer of the supplier in the Commonwealth of Virginia. No supplier, supplier's agent or employee may participate in any charitable gaming of any customer of the supplier in the Commonwealth of Virginia. For the purposes of this regulation, servicing of electronic devices shall not be considered conduct or participation.~~

F. The ~~commission~~ *department* shall conduct a background investigation prior to the issuance of a certificate to any supplier. The investigation may include, but shall not be limited to, the following:

1. A search of the Virginia Central Criminal Records Exchange (CCRE) on all officers, directors and owners; ~~and~~
2. Verification of current compliance with Commonwealth of Virginia state tax laws; ~~and~~
3. *If the officers, directors or owners are domiciled outside of the Commonwealth of Virginia, or have resided in the Commonwealth of Virginia for fewer than five years, a criminal history search conducted by the appropriate authority in any state in which they have resided during the previous five years shall be provided by the applicant.*

G. Appropriate information and authorizations shall be provided to the ~~commission~~ *department* to verify information cited in subsection F of this section.

H. Suppliers shall document each sale *or rental* of charitable gaming supplies to an organization in the Commonwealth of Virginia on an invoice which reflects the following:

1. Name [~~and,~~] address [, *and DCG number*] of the organization;
2. Date of sale *or rental* and location where bingo supplies are shipped if different from the billing address;
3. Name, form number and serial number of each deal of instant bingo or pull-tab raffle cards or bundles and the number of cards in each deal;

4. Quantity of deals sold, the ~~organization's~~ cost per deal and , the selling price per card, the cash take-in per deal and the cash payout per deal;

5. Serial number of the top sheet in each ~~packet~~ pack of disposable bingo paper, the number of sheets in each ~~packet~~ pack or pad, the cut and color and the number of packs or pads sold;

6. Serial number for each series of uncollated bingo paper and the number of sheets sold;

7. Detailed information concerning the type, quantity and individual price of any other charitable gaming supplies or related items including, but not limited to, concealed face bingo cards, hard cards, markers or daubers and refills, or any other merchandise. For concealed face bingo cards, the number of sets, price per set and the serial number of each set shall be included; and

8. Any type of equipment, device or product manufactured for or intended to be used in the conduct of charitable games including, but not limited to, designators, designator receptacles, number display boards, selection devices, dispensing machines and verification devices.

I. Suppliers shall ensure that two copies of the detailed invoice are provided to the customer for each sale of charitable gaming supplies.

J. Each supplier shall provide a report to the ~~commission department~~ by ~~January~~ March 1 of each year on sales of charitable gaming supplies for the fiscal year ending ~~September 30~~ December 31 of the previous year to each organization in the Commonwealth of Virginia. ~~Reports shall include the name and address of each organization; its CGC number; the sales (in dollars) of bingo paper, instant bingo cards, pull tabs, seal cards, daubers, tape and other supplies; and rental fees and sales of electronic bingo devices. For sales of instant bingo cards, pull tabs and seal cards, the records shall also indicate the name, form number, selling price per ticket and serial number of each deal or box of instant bingo or pull tab raffle cards and the number of tickets in each deal. This report may~~ shall be provided to the ~~commission department~~ on paper, computer disk or other ~~commission department~~-approved media. ~~The report shall include the name and address of each organization and the following information for each sale or transaction:~~

1. Bingo paper sales including purchase price, description of paper to include number of sheets in pack and number of faces on sheet, quantity of single sheets or packs shipped;

2. Deals of instant bingo, pull-tabs, seal cards, or any other raffle sales including purchase price, deal name, deal form number, number of tickets in deal, ticket price, cash take-in per deal, cash payout per deal, and number of deals;

3. Electronic bingo device sales including purchase or rental price and number of units; and

4. Sales of miscellaneous items such as daubers, markers, and other merchandise including purchase price, description of product, and number of units.

K. The ~~commission department~~ shall ~~have the right to~~ set manufacturing and testing criteria for all electronic bingo devices and ~~mechanical~~ other equipment used in the conduct of charitable gaming. An electronic bingo device shall not be sold, leased or otherwise furnished to any person in the Commonwealth of Virginia for use in the conduct of charitable gaming until an identical sample device containing identical proprietary software has been approved by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the device conforms, at a minimum, to the restrictions and conditions set forth in these regulations. Once the testing facility reports the test results to the department, the department will either approve or disapprove the submission and inform the manufacturer of the results within 10 business days. If any such equipment does not meet the department's criteria, it shall be recalled and shall not be distributed in the Commonwealth of Virginia. The cost of testing shall be borne by the manufacturer of such equipment.

L. ~~Commission Department~~ employees or agents shall have the right to inspect all electronic and mechanical equipment used in the conduct of charitable gaming.

M. Suppliers, their agents and employees, members of the supplier's immediate family or persons residing in their household shall not make any loan directly or indirectly to any organization or officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming of a supplier's customer located in the Commonwealth of Virginia.

N. No supplier or , supplier's agent or employee shall directly or indirectly provide a rebate, discount or refund to any person other than an organization which purchases supplies or leases or purchases equipment from the supplier. All such transactions shall be recorded on the supplier's account books.

O. A supplier shall not rent, sell or otherwise provide electronic bingo devices unless he possesses a valid registration certificate in the Commonwealth of Virginia.

P. A written agreement specifying the terms of lease or rental shall be required for any electronic bingo devices provided to an organization.

11 VAC 15-31-30. Construction and other standards for bingo, instant bingo, pull-tabs, raffles; electronic bingo devices and pull-tab dispensers.

A. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use bingo supplies unless they conform to the following construction standards:

1. Disposable paper sold shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading, bleeding or otherwise obscuring other numbers or cards.

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2. Each sheet of disposable bingo paper shall be comprised of cards bearing a serial number. No serial number shall be repeated on or in the same style, series and color of cards within a ~~one-year~~ three-year period.
 3. Disposable bingo paper assembled in books or ~~packets~~ packs shall not be separated except for single-sheet specials. This provision does not apply to two-part cards on which numbers are filled by players and one part is separated and provided to an organization for verification purposes.
 4. Each ~~carton~~ unit of disposable bingo paper shall have an exterior label listing the following information:
 - a. ~~Type~~ Description of product;
 - b. Number of ~~booklets~~ packs or loose sheets;
 - c. Series numbers;
 - d. Serial number of the top sheet;
 - e. Number of cases;
 - f. Cut of paper; and
 - g. Color of paper.
 5. *"Lucky Seven" bingo cards or electronic facsimiles thereof shall have a single face where seven numbers shall be chosen. "Lucky Seven" sheets or electronic facsimiles thereof shall have multiple faces where seven numbers shall be chosen per face.*
- B. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use instant bingo, pull-tab or seal cards unless they conform to the following construction standards:
1. Cards shall be constructed so that concealed numbers, symbols or winner protection features cannot be viewed or determined from the outside of the card by using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.
 2. Deals shall be designed, constructed, glued and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.
 3. Each card in a deal shall bear the same serial number. Only one serial number shall be used in a deal. No serial number used in a deal shall be repeated by the same manufacturer on that same manufacturer's form within a three-year period. The flare of each deal shall accompany the deal and shall have affixed to it the same serial number as the tickets in such deal.
 4. Numbers or symbols on cards shall be fully visible in the window and shall be placed so that no part of a number or symbol remains covered when the tab is removed.
 5. ~~Window slits on each card shall be perforated on the three cut sides. Cards shall be glued on all four edges and between around each window. Glue shall be of~~ sufficient strength and type to prevent the undetectable separation or delamination of the card. *For banded tickets, the glue must be of sufficient strength and quality to prevent the separation of the band from the ticket.*
6. The following minimum information shall be printed on a card:
- a. Break open pull-tab, instant bingo cards:
 - (1) Name of the manufacturer or its distinctive logo;
 - (2) Name of the game;
 - (3) Manufacturer's form number;
 - (4) Price per individual card or bundle [~~—unless accompanied by a manufacturer's preprinted publicly posted flare with that information~~];
 - (5) Unique minimum five-digit game serial number printed on the game information side of the card; and
 - (6) Number of winners and respective winning number or symbols and specific prize amounts, unless accompanied by a *manufacturer's preprinted publicly posted flare with that information.*
 - b. Banded pull-tabs:
 - (1) Manufacturer;
 - (2) Serial number [~~and price per individual bundle~~]; [~~and~~
 - (3) *Price per individual card or bundle, unless accompanied by a manufacturer's preprinted publicly posted flare with that information; and*]
 - [~~(3)~~ (4)] Number of winners and respective winning numbers or symbols and prize amounts, or a *manufacturer's preprinted publicly posted flare giving that information.*
7. All seal card games sold to organizations shall contain the sign-up sheet, seals and cards packaged together in each deal.
- C. No organization shall use raffle tickets (other than pull-tab cards) independent of a bingo game unless they conform to the following construction standards:
1. Each ticket shall have a detachable section and shall be consecutively numbered.
 2. Each section of a ticket shall bear the same number. The section retained by the organization shall provide space for the purchaser's name, complete address and telephone number.
 3. The following information shall be printed on the purchaser's section of each ticket:
 - a. Dates and times of drawings;
 - b. Locations of the drawings;
 - c. Name of the charitable organization conducting the raffle;

- d. Price of the ticket;
- e. Charitable gaming ~~Commission~~ permit or ~~exemption~~ authorization number; and
- f. Prizes.

D. Electronic bingo.

1. ~~At any time, The commission department, at its discretion, may require additional testing at the manufacturer's expense of electronic bingo devices at any time as a condition of use. Such additional testing shall be at the manufacturer's expense and shall be a condition of the continued use of such device.~~

2. All electronic bingo devices shall use proprietary software and hardware or commonly available software and computers and shall be programmed or enabled for play on the premises where the game is to be played.

3. Each electronic bingo device shall have a unique identification number permanently coded into the software of such device. *Manufacturers of electronic bingo devices shall employ sufficient security safeguards in designing and manufacturing the devices such that it may be verified that all proprietary software components are authentic copies of the approved software components and all functioning components of the device are operating with identical copies of approved software programs. The device must also have sufficient security safeguards so that any restrictions or requirements authorized by the department or any approved proprietary software are protected from alteration by unauthorized personnel. The device shall not contain hard-coded or unchangeable passwords. Security measures that may be employed to comply with these provisions include, but are not limited to, the use of dongles, digital signature comparison hardware and software, secure boot loaders, encryption, and key and callback password systems.*

4. Electronic bingo devices shall not allow a player to create a card by the input of specific numbers on each card. *Manufacturers shall ensure that an electronic bingo device does not allow for the play of any bingo card faces other than those verifiably purchased by the patron.*

5. Electronic bingo devices shall not accept cash, currency or tokens for play.

6. Electronic bingo devices shall require the manual entry of numbers as they are called *or the manual verification of numbers as they have been electronically transmitted to the device. The transmission of data to electronic bingo devices shall be limited to one-way communication to the device and shall consist only of the number called.*

7. A device shall not allow the play of more than ~~72~~ 54 cards per device per game.

8. The electronic bingo device system shall record a sequential transaction number or audit tracking number for each transaction. The system shall not allow the manual resetting or changing of this number.

9. The system shall produce a receipt and a transaction log containing the following:

- a. Organization name;
- b. Location of bingo game;
- c. Sequential transaction or receipt number;
- d. Number of electronic bingo cards loaded;
- e. Cost of electronic bingo cards loaded;
- f. Electronic device number issued to a player; and
- g. Date and time of ~~the~~ each transaction.

In addition, the system shall produce a summary report identifying the date and time of the report, voided transactions, *including the date and time of each voided transaction* and total gross receipts for each session.

10. Each device shall be programmed to automatically erase all stored electronic cards at the end of the last game of a session, ~~or~~ within a set time from their rental to a player, *or by some other clearance method approved by the department.*

11. All devices shall be reloaded with another set of cards at the beginning of each session if the devices are to be reused at the same location.

E. In instances where a defect in packaging or in the construction of deals or electronic devices is discovered by or reported to the ~~commission department~~, the ~~commission department~~ shall notify the manufacturer of the deals or devices containing the alleged defect. Should the ~~commission department~~, in consultation with the manufacturer, determine that a defect exists, and should the ~~commission department~~ determine the defect affects game security or otherwise threatens public confidence in the game, the ~~commission department~~ may, with respect to deals or electronic devices for use still located within the Commonwealth of Virginia, require the supplier to:

- 1. Recall the deals or electronic devices affected that have not been sold or otherwise provided; or
- 2. Issue a total recall of all affected deals or electronic devices.

F. ~~After [the effective date of these regulations~~ January 1, 2006], no pull-tab *or instant bingo* dispenser may be sold, leased or otherwise furnished to any person or organization in the Commonwealth of Virginia or used in the conduct of charitable gaming ~~unless the device meets standards approved by the commission until an identical sample device containing identical proprietary software, if applicable, has been approved by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The cost of testing shall be borne by the manufacturer of such equipment.~~ In addition, suppliers and manufacturers of such dispensers shall comply with the requirements of The Gambling Devices Act of 1962 (15 USC §§ 1171-1178).

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G. All pull-tab dispensing devices must meet the following standards:

1. Each dispenser shall be manufactured in a manner that ensures a pull-tab ticket is dispensed only after insertion of United States currency or coinage into the dispenser. Such ticket and any change due shall be the only items dispensed from the machine.
2. Each dispenser shall be manufactured in a manner that ensures the device neither displays nor has the capability of displaying or otherwise identifying a pull-tab as a winning or nonwinning ticket.
3. Each dispenser shall be manufactured in such a manner that any visual animation does not simulate or display rolling or spinning reels or produce audible music or enhanced sound effects.
4. Each dispenser shall be equipped with separate locks for the pull-tab supply modules and money boxes. Locks shall be configured so that no one key will operate both the supply modules and money boxes.

H. No dispensing devices shall be linked to other such devices so as to permit the play of progressive games.

I. The ~~commission~~ department may ~~test~~ require additional testing of a dispensing device at any time to ensure that it meets construction standards and allows for fair play. Such tests shall be conducted at the cost of the manufacturer of such devices.

J. The face value of cards being dispensed shall match the amount deposited in the currency/coin acceptor less change provided.

11 VAC 15-31-50. Procedural rules for the conduct of fact-finding conferences and hearings.

A. Fact-finding conference; notification, appearance, conduct.

1. Unless automatic revocation or immediate suspension is required by law, no certificate to sell charitable gaming supplies shall be denied, suspended or revoked except upon notice stating the basis for such proposed action and the time and place for a fact-finding conference, as set forth in § ~~9-6.14:11~~ 2.2-4019 of the Administrative Process Act.
2. If a basis exists for a refusal to renew, suspend or revoke a certificate, the ~~commission~~ department shall notify, by certified mail or by hand delivery, the interested ~~parties~~ persons at the address of record maintained by the ~~commission~~ department.
3. Notification shall include the basis for the proposed action and afford interested ~~parties~~ persons the opportunity to present written and oral information to the ~~commission~~ department which may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations or suppliers who wish to waive their right

to a conference shall notify the ~~commission~~ department at least 14 days before the scheduled conference.

4. If, after consideration of evidence presented during an informal fact-finding conference, a basis for action still exists, the interested ~~parties~~ persons shall be notified in writing within 60 days of the fact-finding conference, via certified or hand-delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

B. Hearing; notification, appearance, conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend or revoke a certificate, interested ~~parties~~ persons shall be notified by certified or hand-delivered mail of the proposed action and of the opportunity for a hearing on the proposed action. If a supplier desires to request a hearing, it shall notify the ~~commission~~ department within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to or subsequent to an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the supplier is located. *If the parties agree*, hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference or similar technology, in order to expedite the hearing process.

D. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or bases for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.

2. The ~~commission~~ department shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

E. Agency representation. The ~~executive secretary's~~ director's designee may represent the ~~commission~~ department in an informal conference or at a hearing.

11 VAC 15-31-60. Reporting violations.

A. Unless otherwise required by law, the identity of any individual who provides information to the ~~commission~~ department or its employees regarding alleged violations shall be held in strict confidence.

B. Any officer or director of a supplier, or his agent or employee, shall immediately report to the ~~commission~~ *department* any information pertaining to the suspected misappropriation or theft of funds or any other violations of the law.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension or revocation of a certificate of registration.

D. Any officer, director, partner or owner of a supplier shall immediately notify the ~~commission~~ *department* upon conviction or plea of nolo contendere to a felony or a crime involving gambling or an action against any license or certificate held by the supplier in any state in the United States.

E. Failure to report information required by subsection D of this section by any supplier may result in the denial, suspension or revocation of a registration certificate.

NOTICE: The forms used in administering 11 VAC 15-31, Supplier Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Charitable Gaming, James Monroe Building, 101 N. 14th Street, 17th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Supplier Registration Certificate Application, ~~CGG DCG Form #203 301, eff. 11/07~~ rev. 7/03.

Annual Supplier Sales and Transaction Report, DCG Form 302, rev. 10/04.

Certification of Non-Permit Holder, DCG Form 303, rev. 1/05.

VA.R. Doc. No. R05-08; Filed November 9, 2005, 8:28 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

CEMETERY BOARD

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 7 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants. The Cemetery Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18 VAC 47-20. Cemetery Board Rules and Regulations (amending 18 VAC 47-20-70 and 18 VAC 47-20-140).

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-2313 of the Code of Virginia.

Effective Date: January 1, 2006.

Agency Contact: Christine Martine, Executive Director, Cemetery Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946 or e-mail cemetery@dpor.virginia.gov.

Summary:

The amendments reduce the fees for regulants of the Cemetery Board. The fee for an initial or renewed/reinstated cemetery company license and the fee for the addition of a cemetery are reduced to \$50. The fee for an initial or renewed/reinstated sales personnel registration is reduced to \$20. The fee for a dishonored check is eliminated.

18 VAC 47-20-70. Application Fees

Application fees are nonrefundable.

Cemetery company license	\$600 \$50 per cemetery
Addition of cemetery	\$600 \$50 per cemetery
Sales personnel registration	\$50 \$20 per cemetery
Dishonored check fee	\$25

18 VAC 47-20-140. Renewal and reinstatement fees.

All fees required by the board are nonrefundable. The date on which the fee is received by the department or its agent shall determine whether the licensee or registrant is eligible for renewal or reinstatement or must reapply as a new applicant.

Renewal of cemetery company license	\$600 \$50 per cemetery
Renewal of sales personnel registration	\$50 \$20 per cemetery
Reinstatement of cemetery company license	\$400 \$50 per cemetery
Reinstatement of sales personnel registration	\$50 \$20 per cemetery
Dishonored check fee	\$25

NOTICE: The forms used in administering 18 VAC 47-20, Cemetery Board Rules and Regulations, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

Final Regulations

FORMS

Compliance Agent/Director/Officer Change Form, CCADOCHG (eff. 7/1/00).

Cemetery Addition Form, ~~CCCADD~~ 49CADD (eff. ~~7/1/00~~ 1/06).

Cemetery Company License Application, ~~CCCLIC~~ 49LIC (eff. ~~7/1/00~~ 1/06).

New Trustee/Transfer of Funds Notification Form, CCNEWTR (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report Instructions, CCPCTINS (eff. 7/1/00).

Perpetual Care Fidelity Bond Form, CCPCFBND (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report, CCPCTFR (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report--Schedule A (Statement of Receipts and Expenses), CCPCTFRA (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report--Schedule B (Statement of Required Deposits), CCPCTFRB (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report--Schedule C (Statement of Expenses Incurred for the General Care, Maintenance, Embellishment and Administration of Cemeteries), CCPCTFRC (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report--Schedule D (Statement of Investment Securities), CCPCTFRD (eff. 7/1/00).

Perpetual Care Trust Fund Financial Report--Schedule E (Cemeteries Covered by Trust Fund), CCPCTFRE (eff. 7/1/00).

Proneed Trust Fund Financial Report Instructions, CCPTINS (eff. 7/1/00).

Proneed Fidelity Bond Form, CCPFBND (eff. 7/1/00).

Proneed Trust Fund Financial Report, CCPTFR (eff. 7/1/00).

Proneed Trust Fund Financial Report--Schedule A (Statement of Receipts and Expenses), CCPTFRA (eff. 7/1/00).

Proneed Trust Fund Financial Report--Schedule B (Statement of Financial Deposits), CCPTFRB (eff. 7/1/00).

