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Title 2. Agriculture			
2 VAC 5-20-10 through 2 VAC 5-20-40	Amended	22:11 VA.R. 1761-1764	3/10/06
2 VAC 5-20-30	Erratum	22:13 VA.R. 2153	--
2 VAC 5-390-180	Amended	22:14 VA.R. 2201	2/27/06
Title 4. Conservation and Natural Resources			
4 VAC 5-36-50	Erratum	22:14 VA.R. 2216	--
4 VAC 5-40-10 through 4 VAC 5-40-350	Repealed	22:21 VA.R. 2801-2804	7/26/06
4 VAC 5-60-10 through 4 VAC 5-60-170	Repealed	22:21 VA.R. 2805-2807	7/26/06
4 VAC 10-30-10 through 4 VAC 10-30-350	Added	22:21 VA.R. 2801-2804	7/26/06
4 VAC 10-40-10 through 4 VAC 10-40-170	Added	22:21 VA.R. 2805-2807	7/26/06
4 VAC 15-20-65	Added	22:22 VA.R. 3089	7/1/06
4 VAC 15-20-130	Amended	22:19 VA.R. 2599	7/1/06
4 VAC 15-20-160	Amended	22:19 VA.R. 2600	7/1/06
4 VAC 15-40-30	Amended	22:19 VA.R. 2601	7/1/06
4 VAC 15-40-200	Amended	22:19 VA.R. 2601	7/1/06
4 VAC 15-40-285	Added	22:19 VA.R. 2601	7/1/06
4 VAC 15-50-71	Amended	22:19 VA.R. 2601	7/1/06
4 VAC 15-50-110	Amended	22:19 VA.R. 2602	7/1/06
4 VAC 15-50-120	Amended	22:19 VA.R. 2602	7/1/06
4 VAC 15-70-10	Amended	22:19 VA.R. 2602	7/1/06
4 VAC 15-70-60	Added	22:19 VA.R. 2602	7/1/06
4 VAC 15-90-22	Added	22:19 VA.R. 2603	7/1/06
4 VAC 15-90-70	Amended	22:19 VA.R. 2603	7/1/06
4 VAC 15-90-80	Amended	22:19 VA.R. 2604	7/1/06
4 VAC 15-90-80	Amended	22:22 VA.R. 3091	7/1/06
4 VAC 15-90-90	Amended	22:19 VA.R. 2605	7/1/06
4 VAC 15-90-91	Added	22:19 VA.R. 2605	7/1/06
4 VAC 15-90-100 through 4 VAC 15-90-121	Repealed	22:19 VA.R. 2608-2609	7/1/06
4 VAC 15-90-141	Repealed	22:19 VA.R. 2609	7/1/06
4 VAC 15-90-160	Repealed	22:19 VA.R. 2609	7/1/06
4 VAC 15-90-170	Repealed	22:19 VA.R. 2609	7/1/06
4 VAC 15-90-190 through 4 VAC 15-90-220	Repealed	22:19 VA.R. 2609-2610	7/1/06
4 VAC 15-90-291	Added	22:19 VA.R. 2610	7/1/06
4 VAC 15-90-292	Added	22:19 VA.R. 2610	7/1/06
4 VAC 15-110-20	Amended	22:19 VA.R. 2613	7/1/06
4 VAC 15-120-10	Amended	22:19 VA.R. 2614	7/1/06
4 VAC 15-170-21	Added	22:19 VA.R. 2614	7/1/06
4 VAC 15-190-10	Amended	22:19 VA.R. 2614	7/1/06
4 VAC 15-200-10	Amended	22:19 VA.R. 2614	7/1/06
4 VAC 15-210-10 and 4 VAC 15-210-20	Amended	22:19 VA.R. 2615	7/1/06
4 VAC 15-230-21	Added	22:19 VA.R. 2615	7/1/06
4 VAC 15-230-40	Repealed	22:19 VA.R. 2615	7/1/06
4 VAC 15-230-61	Added	22:19 VA.R. 2616	7/1/06
4 VAC 15-240-10	Amended	22:19 VA.R. 2616	7/1/06
4 VAC 15-240-20	Amended	22:19 VA.R. 2616	7/1/06