Proneed Trust Fund Financial Report--Schedule C (Statement of Investment Securities), CCPTFRC (eff. 7/1/00).

Cemetery Company Renewal/Reinstatement Application, ~~CCRENREI~~ 49RENREI (eff. ~~7/1/00~~ 1/06).

Sales Personnel Registration Form, ~~CCSLSREG~~ 49SLSREG (eff. ~~7/1/00~~ 1/06).

Perpetual Care Trust Fund Trustee Affidavit, CCTRAFF (eff. 7/1/00).

Trustee Approval Application, CCTRAPP (eff. 7/1/00).

Proneed Burial Contract, CCPCTRCT (eff. 7/1/00).

VA.R. Doc. No. R06-105; Filed November 4, 2005, 2:09 p.m.



EMERGENCY REGULATIONS

TITLE 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Titles of Regulations: **8 VAC 40-30. Regulation Governing the Approval of Certain Institutions to Confer Degrees, Diplomas and Certificates (REPEALED).**

8 VAC 40-31. Regulation Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates (adding 8 VAC 40-31-10 through 8 VAC 40-31-320).

Statutory Authority: § 23-276.3 of the Code of Virginia, Chapter 991 of the 2004 Acts of Assembly, and Chapter 447 of the 2005 Acts of Assembly.

Effective Dates: November 8, 2005, through November 7, 2006.

Agency Contact: Linda Woodley, Certification Manager, State Council of Higher Education for Virginia, James Monroe Building, 101 N. 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 371-2938, FAX (804) 225-2604, or e-mail lindawoodley@schev.edu.

Preamble:

This action repeals 8 VAC 40-30 and promulgates emergency regulations 8 VAC 40-31 in order to implement changes required by Chapter 991 of the 2004 Acts of Assembly. The primary purpose of these changes is to incorporate nondegree proprietary schools into SCHEV current policy of self-certification. These regulations will be the primary document that the State Council of Higher Education for Virginia uses to administer the certification of private and out-of-state postsecondary schools and institutions of higher learning. The regulations define terms unique to school certification; identify the regulated community, exempted schools, and exempted degrees; establish certification criteria and procedures for application and appeal; and impose fees. These regulations supplant the previous process of approval in 8 VAC 40-30.

According to the agency's legal counsel, this emergency action is authorized based on legislation enacted in 2005 to correct an oversight in Chapter 991 of the 2004 Acts of Assembly.

CHAPTER 31.
REGULATIONS GOVERNING CERTIFICATION OF
CERTAIN INSTITUTIONS TO CONFER DEGREES,
DIPLOMAS AND CERTIFICATES.

PART I.
DEFINITIONS, PROHIBITIONS, ADVERTISING.

8 VAC 40-31-10. Definitions.

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

"Academic credit" means the measure of the total time commitment an average student is expected to devote to learning per week of study. Generally, one unit of credit represents a total of three hours per week of in-class and out-of-class work (Carnegie Unit of Credit). In this context, an hour is defined as 50 minutes. Emerging delivery methodologies may necessitate determining a unit of undergraduate credit with nontime based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to insure these courses are equivalent to traditionally delivered courses.

"Academic-vocational" refers to a noncollege degree school that offers degree and nondegree credit courses.

"Agent" means a person who is employed by any institution of higher education or noncollege degree school, whether such institution or school is located within or outside this Commonwealth, to act as an agent, solicitor, procurer, broker or independent contractor to procure students or enrollees for any such institution or school by solicitation in any form at any place in this Commonwealth other than the office or principal location of such institution or school.

"Accreditation" means a process of external quality review used by higher education to scrutinize colleges, universities and educational programs for quality assurance and quality improvement. This term applies to those accrediting organizations recognized by the United States Department of Education.

"Adjunct faculty" is defined as professional staff members of businesses, industries and other agencies and organizations who are appointed by institutions and schools on a part-time basis to carry out instructional, research or public service functions.

"Administrative capability" means a branch (i) maintains or has access to all records and accounts; (ii) designates a named site director; (iii) maintains a local mailing address; and (iv) the course offering at the branch consists of a large number of unit subjects which comprise a program of education or a set curriculum large enough to allow pursuit on a continuing basis.

"Branch" means an additional location, operated by an institution with an approved existing site. A branch campus must have administrative capability exclusive of the main campus and adequate resources to ensure that the objectives of its programs can be met.

"Certification" means the process of securing authorization to operate an institution of higher education and/or degree program in the Commonwealth of Virginia.

"Change of ownership" refers to the change in power within a school. Change of ownership may include, but is not limited to, the following situations: (i) sale of the school; (ii) merger of two or more schools if one of the institutions is nonexempt; or (iii) change from profit to nonprofit or collective.

"CIP code number" means the six-digit Classification of Instructional Programs number assigned to each discipline specialty.

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"Contact hour" means the basic unit of attendance for computing full-time equivalent student (FTES). It is a period of not less than 50 minutes of scheduled instruction and/or examination.

"College" means any institution of higher education that offers degree programs.

"Council" means the State Council of Higher Education for Virginia.

"Course for degree credit" means a single course whose credits are applicable to the requirements for earning a degree, diploma, or certificate.

"Course registration materials" means any official documents provided to students for the purpose of formal enrollment into the institution, a specific program, or a certain course(s).

"Degree" means any earned award at the associate, baccalaureate, master's, first professional, or doctoral level which represents satisfactory completion of the requirements of a program or course of study or instruction beyond the secondary school level and includes certificates and specialist degrees when such awards represent a level of educational attainment above that of the associate degree level.

"Degree program" means a curriculum or course of study that leads to a degree in a discipline or interdisciplinary specialty and normally is identified by a six-digit CIP code number.

"Diploma" or "certificate" means an award which represents a level of educational attainment at or below the associate degree level and which is given for successful completion of a curriculum comprised of two or more courses and applies only to those awards given for coursework offered within Virginia by institutions of higher education which are appropriately approved to offer, either within the Commonwealth or outside the Commonwealth, degrees at the associate, baccalaureate, graduate, or professional level.

"Existing institution" or "existing postsecondary school" means any postsecondary school that (i) has been in operation in Virginia for two or more calendar years as of July 1, 2004, and has been certified to operate continuously during that period, or; (ii) has been approved to operate as a postsecondary school in another state, is accredited by an accrediting agency recognized by the United States Department of Education, and is certified to operate in Virginia.

"Full-time faculty" means a person whose: (i) employment is based upon an official contract, appointment, or agreement with an institution; (ii) principal employment is with that institution; and (iii) major assignments are in teaching and research. A full-time administrator who teaches classes incidental to administrative duties is not a full-time faculty member.

"Gross tuition collected" means all fees collected or received on either a cash or accrual accounting method basis for all instructional programs or courses, except for nonrefundable registration and application fees and charges for materials, supplies, and books which have been purchased by, and are the property of, the student.

"In-state institution" means an institution of higher education that is formed, chartered or established within Virginia. For the purposes of certification as a degree-granting institution, an institution incorporated outside Virginia shall be considered a Virginia institution if (i) it is incorporated in a state in which it has no instructional campus, and (ii) it produces clear and convincing evidence that its main or principal campus is located in Virginia.

"Institution of higher education" or "institution" means any person, firm, corporation, association, agency, institute, trust, or other entity of any nature whatsoever offering education beyond the secondary school level which has received certification from the council and: (i) offers courses or programs of study or instruction which lead to, or which may reasonably be understood to be applicable to, a degree; or (ii) operates a facility as a college or university or other entity of whatever kind which offers degrees or other indicia of level of educational attainment beyond the secondary school level; or (iii) uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business.

"Instructional faculty" means a person employed by an institution of higher education that is engaged in instructional, research, or related activities.

"Multistate compact" means any agreement involving two or more states to offer jointly postsecondary educational opportunities, pursuant to policies and procedures set forth by such agreement and approved by council.

"Noncollege degree school" means any postsecondary school that offers courses or programs of study that do not lead to an associate or higher level degree. Such schools may be academic-vocational or vocational.

"New institution" or "new postsecondary school" means any postsecondary school that seeks certification and has been in operation in Virginia for less than two calendar years as of July 1, 2004, and has not operated in nor has been approved to operate as a postsecondary institution in another state.

"Out-of-state institution" means an institution of higher education that is formed, chartered or established outside Virginia.

"Part-time faculty" means a person whose: (i) annual employment is based upon an official contract, appointment, or agreement with an institution; (ii) principal employment is with an entity other than that institution; and (iii) teaching assignments include at least one course during at least two terms within the academic year.

"Postsecondary education" is the provision of formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or equivalent. This includes programs of an academic, vocational, and continuing professional education purpose, and excludes vocational and adult basic education programs.

"Postsecondary education activities" means researching, funding designing, and/or conducting instructional programs, classes, or research opportunities, designed primarily for

students who have completed the requirements for a high school diploma or its equivalent.

"Postsecondary school" or "school" means formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or its equivalent. Such schools include programs of academic, vocational, and continuing professional education, and exclude avocational and adult basic education programs. For the purposes of this chapter, a "postsecondary school" shall be classified as either an institution of higher education as defined in this section or a noncollege degree school, as defined in this section.

"Program" means a curriculum or course of study in a discipline or interdisciplinary area that leads to a degree, certificate, or diploma.

"Program area" means a general group of disciplines in which one or more degree programs, certificates, or diplomas may be offered.

"Program of study" means a curriculum of two or more courses that is intended or understood to lead to a degree, diploma, or certificate. It may include all or some of the courses required for completion of a degree program.

"Proprietary" means a privately owned and managed, for-profit institution of higher education or noncollege degree school.

"Site" means a location in Virginia where a postsecondary school (i) offers one or more courses on an established schedule and (ii) enrolls two or more persons who are not members of the same household. A site may or may not be a branch, and it does not have to have administrative capability.

"Surety instrument" means a surety bond or a clean irrevocable letter of credit, issued by a surety company or banking institution, authorized to transact business in Virginia, adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with filing a claim against the instrument.

"Teach-out agreement" means the process whereby a school undertakes to fulfill its educational and contractual obligations to currently enrolled students.

"Telecommunications activity" means any course offered by a postsecondary school or consortium of postsecondary schools where the primary mode of delivery to a site is television, videocassette or disc, film, radio, computer, or other telecommunications devices.

"University" means any institution offering programs leading to degrees or degree credit beyond the baccalaureate level.

"Vocational school" refers to a school that does not offer courses for degree credit.

8 VAC 40-31-20. Prohibited acts.

A. Except as in accordance with this chapter, no person, or other entity shall sell, barter, or exchange for any consideration, or attempt to sell, barter, or exchange for any consideration, any degree, degree credit, diploma, or certificate.

B. No person, or other entity shall use, or attempt to use, in connection with any business, trade, profession, or occupation any degree or certification of degree or degree credit, including but not limited to a transcript of coursework, which has knowingly been fraudulently issued, obtained, forged, or materially altered.

C. Unless exempted from the provisions of this chapter pursuant to § 23-276.2 of the Code of Virginia, no person, firm, or institution may represent that credits earned at or granted by that person, firm, or institution are applicable for credit toward a degree, except under such conditions and in a manner specified and approved by the Council in accordance with this chapter.

D. Without prior certification, no person or other entity subject to the provisions of this chapter shall use in any manner, within the Commonwealth of Virginia, the term "college" or "university" or abbreviations or words of similar meaning in its name or in any manner in connection with its academic affairs or business or in any literature, catalog, pamphlet, or descriptive materials.

1. This subsection shall not apply to any person or other entity that (i) used the term "college" or "university" openly and conspicuously in its title within the Commonwealth prior to July 1, 1970; (ii) was granted authority to operate in Virginia by the council between July 1, 1970, and July 1, 2002, and maintains valid authority to so operate in Virginia after July 1, 2002; (iii) was exempted from the provisions of Chapter 21 (§ 23-265 et seq.) of this title, as such law was in effect prior to July 1, 2002; or (iv) was authorized by the council to use a name prior to a request for certification.

2. For only as long as the provisions of Item 158 D of Chapter 912 of the 1996 Acts of Assembly shall be in effect, this subsection shall not apply to individual proprietorships, associations, co-partnerships or corporations which use the words "college" or "university" in their training programs solely for their employees or customers, which do not offer degree-granting programs, and whose name includes the word "college" or "university" in a context from which it clearly appears that such entity is not an educational institution.

E. Council may refuse to certify institution names and terms, which have the potential to mislead the general public about the institution's affiliation or association with any state-supported institution of higher education in Virginia. Terms such as, but not limited to, "public university", "public college," or "community college" may be protected from use by private institutions of higher education.

8 VAC 40-31-30. Advertisements, announcements, and other promotional materials.

A. A school certified to operate by the council in accordance with this chapter shall include in any print and electronic catalogs, and course registration materials that; (i) the council has certified the institution to operate in Virginia, (ii) a complete address of the main campus and all branch locations within Virginia.

B. An out-of-state school shall state in its course registration materials distributed in Virginia that:

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1. Each course or degree, diploma, or certificate program offered in Virginia is approved by the governing board of the institution;

2. The appropriate state agency, if any, in the state where the main campus of the institution is located has granted whatever approval may be necessary for the institution to:

a. Offer courses or degree, diploma, or certificate programs at the level for which credit is being awarded for those courses or programs in Virginia;

b. Offer courses or degree programs outside its state;

c. Offer each course or degree, diploma, or certificate program being offered in Virginia; and

d. Any credit earned for coursework offered by the institution in Virginia can be transferred to the institution's principal location outside Virginia as part of an existing degree, diploma, or certificate program offered by the institution.

C. No advertisement, announcement, or any other material produced by or on behalf of a postsecondary school shall in any way indicate that the institution is supervised, recommended, endorsed, or accredited by the Commonwealth of Virginia, by the State Council of Higher Education, or by any other state agency in Virginia.

PART II. EXEMPTIONS.

8 VAC 40-31-40. State-supported institutions.

This chapter shall not apply to the institutions named in §§ 23-9.5 and 23-14 of the Code of Virginia, including their branches, divisions, or colleges, or to any state-supported institution of higher education that may be established in the future.

8 VAC 40-31-50. Religious institutions.

A. The council shall exempt from the provisions of Chapter 21 (§ 23-276.1 et seq.) of Title 23 of the Code of Virginia, any institution of higher education whose primary purpose is to provide religious training or theological education, provided that the institution:

1. Awards only degrees, diplomas, or certificates (i) whose titles indicate the institution's primary purpose plainly upon their face and (ii) which state that the institution is excluded from the requirement of state certification; and

2. States plainly in its catalogs and other publications that (i) the institution's primary purpose is to provide religious training or theological education, (ii) the institution's degrees, diplomas, or certificates are so titled and worded, and (iii) the institution is exempt from the requirement of state certification.

3. The title of each degree, diploma, or certificate awarded by an institution which claims an exemption under the provisions of this section must reflect that the institution's primary purpose is religious education.

a. The titles of religious degrees that may be awarded include, but are not limited to, (i) Bachelor of Christian

Education, (ii) Master of Divinity, and (iii) Doctor of Sacred Theology.

b. The titles of secular degrees that may not be awarded in any discipline, including religion, Christian education, and biblical studies, include, but are not limited to, (i) Associate of Arts, (ii) Associate of Science, (iii) Associate of Applied Science, (iv) Associate of Occupational Science, (v) Bachelor of Arts, (vi) Bachelor of Science, (vii) Master of Arts, (viii) Master of Science, (ix) Doctor of Philosophy, and (x) Doctor of Education.

B. Exemptions granted after July 1, 2002 will be for a maximum of five years. Institutions wishing to maintain an exempt status, must reapply to council at least six months prior to the expiration of the exemption period. Exempt institutions shall not make claims of "approval" "endorsement" or other such terms by the council in any of their promotional materials. Exempt institutions shall clearly state in their catalogs and promotional materials that they are exempt from the requirements of state regulation and oversight.

C. An institution that awards secular degrees in addition to religious degrees, certificates or diplomas, as defined in subsections A and B of 8 VAC 40-31-50, must comply with the provisions for certification for all nonreligious degree programs.

D. Each institution requesting full or partial exemption must apply on forms provided by and in a manner prescribed by the council.

E. The council, on its own motion, may initiate formal or informal inquiries to confirm that this chapter is not applicable to a religious institution if the council has reason to believe that the institution may be in violation of the provisions of this section.

1. Any institution which claims an exemption under subsection A of this section on the basis that its primary purpose is to provide religious training or theological education shall be entitled to a rebuttable presumption of the truth of that claim.

2. It shall be the council's responsibility to show that an institution is not exempt under subsection A of this section.

3. The council assumes no jurisdiction or right to regulate religious beliefs under this chapter.

F. An institution whose claim for exemption under subsection A of this section is denied by the council shall have the opportunity to appeal the council's action in accordance with 8 VAC 40-31-70.

8 VAC 40-31-60. Institutions, programs, degrees, diplomas, & certificates exempt by council action.

A. The following activities or programs offered by institutions, otherwise subject to this chapter shall be exempt from its provisions:

1. Any school subject to the provisions of Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 of the Code of Virginia.

2. Any honorary degree conferred or awarded by an institution, as long as the degree (i) does not represent the

satisfactory completion of all or any part of the requirements of a program or course of study and (ii) is normally regarded as one which is intended to be commemorative in nature in recognition of an individual's contributions to society. Such degree must state on its face that it is honorary in nature.

3. Any postsecondary educational course or program of study offered by an institution of higher education at a United States military post or reservation when that course or program is open only to military post personnel, their dependents or civilians employed by that military post or reservation.

a. Military personnel or civilians employed at one military post or reservation may take courses or programs of study at another military post or reservation without affecting the exemption from this chapter.

b. This exemption shall not apply to an institution that offers a course or program of study at a military post or reservation if:

(1) Civilians who are not employed by the military post or reservation are enrolled in the course or program at that site.

(2) The appropriate military official at the military post or reservation submits a written request to the executive director of the council that the institution be subject to this chapter.

(3) The postsecondary educational course or program of study offered at the military post or reservation is operated by an institution that is not already certified in Virginia and is operated as a branch campus having administrative capability within Virginia.

4. Any nursing education program offered by an institution to the extent that the program is regulated by the Virginia Board of Nursing.

a. The Virginia Board of Nursing is the state agency which is authorized to license registered nurses and to approve nursing programs with regard to the adequacy of the curriculum and resources for preparing students to take the licensing examination.

b. To offer a degree in nursing, an institution must have obtained prior council certification.

5. A professional program for professional or occupational training offered by an institution to the extent that the program is subject to approval by a regulatory board pursuant to Title 54.1 of the Code of Virginia.

6. Any course or program of study given by or approved by any professional body, fraternal organization, civic club, or benevolent order principally for professional education or advancement or similar purpose and for which no degree or degree credit is awarded.

7. Courses or programs offered through approved multistate compacts, including but not limited to, the Southern Regional Education Board's Electronic Campus; and

8. Those courses offered and delivered by a postsecondary school solely on a contractual basis for which no individual

is charged tuition and for which there is no advertising for open enrollment;

9. Any school, institute or course of instruction offered by any trade association or any nonprofit affiliate of a trade association on subjects related to the trade, business or profession represented by such association;

10. Any public or private high school accredited or recognized by the Board of Education that has offered or may offer one or more courses cited in this chapter, if any tuition, fees and charges made by the school are collected as may be permitted by Title 22.1, in the case of a public school, or pursuant to regulations prescribed by the relevant governing body of such private school; or

11. Tutorial instruction delivered and designed to supplement regular classes for students enrolled in any public or private school or to prepare an individual for an examination for professional practice or higher education.

B. Notwithstanding the exemptions provided in this section, an institution of higher education may seek certification for an otherwise exempt activity or program.

8 VAC 40-31-70. Denial of exemption; appeal of action.

If the council denies a request for exemption the executive director shall ensure that the institution is afforded an opportunity to be heard. The procedures set forth in 8 VAC 40-31-220 shall apply.

PART III. ROLE OF THE COUNCIL AND STAFF.

8 VAC 40-31-80. Role of the council.

A. Pursuant to § 23-276.9 of the Code of Virginia, the council may establish fees for services and the methods for collecting such fees.

B. Pursuant to § 23-276.3 (E) of the Code of Virginia and unless otherwise indicated, the council delegates authority for administering the requirements of § 23-276.1 through § 23-276.12 of the Code of Virginia and this chapter to the executive director.