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4 VAC 15-240-31	Amended	22:19 VA.R. 2616	7/1/06
4 VAC 15-320-25	Amended	22:19 VA.R. 2617	7/1/06
4 VAC 15-320-100	Amended	22:16 VA.R. 2370	5/17/06
4 VAC 15-330-50	Amended	22:19 VA.R. 2623	7/1/06
4 VAC 15-330-140	Amended	22:19 VA.R. 2623	7/1/06
4 VAC 15-330-160	Amended	22:19 VA.R. 2623	7/1/06
4 VAC 15-340-10	Amended	22:19 VA.R. 2624	7/1/06
4 VAC 15-340-30	Amended	22:19 VA.R. 2624	7/1/06
4 VAC 15-340-40	Amended	22:19 VA.R. 2624	7/1/06
4 VAC 15-360-10	Amended	22:19 VA.R. 2625	7/1/06
4 VAC 15-360-30	Amended	22:19 VA.R. 2626	7/1/06
4 VAC 15-360-70	Added	22:19 VA.R. 2626	7/1/06
4 VAC 20-20-20	Amended	22:10 VA.R. 1551	12/22/05
4 VAC 20-20-50	Amended	22:10 VA.R. 1551	12/22/05
4 VAC 20-20-50 emer	Amended	22:10 VA.R. 1682	12/28/05-1/27/06
4 VAC 20-20-50	Amended	22:12 VA.R. 2033	1/27/06
4 VAC 20-150-10 emer	Amended	22:20 VA.R. 2716	5/29/06-6/28/06
4 VAC 20-150-70 emer	Amended	22:20 VA.R. 2716	5/29/06-6/28/06
4 VAC 20-252-55	Amended	22:15 VA.R. 2280	3/2/06
4 VAC 20-252-150	Amended	22:15 VA.R. 2280	3/2/06
4 VAC 20-450-30	Amended	22:20 VA.R. 2704	5/26/06
4 VAC 20-530-10	Amended	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-20	Amended	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-20 emer	Amended	22:14 VA.R. 2208	3/2/06-3/31/06
4 VAC 20-530-20	Amended	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-23	Repealed	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-26	Repealed	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-29	Repealed	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-30	Amended	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-30 emer	Amended	22:14 VA.R. 2208	3/2/06-3/31/06
4 VAC 20-530-30	Amended	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-31	Added	22:12 VA.R. 2035	1/27/06
4 VAC 20-530-31 emer	Amended	22:14 VA.R. 2208	3/2/06-3/31/06
4 VAC 20-530-31	Amended	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-32 emer	Added	22:14 VA.R. 2209	3/2/06-3/31/06
4 VAC 20-530-32	Added	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-35	Repealed	22:12 VA.R. 2035	1/27/06
4 VAC 20-560-20 emer	Amended	22:16 VA.R. 2387	3/30/06-4/28/06
4 VAC 20-560-20	Amended	22:19 VA.R. 2626	4/28/06
4 VAC 20-560-40 emer	Amended	22:16 VA.R. 2388	3/30/06-4/28/06
4 VAC 20-560-40	Amended	22:19 VA.R. 2627	4/28/06
4 VAC 20-560-50 emer	Amended	22:16 VA.R. 2388	3/30/06-4/28/06
4 VAC 20-560-50	Amended	22:19 VA.R. 2628	4/28/06
4 VAC 20-720-40	Amended	22:10 VA.R. 1552	1/1/06
4 VAC 20-720-40 emer	Amended	22:12 VA.R. 2043	2/1/06-2/28/06
4 VAC 20-720-50	Amended	22:10 VA.R. 1552	1/1/06
4 VAC 20-720-50 emer	Amended	22:12 VA.R. 2043	2/1/06-2/28/06
4 VAC 20-720-70	Amended	22:10 VA.R. 1553	1/1/06
4 VAC 20-720-75	Amended	22:10 VA.R. 1553	1/1/06
4 VAC 20-900-25	Amended	22:10 VA.R. 1553	12/22/05
4 VAC 20-900-30	Amended	22:10 VA.R. 1554	12/22/05
4 VAC 20-910-45	Amended	22:10 VA.R. 1555	12/30/05
4 VAC 20-950-47 emer	Amended	22:10 VA.R. 1682	1/1/06-1/30/06
4 VAC 20-950-47	Amended	22:12 VA.R. 2035	2/1/06
4 VAC 20-950-48 emer	Amended	22:10 VA.R. 1683	1/1/06-1/30/06
4 VAC 20-950-48	Amended	22:12 VA.R. 2035	2/1/06

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4 VAC 20-1040-20	Amended	22:10 VA.R. 1555	1/1/06
4 VAC 20-1100-10 through 4 VAC 20-1100-30	Added	22:19 VA.R. 2628	7/1/06
4 VAC 25-31 (Forms)	Amended	22:16 VA.R. 2389	--
4 VAC 25-35 (Forms)	Amended	22:16 VA.R. 2389	--
4 VAC 25-40 (Forms)	Amended	22:16 VA.R. 2389	--
4 VAC 25-130 (Forms)	Amended	22:16 VA.R. 2390	--
Title 6. Criminal Justice and Corrections			
6 VAC 20-120-80	Amended	22:20 VA.R. 2704	7/12/06
6 VAC 20-190-10 through 6 VAC 20-190-200	Repealed	22:10 VA.R. 1556-1559	2/22/06
6 VAC 20-210-10 through 6 VAC 20-210-110	Repealed	22:10 VA.R. 1561-1562	2/22/06
6 VAC 20-220-20 through 6 VAC 20-220-80	Repealed	22:10 VA.R. 1559-1560	2/22/06
6 VAC 20-240-10 through 6 VAC 20-240-120	Added	22:11 VA.R. 1764-1768	3/8/06
6 VAC 20-260-10 through 6 VAC 20-260-360 emer	Added	22:12 VA.R. 2044-2053	2/20/06-2/19/07
6 VAC 40-20-10 through 6 VAC 40-20-200	Added	22:10 VA.R. 1556-1559	2/22/06
6 VAC 40-20 (Forms)	Added	22:16 VA.R. 2392	--
6 VAC 40-30-10 through 6 VAC 40-30-80	Added	22:10 VA.R. 1559-1560	2/22/06
6 VAC 40-30-10	Amended	22:21 VA.R. 2807	7/26/06
6 VAC 40-30-20	Amended	22:21 VA.R. 2807	7/26/06
6 VAC 40-30-50	Amended	22:21 VA.R. 2807	7/26/06
6 VAC 40-40-10 through 6 VAC 40-40-110	Added	22:10 VA.R. 1561-1562	2/22/06
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8 VAC 20-520-10	Repealed	22:21 VA.R. 2922	9/15/06
8 VAC 20-521-10 through 8 VAC 20-521-60	Added	22:21 VA.R. 2922-2924	9/15/06
8 VAC 20-660-10 through 8 VAC 20-660-40	Added	22:22 VA.R. 3092-3094	8/23/06
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9 VAC 5-50-250	Amended	22:10 VA.R. 1563	*
9 VAC 5-50-270	Amended	22:10 VA.R. 1563	*
9 VAC 5-50-280	Amended	22:10 VA.R. 1564	*
9 VAC 5-80-1100	Amended	22:10 VA.R. 1564	*
9 VAC 5-80-1110	Amended	22:10 VA.R. 1565	*
9 VAC 5-80-1310	Repealed	22:10 VA.R. 1569	*
9 VAC 5-80-1605	Amended	22:10 VA.R. 1571	*
9 VAC 5-80-1615	Amended	22:10 VA.R. 1571	*
9 VAC 5-80-1625	Amended	22:10 VA.R. 1583	*
9 VAC 5-80-1635	Added	22:10 VA.R. 1583	*
9 VAC 5-80-1645	Added	22:10 VA.R. 1584	*
9 VAC 5-80-1655	Added	22:10 VA.R. 1584	*
9 VAC 5-80-1665	Added	22:10 VA.R. 1584	*
9 VAC 5-80-1675	Added	22:10 VA.R. 1584	*
9 VAC 5-80-1685	Added	22:10 VA.R. 1584	*
9 VAC 5-80-1695	Added	22:10 VA.R. 1584	*
9 VAC 5-80-1700	Repealed	22:10 VA.R. 1585	*
9 VAC 5-80-1705	Added	22:10 VA.R. 1585	*
9 VAC 5-80-1710	Repealed	22:10 VA.R. 1586	*
9 VAC 5-80-1715	Added	22:10 VA.R. 1586	*
9 VAC 5-80-1720	Repealed	22:10 VA.R. 1586	*
9 VAC 5-80-1725	Added	22:10 VA.R. 1586	*
9 VAC 5-80-1730	Repealed	22:10 VA.R. 1586	*
9 VAC 5-80-1735	Amended	22:10 VA.R. 1586	*
9 VAC 5-80-1740	Repealed	22:10 VA.R. 1587	*
9 VAC 5-80-1745	Added	22:10 VA.R. 1587	*
9 VAC 5-80-1750	Repealed	22:10 VA.R. 1587	*
9 VAC 5-80-1755	Added	22:10 VA.R. 1587	*