C. Pursuant to § 23-276.3 of the Code of Virginia, the council shall adopt certification criteria for the operation of postsecondary schools in Virginia.

D. Only the council may refuse to grant certification, or revoke or suspend certification. In these instances, the council will be responsible for ensuring due process and compliance with the Administrative Process Act (§ 2.2-4000 et seq.)

8 VAC 40-31-90. Role of the executive director.

A. In addition to other administrative responsibilities vested in the executive director of the council, the executive director shall carry out the following administrative responsibilities relative to this chapter:

1. Authorize certification to operate for postsecondary schools that meet the certification criteria.

2. Authorize the use of the term "college" or "university" in an institution's name.

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3. Authorize religious exemptions.

4. Pursuant to § 23-276.7 of the Code of Virginia, authorize emergency action in the event an institution has received an adverse action by the United States Department of Education or by its accrediting agency which threatens a disruption of the operation of the institution and exposes students to a loss of course or degree credit or financial loss. All emergency actions shall be reported to council at its next meeting to either ratify or take such as actions as it may deem necessary. The authority of the executive director in these instances includes:

- a. Suspend new enrollment in specified programs, degree levels or in all programs and degree levels.
- b. Require the institution to provide a guaranty instrument or increase the penal amount or a current guaranty.
- c. Take other actions as may be necessary to protect the rights of currently enrolled or future students.

5. Assess administrative fees.

6. Authorize the release of a surety instrument requirement.

7. The executive director may delegate certain administrative responsibilities to the council staff.

8 VAC 40-31-100. Role of the council staff.

The role of council staff shall include:

1. Oversight and administration for purposes of compliance, Title 23, Chapter 21.1, §§ 23-276.1 through 23-276.12 of the Code of Virginia and chapter.
2. Review initial and annual certification requirements for all institutions.
3. Perform random and periodic site visits to review, inspect and investigate institutional compliance.
4. Investigate as necessary all noncertified postsecondary school activities operating in the Commonwealth of Virginia.
5. Monitor the accreditation activities of all nonaccredited postsecondary schools operating in the Commonwealth of Virginia.
6. Investigate all written and signed complaints or adverse publicity or any situation that may adversely affect students or consumers.
7. Share with state or federal agencies and appropriate accrediting bodies information regarding the operation or closure of postsecondary schools operating in Virginia.
8. The executive director may delegate other responsibilities as deemed appropriate.

PART IV. INSTITUTIONS FOR WHICH CERTIFICATION IS REQUIRED.

8 VAC 40-31-110. Certain existing approvals & exemptions continued.

A. An institution of higher education that was approved or authorized to confer degrees at a particular level or to offer

one or more degree programs or program areas may continue to confer those degrees and to offer those programs until and unless the institution's approval or authorization is revoked by the council in accordance with 8 VAC 40-31-200.

B. A Virginia institution of higher education that is approved or authorized to confer degrees by the council, the State Board of Education, or act of the General Assembly of Virginia and is subject to the conditions of § 23-276.4 (C) of the Code of Virginia, shall be subject to whatever conditions or stipulations may have been imposed.

8 VAC 40-31-120. Certification required for new and existing postsecondary schools.

A. All instructional offerings in Virginia which are not exempted from these regulations are subject to this chapter, even though the credit awarded for those offerings may be transferred to a location outside Virginia.

B. A new postsecondary school must become certified to operate prior to engaging in activities related to postsecondary education via telecommunications activity or at a site within the Commonwealth.

1. The determination for certification of telecommunications activities may be based upon, but not limited to, physical presence.

2. Telecommunications activities, with the exception of degree programs, academic credit and other courses offered exclusively from outside the state through individual and private interstate communication, are subject to the certification criteria required for all postsecondary schools.

C. Existing postsecondary schools must re-certify compliance with certification criteria on an annual basis in order to continue offering postsecondary courses and programs.

D. Postsecondary schools operating branches must certify each separately.

E. Postsecondary schools, not previously certified in Virginia, seeking to establish a postsecondary education consortium, agreement, partnership, or other similar arrangement with an existing postsecondary school, must meet all requirements for certification as set forth in these regulations, and must become certified to operate, prior to engaging in postsecondary education activities within the Commonwealth of Virginia.

PART V. CERTIFICATION CRITERIA.

8 VAC 40-31-130. Application of certification criteria.

A. The certification criteria shall include but not be limited to, (i) procedures by which a postsecondary school may apply for certification, (ii) criteria designed to ensure that all postsecondary schools that are subject to this chapter meet minimal academic or vocational standards.

B. Postsecondary schools, by notarized signature of the Chief Executive Officer, will be responsible for certifying total compliance with certification criteria on an initial and annual basis.

8 VAC 40-31-140. Certification criteria for institutions of higher education.

The following criteria shall apply to each institution for which certification is required:

A. The course, program, curriculum and instruction must be of quality, content and length to adequately achieve the stated objective. Administrators and faculty must be qualified and appropriately credentialed:

1. For terminal occupational/technical programs leading to the Associate of Occupational Science (A.O.S.) degree, general education courses must compose at least 10% of the total credit hours required for the degree.

2. For terminal occupational/technical programs leading to the Associate of Applied Science (A.A.S.) degree, general education courses shall compose at least 25% of the total credit hours required for the degree.

3. All instructional faculty teaching in a terminal occupational/technical program leading to the Associate of Applied Science (A.A.S.) or Associate of Occupational Science (A.O.S.) degree shall:

a. If teaching general education courses, hold a baccalaureate degree plus at least 18 graduate credit hours in the discipline being taught.

b. If teaching occupational/technical courses, hold either (i) an associate degree or (ii) qualify for a faculty appointment by virtue of scholarly or professional achievements.

4. For all university parallel associate degree programs, general education courses shall compose at least 25% of the total credit hours required for the degree, and required courses in the major field of study shall compose no more than 50% of the total credit hours required for the degree in a specific discipline.

5. All instructional faculty teaching in a college-transfer program at the associate level shall:

a. If teaching general education courses or in programs in the liberal arts and sciences, hold a baccalaureate degree plus at least 18 graduate credit hours in the discipline being taught.

b. If teaching occupational/technical courses, hold a baccalaureate degree in the discipline being taught or qualify by virtue of professional or scholarly achievement.

6. All instructional faculty members who teach in programs at the baccalaureate level shall:

a. Hold a master's degree in the discipline being taught or hold a master's degree in an area other than that being taught with at least 18 graduate semester hours in the teaching discipline.

b. Exception to academic preparation requirements for instructional faculty may be made in instances where substantial documentation of professional and scholarly achievements can be shown.

7. All instructional faculty teaching in a program at the master's level or higher shall:

a. Hold a doctoral or other terminal degree.

b. Exception to academic preparation requirements for instructional faculty may be made in instances where substantial documentation of professional and scholarly achievements can be shown.

B. In addition to the above instructor qualifications, the institution must certify that:

1. All instructional courses for degree credit require a minimum of 15 contact hours for each semester credit hour or a minimum of 10 contact hours for each quarter credit hour, or the equivalent, and an expectation for additional assignments beyond scheduled instructional activities.

2. The elective and required courses for each program are offered on a schedule and in a sequence that enables both full-time and part-time students to complete the program in a reasonable period of time.

3. The institution's instructional faculty at each site shall hold either full-time, part-time, or adjunct appointments.

4. The institution's academic programs meet the following criteria: (i) ensure a properly credentialed and course qualified instructor teaches each course; (ii) ensure that a credentialed and course qualified academic advisor is available to meet the concerns of the student, and that a student contact by any method will elicit a response from the advisor within a reasonable timeline; (iii) ensure that continual curriculum development and oversight for each major and concentration/track is maintained; and (iv) ensure a program director is named and designated to oversee each program area.

5. A plan to provide for interaction between student and faculty, and among students.

8 VAC 40-31-150. Certification criteria for vocational schools.

The following criteria shall apply to each vocational school for which certification is required:

A. The course, program, curriculum and instruction must be of quality, content and length to adequately achieve the stated objective. Administrators and faculty, if teaching technical courses for vocational programs not leading to a degree and not offered as degree credit, must hold either (i) an associate degree related to the area of instruction or (ii) have a minimum of two years of technical/occupational experience in the area of teaching responsibility or a related area.

B. In addition to the above instructor qualifications, the vocational school must certify that:

1. Courses of study shall conform to state, federal, trade, or manufacturing standards of training for the occupational fields in which such standards have been established or must conform to recognized training practices in those fields.

2. It has a plan to provide for interaction between student and faculty, and among students.

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8 VAC 40-31-160. Certification criteria for all postsecondary schools.

The following criteria shall apply to all postsecondary schools for which certification is required:

A. The postsecondary school shall have a clear, accurate, and comprehensive written statement, which shall be available to the public upon request. The statement minimally shall include the following items:

1. The history and development of the postsecondary school;
2. An identification of any persons, entities, or institutions that have a controlling ownership or interest in the postsecondary school;
3. The purpose of the postsecondary school, including a statement of the relative degree of emphasis on instruction, research, and public service;
4. A description of the postsecondary school's activities including telecommunications activities away from its principal location, including a list of all program areas in which courses are offered away from the principal location;
5. A list of all locations in Virginia at which the postsecondary school offers courses, a list of the degree programs currently offered or planned to be offered in Virginia; and
6. A statement of the postsecondary school's long-range plans.

B. The postsecondary school or branch shall have a current, written document, available to students and the general public upon request that accurately states the powers, duties, and responsibilities of:

1. The governing board or owners of the institution;
2. The chief operating officer, president, or director at that site in Virginia;
3. The principal administrators and their credentials at that site in Virginia;
4. The students, if students participate in institutional governance.

C. The postsecondary school shall have and maintain, and shall provide to all applicants upon request, a policy document accurately defining the minimum requirements for eligibility for admission to the institution and for acceptance at the specific degree level or into all specific degree programs offered by the postsecondary school which are relevant to the school's admissions standards. In addition, the document shall explain:

1. The standards for academic credit or course completion given for experience;
2. The criteria for transfer credit where applicable;
3. The criteria for refunds of tuition and fees; and
4. Students' rights, privileges, and responsibilities.

D. The postsecondary school shall maintain records on all enrolled students. These records minimally shall include:

1. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted which are relevant to the postsecondary school's admissions standards. Each student record must reflect the requirements and justification for admission of the student to the postsecondary school. Admissions records must be maintained for five years after the student's last date of attendance.

2. Transcript of the student's academic or course work at the school, which shall be retained permanently in either hard copy forms or in a database with backup.

3. A record of student academic or course progress at the school including programs of study, dates of enrollment, courses taken and completed, grades, and indication of the student's current status (graduated, probation, etc.)

4. The school shall transact a written, binding agreement with another school or records-maintenance organization with which the school is not corporately connected for the preservation of students' transcripts by another institution or agency, as well as for access to the transcripts, in the event of school closure or revocation of certification in Virginia.

E. Each school shall provide or make available to students, prospective students, and other interested persons a catalog, bulletin or brochure containing, as a minimum the following information:

1. A description of any financial aid offered at the school including repayment obligations, standards of academic progress required for continued participation in the program, and source of loan or scholarship.

2. A broad description, including academic and/or vocational objectives of each program offered, the number of hours of instruction in each subject and total number of hours required for course completion, course descriptions, and a statement of the type of credential awarded.

3. A statement of tuition and fees and other charges related to enrollment, such as deposits, fees, books and supplies, tools and equipment, and any other charges for which a student may be responsible.

4. The school's refund policy for tuition and fees pursuant to paragraph M of this section, and the school's procedures for handling complaints, including procedures to ensure that a student will not be subject to unfair actions as a result of his/her initiation of a complaint proceeding.

5. The name and address of the school's accrediting body, if applicable.

6. The minimum requirements for satisfactory completion of each degree level and degree program, or nondegree certifications/diplomas.

7. The school shall ensure that all institutional officials accurately represent the transferability of any courses or programs and state if any of the associate degrees offered by the school are considered terminal degrees.

8. If the institution offers programs leading to the Associate of Applied Science or Associate of Occupational Science

degree, that these programs are terminal occupational/technical programs and their credits generally are not applicable to other degrees.

9. The academic or course work schedule for the period covered by the publication.

10. Placement services and employment opportunities shall be accurately stated.

11. Name, location, and address of the main campus, branch or site operating in Virginia.

F. The school must have a clearly defined process by which the curriculum is established, reviewed and evaluated. Evaluation of school effectiveness must be completed on a regular basis and include, but not be limited to:

1. An explanation of how each program is consistent with the mission of the school.

2. The written process for evaluating each degree level and program, or vocational program, once initiated and written procedures for assessing the extent to which the educational goals are being achieved.

3. Documented use of the results of these evaluations to improve the degree programs.

G. Pursuant to § 23-276.3 B of the Code of Virginia, the school must maintain records that demonstrate it is financially sound, exercises proper management, financial controls and business practices and can fulfill its commitments for education or training. The school's financial resources should be characterized by stability, which indicates the school is capable of maintaining operational continuity for an extended period of time. The stability indicator that will be used is the U.S. Department of Education (USDE) Financial Ratio (composite score).

1. Schools shall provide the results of an annual audited financial statement or a reviewed financial statement.

2. The USDE composite score range is - 1.0 to 3.0. Schools with a score of 1.5 to 3.0 meet fully the stability requirement in subsection H scores between 1.0 and 1.4 meet the minimum expectations; and, scores less than 1.0 do not meet the requirement and shall be immediately considered for audit.

H. Pursuant to § 23-276.3 (B) of the Code of Virginia, the school shall have and maintain a surety instrument issued by a surety company or banking institution authorized to transact business in Virginia, adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with the instrument claim. The instrument shall be based on the nonTitle IV funds, which have been received from students or agencies for which the education has not yet been delivered. This figure shall be indicated in audited or reviewed financial statements as a Current (nonTitle IV) Tuition Liability. Schools certified under this regulation shall be exempt from the surety instrument requirement if they can demonstrate a U.S. Department of Education composite financial responsibility score of 1.5 or greater on their current audited or reviewed financial

statement; or if they can demonstrate a composite score between 1.0 and 1.4 on their current audited or reviewed financial statement and have scored at least 1.5 on an audited or reviewed financial statement in either of the prior two years. New schools and unaccredited existing schools must complete at least two calendar years of academic instruction to qualify for the surety waiver.

I. The school shall have a current written policy on faculty accessibility, which shall be distributed, to all students. The school shall ensure that instructional faculty are accessible to students for academic or course advising at stated times outside regularly scheduled class hours at each site when a course is offered and throughout the period during which the course is offered.

J. All recruitment personnel must provide prospective students with current and accurate information on the institution through the use of written and electronic materials and in oral admissions interviews:

1. The school shall be responsible and liable for the acts of its admissions personnel.

2. No school, agent, or admissions personnel knowingly making any statement or representation that is false, inaccurate or misleading regarding the school.

K. All programs offered via telecommunications must be comparable in content, faculty, and resources to those offered in residence, and include regular student-faculty interaction by computer, telephone, mail, and/or face-to-face meetings.

L. The school shall maintain and ensure that students have access to a library with a collection, staff, services, equipment and facilities that are adequate and appropriate for the purpose and enrollment of the institution. Current and formal written agreements with other libraries or with other entities may be used. Institutions offering graduate work shall provide access to library resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Vocational schools shall provide adequate and appropriate resources for completion of course work.

M. In accordance with § 23-276.3 (B) of the Code of Virginia, the school shall establish a tuition refund policy and communicate it to students. Accredited institutions shall adhere to the tuition refund requirements of their accrediting body, if required. All other schools shall adhere to the following tuition refund requirements:

1. The school shall adopt a minimum refund policy relative to the refund of tuition, fees, and other charges. All fees and payments, with the exception of the nonrefundable fee described in subsection 2 below, remitted to the school by a prospective student shall be refunded if the student is not admitted, does not enroll in the school, does not begin the program or course, withdraws, or is dismissed.

2. A school may require the payment of a reasonable nonrefundable initial fee, not to exceed \$100, to cover expenses in connection with processing a student's enrollment, provided it retains a signed statement in which the parties acknowledge their understanding that the fee is

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nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.

3. The school shall provide a period of at least three business days, weekends and holidays excluded, during which a student applicant may cancel his enrollment without financial obligation other than the nonrefundable fee described in subsection 2 above.

4. Following the period described in subsection 3 above, a student applicant (one who has applied for admission to a school) may cancel, by written notice, his enrollment at any time prior to the first class day of the session for which application was made. When cancellation is requested under these circumstances, the school is required to refund all tuition paid by the student, less a maximum tuition fee of 15% of the stated costs of the course or program or \$100 whichever is less. A student applicant will be considered a student as of the first day of classes.

5. An individual's status as a student shall be terminated by the school not later than seven consecutive instructional days after the last day on which the student actually attended the school. Termination may be effected earlier by written notice. In the event that a written notice is submitted, the effective date of termination will be the date the student last attended classes. Schools may require that written notice be transmitted via registered or certified mail, provided that such a stipulation is contained in the written enrollment contract. The school may require that the parents or guardians of students under 18 years of age submit notices of termination on behalf of their children or wards. Schools are required to submit refunds to individuals who have terminated their status as students within 45 days after receipt of a written request or the date the student last attended classes whichever is sooner.

6. The minimum refund policy for schools which financially obligate the student for a quarter, semester, trimester or other period not exceeding 4-1/2 calendar months shall be as follows:

a. A student who enters school but withdraws during the first 1/4 (25%) of the period is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.

b. A student who enters a school but withdraws after completing 1/4 (25%), but less than 1/2 (50%) of the period is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.

c. A student who withdraws after completing 1/2 (50%), or more than 1/2 (50%), of the period is not entitled to a refund.

7. The minimum refund policy for schools which financially obligate the student for the entire amount of tuition and fees for the entirety of a program or course shall be as follows:

a. A student who enters the schools but withdraws or is terminated during the first 1/4 of the program shall be entitled to a minimum refund amounting to 75% of the cost of the program.

b. A student who withdraws or is terminated during the second 1/4 of the program shall be entitled to a minimum refund amounting to 50% of the cost of the program.

c. A student who withdraws or is terminated during the third 1/4 of the program shall be entitled to a minimum refund amounting to 25% of the cost of the program.

d. A student who withdraws after completing 3/4 (75%) of the program shall not be entitled to a refund.

8. Fractions of credit for courses completed shall be determined by dividing the total amount of time required to complete the period or the program by the amount of time the student actually spent in the program or the period, or by the number of correspondence course lessons completed, as described in the contract.

9. It is not required that expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges, deposits, and all other charges be considered in tuition refund computations when these expenses have been represented separately to the student in the enrollment contract and catalogue, or other documents prior to enrollment in the course or program. Schools shall adopt and adhere to reasonable policies regarding the handling of these expenses when calculating the refund and submit the policies to the department for approval.

10. For programs longer than one year, the policy outlined in subdivisions 7 and 8 above shall apply separately for each year or portion thereof.

11. Schools shall comply with the cancellation and settlement policy outlined in this section, including promissory notes or contracts for tuition or fees sold to third parties.

12. When notes, contracts or enrollment agreements are sold to third parties, the school continues to have the responsibility to provide the training specified regardless of the source of any tuition, fees, or other charges that have been remitted to the school by the student or on behalf of the student.

PART VI.

CERTIFICATION REQUIREMENTS.

8 VAC 40-31-170. Initial certification.

A. An institution shall not use the term "college" or "university" until it has received acknowledgment from SCHEV that the name is not in violation of 8 VAC 40-31-20.

1. An institution seeking certification, must notify SCHEV of its proposed name prior to filing such name with the State Corporation Commission.

2. Prior to receiving certification to operate, a copy of the institution's certificate from the Virginia State Corporation Commission authorizing it to transact business in the Commonwealth under the acknowledged name must be submitted.

B. An institution shall not operate in the Commonwealth of Virginia without first receiving certification to operate from

council. Certified institutions shall not enter into any agreement to deliver or develop courses or programs of study in Virginia, with noncertified postsecondary schools.

C. All certifications shall expire on the certificate expiration date. Applications for recertification must be submitted to SCHEV at least 60 days prior to the expiration date of the current certification.

D. Certification is not transferable. In the event of a change of ownership of a certified institution, the new owner or governing body must secure certification. The institution must apply for certification within 45 days following a change of ownership. During the 45-day period and the time required for the council to process the new application, up to and not exceeding 90 days, the old certification remains in effect provided that there are no changes in the academic or course work programs, policies, or financial considerations such that the change would constitute or create a violation of SCHEV's policies.