* Notice of Suspension of Regulatory Process and Reopening of Public Comment Period (22:13 VA.R. 2131-2132)

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-80-1760	Repealed	22:10 VA.R. 1587	*
9 VAC 5-80-1765	Amended	22:10 VA.R. 1587	*
9 VAC 5-80-1770	Repealed	22:10 VA.R. 1588	*
9 VAC 5-80-1775	Added	22:10 VA.R. 1588	*
9 VAC 5-80-1780	Repealed	22:10 VA.R. 1590	*
9 VAC 5-80-1785	Amended	22:10 VA.R. 1590	*
9 VAC 5-80-1790	Repealed	22:10 VA.R. 1591	*
9 VAC 5-80-1795	Added	22:10 VA.R. 1591	*
9 VAC 5-80-1800	Repealed	22:10 VA.R. 1591	*
9 VAC 5-80-1805	Added	22:10 VA.R. 1591	*
9 VAC 5-80-1810	Repealed	22:10 VA.R. 1591	*
9 VAC 5-80-1815	Added	22:10 VA.R. 1591	*
9 VAC 5-80-1820	Repealed	22:10 VA.R. 1591	*
9 VAC 5-80-1825	Amended	22:10 VA.R. 1591	*
9 VAC 5-80-1830	Repealed	22:10 VA.R. 1592	*
9 VAC 5-80-1835	Added	22:10 VA.R. 1592	*
9 VAC 5-80-1845	Added	22:10 VA.R. 1593	*
9 VAC 5-80-1855	Added	22:10 VA.R. 1596	*
9 VAC 5-80-1840	Repealed	22:10 VA.R. 1593	*
9 VAC 5-80-1850	Repealed	22:10 VA.R. 1596	*
9 VAC 5-80-1860	Repealed	22:10 VA.R. 1597	*
9 VAC 5-80-1865	Added	22:10 VA.R. 1597	*
9 VAC 5-80-1870 through 9 VAC 5-80-1920	Repealed	22:10 VA.R. 1602	*
9 VAC 5-80-1925	Added	22:10 VA.R. 1602	*
9 VAC 5-80-1930	Repealed	22:10 VA.R. 1603	*
9 VAC 5-80-1935	Added	22:10 VA.R. 1603	*
9 VAC 5-80-1940	Repealed	22:10 VA.R. 1603	*
9 VAC 5-80-1945	Added	22:10 VA.R. 1603	*
9 VAC 5-80-1950	Repealed	22:10 VA.R. 1604	*
9 VAC 5-80-1955	Added	22:10 VA.R. 1604	*
9 VAC 5-80-1960	Repealed	22:10 VA.R. 1604	*
9 VAC 5-80-1965	Added	22:10 VA.R. 1604	*
9 VAC 5-80-1970	Repealed	22:10 VA.R. 1604	*
9 VAC 5-80-1975	Added	22:10 VA.R. 1604	*
9 VAC 5-80-1985	Added	22:10 VA.R. 1605	*
9 VAC 5-80-1995	Added	22:10 VA.R. 1605	*
9 VAC 5-80-2000 through 9 VAC 5-80-2020	Amended	22:10 VA.R. 1605-1617	*
9 VAC 5-80-2040 through 9 VAC 5-80-2070	Amended	22:10 VA.R. 1617-1620	*
9 VAC 5-80-2090	Amended	22:10 VA.R. 1620	*
9 VAC 5-80-2091	Added	22:10 VA.R. 1620	*
9 VAC 5-80-2110 through 9 VAC 5-80-2140	Amended	22:10 VA.R. 1621-1624	*
9 VAC 5-80-2141 through 9 VAC 5-80-2144	Added	22:10 VA.R. 1624-1634	*
9 VAC 5-80-2180	Amended	22:10 VA.R. 1634	*
9 VAC 5-80-2200 through 9 VAC 5-80-2240	Amended	22:10 VA.R. 1635-1637	*
9 VAC 20-170-70	Amended	22:21 VA.R. 2808	7/26/06
9 VAC 25-194-40	Amended	22:16 VA.R. 2372	5/17/06
9 VAC 25-194-70	Amended	22:16 VA.R. 2372	5/17/06
9 VAC 25-260-310	Amended	22:11 VA.R. 1768	1/12/06
9 VAC 25-260-410	Amended	22:11 VA.R. 1768	1/12/06
9 VAC 25-260-530	Amended	22:11 VA.R. 1768	1/12/06
9 VAC 25-660-10	Erratum	22:12 VA.R. 2063	--
9 VAC 25-660-10 through 9 VAC 25-660-100	Amended	22:21 VA.R. 2809-2824	8/1/06
9 VAC 25-660-60	Erratum	22:12 VA.R. 2063	--
9 VAC 25-660-70	Erratum	22:12 VA.R. 2063	--
9 VAC 25-660-95	Added	22:21 VA.R. 2817	8/1/06
9 VAC 25-670-10	Erratum	22:12 VA.R. 2063	--