E. SCHEV will process all applications and provide notice to applicants within 45 days of receipt.

F. Certificate valid dates and recertification due dates are as follows:

1. Out-of-state private degree granting and vocational school certificates are valid for 1 year beginning on 1 September of the calendar year and ending on 31 August of the following calendar year. Applications are due not later than 2 July.
2. Out-of-state public institution certificates are valid for 1 year beginning on 15 September of the calendar year and ending on 14 September of the following calendar year. Applications are due not later than 16 July.
3. In-state private non-profit institution certificates are valid for 1 year beginning on 1 October of the calendar year and ending on 30 September of the following calendar year. Applications are due not later than 2 August.
4. In-state proprietary degree-granting and academic-vocational institution certificates are valid for 1 year beginning on 15 October of the calendar year and ending on 14 October of the following calendar year. Applications are due not later than 16 August.
5. In-state proprietary vocational school certificates (letters A-D) are valid for 1 year beginning on 1 November of the calendar year and ending on 31 October of the following calendar year. Applications are due not later than 2 September.
6. In-state proprietary vocational school certificates (letters E-P) are valid for 1 year beginning on 15 November of the calendar year and ending on 14 November of the following calendar year. Applications are due not later than 16 September.
7. In-state proprietary vocational school certificates (letters Q-Z and others) are valid for 1 year beginning on 1 December of the calendar year and ending on 30 November of the following calendar year. Applications are due not later than 2 October.

8 VAC 40-31-180. Application requirements.

A. Each certification to operate attests that the institution is in compliance with § 23-276.1 through 23-276.12 of the Code of Virginia and with this chapter.

B. To apply for certification the following information must be submitted:

1. A completed certification application form provided by SCHEV.
2. A statement regarding the institution's accreditation status.
 - a. Vocational schools need not provide a statement of accreditation but rather a statement that courses of study offered conform to state, federal, trade, or manufacturing standards of training for the occupational fields in which such standards have been established or that courses conform to recognized training practices in those fields.
 - b. Out-of-state Institutions requesting certification must be accredited by an accrediting organization recognized by the United States Department of Education.
 - c. Unaccredited institutions who offer courses for degree credit must submit a plan of action for securing accreditation from an organization recognized by the United States Department of Education, including the name of the accrediting organization and timeframe. In order to remain eligible for certification, an institution must secure as a minimum, candidacy status or equivalent within three years of its initial date of certification, and initial accreditation not later than six years after initial certification.
 - d. Unaccredited institutions that undergo a change of ownership during the time period covered by the plan of action for securing accreditation, and that wish to remain eligible for certification under new ownership, will remain on the plan of action timeframe established by the former ownership. This plan of action timeframe begins from the initial date of certification under the former ownership and encompasses the accreditation dates established in the plan of action put into place by the former ownership. No additional time will be granted for obtaining the minimum level of accreditation required of the plan of action due to the change in ownership. Changes to the plan of action timeframe for accreditation will not be granted except at the discretion of the council.
3. A copy of the transacted surety instrument form.
4. A completed checklist, signed and dated, acknowledging full compliance with certification criteria, along with a notarized attestation statement signed by the chief executive officer or equivalent.
5. A company check in the correct, nonrefundable amount, made payable to the Treasurer of Virginia.
6. A copy of the institution's certificate from the State Corporation Commission providing authorization to transact business within the Commonwealth.

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7. For out-of-state institutions, a copy of the institution's authorization to operate from the state agency in which its main campus is domiciled.

8. A complete listing of all sites, along with their addresses, phone numbers (if applicable), and classes taught at the site.

9. For new postsecondary school applicants, the President or CEO shall provide a signed and notarized statement, which attests to any previous involvement in the operation of a postsecondary school, or any previous involvement by any member of the institutions governing board in the operation of a postsecondary school. As a minimum this statement shall include the name(s) of previous institutions, the dates of the involvement, the positions held within the institution, the location, and the status (open/closed, and accredited/nonaccredited) of the institution.

10. A complete list of all diploma, certificate, or degree program offerings during the valid period of the certification. This list shall consist of the number of hours required for completion of each program, the Classification of Instructional Programs (CIP) Code where applicable, and the type of program and degree.

a. New and unaccredited Institutions must also include their estimated annual enrollment projections and number of students per program, and;

b. Include from the previous year; degrees conferred, placement information, and headcounts.

C. An existing post-secondary school licensed by any other state agency empowered by the Code of Virginia to license the school, its teachers or curriculum, or both, must become certified prior to enrolling any student into a course for degree credit or program of study. The school must submit an application for certification to operate that shall contain all of the requirements outlined in 8 VAC 40-31-160 A and B.

D. All proprietary postsecondary schools must provide evidence of a valid business license from the locality within which it seeks to operate. Upon confirmation that an institution is operating without the required business license, Council shall take action as required by § 23-276.15 of the Code of Virginia.

8 VAC 40-31-190. Withdrawal of application by a postsecondary school.

A. A school that has submitted an application to the council may withdraw that application without prejudice at any time.

B. Withdrawal of an application by a school shall result in revocation by the council of all authorizations associated with that application that previously had been granted to the institution.

C. A school that has withdrawn an application may submit, at any time and without prejudice, a new application to the council in accordance with Part V.

D. A school that withdraws an application prior to receiving notification of certification will receive a refund of the filing fee minus a handling charge.

8 VAC 40-31-200. Audit requirements.

A. All certified postsecondary schools shall be subject to random periodic audits. The purpose of such audit is to verify compliance with certification criteria.

B. At the discretion of council staff, an audit review committee shall consist of the executive director or designee and may:

1. Include individuals with the experience in the disciplines in which the institution provides instruction; and/or
2. Consist of council staff.

C. Audits shall be random and/or triggered by, but not limited to, the following events:

1. Staff concerns based on questionable initial or recertification application information.
2. Volume and frequency of negative student complaints and/or adverse publicity.
3. Difficulty securing accreditation within the specified time period.
4. Adverse action by the U.S. Department of Education or the institution's accrediting agency.
5. A USDE composite financial responsibility score of less than 1.0.

D. Following an audit of the institution, council staff will prepare a report with recommendations for review by the council. If a school is found noncompliant, the council may:

1. Determine no action is necessary and have the report filed;
2. Change the status to probationary certification and require remedial action(s) within a specified timeframe;
3. Revoke or suspend certification;

8 VAC 40-31-210. Duplication of, and need for instruction for degree credit is irrelevant.

In considering an school's application, the council shall not take into account either duplication of effort by public and private schools in Virginia or need within the Commonwealth for the course for degree credit, program of study, or degree program for which certification is sought.

PART VII.

PROCEDURES FOR CONDUCTING FACT-FINDING CONFERENCES AND HEARINGS.

8 VAC 40-31-220. Procedural rules for the conduct of fact-finding conferences and hearings (§ 2.2-4019 through 2.2-4030 of the Code of Virginia).

A. Fact-finding conference; notification, appearance, conduct.

1. Unless there are emergency circumstances requiring immediate action, no certification application shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for a fact-finding conference.
2. If a basis exists for a refusal to certify or a suspension or a revocation of a certificate to operate, the council shall

notify, by certified mail or by hand delivery, the interested parties at the address of record maintained by the council.

3. Notification shall include the basis for the proposed action and afford interested parties the opportunity to present written and oral information to the council, which may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Institutions who wish to waive their right to a conference shall notify the council at least 14 days before the scheduled conference.

4. If after consideration of information presented during an informal fact-finding conference, a basis for action still exists, the interested parties shall be notified in writing within 60 days of the fact-finding conference, via certified or hand-delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant information.

B. Hearing; notification, appearance, conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend or revoke a certification, interested parties shall be notified by certified mail or hand delivery of the proposed action and of the opportunity for a hearing on the proposed action. If an organization desires to request a hearing, it shall notify the council within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to, or subsequent to, an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the institution is located. Hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, videoconference or similar technology, in order to expedite the hearing process.

D. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.

2. The council shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

E. Agency representation. The executive director's designee may represent the council in an informal conference or at a hearing.

**PART VIII.
CRIMINAL PROSECUTION FOR VIOLATION; CIVIL
ENFORCEMENT.**

8 VAC 40-31-230. Criminal prosecution for violation.

A. Any person, firm, association, postsecondary school, trust, or other entity which violates any provision of § 23-276.12 of the Code of Virginia or which, without certification from the council as provided in this chapter, offers or confers degrees, diplomas, certificates, programs, or courses of study shall be guilty of a class 1 misdemeanor.

B. Each degree, diploma, certificate, program, or course of study offered or conferred in violation of this chapter or each violation of the provisions of § 23-276.12 of the Code of Virginia shall constitute a separate offense.

C. The council shall take any action required by code to deter illegal or improper acts, which may violate the requirement for institutional certification.

8 VAC 40-31-240. Civil enforcement.

Upon the determination of the council that any institution of higher education, or its agents or representatives, is in violation of this chapter, the council may institute a proceeding in equity to enjoin the violation.

**PART IX.
ADDITIONAL REGULATIONS.**

8 VAC 40-31-250. Virginia law to apply to agreements.

The laws of Virginia shall govern any agreement, contract, or instrument of indebtedness executed between a postsecondary school and any person enrolling in any course or program offered or to be offered by a postsecondary school in Virginia and also between that postsecondary school and any person employed or offered employment by that postsecondary school in Virginia.

8 VAC 40-31-260. Fees.

A. Fees are included in Schedule A of this regulation.

B. All fees collected by council staff will be deposited in the State Treasury.

C. All fees are nonrefundable with the exception of withdrawal of an application in which case all fees will be refunded minus a reasonable handling charge.

D. Fees must be paid with a company check and made payable to the Treasurer of Virginia.

8 VAC 40-31-270. Receipt of applications, correspondence and other materials.

A. All applications, forms, letters or other materials relating to, or required by this chapter should be sent to:

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State Council of Higher Education for Virginia
ATTN: Institutional Certification
James Monroe Building, 9th Floor
101 North Fourteenth Street
Richmond, Virginia 23219

B. The mail of items specified in subsection A of this section shall not constitute receipt of them by the council unless sent by registered or certified mail, return receipt requested.

8 VAC 40-31-280. Closure of a postsecondary school.

A. The council, on its own motion, may authorize a postsecondary school whose application for certification to operate is denied in accordance with 8 VAC 40-31-200 to continue to offer instruction for degree credit to all currently enrolled students until the end of the semester, quarter, or other academic term during which certification is denied.

B. The council, on its own motion, may authorize a school whose certification is revoked in accordance with 8 VAC 40-31-200 to offer the coursework necessary for all currently enrolled students to complete their programs and to award degrees to those students, provided that the institution:

1. Offers degree coursework only to those students who were enrolled at the time the school's certification was revoked; and
2. Offers all necessary coursework on a schedule that permits all currently enrolled students to complete their programs in a reasonable period of time.

C. When a school decides to voluntarily cease operations it must immediately inform the council of the following:

1. The planned date for the termination of operations.
2. The planned date and location for the transfer of student records.
3. The name and address of the organization to receive and manage the student records and the name of the official who is designated to manage transcript requests. The organization designated for the preservation of the student records may not be corporately connected to the closing school.
4. Arrangements for the continued education of currently enrolled students via Teach-Out Agreement or other practical solution.
5. Rosters showing the name, address, and current academic status of enrolled students.

D. In the event of institutional closure or revocation of certification, council may facilitate the transfer of student records to the designated repository.

E. Council shall be responsible for securing and preserving student records until the designated repository accepts them.

F. Council shall seek the advice of the Career College Advisory Board on matters relating to school closures.

8 VAC 40-31-290. Waiver by council.

The council may waive or modify the certification requirements for an accredited institution, if the council finds that such

waiver or modification will not conflict with the intent of the regulations and that in light of the institution's mission, literal application of such requirement(s) creates an unreasonable hardship on the institution.

8 VAC 40-31-300. Freedom of Information Act to apply.

All materials submitted by an institution in its application for approval or in response to a request by the council for pertinent information shall be subject to the Virginia Freedom of Information Act (Chapter 21 of Title 2.1 of the Code of Virginia) and shall be available for public inspection in accordance with the provisions of § 2.1-342 of the Code of Virginia.

8 VAC 40-31-310. Student Tuition Guaranty Fund (proprietary schools only).

A. The Executive Director shall appoint in writing a Director of the Student Guaranty Fund.

B. The purpose of the fund is to reimburse tuition and fees due students at institutions previously approved under § 22.1-321 of the Code of Virginia when the school ceases to operate.

C. Schools seeking initial certification after July 1, 2004, shall not be required to pay into the fund. All other schools which were certified to operate prior to July 1, 2004, under the provisions of § 22.1-321 of the Code of Virginia, shall be subject to the provisions valid at the time of certification.

D. A claim shall be made against the fund only if it arises out of the cessation of operation by a school on or after the effective date of this chapter. If the school holds a surety bond or other guaranty instrument, the first priority shall be to file a claim against the guaranty instrument. Claims shall be filed with the director of the fund on forms prescribed by the council within three years after cessation of operation by the school. Claims filed after that are not considered. Within a reasonable time after receipt of a claim, the director shall give the school or its owners, or both, notice of the claim and an opportunity to show cause, within 30 days, why the claim should not be reimbursed in whole or part. The director may cause to be made other investigation of the claim as he deems appropriate or may base his determination, without further investigation, upon information contained in the records of the council.

E. The director's determination shall be in writing and shall be mailed to the claimant and the school or its owners, or both, and shall become final 30 days after the receipt of the determination unless either the claimant or the school, or its owners, within the 30-day period, files with the director a written request for a hearing. Upon request, a hearing shall be held and, subject to the authority of the director to exclude irrelevant or other inappropriate evidence, the claimant and the school or its owners may present such information as they deem pertinent.

F. The Executive Director shall administer the fund upon the following basis:

1. The assets of the fund may not be expended for any purpose other than to pay bona fide claims made against the fund;

2. All payments into the fund shall be maintained by the state comptroller who shall deposit and invest the assets of the fund in any savings accounts or funds which are federally or state insured, and all interests or other return on the fund shall be credited to the fund;

3. Payment into the fund shall be made in the form of a company or cashier's check or money order made payable to the "Student Tuition Guaranty Fund";

G. When a claim is allowed by the director, the Executive Director, as agent for the fund, shall be subrogated in writing to the amount of the claim and the Executive Director is authorized to take all steps necessary to perfect the subrogation rights before payment of the claim. Refunds will be made, first, to the lender issuing student financial aid or the guarantor of the loan, and second, to the student. In the event there was no financial aid involved, refunds will be made to the student.

8 VAC 40-31-320. Agent registration.

A. Agents representing noncertified accredited postsecondary schools must:

1. Register with the council prior to soliciting in Virginia and;
2. Pay an annual fee of \$300.00 for each registrant.

B. Agents representing noncertified unaccredited postsecondary schools shall not conduct business in Virginia.

C. Agents operating sites in Virginia must seek council certification.

Schedule A
FLAT-RATE FEES

Initial fee for all new institutions of higher education =	\$6,000
Annual fee for all unaccredited institutions of higher education =	\$6,000
Annual fee for all existing accredited institutions of higher education =	\$2,500
Initial fee for all new vocational schools =	\$2,500
Annual fee for all existing vocational schools with gross tuition collected greater than \$150,000 =	\$2,500
Annual fee for all vocational schools with gross tuition collected less than or equal to \$150,000 =	\$1,500

Late fee =	\$100.00/day for first 10 business days after expiration of annual certification (11th day institution notified to cease and desist and matter referred for prosecution)
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Non-compliance administrative fees =	\$1000 for each occurrence of non-compliance found as a result of audit
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Initial or renewed exemption application/ request for name acknowledgement/agent registration =	\$300.00
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Nonrefundable handling charge (withdrawal of application) =	\$300.00
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/s/ Mark R. Warner
Governor

Date: November 3, 2005

VA.R. Doc. No. R06-107; Filed November 4, 2005, 2:27 p.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load (TMDL) for Lower Blackwater River, Maggodee Creek and Gills Creek

The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) invite citizens to a public meeting to present the Water Quality Implementation Plan (IP) to address fecal coliform bacteria impairments in the Lower Blackwater River, Maggodee Creek and Gills Creek. These Franklin County streams were identified as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria. DEQ and DCR seek written and oral comments from interested persons on the IP. The IP is a clean-up plan that identifies ways to meet the pollution reductions outlined in total maximum daily load (TMDL) studies. The TMDLs for these impairments were completed and approved by EPA in 2001 and 2002 and are available on DEQ's website at <http://www.deq.virginia.gov/tmdl>.

The final public meeting on the development of the IP for the Lower Blackwater River, Maggodee Creek and Gills Creek impairments will be held on Tuesday, December 6, 2005, at 7 p.m., Burnt Chimney Elementary School, 80 Burnt Chimney Road, Wirtz, Virginia.

The purpose of the meeting is to present and discuss the draft implementation plan for the fecal coliform impairments. Section 62.1-44.19.7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP includes the corrective actions needed to reduce bacteria and their associated costs, benefits and environmental impacts. The IP also provides measurable goals and a timeline of expected achievement of water quality objectives. A fact sheet on the development of the IP is available upon request. The impaired segments addressed in the plan are:

- Lower Blackwater River: 20 miles from river mile 35.8, northwest of Rocky Mount to the upper reaches of Smith Mountain Lake
- Maggodee Creek: 21.2 miles to the confluence with the Blackwater River

- Gills Creek: 27.9 miles to the confluence with Smith Mountain Lake

How to comment: The public comment period for this public meeting will end on January 9, 2005. Oral comments will be accepted and addressed at the public meeting. Additional questions or information requests should be addressed to Jason Ericson. 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, Virginia 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.

Total Maximum Daily Loads (TMDLs) for Broad Run, South Run, Kettle Run, Occoquan River (below Lake Jackson), Little Bull Run, Bull Run, and Popes Head 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 seven watersheds: Broad Run, South Run, Kettle Run, Occoquan River (below Lake Jackson), Little Bull Run, Bull Run, and Popes Head Creek. The subject stream segments, all in the Occoquan Basin, are identified in Virginia's 2004 305(b)/303(d) Report on Impaired Waters as impaired due to exceedances of the state's water quality criterion for fecal coliform bacteria. South Run, Bull Run, and Popes Head Creek are also listed as impaired due to violations of the general standard for state waters. (Please note that the Occoquan Reservoir is NOT impaired for bacteria or any other drinking water standard.)

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 Fairfax, Fauquier, and Prince William counties, and their location is set forth in the table below.

Occoquan Streams Impairments for TMDL Development						
Stream	County/City	Length (mi.)	Impairment	Upstream	Downstream	Road crossing
Broad Run	Prince William	7.26	Bacteria	Confluence of Rocky Branch	Confluence of Cannon Branch	Rte. 28
Broad Run	Prince William	1.51	Bacteria	Confluence of an unnamed tributary to Broad Run	Start of Lake Manassas	Rte. 29/211
Broad Run	Prince William	1.06	Bacteria	Confluence with Mill Run	Confluence with Trapp Run	Rte. 628
Kettle Run	Prince William	7.59	Bacteria	Confluence of an unnamed tributary to Kettle Run	Confluence with Broad Run	Rte. 619
South Run	Fauquier, Prince William	2.34	Bacteria, benthic	Downstream of Lake Brittle	Confluence with Lake Manassas	Rte. 215
Occoquan River	Prince William	1.61	Bacteria	Downstream of Lake Jackson	Confluence of Purcell Branch	Rte. 234
Little Bull Run	Prince William	3.03	Bacteria	Confluence with Catharpin	Confluence with	Rte. 705

				Creek	Lick Branch	
Bull Run	Prince William, Fairfax	4.8	Bacteria, benthic	Confluence of Cub Run to Bull Run	Confluence with Popes Head Creek	Rte. 28
Popes Head Creek	Fairfax	4.92	Bacteria, benthic	Confluence of Piney Branch	Confluence with Bull Run	Rte. 645

The second public meeting on the development of the Occoquan Basin Streams TMDLs will be held on Wednesday, December 14, 2005, at 7 p.m. in the Richard Frank Room, Sully District Governmental Center, 4900 Stonecroft Blvd., Chantilly, Virginia.

The public comment period for this phase of the TMDL study will begin on December 14, 2005, and end on January 13, 2005. Fact sheets on the development of the TMDLs for the impairments referenced above are available upon request, or at <http://www.deq.virginia.gov/tmdl/>. Questions or information requests should be addressed to Bryant Thomas. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Mr. Bryant Thomas, Department of Environmental Quality Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3843, FAX (703) 583-3841, or e-mail bhthomas@deq.virginia.gov.

Total Maximum Daily Load (TMDL) for Gloucester County and Mathews County

The Department of Environmental Quality (DEQ), Virginia Department of Health (VDH) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the draft report for the total maximum daily load (TMDL) for fecal coliform bacteria in 16 shellfish propagation waters located in Gloucester County and Mathews County, Virginia.

The impaired segments are located in VDH Growing Area 42 containing the North River, Green Mansion Creek, Blackwater Creek, Elmington Creek and Back Creek, VDH Growing Area 43 containing the Ware River and Fox Mill Run, Growing Area 44 including the Severn River and several tributaries, Growing Area 45 including Monday Creek and Brown's Bay, and Growing Area 46, Sarah Creek and the Perrin River. All waters are tributaries to Mobjack Bay and 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.

This is the second and final public meeting, to provide information and solicit comments from citizens and local government on the draft report of the fecal coliform TMDL's study to be held on January 5, 2006, from 6:30 to 9:30 p.m. at the Page Middle School, 5628 George Washington Memorial Highway, Gloucester, Virginia 23061. A copy of these reports

can be obtained on the DEQ website at <http://www.deq.virginia.gov/programs/tmdl/> or the FTP site <http://www.deq.state.va.us/tmdl/tempdocs>.

The public comment period will begin on January 6, 2006, and end on February 3, 2006. Questions or information requests should be addressed to Chester Bigelow and should include the name, address, and telephone number of the person submitting the comments. Requests 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 Load (TMDL) for Pamunkey River Basin TMDLS

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 water quality impairments of specific stream segments in the following eight watersheds: Pamunkey River, South Anna River, Totopotomoy Creek, Newfound River, Taylor's Creek, Black's Creek, Monquin Creek/Webb Creek and Northeast Creek. The subject stream segments, all in the Pamunkey River Basin, are identified in Virginia's 2004 305(b)/303(d) Report on Impaired Waters 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 Hanover, King William, Louisa, New Kent, Orange, and Spotsylvania counties, as set forth in the table below.

Stream	County/City	Length (mi.)	Impairment
Pamunkey River	King William, New Kent	0.84 square miles	Bacteria
Black's Creek	New Kent	2.61	Bacteria
Monquin Creek, Webb Creek	King William	11.83	Bacteria
Totopotomoy Creek	Hanover	9.6	Bacteria
South Anna River	Hanover	22.22	Bacteria
Newfound River	Hanover	10.61	Bacteria
South Anna	Hanover	4.63	Bacteria

General Notices/Errata

River			
Taylor's Creek	Louisa	16.26	Bacteria
South Anna River	Louisa	6.27	Bacteria
South Anna River	Orange, Louisa	7.0	Bacteria
Northeast Creek	Spotsylvania	1.04	Bacteria

The second series of public meetings on the Pamunkey Basin TMDLs development will be held Wednesday, December 7, 2005, at 7 p.m. at the Louisa County Government Center, Extension Room, 1 Woolfolk Avenue, Louisa, Virginia; and on Thursday, December 8, 2005, at 7 p.m. in the Eastern Hanover Volunteer Company #3 Meeting Room, 4428 Mechanicsville Turnpike, Mechanicsville, Virginia.

The public comment period for this phase of the TMDL study will begin on December 7, 2005, and end on January 7, 2006. Fact sheets on the development of the TMDLs for the impairments referenced above are available upon request, or at <http://www.deq.virginia.gov/tmdl/>. Questions or information requests should be addressed to Chris French for Spotsylvania, Hanover, King William and New Kent counties; or Bryant Thomas for questions relating to Orange and Louisa counties. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Mr. Chris French, VDEQ-PRO, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, or e-mail rcfrench@deq.virginia.gov or Mr. Bryant Thomas, VDEQ-NRO, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3843, or e-mail bhthomas@deq.virginia.gov.

DEPARTMENT OF FORENSIC SCIENCE

Updated List of Approved Field Tests for the Detection of Drugs

In accordance with 6 VAC 20-220-60 of the Regulations for the Approval of Field Tests for Detection of Drugs and under the authority of the Code of Virginia, the following field tests for detection of drugs are approved field tests:

O D V Incorporated
13386 International Parkway
Jacksonville, Florida 32218-2383

ODV NarcoPouch

Drug or Drug Type

Heroin
Amphetamine
Methamphetamine
3,4 – Methylenedioxymethamphetamine (MDMA)
Cocaine Hydrochloride
Cocaine Base
Barbiturates
Lysergic Acid Diethylamide (LSD)
Marijuana
Hashish Oil
Marijuana
Hashish Oil
Phencyclidine (PCP)
Heroin
Methamphetamine
3,4 – Methylenedioxymethamphetamine (MDMA)
Heroin
Diazepam
Ketamine
Ephedrine
gamma – Hydroxybutyrate (GHB)

Manufacturer's Field Test

902 – Marquis Reagent
902 – Marquis Reagent
902 – Marquis Reagent
902 – Marquis Reagent
904B – Cocaine HCl and Base Reagent
904B – Cocaine HCl and Base Reagent
905 – Dille-Koppanyi Reagent
907 – Ehrlich's (Modified) Reagent
908 – Duquenois – Levine Reagent
908 – Duquenois – Levine Reagent
909 – K N Reagent
909 – K N Reagent
914 – PCP Methaqualone Reagent
922 – Opiates Reagent
923 – Methamphetamine/Ecstasy Reagent
923 – Methamphetamine/Ecstasy Reagent
924 – Mecke's (Modified) Reagent
925 – Valium/Ketamine Reagent
925 – Valium/Ketamine Reagent
927 – Ephedrine Reagent
928 – GHB Reagent

ODV NarcoTest

Drug or Drug Type

Heroin
Amphetamine
Methamphetamine
3,4 – Methylenedioxymethamphetamine (MDMA)

Manufacturer's Field Test

7602 – Marquis Reagent
7602 – Marquis Reagent
7602 – Marquis Reagent
7602 – Marquis Reagent

Barbiturates	7605 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	7607 – Ehrlich's (Modified) Reagent
Marijuana	7608 – Duquenois – Levine Reagent
Hashish Oil	7608 – Duquenois – Levine Reagent
Marijuana	7609 – K N Reagent
Hashish Oil	7609 – K N Reagent
Cocaine Hydrochloride	7613 – Scott (Modified) Reagent
Cocaine Base	7613 – Scott (Modified) Reagent
Phencyclidine (PCP)	7614 – PCP Methaqualone Reagent
Heroin	7622 – Opiates Reagent
Methamphetamine	7623– Methamphetamine/Ecstasy Reagent
3,4 – Methylenedioxymethamphetamine (MDMA)	7623– Methamphetamine/Ecstasy Reagent
Heroin	7624 – Mecke's Reagent
Diazepam	7625 – Valium/Ketamine Reagent
Ketamine	7625 – Valium/Ketamine Reagent
Ephedrine	7627 – Chen's Reagent - Ephedrine
gamma – Hydroxybutyrate (GHB)	7628 – GHB Reagent

Sirchie Fingerprint Laboratories
100 Hunter Place
Youngsville, North Carolina 27596

NARK

Drug or Drug Type

Manufacturer's Field Test

Narcotic Alkaloids	1 – Mayer's Reagent
Heroin	1 – Mayer's Reagent
Morphine	1 – Mayer's Reagent
Amphetamine	1 – Mayer's Reagent
Methamphetamine	1 – Mayer's Reagent
Opium Alkaloids	2 – Marquis Reagent
Heroin	2 – Marquis Reagent
Morphine	2 – Marquis Reagent
Amphetamine	2 – Marquis Reagent
Methamphetamine	2 – Marquis Reagent
3,4 – Methylenedioxymethamphetamine (MDMA)	2 – Marquis Reagent
Meperidine (Demerol) (Pethidine)	2 – Marquis Reagent
Heroin	3 – Nitric Acid
Morphine	3 – Nitric Acid
Cocaine Hydrochloride	4 – Cobalt Thiocyanate Reagent
Cocaine Base	4 – Cobalt Thiocyanate Reagent
Procaine	4 – Cobalt Thiocyanate Reagent
Tetracaine	4 – Cobalt Thiocyanate Reagent
Barbiturates	5 – Dille-Koppanyi Reagent
Heroin	6 – Mandelin Reagent
Morphine	6 – Mandelin Reagent
Amphetamine	6 – Mandelin Reagent
Methamphetamine	6 – Mandelin Reagent
Lysergic Acid Diethylamide (LSD)	7 – Ehrlich's Reagent
Marijuana	8 – Duquenois – Levine Reagent
Hashish	8 – Duquenois – Levine Reagent
Hashish Oil	8 – Duquenois – Levine Reagent
Tetrahydrocannabinol (THC)	8 – Duquenois – Levine Reagent
Marijuana	9 – NDB (Fast Blue B Salt) Reagent
Hashish	9 – NDB (Fast Blue B Salt) Reagent
Hashish Oil	9 – NDB (Fast Blue B Salt) Reagent
Tetrahydrocannabinol (THC)	9 – NDB (Fast Blue B Salt) Reagent
Cocaine Base	13 – Cobalt Thiocyanate/Crack Test

General Notices/Errata

NARK II

Drug or Drug Type

Narcotic Alkaloids
Heroin
Morphine
Amphetamine
Methamphetamine
3,4 – Methylenedioxymethamphetamine (MDMA)
Morphine
Heroin
Barbiturates
Lysergic Acid Diethylamide (LSD)
Marijuana
Hashish
Hashish Oil
Tetrahydrocannabinol (THC)
Cocaine Hydrochloride
Cocaine Base
Phencyclidine (PCP)
Opiates
Heroin
Morphine
Heroin
3,4 – Methylenedioxymethamphetamine (MDMA)
Pentazocine
Ephedrine
Diazepam
Methamphetamine

Narcotic Alkaloids
Heroin
Morphine
Amphetamine
Methamphetamine

Armor Holdings, Incorporated
13386 International Parkway
Jacksonville, Florida 32218-2383

NIK

Drug or Drug Type

Heroin
Amphetamine
Methamphetamine
3,4 – Methylenedioxymethamphetamine (MDMA)
Morphine
Barbiturates
Lysergic Acid Diethylamide (LSD)
Marijuana
Hashish Oil
Tetrahydrocannabinol
Cocaine Hydrochloride
Cocaine Base
Cocaine Hydrochloride
Cocaine Base
Phencyclidine (PCP)
Heroin
Heroin
gamma – Hydroxybutyrate (GHB)

Manufacturer's Field Test

01 – Marquis Reagent
01 – Marquis Reagent
01 – Marquis Reagent
01 – Marquis Reagent
01 – Marquis Reagent
01 – Marquis Reagent
02 – Nitric Acid
02 – Nitric Acid
03 – Dille-Koppanyi Reagent
04 – Ehrlich's Reagent
05 – Duquenois – Levine Reagent
05 – Duquenois – Levine Reagent
05 – Duquenois – Levine Reagent
05 – Duquenois – Levine Reagent
07 – Scott's (Modified) Reagent
07 – Scott's (Modified) Reagent
09 – Phencyclidine Reagent
10 – Opiates Reagent
10 – Opiates Reagent
10 – Opiates Reagent
11 – Mecke's Reagent
11 – Mecke's Reagent
12 – Talwin/ Pentazocine Reagent
13 – Ephedrine Reagent
14 – Valium Reagent
15 – Methamphetamine (Secondary Amines)
Reagent
19 – Mayer's Reagent
19 – Mayer's Reagent
19 – Mayer's Reagent
19 – Mayer's Reagent
19 – Mayer's Reagent

Manufacturer's Field Test

Test A 6071 – Marquis Reagent
Test A 6071 – Marquis Reagent
Test A 6071 – Marquis Reagent
Test A 6071 – Marquis Reagent
Test B 6072 – Nitric Acid Reagent
Test C 6073 – Dille-Koppanyi Reagent
Test D 6074 – LSD Reagent System
Test E 6075 – Duquenois – Levine Reagent
Test E 6075 – Duquenois – Levine Reagent
Test E 6075 – Duquenois – Levine Reagent
Test G 6077 – Scott (Modified) Reagent
Test G 6077 – Scott (Modified) Reagent
6501 – Cocaine ID Swab
6501 – Cocaine ID Swab
Test J 6079 – PCP Reagent System
Test K 6080 – Opiates Reagent
Test L 6081 – Brown Heroin Reagent System
Test O 6090 – GHB Reagent

Ephedrine
Pseudoephedrine
Diazepam
Methamphetamine
3,4 – Methylendioxyamphetamine (MDMA)
Methadone

Test Q 6085 – Ephedrine Reagent
Test Q 6085 – Ephedrine Reagent
Test R 6085 – Valium Reagent
Test U 6087 – Methamphetamine Reagent
Test U 6087 – Methamphetamine Reagent
Test W 6088 – Mandelin Reagent System

Mistral Security Incorporated
7910 Woodmont Avenue Suite 820
Bethesda, Maryland 20814

Drug or Drug Type

Manufacturer's Field Test

Heroin
Amphetamine
Methamphetamine
Marijuana
Hashish Oil
Methamphetamine
Heroin
Marijuana
Hashish Oil
Cocaine Hydrochloride
Cocaine Base

Detect 4 Drugs Aerosol
Detect 4 Drugs Aerosol
Detect 4 Drugs Aerosol
Detect 4 Drugs Aerosol
Detect 4 Drugs Aerosol
Meth 1 and 2 Aerosol
Herosol Aerosol
Cannabispray 1 and 2 Aerosol
Cannabispray 1 and 2 Aerosol
Coca-Test Aerosol
Coca-Test Aerosol

Millennium Security Group
8300 Greensboro Drive
McLean, VA 22102

IDenta

Drug or Drug Type

Manufacturer's Field Test

Marijuana
Hashish Oil
Heroin
Cocaine Hydrochloride
Cocaine Base
3,4 – Methylendioxyamphetamine (MDMA)

Marijuana/Hashish
Marijuana/Hashish
Heroin Step 1 and Step 2
Cocaine/Crack Step 1 and Step 2
Cocaine/Crack Step 1 and Step 2
MDMA Step 1 and Step 2

Cozart plc
92 Milton Park
Abingdon, Oxfordshire England OX14 4RY

Drug or Drug Type

Manufacturer's Field Test

Cocaine

Cocaine Solid Field Test

VIRGINIA WASTE MANAGEMENT BOARD

Proposed Consent Special Order for TBR Associates Limited Partnership

Purpose of notice: To invite citizens to comment on a proposed consent order for a facility in the City of Alexandria, Virginia.

Public comment period: November 28, 2005, to December 28, 2005.

Consent order description: The Virginia Waste Management Board proposes to issue a consent order to TBR Associates Limited Partnership to address alleged violations of Virginia's regulations. The location of the facility where the alleged violation occurred is Fairlington

Cleaners, 1712 Fern Street, Alexandria, Virginia. The consent order describes a settlement to resolve the improper disposal of dry cleaning waste water containing perchloroethylene (PCE) and trichloroethylene (TCE).

How to comment: DEQ accepts comments from the public by e-mail, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Jack Welsch, Department of Environmental Quality, Northern Virginia Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone

General Notices/Errata

(703) 583-3854, FAX (703) 583-3841, or e-mail
jwelsch@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 website's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD OF ACCOUNTANCY

NOTE: CHANGE IN MEETING TIME AND LOCATION

December 13, 2005 - 9 a.m. -- Open Meeting
Linden Row Inn, 100 East Franklin Street, Board Room, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A general business meeting. 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. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, 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.

COMMONWEALTH COUNCIL ON AGING

† **December 1, 2005 - 10 a.m.** -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A regular business meeting. Public comments are welcome.

Contact: Marsha Mucha, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-9312.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

December 8, 2005 - 9 a.m. -- Open Meeting
102 Governor Street, 2nd Floor, Board Room, Richmond, Virginia.♿

A regular meeting. The board will entertain public comment at the beginning 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

Consumer Affairs Advisory Committee

† **December 14, 2005 - 9:30 a.m.** -- Open Meeting
Oliver W. Hill Building, 102 Governor Street, 2nd Floor Board Room, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

The committee communicates the views and interests of Virginians on issues related to the Department of Agriculture and Consumer Services' consumer education and fraud prevention programs and their availability to citizens. Members will review consumer education outreach efforts for the past six months, accept nominations for citizen terms, elect a chairperson, and assist with planning for 2006. Public comment is accepted 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 Evelyn A. Jez at least two days before the meeting date so that suitable arrangements can be made.

Calendar of Events

Contact: Evelyn A. Jez, Ph.D., Consumer Affairs Specialist, Department of Agriculture and Consumer Services, 102 Governor St., 1st Floor, Richmond, VA 23219, telephone (804) 786-1308, FAX (804) 786-5112, toll-free (800) 552-9963, (800) 828-1120/TTY ☎, e-mail penny.jez@vdacs.virginia.gov.

Virginia Corn Board

† **December 12, 2005 - 9 a.m.** -- Open Meeting
Wallace Manor, 3821 North Courthouse Road, Providence Forge, Virginia. ♿

A meeting to (i) hear and approve the previous meeting minutes; (ii) review checkoff revenues and the financial status resulting from sale of the 2005 Virginia corn crop; (iii) hear reports from the chairman, board member representation to the U.S. Grains Council, the National Corn Growers Association, and the Virginia Corn Growers Association; and (iv) nominate and elect officers for 2006. 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, 102 Governor St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail phil.hickman@vdacs.virginia.gov.

Virginia Horse Industry Board

† **January 31, 2006 - 10 a.m.** -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, 2nd Floor Meeting Room, Charlottesville, Virginia. ♿

A meeting to discuss marketing and promotional projects for 2006-07, budget items, and the upcoming grant submission and review cycle. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 102 Governor St., 3rd Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 371-7786, e-mail andrea.heid@vdacs.virginia.gov.

Virginia Soybean Board

† **December 15, 2005 - 1 p.m.** -- Open Meeting
Virginia Soybean Association, 151 Kristiansand Drive, Suite E., Williamsburg, Virginia. ♿

A meeting to (i) hear and approve previous meeting minutes; (ii) review checkoff revenues and the financial status resulting from sale of the 2005 Virginia soybean crop; (iii) hear reports from the chairman, the United Soybean Board representative, and the Virginia Soybean

Association; and (iv) nominate and elect officers for 2006. 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, 102 Governor St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail phil.hickman@vdacs.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD

† **November 29, 2005 - 6:30 p.m.** -- Public Hearing
Radford Municipal Building, Council Chambers, 619 Second Street, Radford, Virginia. ♿

A public hearing on a minor permit amendment allowing Internet Corporation to modify the New River Foundry in Radford.

Contact: Dean Downs, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6768, FAX (540) 562-6729, e-mail hddowns@deq.virginia.gov.

December 8, 2005 - 9 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. ♿

A regular meeting of the board and annual joint meeting with the State Advisory Board on Air Pollution. Agenda and minibook to be posted at least seven days before the meeting.

Contact: Cindy Berndt, Regulatory Coordinator, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.virginia.gov.

† **December 9, 2005 - 10 a.m.** -- Public Hearing
Greensville County Government Building, Public Meeting Room, Emporia, Virginia. ♿

A public hearing to receive comments on a draft construction permit for International Biofuels, Inc. to construct a wood pellet manufacturing facility in Greensville County.

Contact: Rebekah Remick, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 24060, telephone (804) 527-5128, FAX (804) 527-5106, e-mail rjremick@deq.virginia.gov.


† **January 5, 2006 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ♿

A public meeting to receive comments on the notice of intended regulatory action to amend the regulations for the control and abatement of air pollution concerning minor new source review. The NOIRA appears in the Virginia Register of Regulations on November 28, 2005. The comment period

begins on November 28, 2005, and ends on January 5, 2006.

Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510, e-mail gegraham@deq.virginia.gov.