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9 VAC 25-670-10 through 9 VAC 25-670-100	Amended	22:21 VA.R. 2824-2845	8/1/06
9 VAC 25-670-70	Erratum	22:12 VA.R. 2063	--
9 VAC 25-670-95	Added	22:21 VA.R. 2833	8/1/06
9 VAC 25-670-100	Erratum	22:12 VA.R. 2063	--
9 VAC 25-680-10 through 9 VAC 25-680-100	Amended	22:21 VA.R. 2845-2866	8/1/06
9 VAC 25-680-70	Erratum	22:12 VA.R. 2063	--
9 VAC 25-680-80	Erratum	22:12 VA.R. 2063	--
9 VAC 25-680-95	Added	22:21 VA.R. 2854	8/1/06
9 VAC 25-680-100	Erratum	22:12 VA.R. 2063	--
9 VAC 25-690-10 through 9 VAC 25-690-100	Amended	22:21 VA.R. 2867-2889	8/1/06
9 VAC 25-690-30	Erratum	22:12 VA.R. 2063	--
9 VAC 25-690-50	Erratum	22:12 VA.R. 2063	--
9 VAC 25-690-95	Added	22:21 VA.R. 2876	8/1/06
9 VAC 25-690-100	Erratum	22:12 VA.R. 2063	--
9 VAC 25-720-60	Erratum	22:12 VA.R. 2064	--
9 VAC 25-720-110	Amended	22:16 VA.R. 2378	5/17/06
9 VAC 25-720-120	Erratum	22:12 VA.R. 2064	--
9 VAC 25-780-30	Amended	22:21 VA.R. 2889	7/26/06
Title 10. Finance and Financial Institutions			
10 VAC 5-200-80	Amended	22:11 VA.R. 1769	3/1/06
10 VAC 5-160-10	Amended	22:18 VA.R. 2514	9/1/06
10 VAC 5-160-20	Amended	22:18 VA.R. 2514	9/1/06
10 VAC 5-160-30	Amended	22:18 VA.R. 2515	9/1/06
10 VAC 5-160-60	Added	22:18 VA.R. 2516	9/1/06
Title 11. Gaming			
11 VAC 10-20-240	Amended	22:11 VA.R. 1771	3/8/06
11 VAC 10-20-260	Amended	22:15 VA.R. 2281	3/7/06
11 VAC 10-70-20	Amended	22:20 VA.R. 2705	5/19/06-9/4/06
11 VAC 10-70-30	Amended	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-40	Amended	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-50	Repealed	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-60	Amended	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-70	Amended	22:20 VA.R. 2707	5/19/06-9/4/06
11 VAC 10-70-80	Amended	22:20 VA.R. 2707	5/19/06-9/4/06
11 VAC 10-70-90	Amended	22:20 VA.R. 2707	5/19/06-9/4/06
11 VAC 10-70-170	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 10-90-10	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 10-90-30	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 10-90-50	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 15-22-10 through 11 VAC 15-22-80	Amended	22:22 VA.R. 3095-3104	8/9/06
11 VAC 15-22-110	Amended	22:22 VA.R. 3104	8/9/06
11 VAC 15-22-120	Amended	22:22 VA.R. 3105	8/9/06
11 VAC 15-31-10 through 11 VAC 15-31-60	Amended	22:22 VA.R. 3106-3112	8/9/06
Title 12. Health			
12 VAC 5-590-370	Amended	22:15 VA.R. 2282	5/3/06
12 VAC 5-590-400	Amended	22:15 VA.R. 2306	5/3/06
12 VAC 5-590-410	Amended	22:15 VA.R. 2307	5/3/06
12 VAC 5-590-440	Amended	22:15 VA.R. 2310	5/3/06
12 VAC 5-590-530	Amended	22:21 VA.R. 2890	7/26/06
12 VAC 5-590-540, Appendices B and N	Amended	22:15 VA.R. 2313	5/3/06
12 VAC 30-50-10	Amended	22:16 VA.R. 2382	7/3/06
12 VAC 30-50-120	Amended	22:16 VA.R. 2383	7/3/06
12 VAC 30-50-140	Amended	22:16 VA.R. 2383	7/3/06
12 VAC 30-50-150	Amended	22:16 VA.R. 2385	7/3/06
12 VAC 30-60-40	Amended	22:22 VA.R. 3112	8/9/06

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12 VAC 30-60-350	Added	22:22 VA.R. 3112	8/9/06
12 VAC 30-80-40	Amended	22:14 VA.R. 2202	5/1/06
12 VAC 30-80-190	Amended	22:14 VA.R. 2204	5/1/06
12 VAC 30-80-190 emer	Amended	22:14 VA.R. 2209	5/1/06-4/30/07
12 VAC 30-90-41	Amended	22:22 VA.R. 3112	8/9/06
12 VAC 30-120-10 through 12 VAC 30-120-60	Repealed	22:10 VA.R. 1638	2/22/06
12 VAC 30-120-211	Amended	22:19 VA.R. 2629	6/28/06
12 VAC 30-120-213	Amended	22:19 VA.R. 2632	6/28/06
12 VAC 30-120-215	Amended	22:19 VA.R. 2633	6/28/06
12 VAC 30-120-217	Amended	22:19 VA.R. 2637	6/28/06
12 VAC 30-120-219	Amended	22:19 VA.R. 2639	6/28/06
12 VAC 30-120-221	Amended	22:19 VA.R. 2640	6/28/06
12 VAC 30-120-223	Amended	22:19 VA.R. 2641	6/28/06
12 VAC 30-120-225	Amended	22:19 VA.R. 2643	6/28/06
12 VAC 30-120-227	Amended	22:19 VA.R. 2647	6/28/06
12 VAC 30-120-229	Amended	22:19 VA.R. 2648	6/28/06
12 VAC 30-120-231	Amended	22:19 VA.R. 2649	6/28/06
12 VAC 30-120-233	Amended	22:19 VA.R. 2650	6/28/06
12 VAC 30-120-237	Amended	22:19 VA.R. 2653	6/28/06
12 VAC 30-120-241	Amended	22:19 VA.R. 2654	6/28/06
12 VAC 30-120-243	Repealed	22:19 VA.R. 2656	6/28/06
12 VAC 30-120-245	Amended	22:19 VA.R. 2658	6/28/06
12 VAC 30-120-247	Amended	22:19 VA.R. 2658	6/28/06
12 VAC 30-120-249	Amended	22:19 VA.R. 2660	6/28/06
12 VAC 30-120-490 through 12 VAC 30-120-550	Repealed	22:10 VA.R. 1638	2/22/06
12 VAC 30-120-900 through 12 VAC 30-120-980	Added	22:10 VA.R. 1638-1661	2/22/06
12 VAC 30-141-500	Amended	22:16 VA.R. 2385	7/3/06
12 VAC 35-45-10	Amended	22:10 VA.R. 1684	12/30/05-12/29/06
12 VAC 35-45-70 emer	Amended	22:10 VA.R. 1685	12/30/05-12/29/06
12 VAC 35-45-80 emer	Amended	22:10 VA.R. 1685	12/30/05-12/29/06
12 VAC 35-45-210 emer	Added	22:10 VA.R. 1686	12/30/05-12/29/06
12 VAC 35-105-20 emer	Amended	22:10 VA.R. 1686	12/30/05-12/29/06
12 VAC 35-105-30 emer	Amended	22:10 VA.R. 1693	12/30/05-12/29/06
12 VAC 35-105-590 emer	Amended	22:10 VA.R. 1693	12/30/05-12/29/06
12 VAC 35-105-660 emer	Amended	22:10 VA.R. 1694	12/30/05-12/29/06
Title 13. Housing			
13 VAC 5-51-132	Amended	22:20 VA.R. 2709	7/12/06
13 VAC 5-63-40	Amended	22:20 VA.R. 2710	7/12/06
13 VAC 5-63-480	Amended	22:20 VA.R. 2712	7/12/06
13 VAC 6-20-10	Amended	22:10 VA.R. 1679	4/12/06
13 VAC 6-20-80	Amended	22:10 VA.R. 1680	4/12/06
13 VAC 6-20-120	Amended	22:10 VA.R. 1680	4/12/06
13 VAC 6-20-350	Amended	22:10 VA.R. 1680	4/12/06
Title 14. Insurance			
14 VAC 5-260 (Forms)	Amended	22:22 VA.R. 3140	--
Title 16. Labor and Employment			
16 VAC 25-90-1910.6	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.106	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.142	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.178	Amended	22:18 VA.R. 2517	6/15/06
16 VAC 25-90-1910.243	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.254	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.265	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.1000	Amended	22:18 VA.R. 2519	6/15/06
16 VAC 25-90-1910.1026	Added	22:18 VA.R. 2519	6/15/06