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† **January 12, 2006 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 


† **January 30, 2006** - 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 5-20, General Provisions**, and **9 VAC 5-40, Existing Stationary Sources (Rev. D04)**. The purpose of the proposed action is to enlarge the scope of volatile organic compound and nitrogen oxides emissions control areas in order to include new ozone nonattainment areas.

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

Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510 or e-mail gegraham@deq.virginia.gov.

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† **January 12, 2006 - 1:30 p.m.** -- Public Hearing
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

† **January 30, 2006** - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-40, Existing Stationary Sources (Rev. H03)**. The purpose of the proposed action is to reduce emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) from open burning and special incineration devices in Virginia's emissions control areas in order to attain and maintain the federal health-based air quality standard for ozone and nitrogen oxides.

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


Contact: Mary L. Major, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510 or e-mail mimajor@deq.virginia.gov.

ALCOHOLIC BEVERAGE CONTROL BOARD

December 5, 2005 - 9 a.m. -- Open Meeting

December 19, 2005 - 9 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. 


An executive staff meeting to receive and discuss reports and activities from staff members and to discuss other matters not yet determined.

Contact: W. Curtis Coleburn, III, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY , e-mail curtis.coleburn@abc.virginia.gov.


ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

NOTE: CHANGE IN MEETING DATE

December 6, 2005 - 10 a.m. -- Open Meeting


Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Cecily Slasor, I and R Specialist, Alzheimer's Disease and Related Disorders Commission, 1610 Forest Ave., Ste. 100, Richmond, VA 23229, telephone (804) 662-9338, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY , e-mail cecily.slasor@vda.virginia.gov.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS


December 7, 2005 - 3 p.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: 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.

December 8, 2005 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 


A meeting to conduct board business. 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 (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be

Calendar of Events

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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

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December 8, 2005 - 9 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. 

December 8, 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 Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects intends to amend regulations entitled **18 VAC 10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations**. The purpose of the proposed action is to make general clarifying changes to the regulation as well as clarifying the requirements relating to "responsible charge" and "direct control and personal supervision." Any other changes that may be necessary may also be considered.


Statutory Authority: §§ 54.1-201, 54.1-404 and 54.1-411 of the Code of Virginia.

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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

February 1, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Architects Section to conduct board business. 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 (804) 367-8514 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

February 7, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Interior Designers Section to conduct board business. 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 (804) 367-8514 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

February 8, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 


A meeting of the Professional Engineers Section to conduct board business. 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 (804) 367-8514 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

February 9, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Landscape Architects Section to conduct board business. 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 (804) 367-8514 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.


February 15, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Land Surveyors Section to conduct board business. 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 (804) 367-8514 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad

St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.


ART AND ARCHITECTURAL REVIEW BOARD

December 2, 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.

AUCTIONEERS BOARD


† **December 13, 2005 - 9:30 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: Marian H. Brooks, Regulatory Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail auctioneers@dpor.virginia.gov

January 12, 2006 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 


A meeting to conduct board business. A portion of the meeting may be held in closed session. 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: Marian H. Brooks, Regulatory Board Administrator, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail auctioneers@dpor.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

December 5, 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 conduct general business and consider regulatory issues as may be 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.


DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

December 6, 2005 - 11 a.m. -- Open Meeting
Melfa Chamber of Commerce, 19056 Parkway, Eastern Shore, Virginia.


A public meeting to solicit comments regarding the Department for the Blind and Vision Impaired's intent to amend its state plan for vocational rehabilitation (VR) to identify by category the order in which eligible VR clients will be served in the event resources are not available to serve all eligible VR clients.

Contact: Susan D. Payne, Vocational Rehabilitation 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.

Statewide Rehabilitation Council for the Blind

December 10, 2005 - 10 a.m. -- Open Meeting
Department for the Blind and Vision Impaired, 397 Azalea Avenue, 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.

Calendar of Events


BOARD FOR BRANCH PILOTS

December 5, 2005 - 9 a.m. -- Open Meeting

December 6, 2005 - 9 a.m. -- Open Meeting

Virginia Pilot Association, 3329 Shore Drive, Virginia Beach, Virginia. 


A meeting to conduct examination for renewal of licenses.

Contact: Mark N. Courtney, Executive Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail branchpilots@dpor.virginia.gov.


December 12, 2005 - 9 a.m. -- Open Meeting

February 1, 2006 - 8:30 a.m. -- Open Meeting

† February 2, 2006 - 9:30 a.m. -- Open Meeting

Virginia Port Authority, 600 World Trade Center, Norfolk, 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 804-367-8514 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: Mark N. Courtney, Executive Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail branchpilots@dpor.virginia.gov.

DEPARTMENT OF BUSINESS ASSISTANCE

Virginia Small Business Financing Authority

† December 14, 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. 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.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

NOTE: CHANGE IN MEETING DATE

December 12, 2005 - 10 a.m. -- Open Meeting

Dorey Recreational Park, 7200 Dorey Park Drive, Richmond, 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 BOARD FOR COMMUNITY COLLEGES


January 18, 2006 - 1:30 p.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


Meetings of the Academic Committee, Student Affairs and Workforce Development Committee, and Budget and Finance Committee begin at 1:30 p.m. The Facilities Committee and the Audit Committee will meet at 3 p.m. The Personnel Committee will meet at 3:30 p.m.

Contact: D. Susan Hayden, Director of Public Affairs, Virginia Community College System, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

January 19, 2006 - 9 a.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, 15th Floor, Godwin-Hamel Board Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the full board. Public comment may be received at the beginning of the meeting upon notification at least five working days prior to the meeting.


Contact: D. Susan Hayden, Director of Public Affairs, Virginia Community College System, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

COMPENSATION BOARD

NOTE: CHANGE IN MEETING DATE

November 30, 2005 - 11 a.m. -- Open Meeting

† December 21, 2005 - 11 a.m. -- Open Meeting

102 Governor Street, Richmond, Virginia. 

A monthly board meeting.

Contact: Cindy P. Waddell, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cindy.waddell@scb.virginia.gov.

BOARD OF CONSERVATION AND RECREATION

December 16, 2005 - 11 a.m. -- Open Meeting

Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia.

A regular 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.

DEPARTMENT OF CONSERVATION AND RECREATION

December 8, 2005 - Noon -- Open Meeting
Richmond City Hall, 5th Floor Conference Room, Richmond, Virginia.

A regular meeting of the Falls of the James River Scenic Advisory Committee 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.


Virginia Land Conservation Foundation

December 1, 2005 - 10 a.m. -- Open Meeting
Dorey Recreational Park, 7200 Dorey Park Drive, Richmond, Virginia.


A regular business meeting to review and approve grant applications.


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

† **November 29, 2005 - 9 a.m.** -- Open Meeting
† **November 30, 2005 - 9 a.m.** -- Open Meeting
December 1, 2005 - 9 a.m. -- Open Meeting
† **December 6, 2005 - 9 a.m.** -- Open Meeting
† **December 15, 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.


December 13, 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 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.

BOARD OF CORRECTIONAL EDUCATION

† **December 2, 2005 - 10 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 7th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss general business.


Contact: Patty Ennis, Board Clerk, Board of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314, FAX (804) 786-7642, (804) 371-8647/TTY , e-mail patricia.ennis@dce.virginia.gov.

BOARD OF CORRECTIONS

January 17, 2006 - 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 barbara.woodhouse@vadoc.virginia.gov.

January 17, 2006 - 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 barbara.woodhouse@vadoc.virginia.gov.

January 18, 2006 - 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 barbara.woodhouse@vadoc.virginia.gov.

January 18, 2006 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. 

A regular meeting of the full board to review and discuss all matters considered by board committees that require action by the board.


Calendar of Events

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 barbara.woodhouse@vadoc.virginia.gov.

BOARD OF COUNSELING

† **December 2, 2005 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting of the Regulatory Committee to discuss supervisory issues.

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

December 8, 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, Criminal Justice Services Board, Eighth St. 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.

December 8, 2005 - 11 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.


A meeting to conduct general business.

Contact: Leon D. Baker, Jr., Division Director, Criminal Justice Services Board, Eighth St. 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.

BOARD OF DENTISTRY


December 2, 2005 - 9 a.m. -- Open Meeting
January 6, 2006 - 9 a.m. -- Open Meeting
February 3, 2006 - 9 a.m. -- Open Meeting
February 10, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting of the Special Conference Committee to hold informal conferences. 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.


December 8, 2005 - 9 a.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.

December 9, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, 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

December 15, 2005 - 11 a.m. -- Open Meeting
Department of General Services, 202 North 9th Street, Room 412, 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

November 30, 2005 - 9 a.m. -- Open Meeting
January 11, 2006 - 9 a.m. -- Open Meeting
† **February 15, 2006 - 9 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, Main Lobby Level, Conference Rooms C and D, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A regular business meeting of the board. Public comment will be received. 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.

† **December 1, 2005 - 10 a.m.** -- Open Meeting
Hampton School for the Deaf, Blind, and Multi-Disabled, Bradford Hall, Auditorium, Hampton, Virginia. 
(Interpreter for the deaf provided upon request)

A regular meeting to (i) review and approve minutes from the January 1, 2005, meeting; (ii) receive updates from the VSDB Superintendents and from the Director of State Schools; and (iii) discuss current enrollment, number of day students, number of residential students, program changes, staffing levels and needs, and proposed consolidation plans and actions needed during upcoming session. There will be a tour of the facility to include the education building, dormitory, cafeteria and infirmary. Public comment will be received at 11 a.m.

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.

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† **January 17, 2006 - 7 p.m.** -- Public Hearing
Loudoun County, Virginia.
Chesapeake City, Virginia.
Richmond, Virginia.
Waynesboro, Virginia.
Wytheville, Virginia.
Specific sites will be announced in advance of the hearing date.

† **January 31, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to amend regulations entitled **8 VAC 20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia**. The purpose of the proposed action is to update standards for accreditation. The regulations were last amended in 2000. Since that time, public schools in Virginia have implemented more rigorous requirements for accountability both at the school level and the student level. Now that most Virginia schools are fully accredited, and the first high school class required to earn verified units of credit has graduated from high school, the board undertook a comprehensive review of the regulations to determine if there are changes that might be needed. Substantive changes proposed are related to additional options for students to meet the requirements for graduation, the methodology for calculating accreditation ratings, greater flexibility for transfer students, more rigorous benchmarks for accreditation, and better defined sanctions for schools, superintendents, and school boards if a school loses its accreditation.

Statutory Authority: § 22.1-253.13:3 of the Code of Virginia.

Contact: Anne D. Wescott, Assistant Superintendent for Polity and Communications, Department of Education, P.O. Box 2121, Richmond, VA 23218, telephone (804) 225-2403, FAX (804) 225-2524 or e-mail anne.wescott@doe.virginia.gov.


Advisory Board on Teacher Education and Licensure

January 23, 2006 - 9 a.m. -- Open Meeting
Location to be announced.


A regular meeting. 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. Please note that persons requesting the services of an interpreter for the deaf are asked to do so at least 72 hours in advance so that the appropriate arrangements may be made.

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.


STATE BOARD OF ELECTIONS

† **November 28, 2005 - 10 a.m.** -- Open Meeting
Patrick Henry Building, 1111 East Broad Street, House Room 1, Richmond, Virginia. 

A meeting to ascertain the results of the November 8, 2005, elections. Public comment will be received.

Contact: Vanessa Archie, Administrative Assistant, State Board of Elections, 200 N. 9th St., Room 101, telephone (804) 864-8908, FAX (804) 371-0194, toll-free (800) 552-9745, (800) 260-3466/TTY , e-mail vanessa.archie@sbe.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY


November 28, 2005 - 6:30 p.m. -- Open Meeting
Hurley Elementary and Middle School, Hurley, Virginia. 

A public meeting on the development of TMDLs to address impairments of the general standard and fecal coliform bacteria for Know Creek and impairments of the general standard for Pawpaw Creek located in Buchanan County. The public notice appears in the Virginia Register of Regulations on November 14, 2005. The public comment period begins on November 28, 2005, and ends on December 30, 2005.

Contact: Nancy T. Norton, Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.

Calendar of Events


† **November 30, 2005 - 1 p.m.** -- Open Meeting

December 15, 2005 - 7 p.m. -- Open Meeting
Northumberland Public Library, 7204 Northumberland Highway, Heathsville, Virginia. 

The final public meeting on the development of fecal coliform bacteria TMDLs for shellfish propagation waters in Cockrell Creek in Northumberland County. The public notice appears in the Virginia Register on November 14, 2005. The comment period begins on December 15, 2005, and ends on January 14, 2006.

Contact: Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, e-mail rcfrence@deq.virginia.gov.


December 5, 2005 - 7 p.m. -- Open Meeting

Lancaster Courthouse, General District Room, 8311 Mary Ball Road, Lancaster, Virginia. 

The first public meeting on the development of the fecal coliform TMDLs for shellfish propagation waters located in Lancaster County. The public notice appears in the November 14, 2005, Virginia Register of Regulations. The comment period begins on December 5, 2005, and ends on January 4, 2006.

Contact: Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, e-mail rcfrench@deq.virginia.gov.


† **December 6, 2005 - 7 p.m.** -- Open Meeting

Burnt Chimney Elementary School, 80 Burnt Chimney Road, Wirtz, Virginia. 

The final public meeting on the development of a TMDL implementation plan to address fecal coliform bacteria impairments in the Lower Blackwater River, Maggodee Creek and Gills Creek located in Franklin County. The public notice appears in the November 28, 2005, Virginia Register of Regulations. The public comment period begins on December 6, 2005, and ends on January 9, 2006.

Contact: Jason Ericson, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-3389, FAX (804) 371-0771, e-mail jason.ericson@dcr.virginia.gov.


December 7, 2005 - 6 p.m. -- Open Meeting

Eastern Shore Chamber of Commerce Building, 19056 Parkway, Melfa, Virginia. 

The second public meeting on the fecal coliform TMDL for seven shellfish propagation areas located in Accomack County. The public notice appears in the Virginia Register of Regulations on November 14, 2005. The public comment period begins on December 8, 2005, and closes on January 7, 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 ccbigelow@deq.virginia.gov.

† **December 7, 2005 - 7 p.m.** -- Open Meeting

Louisa County Government Center, 1 Woolfolk Avenue, Extension Room, Louisa, Virginia. 


† **December 8, 2005 - 7 p.m.** -- Open Meeting

Eastern Hanover Volunteer Company, #3 Meeting Room, Mechanicsville, Virginia.

The second series of public meetings on the development of TMDLs to address water quality impairments in the Pamunkey River, South Anna River, Totopotomoy Creek, Newfound River, Taylor's Creek, Black's Creek, Monquin Creek/Webb Creek and Northeast Creek watersheds located in Hanover, King William, Louisa, New Kent, Orange, and Spotsylvania Counties. The public notice appears in the November 28, 2005, Virginia Register of Regulations. The comment period begins on December 7, 2005, and ends on January 7, 2006.

Contact: Bryant Thomas, Department of Environmental Quality, 13901 Crown Court Woodbridge, VA 22193, telephone (704) 583-3843, e-mail bhthomas@deq.virginia.gov.


December 12, 2005 - 7 p.m. -- Open Meeting

Rappahannock Community College Auditorium, 52 Campus Drive, Warsaw, Virginia. 

The first public meeting on the development of the fecal coliform TMDL for shellfish propagation waters in Farnham Creek located in Richmond County. The public notice appears in the Virginia Register of Regulations on November 14, 2005. The comment period begins on December 12, 2005, and ends on January 11, 2006.

Contact: Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, e-mail rcfrench@deq.virginia.gov.


† **December 14, 2005 - 7 p.m.** -- Open Meeting

Sully District Governmental Center, 4900 Stonecroft Boulevard, Richard Frank Room, Chantilly, Virginia. 

The second public meeting on the development to TMDLs to address impairments in Broad Run, South Run, Kettle Run, Occoquan River (below Lake Jackson), Little Bull Run, Bull Run and Popes Head Creek located in Fairfax, Fauquier and Prince William Counties. The public notice appears in the November 28, 2005, Virginia Register of Regulations. The public comment period begins on December 14, 2005, and ends on January 13, 2006.

Contact: Bryant Thomas, Department of Environmental Quality, 13901 Crown Court Woodbridge, VA 22901, telephone (703) 583-3843, FAX (703) 583-3841, e-mail bhthomas@deq.virginia.gov.


December 15, 2005 - 7 p.m. -- Open Meeting

Brookneal Community Center Auditorium, 261 Main Street, Brookneal, Virginia. 

A public meeting on the development of bacteria TMDLs for impaired stream segments in the Staunton (Roanoke) River watershed in Campbell, Pittsylvania, Halifax and Charlotte counties. The public notice appears in the Virginia Register

on November 14, 2005. The public comment period begins on December 15, 2005, and ends on January 16, 2005.


Contact: Kelly Wills, Department of Environmental Quality, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-5120, FAX (434) 582-5125, e-mail kjwills@deq.virginia.gov.

† **January 5, 2006 - 6:30 p.m.** -- Open Meeting
Page Middle School, 5628 George Washington Memorial Highway, Gloucester, Virginia. 

The second and final meeting on the fecal coliform bacteria TMDL for sixteen shellfish propagation waters located in Gloucester and Mathews Counties. The public notice appears in the November 28, 2005, Virginia Register of Regulations. The public comment period begins on January 6, 2006, and ends on February 3, 2006.

Contact: Chester Bigelow, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, e-mail ccbigeLOW@deq.virginia.gov.


VIRGINIA FIRE SERVICES BOARD

December 1, 2005 - 10 a.m. -- Open Meeting
Lynchburg Fire and EMS Training Center, Lynchburg, 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, VFSB Clerk and Research Assistant, Department of Fire Programs, 1005 Technology Park Dr., Glen Allen, VA 23059, telephone (804) 371-0220, e-mail nausheen.khan@vdfp.virginia.gov.

December 2, 2005 - 9 a.m. -- Open Meeting
Lynchburg Fire and EMS Training Center, Lynchburg, Virginia.  (Interpreter for the deaf provided upon request)

A regular board meeting.

Contact: Nausheen I. Khan, VFSB Clerk and Research Assistant, Department of Fire Programs, 1005 Technology Park Dr., Glen Allen, VA 23059, telephone (804) 371-0220, e-mail nausheen.khan@vdfp.virginia.gov.

BOARD OF FORENSIC SCIENCE

† **November 30, 2005 - 12:30 p.m.** -- Open Meeting
Department of Forensic Science, Central Laboratory, 700 North 5th Street, Classroom 1, Richmond, Virginia.

A meeting for orientation of members and to discuss the transfer of regulations to the Department of Forensic Science.

Contact: Charlie Oates, Department of Forensic Science, 700 N. 5th St., Richmond, VA 23219, telephone (804) 786-1006.


DEPARTMENT OF FORENSIC SCIENCE

† **November 29, 2005 - 1:30 p.m.** -- Open Meeting
† **November 30, 2005 - 8 a.m.** -- Open Meeting
Department of Forensic Science, Central Laboratory, 700 North 5th Street, Classroom 1, Richmond, Virginia.

A meeting of the Scientific Advisory Committee for orientation of members and to discuss a response to the ASCLD/LAB recommendations.

Contact: Charlie Oates, Department of Forensic Science, 700 N. 5th St., Richmond, VA 23219, telephone (804) 786-1006.

BOARD OF FORESTRY

December 7, 2005 - 9 a.m. -- Open Meeting
Department of Forestry, Central Office, Board Room, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Donna Hoy, Administrative Staff Specialist, Board of Forestry, 900 Natural Resources Dr., Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 296-2369, e-mail donna.hoy@dof.virginia.gov.


BOARD OF GAME AND INLAND FISHERIES

† **November 29, 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 continue efforts to address and correct issues identified in the May 23, 2005, report of the State Internal Auditor, receive reports of committees of the board, and receive a financial status report. The board may also discuss general and administrative issues and may hold a closed session at some time during the meeting.

Contact: Belle Harding, Executive Secretary, Department of Game and Inland Fisheries, 4016 W. Broad St., Richmond VA 23230, telephone (804) 367-9231, e-mail belle.harding@dgif.virginia.gov.

CHARITABLE GAMING BOARD

December 6, 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, Charitable Gaming Board, 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.

Calendar of Events

OFFICE OF GOVERNOR


Commission on Urbanized Transportation

† **November 30, 2005 - Noon** -- Open Meeting
1221 East Broad St., Auditorium, Richmond, Virginia. 