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16 VAC 25-100-1915.1000	Amended	22:18 VA.R. 2519	6/15/06
16 VAC 25-100-1915.1026	Added	22:18 VA.R. 2519	6/15/06
16 VAC 25-120-1917.1	Amended	22:18 VA.R. 2519	6/15/06
16 VAC 25-130-1918.1	Amended	22:18 VA.R. 2519	6/15/06
16 VAC 25-175-1926, Appendix B of Subpart R	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926, Appendix A to Subpart W	Adding	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.55	Added	22:18 VA.R. 2519	6/15/06
16 VAC 25-175-1926.754	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.1002	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.1003	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.1126	Added	22:18 VA.R. 2519	6/15/06
16 VAC 25-190-1928, Appendix B to Subpart C	Added	22:18 VA.R. 2520	6/15/06
16 VAC 25-190-1928.51	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-190-1928.52	Added	22:18 VA.R. 2520	6/15/06
16 VAC 25-190-1928.53 and Appendix B to Subpart C	Added	22:18 VA.R. 2520	6/15/06
Title 17. Libraries and Cultural Resources			
17 VAC 10-30-10 through 17 VAC 10-30-160	Added	22:13 VA.R. 2132-2140	4/5/06
Title 18. Professional and Occupational Licensing			
18 VAC 5-21-10 through 18 VAC 5-21-40	Amended	22:22 VA.R. 3113-3118	8/9/06
18 VAC 5-21-20	Amended	22:22 VA.R. 3136	9/23/06
18 VAC 5-21-170	Amended	22:22 VA.R. 3118	8/9/06
18 VAC 30-20-80	Amended	22:14 VA.R. 2205	4/19/06
18 VAC 60-20-30	Amended	22:15 VA.R. 2320	5/3/06
18 VAC 65-20-60	Amended	22:21 VA.R. 2897	7/26/06
18 VAC 65-20-110	Amended	22:12 VA.R. 2036	3/22/06
18 VAC 65-20-500	Amended	22:21 VA.R. 2897	7/26/06
18 VAC 65-20-580	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-10	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40 (Forms)	Amended	22:21 VA.R. 2900	--
18 VAC 65-40-40	Amended	22:12 VA.R. 2036	3/22/06
18 VAC 65-40-40	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-90	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-110	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-130	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-160	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-180	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-201	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-220	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-280	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-300	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-320	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-330	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-340	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 70-20 (Forms)	Amended	22:21 VA.R. 2911	--
18 VAC 70-20-10	Amended	22:21 VA.R. 2908	8/1/06
18 VAC 70-20-20	Repealed	22:21 VA.R. 2908	8/1/06
18 VAC 70-20-30	Amended	22:21 VA.R. 2908	8/1/06
18 VAC 70-20-50 through 18 VAC 70-20-90	Amended	22:21 VA.R. 2908-2910	8/1/06
18 VAC 70-20-105	Added	22:21 VA.R. 2911	8/1/06
18 VAC 70-20-110	Amended	22:21 VA.R. 2911	8/1/06
18 VAC 70-20-140	Amended	22:21 VA.R. 2911	8/1/06
18 VAC 70-20-150	Amended	22:21 VA.R. 2911	8/1/06
18 VAC 76-10-20	Amended	22:22 VA.R. 3120	6/19/06
18 VAC 76-10-65	Amended	22:22 VA.R. 3120	6/19/06
18 VAC 85-10-10 through 18 VAC 85-10-110	Erratum	22:15 VA.R. 2324	--
18 VAC 85-20-400 emer	Added	22:10 VA.R. 1695	12/21/05-12/20/06

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-20-410 emer	Added	22:10 VA.R. 1696	12/21/05-12/20/06
18 VAC 85-20-420 emer	Added	22:10 VA.R. 1696	12/21/05-12/20/06
18 VAC 85-130-10 through 18 VAC 85-130-170 emer	Added	22:10 VA.R. 1696-1700	12/21/05-12/20/06
18 VAC 90-20-30	Amended	22:12 VA.R. 2037	3/22/06
18 VAC 90-20-120	Amended	22:21 VA.R. 2915	7/26/06
18 VAC 90-25-80	Amended	22:12 VA.R. 2037	3/22/06
18 VAC 90-30-50	Amended	22:12 VA.R. 2038	3/22/06
18 VAC 90-40-70	Amended	22:12 VA.R. 2038	3/22/06
18 VAC 90-50-30	Amended	22:12 VA.R. 2038	3/22/06
18 VAC 95-20-130	Amended	22:13 VA.R. 2141	4/5/06
18 VAC 105-20-5	Amended	22:20 VA.R. 2714	7/12/06
18 VAC 105-20-10	Amended	22:20 VA.R. 2714	7/12/06
18 VAC 105-20-15	Amended	22:20 VA.R. 2714	7/12/06
18 VAC 105-20-16	Amended	22:20 VA.R. 2715	7/12/06
18 VAC 105-20-20	Amended	22:13 VA.R. 2141	4/5/06
18 VAC 110-20-20	Amended	22:15 VA.R. 2321	5/3/06
18 VAC 110-20-20	Erratum	22:16 VA.R. 2399	--
18 VAC 110-20-275	Amended	22:21 VA.R. 2926	9/10/06
18 VAC 110-20-710	Amended	22:21 VA.R. 2927	9/10/06
18 VAC 110-30-10	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-15	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-15	Amended	22:15 VA.R. 2322	5/3/06
18 VAC 110-30-15	Erratum	22:16 VA.R. 2399	--
18 VAC 110-30-20	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-30	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-35	Repealed	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-40	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-50	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-80	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-110	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-130	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-150	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-170 through 18 VAC 110-30-220	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-240	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-260	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-270	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 112-20-130	Amended	22:13 VA.R. 2141	4/5/06
18 VAC 112-20-150	Amended	22:13 VA.R. 2142	4/5/06
18 VAC 115-20-20	Amended	22:14 VA.R. 2206	4/19/06
18 VAC 115-20-106	Amended	22:12 VA.R. 2039	3/22/06
18 VAC 115-30-30	Amended	22:14 VA.R. 2206	4/19/06
18 VAC 115-40-20	Amended	22:14 VA.R. 2207	4/19/06
18 VAC 115-50-20	Amended	22:14 VA.R. 2207	4/19/06
18 VAC 115-50-96	Amended	22:12 VA.R. 2040	3/22/06
18 VAC 115-60-20	Amended	22:14 VA.R. 2207	4/19/06
18 VAC 115-60-116	Amended	22:12 VA.R. 2041	3/22/06
18 VAC 120-40-40	Amended	22:11 VA.R. 1779	4/23/06
18 VAC 120-40-50	Amended	22:11 VA.R. 1779	4/23/06
18 VAC 125-20-30	Amended	22:11 VA.R. 1772	3/8/06
18 VAC 125-30-20	Amended	22:11 VA.R. 1773	3/8/06
18 VAC 150-20-100	Amended	22:21 VA.R. 2916	7/26/06
Title 19. Public Safety			
19 VAC 30-20-40	Amended	22:10 VA.R. 1663	3/1/06
19 VAC 30-20-80	Amended	22:10 VA.R. 1663	3/1/06
19 VAC 30-20-205	Added	22:10 VA.R. 1663	3/1/06
19 VAC 30-20-220	Amended	22:10 VA.R. 1663	3/1/06

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
19 VAC 30-20-250	Amended	22:10 VA.R. 1663	3/1/06
Title 20. Public Utilities and Telecommunications			
20 VAC 5-313-10 through 20 VAC 5-313-40	Added	22:11 VA.R. 1775-1777	1/5/06
Title 22. Social Services			
22 VAC 40-90-10 through 22 VAC 40-90-40	Amended	22:22 VA.R. 3121-3122	9/1/06
22 VAC 40-141-20	Amended	22:10 VA.R. 1664	2/22/06
22 VAC 40-141-30	Amended	22:10 VA.R. 1664	2/22/06
22 VAC 40-141-80 through 22 VAC 40-141-90	Amended	22:10 VA.R. 1664-1666	2/22/06
22 VAC 40-141-110 through 22 VAC 40-141-210	Amended	22:10 VA.R. 1666-1672	2/22/06
22 VAC 40-191-10	Amended	22:22 VA.R. 3123	9/1/06
22 VAC 40-191-20	Amended	22:22 VA.R. 3125	9/1/06
22 VAC 40-191-40 through 22 VAC 40-191-70	Amended	22:22 VA.R. 3126-3131	9/1/06
22 VAC 40-191-90	Amended	22:22 VA.R. 3131	9/1/06
22 VAC 40-191-100	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-191-120	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-191-130	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-191-150	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-330-10 through 22 VAC 40-330-30	Repealed	22:22 VA.R. 3136-3138	9/23/06
22 VAC 40-340-10 and 22 VAC 40-340-20	Repealed	22:22 VA.R. 3138-3139	9/23/06
Title 24. Transportation and Motor Vehicles			
24 VAC 30-41 (Forms)	Amended	22:21 VA.R. 2921	--
24 VAC 30-41-220	Amended	22:21 VA.R. 2917	7/26/06
24 VAC 30-41-230	Amended	22:21 VA.R. 2917	7/26/06
24 VAC 30-41-290	Amended	22:21 VA.R. 2917	7/26/06
24 VAC 30-41-300	Amended	22:21 VA.R. 2918	7/26/06
24 VAC 30-41-310	Amended	22:21 VA.R. 2918	7/26/06
24 VAC 30-41-320	Amended	22:21 VA.R. 2918	7/26/06
24 VAC 30-41-430	Amended	22:21 VA.R. 2919	7/26/06
24 VAC 30-41-520	Amended	22:21 VA.R. 2920	7/26/06
24 VAC 30-41-650	Amended	22:21 VA.R. 2920	7/26/06
24 VAC 30-121-10 through 24 VAC 30-121-40	Added	22:10 VA.R. 1672-1676	2/22/06
24 VAC 30-400-10 through 24 VAC 30-400-40	Repealed	22:13 VA.R. 2142	2/14/06
24 VAC 30-401-10 through 24 VAC 30-401-40	Added	22:13 VA.R. 2142-2143	2/14/06

PETITIONS FOR RULEMAKING

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Initial Agency Notice

Title of Regulation: 9 VAC 25-720. Water Quality Management Planning Regulation.