A meeting of the commission to recommend strategies for better integrating planning and transit options in Virginia's urbanized areas. The commission's purpose is to address a statewide framework for high-quality urban transportation solutions; identify obstacles to better transit; identify potential legislation, regulations, and incentive programs to support transit development; and evaluate ways to promote quality development and redevelopment.


Contact: Kerry Lugar, Executive Assistant/Scheduler, Office of Governor, Executive Office Bldg., 3rd Floor, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 786-8033, e-mail kerry.lugar@governor.virginia.gov.

DEPARTMENT OF HEALTH


† **December 9, 2005 - 8:30 a.m.** -- Open Meeting
Doubletree Hotel Richmond Airport, 5501 Eubank Road, Sandston, Virginia.  (Interpreter for the deaf provided upon request)


A meeting of the Virginia HIV Community Planning Committee.

Contact: Elaine Martin, Community Planning Committee Co-Chair, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7964, FAX (804) 864-7983, e-mail elaine.martin@vdh.virginia.gov.

December 9, 2005 - 10 a.m. -- Open Meeting
December 21, 2005 - 10 a.m. -- Open Meeting
Virginia Hospital and Healthcare Association, 4200 Innslake Drive, Glen Allen, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Virginia Early Hearing Detection and Intervention Program Advisory Committee to assist the Virginia Department of Health in the implementation of the Virginia Early Hearing Detection and Intervention Program. The advisory committee meets 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, (800) 828-1120/TTY , e-mail pat.dewey@vdh.virginia.gov.

December 14, 2005 - 1:30 p.m. -- Open Meeting
Madison Building, 109 Governor Street, Richmond, Virginia. 

A meeting of the Newborn Screening Regulations Advisory Group to allow and invite public participation in the development of proposed regulations.

Contact: Nancy Ford, Pediatric Screening and Genetic Services, Department of Health, 109 Governor St., 8th Floor, Richmond, VA 23219, telephone (804) 864-7691, FAX (804) 864-7022, e-mail nancy.ford@vdh.virginia.gov.

January 17, 2006 - 9 a.m. -- Open Meeting
Madison Building, 109 Governor Street, 5th Floor Conference Room, Richmond, Virginia.

A meeting of the Authorized Onsite Soil Evaluator Regulations Advisory Committee to make recommendations to the commissioner regarding AOSE/PE policies, procedures and programs.


Contact: Donna Tiller, Executive Secretary, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7470, FAX (804) 864-7475, e-mail donna.tiller@vdh.virginia.gov.

BOARD OF HEALTH PROFESSIONS

† **December 8, 2005 - 11 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A working meeting of the Advisory Committee Prescription Monitoring Program for the purpose of reviewing data collected for the Program Evaluation Workplan and a progress report on the enhancement and expansion of the program. An overview of Practitioner Notification Reports will be given. Public comments will be received during this meeting.


Contact: Ralph Orr, PMP Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9133, FAX (804) 662-9240, e-mail ralph.orr@dhp.virginia.gov.

December 16, 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.

VIRGINIA HIGHER EDUCATION TUITION TRUST FUND

† **December 9, 2005 - 10 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 5th Floor, Virginia College Savings Plan Board Room, Richmond, Virginia. 

A Virginia College Savings Plan Actuarial and Audit Committee meeting.

Contact: Nicole Douglas, Executive Assistant, Virginia Higher Education Tuition Trust Fund, James Monroe Bldg., 101 N. 14th St., 5th Floor, Richmond, VA, telephone (804) 786-3574, FAX (804) 786-2453, toll-free (888) 567-0540, (804) 786-2766/TTY , e-mail vcspinfo@virginia529.com.

† **December 9, 2005 - 11 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 5th Floor,
Virginia College Savings Plan Board Room, Richmond,
Virginia. ♿

A Virginia College Savings Plan Investment Advisory
Committee meeting.

Contact: Nicole Douglas, Executive Assistant, Virginia Higher
Education Tuition Trust Fund, James Monroe Bldg., 101 N.
14th St., 5th Floor, Richmond VA, telephone (804) 786-3574,
FAX (804) 786-2453, toll-free (888) 567-0540, (804) 786-
2766/TTY ☎, e-mail vcspinfo@virginia529.com.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **December 14, 2005 - 11 a.m.** -- Open Meeting
James Monroe Building, 101 N 14th Street, Richmond,
Virginia.

A special meeting to review SCHEV's legislative agenda.

Contact: Lee Ann Rung, State Council of Higher Education
for Virginia, 101 N 14th St., Richmond, VA 23219, telephone
(804) 225-2602, FAX (804) 371-7911, e-mail
leeannrung@schev.edu.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

† **November 29, 2005 - 10 a.m.** -- Open Meeting
Richmond Plaza Building, 110 South 7th Street, 4th Floor,
Auditorium, Richmond, Virginia. ♿

A meeting to discuss proposed wireless legislative
language.

Contact: Steve Marzolf, Public Safety Communications
Coordinator, Virginia Information Technologies Agency, 411
E. Franklin St., 5th Floor, Suite 500, Richmond, VA 23219,
telephone (804) 371-0015, FAX (804) 371-2277, toll-free (866)
482-3911, e-mail steve.marzolf@vita.virginia.gov.

Information Technology Investment Board

December 8, 2005 - 1 p.m. -- Open Meeting
Virginia Information Technologies Agency Operations Center,
110 S. 7th Street, Richmond, Virginia. ♿

A regular meeting.

Contact: Jennifer W. Hunter, Interim IT Investment Board
Executive Director, Virginia Information Technologies Agency,
110 S. 7th St., 3rd Floor, Richmond, VA 23219, telephone
(804) 343-9012, FAX (804) 343-9048, e-mail
jenny.hunter@vita.virginia.gov.

INNOVATIVE TECHNOLOGY AUTHORITY

† **December 7, 2005 - 1 p.m.** -- Open Meeting
Innovative Technology Authority, 2214 Rock Hill Road,
Herndon, Virginia. ♿

A meeting to elect board members.

Contact: June Portch, Operations Manager, Innovative
Technology Authority, 2214 Rock Hill Rd., Herndon, VA
20170, telephone (703) 689-3000, e-mail jportch@cit.org.

JAMESTOWN-YORKTOWN FOUNDATION

NOTE: CHANGE IN MEETING TIME

December 9, 2005 - Noon -- 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

January 11, 2006 - 9 a.m. -- Open Meeting
Cedar Lodge, 1601 Bon Air Road, Bon Air, Virginia.

Details will be provided closer to the meeting date.

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.

NOTE: CHANGE IN PUBLIC HEARING DATE

January 11, 2006 - 10 a.m. -- Public Hearing
Cedar Lodge, 1601 Bon Air Road, Bon Air, Virginia.

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.

Calendar of Events

DEPARTMENT OF LABOR AND INDUSTRY


Virginia Apprenticeship Council

December 8, 2005 - 10 a.m. -- Open Meeting
Confederate Hills Recreation Building, 302 Lee Avenue,
Highland Springs, Virginia.  (Interpreter for the deaf provided
upon request)

A regular meeting to discuss 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.state.va.us.

STATE LIBRARY BOARD


January 27, 2006 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond,
Virginia. 

Meetings of the board to discuss matters pertaining to the
Library of Virginia and the board. Committees of the board
will meet as follows:

8:15 a.m. - Public Library Development Committee,
Orientation Room
Publications and Educational Services Committee,
Conference Room B
Records Management Committee, Conference Room C

9:30 a.m. - Archival and Information Services Committee,
Orientation Room
Collection Management Services Committee, Conference
Room B
Legislative and Finance Committee, Conference Room C


10:30 a.m. - Library Board, Conference Room, 2M

Contact: Jean H. Taylor, Executive Secretary to the Librarian,
The Library of Virginia, 800 E. Broad St., Richmond, VA
23219-8000, telephone (804) 692-3535, FAX (804) 692-3594,
(804) 692-3976/TTY , e-mail jtaylor@lva.lib.va.us.

BOARD OF LONG-TERM CARE ADMINISTRATORS


November 29, 2005 - 9:30 a.m. -- CANCELED
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

A meeting to discuss general business matters and receive
information from the Long-Term Care Administrators Task
Force has been canceled.

Contact: Sandra Reen, Executive Director, Board of Long-
Term Care 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.


November 29, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

A meeting of the Special Conference Committee to hold an
informal conference. There will not be a public comment
period.

Contact: Cheri Emma-Leigh, Operations Manager,
Department of Health Professions, 6603 W. Broad St., 5th
Floor, Richmond, VA 23230, telephone (804) 662-7457, FAX
(804) 662-7246, (804) 662-7197/TTY , e-mail cheri.emma-
leigh@dhp.virginia.gov.


December 12, 2005 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

The Long-Term Care Administrators Task Force will meet to
discuss development of regulations. There will be a public
comment period during the first 15 minutes of the meeting.


Contact: Sandra Reen, Executive Director, Board of Long-
Term Care 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.

January 10, 2006 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

A meeting to discuss general business matters. There will
be a 15-minute public comment period during the beginning
of the meeting.

Contact: Sandra Reen, Executive Director, Board of Long-
Term Care 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.


LONGWOOD UNIVERSITY

† December 9, 2005 - 8:45 a.m. -- Open Meeting
Longwood University, 201 High Street, Lancaster Hall 102,
Stallard Board Room, Farmville, Virginia. 

Meetings of the following committees:

8:45 a.m. - Administration and Finance
10:45 a.m. - University Advancement
1 p.m. - Audit
1:45 p.m. - Administration, Finance and Facilities


Contact: Jeanne Hayden, Longwood University, Office of the
President, Longwood University, 201 High S., Farmville, VA
23909, telephone (434) 395-2005.

December 10, 2005 - 9 a.m. -- Open Meeting
Longwood University, 201 High Street, Lancaster Hall 102,
Stallard Board Room, Farmville, Virginia. 


A meeting to conduct routine business of the Board of
Visitors.

Contact: Jeanne Hayden, Longwood University, Office of the President, Longwood University, 201 High St., Farmville, VA 23909, telephone (434) 395-2004.


VIRGINIA MANUFACTURED HOUSING BOARD

January 19, 2006 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, The Jackson Center, 501 North Second Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular meeting to handle manufactured home claims and complaints and carry out administrative responsibilities of the Virginia Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis L. McIver, State Building Code Administrator, Virginia Manufactured Housing Board, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY , e-mail curtis.mciver@dhcd.virginia.gov.


MARINE RESOURCES COMMISSION

December 20, 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 commission meeting.

Contact: Jane McCroskey, Commission Secretary, Marine Resources Commission, 2600 Washington Avenue, 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

December 13, 2005 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia. 

A routine quarterly meeting required in the BMAS bylaws.

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

December 2, 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 30-120, Waivered Services**. The purpose of the proposed action is to combine the Elderly and Disabled Waiver with the Consumer-Directed Waiver.

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

Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680 or e-mail teja.stokes@dmas.virginia.gov.

† December 7, 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 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) 786-6035, (800) 343-0634/TTY , e-mail robert.knox@dmas.virginia.gov.


† January 27, 2006 - 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 adopt regulations entitled **12 VAC 30-120, Waivered Services**. The purpose of the proposed action is to conform the agency's regulations to recent federally approved changes to the Home and Community Based Services Mental Retardation Waiver Program that have resulted from the federally required waiver renewal process.

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

Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680 or e-mail teja.stokes@dmas.virginia.gov.

BOARD OF MEDICINE

December 1, 2005 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

December 2, 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 85-120, Regulations Governing the Licensure of Athletic Trainers**. The purpose of the proposed action is to require an applicant to hold current NATABOC certification for initial licensure.

Statutory Authority: §§ 54.1-2400, 54.1-2912.1 and 54.1-2957.4 of the Code of Virginia.

Calendar of Events

Public comments may be submitted until December 2, 2005, to William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

† **December 6, 2005 - 9:30 a.m.** -- Open Meeting
Clarion Hotel, 3315 Ordway Drive, Roanoke, Virginia.

† **December 7, 2005 - 9 a.m.** -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

† **December 14, 2005 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.📍

A Special Conference Committee will convene an informal conference to inquire into allegations that certain practitioners of medicine or the other healing arts may have violated certain laws and regulations governing the practice of medicine. Further, the committee may review cases with board staff for case disposition, including consideration of consent orders for settlement. The committee will meet in open and closed session pursuant to the Code of Virginia. Public comment will not be received.

Contact: Renee S. Dixon, Discipline Case Manager, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA, telephone (804) 662-7009, FAX (804) 662-9517, (804) 662-7197/TTY 📞, e-mail renee.dixon@dhp.virginia.gov.

December 16, 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

November 30, 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

December 1, 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

November 29, 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

December 1, 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

November 30, 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 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

November 29, 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.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **December 7, 2005 - 10 a.m.** -- Open Meeting
Southside Virginia Training Center, 26317 West Washington Street, Petersburg, Virginia. 


A regular meeting . A public comment period will be held.

Contact: Marlene A. Butler, State Board Secretary, State Mental Health, Mental Retardation and Substance Abuse Services Board, Jefferson Bldg., 1220 Bank St., 13th Floor, Richmond, VA 23219, telephone (804) 786-7945, FAX (804) 371-2308, e-mail marlene.butler@co.dmhmsas.virginia.gov.


DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

December 16, 2005 - 10 a.m. -- Public Hearing
Jefferson Building, 1220 Bank Street, 8th Floor Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the Synar Annual Report for the Virginia Substance Abuse Prevention and Treatment Block Grant Application for Federal Fiscal Year 2006. Copies of the report are available for review at the Office of Substance Abuse Services, Jefferson Building, Room 818, Richmond, Virginia, and at each community services board office. Comments may be made at the hearing or in writing by no later than December 16, 2005, to the Office of the Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), P.O. Box 1797, Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact Sterling Deal, Ph.D. Copies of oral presentations should be filed at the time of the hearing.

Contact: Sterling Deal, Ph.D., Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 371-2148, FAX (804) 786-9248, (804) 371-8977/TTY , e-mail sterling.deal@co.dmhmsas.virginia.gov.


VIRGINIA COMMISSION ON MILITARY BASES

† **December 1, 2005 - 2 p.m.** -- Open Meeting
VEDP, West Tower, Riverfront Plaza, 901 East Byrd Street,
20th Floor Presentation Room, Richmond, Virginia. 

The final meeting to hear reports from the Governor's BRAC Regional Working Groups.

Contact: Valerie Hubbard, Communications Manager, Virginia Commission on Military Bases, 901 E. Byrd St., 19th Floor, Richmond, Virginia 23219, telephone (804) 545-5716, FAX (804) 545-5701, e-mail vhubbard@yesvirginia.org.

STATE MILK COMMISSION

December 15, 2005 - 10:45 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Room 2063, Charlottesville, Virginia. 

A regular meeting to consider industry issues, distributor licensing, base transfers, and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify the agency meeting contact at least five working days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Washington Bldg., 1100 Bank St., Suite 1019, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 786-3779, e-mail edward.wilson@vdacs.virginia.gov.

VIRGINIA MUSEUM OF FINE ARTS


NOTE: CHANGE IN MEETING DATE

December 8, 2005 - 8 a.m. -- Open Meeting


NOTE: CHANGE IN LOCATION

January 3, 2006 - 8 a.m. -- Open Meeting

February 7, 2006 - 8 a.m. -- Open Meeting


Virginia Museum of Fine Arts, 200 North Boulevard, CEO 2nd Floor Meeting Room, Richmond, Virginia. 

An Executive Committee work session and a meeting for staff to update the Executive Committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

VIRGINIA MUSEUM OF NATURAL HISTORY

December 3, 2005 - 10 a.m. -- Open Meeting

Piedmont Arts Association, 215 Starling Avenue, Martinsville, Virginia. 

A meeting to include reports from standing board committees.

Contact: Cindy Gray, Director's Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112,

Calendar of Events

telephone (276) 666-8616, FAX (276) 632-6487, (276) 666-8638/TTY ☎, e-mail cgray@vmnh.net.

9512, (804) 662-7197/TTY ☎, e-mail jay.douglas@dhp.virginia.gov.

FOUNDATION FOR VIRGINIA'S NATURAL RESOURCES

† **December 15, 2005 - 10:30 a.m.** -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia.

The first meeting of the foundation.

Contact: Jay Gilliam, Chairman, Foundation for Virginia's Natural Resources, 7598 North Lee Highway, Raphine, VA 24472.

BOARD OF NURSING

December 5, 2005 - 9 a.m. -- Open Meeting
December 6, 2005 - 9 a.m. -- Open Meeting
December 13, 2005 - 9 a.m. -- Open Meeting
December 15, 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 or three 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.

January 23, 2006 - 9 a.m. -- Open Meeting
January 25, 2006 - 9 a.m. -- Open Meeting
January 26, 2006 - 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.

January 24, 2006 - 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-

JOINT BOARDS OF NURSING AND MEDICINE

December 7, 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.

OLD DOMINION UNIVERSITY

December 16, 2005 - 1 p.m. -- Open Meeting
Dominion University, Webb University Center, Old 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 by the board.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Old Dominion University, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

February 13, 2006 - 3 p.m. -- Open Meeting
Old Dominion University, Webb University Center, Norfolk, Virginia.📍

A regular meeting of the executive committee of the governing board of the institution to discuss business of the board and the institution as determined by the rector and the president. Public comment will not be received by the board.

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.

BOARD OF OPTOMETRY

† **December 9, 2005 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 3, Richmond, Virginia.📍

A meeting to receive a presentation on the Health Practitioner Intervention Program and discuss CELMO, OE Tracker, professional designation regulations/fees, possible addition of a CPT code and conduct any other general business as required. 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.

BOARD OF PHARMACY

December 1, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A meeting to consider regulatory and disciplinary matters. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Scott Russell, RPh, 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.

December 1, 2005 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

December 2, 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**, and adopt regulations entitled **18 VAC 110-50, Regulations Governing Wholesale Distributors, Manufacturers and Warehousemen**. The purpose of the proposed action is to establish more accountability for wholesale distribution of prescription drugs.

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public comments may be submitted until December 2, 2005, to Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

POLYGRAPH EXAMINERS ADVISORY BOARD

December 1, 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 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: Kevin Hoeft, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804)

VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

December 1, 2005 - 10 a.m. -- Open Meeting
Location to be announced. ♿

An Executive Committee meeting.

Contact: Sandra Smalls, Executive Assistant, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA, telephone (804) 786-0016, FAX (804) 786-1118, toll-free (800) 846-4464, (800) 846-4464/TTY ☎, e-mail sandra.smalls@vbpd.virginia.gov.

December 2, 2005 - 9 a.m. -- Open Meeting
Location to be announced.

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.

PESTICIDE CONTROL BOARD

November 30, 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 Pesticide Control Board intends to amend regulations entitled **2 VAC 20-51, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act**. The purpose of the proposed action is to review the regulation for effectiveness and continued need, including amending the regulation to (i) help reduce fraudulent examination activities by eliminating proctoring by private individuals; (ii) more clearly define application and training requirements; (iii) establish applicator categories in areas where needed for industry; (iv) meet EPA requirements; (v) establish recordkeeping requirements for not-for-hire pesticide applicators, as means of ensuring that all pesticides are stored and used safely; and (vi) amend the regulation for housekeeping purposes.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Contact: W. Wayne Surles, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558, FAX (804) 371-8598, toll-free 1-800-552-9963 or e-mail wayne.surles@vdacs.virginia.gov.

Calendar of Events

367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail kevin.hoeft@dpor.virginia.gov.

(804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reboard@dpor.virginia.gov.

BOARD OF PSYCHOLOGY

January 10, 2006 - 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. Comments will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

December 8, 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, 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.

REAL ESTATE APPRAISER BOARD

December 1, 2005 - 1 p.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 Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reappraisers@dpor.virginia.gov.

REAL ESTATE BOARD

December 1, 2005 - 9 a.m. -- Open Meeting
December 2, 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, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone

DEPARTMENT OF REHABILITATIVE SERVICES

Commonwealth Neurotrauma Initiative Trust Fund Advisory Board

December 9, 2005 - 10 a.m. -- Open Meeting
Forest Office Park, Culpepper Building, 1604 Santa Rosa Road, 1st Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Kristie Chamberlain, CNI Program Administrator, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond VA 23229, telephone (804) 662-7154, FAX (804) 662-7663, toll-free (800) 552-5019, (804) 552-5019/TTY ☎, e-mail kristie.chamberlain@dps.virginia.gov.