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

Name of Petitioner: Steven J. Dugent, Tyson Foods, Inc., Complex Environmental Manager.

Nature of Petitioner's Request: Amend the total phosphorus (TP) waste load allocation established in 9 VAC 25-720 (WQMP Regulation) for the Tysons-Glen Allen plant. In November 2005, this facility's discharge permit was reissued with a TP limit of 409 lbs/yr, based on a total maximum daily load (TMDL) study. The TMDL allocation was determined in relation to the sustainable phosphorus levels in the nearby receiving stream that would be protective of water quality. During this time, the TP waste load allocation under 9 VAC 25-720 was being finalized, with an underlying assumption that the TMDL requirement would also serve as the WQMP allocation. In other words, the WQMP allocation associated with the total James basin nutrient loads would not be more stringent than what was necessary to protect local water quality. It is now apparent that the WQMP allocation (TP = 326 lbs/yr) used a differing assumption for the design flow figure, which is affected by the fact that the facility is operated fewer than seven days per week, but the allocation is expressed in pounds per year. The design flow and TP concentration bases for the TMDL and WQMP waste load allocations must be reviewed and made consistent, with the result being an identical figure of 409 lbs/yr for both discharge limitations.

Agency's Plan for Disposition of Request: The department is public noticing receipt of the petition and seeking public comment on the petition. Upon close of the public comment period, comments received will be reviewed and a decision made on initiating a rulemaking or placing the petition on the board's next meeting agenda for their consideration.

Public comments may be submitted until August 14, 2006.

Agency Contact: John M. Kennedy, Chesapeake Bay Program Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4312, FAX (804) 698-4116, toll free 1-800-592-5482, or e-mail jmkennedy@deq.virginia.gov.

VA.R. Doc. No. R06-290; Filed July 5, 2006, 11:48 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Agency Decision

Title of Regulation: 18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic.

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

Name of Petitioner: Beryl Owens, M.D.

Nature of Petitioner's Request: Amend regulations to waive CE requirements for a practitioner serving as a medical examiner and not treating live patients.

Agency Decision: Request granted.

Statement of Reasons for Decision: The board will publish a Notice of Intended Regulatory Action to initiate amending its rules to grant such a waiver from CME for doctors working only as medical examiners.

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

VA.R. Doc. No. R06-231; Filed June 30, 2006, 8:40 a.m.

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to consider repealing regulations entitled **6 VAC 20-171, Regulations Relating to Private Security Services**, and promulgating regulations entitled **6 VAC 20-172, Regulations Relating to Private Security Services**. The purpose of the proposed action is to conduct a comprehensive review and replacement of existing regulations 6 VAC 20-171. Due to the extensive nature of the amendments, the board will promulgate these regulations under a new number, 6 VAC 20-172 to replace 6 VAC 20-171. This review is based on legislative actions that require incorporation of regulations for detector canine credentials and on a comprehensive review to amend and revise the rules mandating and prescribing standards, requirements, and procedures that serve to protect the citizens of the Commonwealth from unqualified, unscrupulous and incompetent persons engaging in the activities of private security services. Regulations will also be established in order to incorporate the requirements for explosives and narcotic detector canine handlers as established in the Code of Virginia.

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

Statutory Authority: § 9.1-141 of the Code of Virginia.

Public comments may be submitted until August 9, 2006.

Contact: Lisa McGee, Regulatory Program Manager, Department of Criminal Justice Services, 202 N. 9th St., Richmond, VA 23219, telephone (804) 371-2419, FAX (804) 786-6344 or e-mail lisa.mcgee@dcjs.virginia.gov.

VA.R. Doc. No. R06-269; Filed June 15, 2006, 10:58 a.m.

BOARD OF FORENSIC SCIENCE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Forensic Science intends to consider promulgating regulations entitled **6 VAC 40-50, Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material**. The purpose of the proposed action is to establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the department in accordance with § 19.2-

188.1 B of the Code of Virginia, which became effective July 1, 2006. Section 19.2-188.1 B of the Code of Virginia provides that the Department of Forensic Science shall approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of § 18.2-250.1 of the Code of Virginia regarding whether any plant material, the identity of which is at issue, is marijuana.

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

Statutory Authority: §§ 9.1-1110 and 19.2-188.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 23, 2006.

Contact: Katya N. Herndon, Regulatory Coordinator, Department of Forensic Science, 700 N. 5th St., Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857 or e-mail katya.herndon@dfs.virginia.gov.

VA.R. Doc. No. R06-284; Filed June 29, 2006, 2:58 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

† Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board of Medicine has WITHDRAWN the Notices of Intended Regulatory Action for:

18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.

18 VAC 85-40, Regulations Governing the Practice of Respiratory Care Practitioners.

18 VAC 85-50, Regulations Governing the Practice of Physician Assistants.

18 VAC 85-80, Regulations Governing the Licensure of Occupational Therapists.

18 VAC 85-101, Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited.

18 VAC 85-110, Regulations Governing the Practice of Licensed Acupuncturists.

18 VAC 85-120, Regulations Governing the Licensure of Athletic Trainers.

Notices of Intended Regulatory Action

that were published in 22:1 VA.R. 6 September 19, 2005, to increase certain fees charged to applicants and licensees.

Contact: Elaine Yeatts, Senior Policy Analyst, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9943 or e-mail elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R06-26; Filed June 30, 2006, 8:40 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled **18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic**. The purpose of the proposed action is to address two regulatory issues that have been raised by the Credentials Committee in the process of considering applications for licensure - clinical training for an applicant who graduated from a nonapproved medical school and the current requirement that all three steps of the United States Medical Licensing Examination (USMLE) be taken within seven years.

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

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

NOTE: CHANGE IN COMMENT DEADLINE

Public comments may be submitted until 5 p.m. on July 26, 2006.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943 or e-mail william.harp@dhp.virginia.gov.