VIRGINIA RESOURCES AUTHORITY

December 13, 2005 - 9 a.m. -- Open Meeting
January 10, 2006 - 9 a.m. -- Open Meeting
8th and Main Building, 2nd Floor Conference Room, Richmond, Virginia.

A regular board meeting.

Contact: Trisha Henshaw, Office Manager, Virginia Resources Authority, 707 E. Main St., Suite 1350, Richmond, VA 23219, telephone (804) 644-3331, FAX (804) 644-3109, e-mail thenshaw@virginiareources.org.

STATE BOARD OF SOCIAL SERVICES

† **December 14, 2005 - 9 a.m.** -- Open Meeting
† **December 15, 2005 - 9 a.m.** -- Open Meeting
Chesterfield/Colonial Heights Department of Social Services, 9501 Lucy Corr Circle, Chesterfield, Virginia. ♿

A regular meeting.

Contact: Pat Rengnerth, 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.

BOARD OF SOCIAL WORK

December 15, 2005 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Classroom B, Lower Level, Richmond, Virginia. ♿

An informal conference to hear possible violations of the laws and regulations governing the practice of social work.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9914, FAX

(804) 662-7250, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

December 16, 2005 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A regularly scheduled meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9967, FAX (804) 662-7250, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

February 13, 2006 - 9 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. All meetings are subject to cancellation. 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: Mark N. Courtney, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail soilscientist@dpor.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

† **December 15, 2005 - 9 a.m.** -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. ♿

A combined workshop and regularly scheduled meeting to transact CTB business, such as permits, additions/deletions to the highway system, and other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups will be asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

Contact: Carol A. Mathis, Administrative Staff Assistant, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2701, e-mail carol.mathis@vdot.virginia.gov.

TREASURY BOARD

December 14, 2005 - 9 a.m. -- Open Meeting
Department of the Treasury, 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.

VIRGINIA CITIZEN-SOLDIER SUPPORT COUNCIL

† **December 13, 2005 - 10 a.m.** -- Open Meeting
Patrick Henry Building, 1111 East Broad Street, 3rd Floor, Conference Room, Richmond, Virginia. ♿

A regular meeting.

Contact: Doug Manley, Secretary of Public Safety, Department of Military Affairs, Fort Picket, Building 316, Blackstone, VA 23824-6316, telephone (434) 298-6405, e-mail douglas.manley@va.ngb.army.mil.

COUNCIL ON VIRGINIA'S FUTURE

December 16, 2005 - Noon -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

A regular meeting.

Contact: Carole Noe, Executive Assistant, 700 E. Franklin St., Suite 700, Richmond, VA 23219, telephone (804) 371-2346, e-mail cnoe@virginia.edu.

VIRGINIA WASTE MANAGEMENT BOARD

† **January 9, 2006 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia.

† **January 27, 2006** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled **9 VAC 20-85, Regulations Governing Management of Coal Combustion By-Products**. The purpose of the purpose of the proposed action is include (i) provisions for fossil fuel combustion products; (ii) discussion of possibly eliminating the regulation and placing all provision of the regulation into the Virginia Solid Waste Management Regulations or removing the provisions addressing coal ash from the VSWMR and consolidating the provisions of this regulation; and (iii) additional issues that are identified during the NOIRA comment period, the technical advisory committee meetings, and during the public comment period.


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


Contact: Michael Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone


Calendar of Events


(804) 698-4146, FAX (804) 698-4327 or e-mail mjdieter@deq.virginia.gov.


STATE WATER CONTROL BOARD

November 28, 2005 - 7 p.m. -- Open Meeting
Bowman Industrial Complex, 3304 Bourbon Street, 3rd Floor,
Fredericksburg, Virginia. 

November 29, 2005 - 7 p.m. -- Open Meeting
King William Fire and Rescue, Aylett, Virginia. 


January 3, 2006 - 3 p.m. -- Open Meeting
January 3, 2006 - 7 p.m. -- Open Meeting
Department of Environmental Quality, Northern Regional
Office, 13901, Crown Court, Woodbridge, Virginia. 

January 4, 2006 - 7 p.m. -- Open Meeting
Department of Environmental Quality, Tidewater Regional
Office, 5636 Southern Boulevard, Virginia Beach, Virginia. 

January 5, 2006 - 3 p.m. -- Open Meeting
January 5, 2006 - 7 p.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia. 

An information meeting on the General VPDES Permit for
Total Nitrogen and Total Phosphorus Discharges and
Nutrient Trading in the Chesapeake Bay Watershed.

Contact: Kyle Winter, State Water Control Board, P.O. Box
10009, Richmond, VA 23240, telephone (804) 698-4182, e-
mail kiwinter@deq.virginia.gov.


December 5, 2005 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia. 

January 13, 2006 - 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 25-800, Virginia Water
Protection General Permit for Minor Water Withdrawals**.
The purpose of the proposed action is to establish a general
Virginia Water Protection Permit for water withdrawals.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the
Code of Virginia.

Contact: Ellen Gilinsky, Department of Environmental Quality,
P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-
4375, FAX (804) 698-4032 or e-mail
egilinsky@deq.virginia.gov.


December 7, 2005 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room C, Richmond, Virginia. 

A regular meeting. Agenda and minibook to be posted at
least seven days before 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.

December 14, 2005 - 9:30 a.m. -- Open Meeting

January 10, 2006 - 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 a General VPDES Permit for Total Nitrogen
and Total Phosphorus Discharges and Nutrient Trading in
the Chesapeake Bay Watershed in Virginia (9 VAC 25-820)

Contact: Kyle Winter, State Water Control Board, P.O. Box
10009, Richmond, VA 23240, telephone (804) 698-4182, e-
mail kiwinter@deq.virginia.gov.


December 30, 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 amend regulations entitled **9 VAC 25-194, General
Virginia Pollutant Discharge Elimination System
(VPDES) Permit for Car Wash Facilities**. The purpose of
the proposed action is to reissue the existing general
VPDES permit for car wash facilities that expires on
October 15, 2007.


Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402
of the Clean Water Act; 40 CFR Parts 122, 123 and 124.

Contact: George Cosby, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4067, FAX (804) 698-4032 or e-mail
gecosby@deq.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

December 7, 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. The meeting is open
to the public; however, 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: 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


† **December 6, 2005 - 2 p.m.** -- Open Meeting
Renaissance Portsmouth Hotel, 425 Water Street,
Portsmouth, Virginia.  (Interpreter for the deaf provided upon
request)

A regular meeting. Public comment is limited to five minutes
per speaker and a written copy of the remarks is requested.

Contact: Gail Robinson, Virginia Workforce Council Liaison,
Virginia Workforce Council, 703 E. Main St., Richmond, VA
23219, telephone (804) 225-3070, FAX (804) 225-2190, (800)
828-1120/TTY , e-mail gail.robinson@vec.virginia.gov.


INDEPENDENT

VIRGINIA INDIGENT DEFENSE COMMISSION

November 29, 2005 - 11 a.m. -- Open Meeting
Virginia Indigent Defense Commission, 701 East Franklin
Street, Suite 1416, Richmond, Virginia. 

A meeting of the Budget Committee.


Contact: Danita Pryor, Office Manager, Virginia Indigent
Defense Commission, 701 E. Franklin St., Suite 1416,
Richmond, VA 23219, telephone (804) 225-3297, FAX (804)
371-8326, e-mail dpryor@idc.virginia.gov.

December 1, 2005 - 2 p.m. -- Open Meeting
Virginia Indigent Defense Commission, 701 East Franklin
Street, Suite 1416, Richmond, Virginia. 

A regular meeting.

Contact: Danita Pryor, Office Manager, Virginia Indigent
Defense Commission, 701 E. Franklin St., Suite 1416,
Richmond, VA 23219, telephone (804) 225-3297, FAX (804)
371-8326, e-mail dpryor@idc.virginia.gov.

STATE LOTTERY BOARD


† **January 11, 2006 - 9 a.m.** -- Open Meeting
State Lottery Department, 900 East Main Street, 13th Floor,
Richmond, Virginia. 

A regular meeting. There will be an opportunity for public
comment shortly after the meeting is convened.


Contact: Frank S. Ferguson, Director, Legislative and
Regulatory Affairs, State Lottery Department, 900 E. Main St.,
Richmond, VA 23219, telephone (804) 692-7901, FAX (804)
692-7905, e-mail fferguson@valottery.state.va.us.

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

Board for Protection and Advocacy


January 20, 2006 - 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)

A regular meeting. Public comment is welcomed by the
board and will be received beginning at 9 a.m. Public
comment will also be accepted by telephone. If you wish to
provide public comment via telephone, call Lisa Shehi,
Administrative Assistant at 1-800-552-3962 (Voice/TTY) or
e-mail at lisa.shehi@vopa.virginia.gov no later than January
6, 2006. 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 no later than January 6,
2006.


Contact: Lisa Shehi, Administrative Assistant, Virginia Office
for Protection and Advocacy, 1910 Byrd Avenue, Suite 5,
Richmond, VA, telephone (804) 225-2042, FAX (804) 662-
7431, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail
lisa.shehi@vopa.virginia.gov.


VIRGINIA RETIREMENT SYSTEM

NOTE: CHANGE IN MEETING DATE


December 6, 2005 - 12:30 p.m. -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East
Main Street, Richmond, Virginia. 

A regular meeting of the Optional Retirement Plan Advisory
Committee. No public comment will be received at the
meeting.


Contact: LaShaunda B. King, Executive Assistant, Virginia
Retirement System, 1200 E. Main St., Richmond, VA 23219,
telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888)
827-3847, (804) 344-3190/TTY , e-mail
lking@vrs.state.va.us.

December 14, 2005 - 3 p.m. -- Open Meeting
Virginia Retirement System Investment Department, 1111
East Main St., 3rd Floor, Richmond, Virginia. 

A special meeting of the Investment Advisory Committee.
No public comment will be received at the meeting.

Contact: Phyllis Henderson, Executive Assistant, Virginia
Retirement System, 1111 E. Main St., Richmond, VA 23219,
telephone (804) 697-6675, FAX (804) 786-1541, toll-free (888)
827-3847, (804) 344-3190/TTY , e-mail
phenderson@vrs.state.va.us.

NOTE: CHANGE IN MEETING LOCATION

December 15, 2005 - 9 a.m. -- Open Meeting
Virginia Retirement System, Investment Department, 1111
East Main Street, Richmond, Virginia. 


A regular meeting of the Board of Trustees. No public
comment will be received at the meeting.

Calendar of Events

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 COMMISSION ON ADMINISTRATIVE RULES

January 10, 2006 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Elizabeth Palen, 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: Nathan Hatfield, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

CHESAPEAKE BAY RESTORATION FUND ADVISORY COMMITTEE


November 30, 2005 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 3rd Floor East Conference Room, Richmond, Virginia. 


A regular meeting. For questions regarding the meeting agenda, contact Martin Farber or Gwen Foley, 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) 698-7410.

VIRGINIA CODE COMMISSION

NOTE: CHANGE IN MEETING DATE

December 8, 2005 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Senate Leadership Room, Richmond, Virginia. 


December 9, 2005 - 9 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. 

A meeting to continue work on the 2007 Code of Virginia reorganization project and the Title 3.1 recodification. A

brief public comment period will be scheduled at the end of the meeting.

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.


COMMITTEE ON EDUCATION

December 8, 2005 - 10 a.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 Bryan Stogdale, Division of Legislative Services, (804) 786-3591.

Contact: Barbara L. Regen, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.


JOINT SUBCOMMITTEE ON GUBERNATORIAL APPOINTMENTS

† December 1, 2005 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 3rd Floor West Conference Room, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Mary Spain, 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) 698-7410.

JOINT SUBCOMMITTEE STUDYING REDUCTION OF HIGHWAY ABATEMENT COSTS

December 12, 2005 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Alan Wambold, Division of Legislative Services, (804) 786-3591.

Contact: William L. Owen, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

JOINT SUBCOMMITTEE STUDYING THE PUBLIC RECORDS ACT

November 28, 2005 - 2 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 Lisa Wallmeyer, Division of Legislative Services, (804) 786-3591.

Contact: Lois V. Johnson, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

JOINT SUBCOMMITTEE PLANNING AND COORDINATING THE 200TH ANNIVERSARY CELEBRATION OF THE BIRTH OF ROBERT E. LEE

November 30, 2005 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda, contact Robie Ingram or Lisa Wallmeyer, Division of Legislative Services, (804) 786-3591.

Contact: Scott Maddrea, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

JOINT SUBCOMMITTEE STUDYING SCHOOL INFRASTRUCTURE K-12

November 29, 2005 - 3 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 Bryan Stogdale, Division of Legislative Services, (804) 786-3591.

Contact: Lori L. Maynard, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

VIRGINIA SMALL BUSINESS COMMISSION

† **November 28, 2005 - 6 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

A public hearing. 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: Patty Lung, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

December 1, 2005 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

The final meeting for 2005.

Contact: Lisa Wallmeyer, Executive Director, Joint Commission on Technology and Science, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail lwallmeyer@leg.state.va.us.

UNEMPLOYMENT COMPENSATION COMMISSION

November 29, 2005 - 1 p.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 Frank Munyan, Division of Legislative Services, (804) 786-3591.

Contact: Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

CHRONOLOGICAL LIST

OPEN MEETINGS

November 28

† Elections, State Board of Environmental Quality, Department of Public Records Act, Joint Subcommittee Studying the
† Small Business Commission, Virginia
Water Control Board, State

November 29

† Contractors, Board for
† Forensic Science, Department of
† Game and Inland Fisheries, Board of Indigent Defense Commission, Virginia
† Information Technologies Agency, Virginia
Long-Term Care Administrators, Board of Medicine, Board of
- Advisory Board on Occupational Therapy
- Advisory Board on Respiratory Care
School Infrastructure K-12, Joint Subcommittee Studying
Unemployment Compensation Commission
Water Control Board, State

November 30

Chesapeake Bay Restoration Fund Advisory Committee
Compensation Board
† Contractors, Board for
Education, Board of
† Environmental Quality, Department of
† Forensic Science, Board of
† Governor, Office of the
- Commission on Urbanized Transportation
Medicine, Board of
- Advisory Board on Acupuncture

Calendar of Events

- Advisory Board on Radiologic Technology
Robert E. Lee, Joint Subcommittee Planning and
Coordinating the 200th Anniversary Celebration of the
Birth of

December 1

† Aging, Commonwealth Council on
Conservation and Recreation, Department of
Contractors, Board for
† Education, Board of
Fire Services Board, Virginia
† Gubernatorial Appointments, Joint Subcommittee on
Indigent Defense Commission, Virginia
Medicine, Board of
- Advisory Board on Athletic Training
- Advisory Board on Physician Assistants
† Military Bases, Virginia Commission on
People with Disabilities, Board for
Pharmacy, Board of
Polygraph Examiners Advisory Board
Real Estate Appraiser Board
Real Estate Board
Technology and Science, Joint Commission on

December 2

Art and Architectural Review Board
† Correctional Education, Board of
† Counseling, Board of
Dentistry, Board of
Fire Services Board, Virginia
People with Disabilities, Board for
Real Estate Board

December 3

Museum of Natural History, Virginia

December 5

Alcoholic Beverage Control Board, State
Barbers and Cosmetology, Board for
Branch Pilots, Board for
Environmental Quality, Department of
Nursing, Board of

December 6

Alzheimer's Disease and Related Disorders Commission
Blind and Vision Impaired, Department for the
Branch Pilots, Board for
† Contractors, Board for
† Environmental Quality, Department of
Gaming Board, Charitable
† Medicine, Board of
Nursing, Board of
Retirement System, Virginia
† Workforce Council, Virginia

December 7

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
† Environmental Quality, Department of
Forestry, Board of
† Innovative Technology Authority
† Medicine, Board of
Nursing and Medicine, Joint Boards of
† Medical Assistance Services, Department of
† Mental Health, Mental Retardation and Substance Abuse
Services Board, State
Water Control Board, State

Waterworks and Wastewater Works Operators, Board for

December 8

Agriculture and Consumer Services, Board of
Air Pollution Control Board, State
Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Code Commission, Virginia
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
Criminal Justice Services Board
Dentistry, Board of
Education, Committee on
† Environmental Quality, Department of
† Health Professions, Board of
Information Technologies Agency, Virginia
- Information Technology Investment Board
Labor and Industry, Department of
Museum of Fine Arts, Virginia
Public Guardian and Conservator Advisory Board

December 9

Code Commission, Virginia
Dentistry, Board of
† Health, Department of
† Higher Education Tuition Trust Fund, Virginia
Jamestown-Yorktown Foundation
† Longwood University
† Optometry, Board of
Rehabilitative Services, Department of
- Commonwealth Neurotrauma Initiative Trust Fund
Advisory Board

December 10

Blind and Vision Impaired, Department for the
Longwood University

December 12

† Agriculture and Consumer Services, Department of
- Virginia Corn Board
Branch Pilots, Board for
Chesapeake Bay Local Assistance Board
† Environmental Quality, Department of
Highway Abatement Costs, Joint Subcommittee Studying
Reduction of
Long-Term Care Administrators, Board of

December 13

Accountancy, Board of
† Auctioneers Board
Contractors, Board for
Medical Assistance Services, Board of
Nursing, Board of
Resources Authority, Virginia
† Virginia Citizen-Soldier Support Council

December 14

† Agriculture and Consumer Services, Department of
- Consumer Affairs Advisory Committee
† Business Assistance, Department of
- Virginia Small Business Financing Authority
† Environmental Quality, Department of
Health, Department of
† Higher Education for Virginia, State Council of
† Medicine, Board of
Retirement System, Virginia
† Social Services, State Board of

Treasury Board
Water Control Board, State

December 15

† Agriculture and Consumer Services, Department of
- Virginia Soybean Board
† Contractors, Board for
Design-Build/Construction Management Review Board
Environmental Quality, Department of
Milk Commission, State
Nursing, Board of
Retirement System, Virginia
† Social Services, State Board of
Social Work, Board of
† Transportation Board, Commonwealth

December 16

Conservation and Recreation, Board of
Health Professions, Board of
Medicine, Board of
Old Dominion University
Social Work, Board of
Virginia's Future, Council on

December 19

Alcoholic Beverage Control Board

December 20

Marine Resources Commission

December 21

† Compensation Board
Health, Department of

January 3, 2006

Museum of Fine Arts, Virginia
Water Control Board, State

January 4

Water Control Board, State

January 5

† Air Pollution Control Board, State
† Environmental Quality, Department of
Water Control Board, State

January 6

Dentistry, Board of

January 10

Administrative Rules, Joint Commission on
Long-Term Care Administrators, Board of
Psychology, Board of
Resources Authority, Virginia
Water Control Board, State

January 11

Education, Board of
Juvenile Justice, Board of
† Lottery Board, State

January 12

Auctioneers Board

January 17

Corrections, Board of
Health, Department of

January 18

Community Colleges, State Board for
Corrections, Board of

January 19

Community Colleges, State Board for
Manufactured Housing Board, Virginia

January 20

Protection and Advocacy, Virginia Office for

- Board for Protection and Advocacy

January 23

Education, Board of
- Advisory Board on Teacher Education and Licensure
Nursing, Board of

January 24

Nursing, Board of

January 25

Nursing, Board of

January 26

Nursing, Board of

January 27

Library Board, State

January 31

† Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board

February 1

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

† Branch Pilots, Board for

February 2

† Branch Pilots, Board for

February 3

Dentistry, Board of

February 7

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

Museum of Fine Arts, Virginia

February 8

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

February 9

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

February 10

Dentistry, Board of

February 13

Old Dominion University
Soil Scientists and Wetland Professionals, Board for
Professional

February 15

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

† Education, Board of

PUBLIC HEARINGS

November 29

† Air Pollution Control Board, State

December 1

Medicine, Board of
Pharmacy, Board of

December 5

Water Control Board, State

Calendar of Events

December 8

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

December 9

† Air Pollution Control Board, State
† Waste Management Board, Virginia

December 16

Mental Health, Mental Retardation and Substance Abuse
Services, Department of

January 9

† Waste Management Board, Virginia

January 11

† Juvenile Justice, Board of

January 12

† Air Pollution Control Board, State

January 17

† Education, Board of