VA.R. Doc. No. R06-241; Filed 05/24/06, 9:26 a.m. and 5/30/06, 3:32 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled **18 VAC 85-40, Regulations Governing the Practice of Respiratory Care Practitioners**. The purpose of the proposed action is to clarify certain provisions of the regulation for ease of compliance and consistency with current practices. The board will consider rules for reactivation or reinstatement of inactive or lapsed licenses to provide requirements that will reasonably ensure competency for active practice.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2912.1 of the Code of Virginia.

NOTE: CHANGE IN COMMENT DEADLINE

Public comments may be submitted until 5 p.m. on July 26, 2006.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-

1712, telephone (804) 662-9908, FAX (804) 662-9943 or e-mail william.harp@dhp.virginia.gov.

VA.R. Doc. No. R06-242; Filed May 24, 2006, 9:26 a.m. and May 30, 2006, 3:32 p.m.

BOARD OF OPTOMETRY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to make technical changes to clarify the continuing education rules and consider some requirements for face-to-face or interactive hours.

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

Statutory Authority: § 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 23, 2006.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098 or e-mail elizabeth.carter@dhp.virginia.gov.

VA.R. Doc. No. R06-286; Filed June 30, 2006, 8:41 a.m.

BOARD OF COUNSELING

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled **18 VAC 115-20 Regulations Governing the Practice of Professional Counseling; 18 VAC 115-50 Regulations Governing the Practice of Marriage and Family Therapy; and 18 VAC 115-60 Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners**. The purpose of the proposed action is to amend existing regulations regarding supervision and residency specifications for the purpose of updating these requirements to meet the intended objectives of the board, which are to address what constitutes an approved supervisor, remove contradictory language regarding face-to-face supervision, and require registration of supervisors regardless of the exemption/nonexempt setting. The board also intends to amend existing regulations regarding prerequisites for licensure by endorsement to clarify existing requirements. Regulations must be consistent and fair in requirement and usage regardless of whether an applicant is applying for licensure through examination or endorsement.

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

Statutory Authority: § 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Notices of Intended Regulatory Action

Public comments may be submitted until 5 p.m. on August 23, 2006.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone: 804-662-9133, FAX: 804-662-9943, or e-mail: evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R06-287; Filed June 30, 2006, 8:40 a.m.

Statutory Authority: § 51.5-65 of the Code of Virginia.

Public comments may be submitted until July 27, 2006.

Contact: Susan D. Payne, Program Director, Vocational Rehabilitation, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3351 or e-mail susan.payne@dbvi.virginia.gov.

VA.R. Doc. No. R06-263; Filed June 6, 2006, 4:23 p.m.

TITLE 22. SOCIAL SERVICES

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 repealing **22 VAC 40-810, Fees for Court Services Provided by Local Departments of Social Services**. The purpose of the proposed action is to repeal the regulation because standards for fees for court services provided by local departments of social services are now included in a new comprehensive regulation, currently under promulgation. This outdated, standalone regulation is no longer needed.

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

Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

Public comments may be submitted until August 9, 2006.

Contact: Brenda Kerr, Adoption Program Manager, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7530, FAX (804) 726-7499 or e-mail brenda.kerr@dss.virginia.gov.

VA.R. Doc. No. R06-267; Filed June 16, 2006, 8:26 a.m.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department for the Blind and Vision Impaired intends to consider repealing **22 VAC 45-50, Regulation Governing Provisions of Services in Vocational Rehabilitation**, and promulgating regulations entitled **22 VAC 45-51, Regulations Governing Provisions of Services in Vocational Rehabilitation**. The purpose of the proposed action is to update the vocational rehabilitation regulations and provide clearer articulation of vocational rehabilitation regulations for citizens who are blind or vision impaired.

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

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Regulations: 12 VAC 30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-490).

12 VAC 30-120. Waivered Services (amending 12 VAC 30-120-700 through 12 VAC 30-120-750, 12 VAC 30-120-752, 12 VAC 30-120-753, 12 VAC 30-120-754, 12 VAC 30-120-756, 12 VAC 30-120-758, 12 VAC 30-120-760, 12 VAC 30-120-762, 12 VAC 30-120-764, 12 VAC 30-120-766, 12 VAC 30-120-770, 12 VAC 30-120-772, 12 VAC 30-120-774, 12 VAC 30-120-776; repealing 12 VAC 30-120-768, 12 VAC 30-120-780, 12 VAC 30-120-790).

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

Public Hearing Date: N/A - Public comments may be submitted until September 22, 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) 786-0427, 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 authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

This regulatory action is in follow up to an emergency regulatory package, pursuant to the authority § 2.2-4011 of the Code of Virginia, which mandates in the 2004 and 2005 Virginia Appropriation Acts (Item 326 W in each) that "Contingent upon approval by the Centers for Medicare and Medicaid Services [CMS] to implement the renewal of the Individual and Family Developmental Disabilities Support Waiver as developed by the Department and stakeholders, the Department of Medical Assistance Services shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment date of this act." The department implemented the necessary regulatory changes in the emergency regulatory package to be consistent with federal approval of the waiver application renewal. CMS approved the renewal of the IFDDS Waiver in February 2004. The approval included suggested changes to

the waiver that are included in this proposed regulatory package.

Purpose: The purpose of these proposed regulations is to (i) provide clarity and guidance to providers and other stakeholders; (ii) conform to the IFDDS Waiver renewal application as approved by CMS in February of 2004; (iii) comply with Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) and Department of Social Services (DSS) provider licensing standards; (iv) follow recommendations made by the Office of the Attorney General; and (v) support individual choice.

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.

Substance: The IFDDS Waiver regulations were revised to (i) provide clarity and guidance to providers and other stakeholders; (ii) conform to the IFDDS Waiver renewal application as approved by CMS in February of 2004; (iii) comply with Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) and Department of Social Services (DSS) provider licensing standards; (iv) follow recommendations made by the Office of the Attorney General; and (v) support individual choice. Throughout this document there are several references made to regulation language changes made "to be consistent with the Mental Retardation (MR) Waiver." In most cases this is a reference to changing language to conform it to MR Waiver language concerning the same issue in both waivers. In other cases changes were made to conform IFDDS procedures to match the same process already being carried out in the MR Waiver. All these conforming changes were approved by the Task Force.

Issues: The primary advantage of the proposed regulations is that they allow individuals with developmental disabilities 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 known disadvantages of these regulations to the agency, public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed regulation. The proposed amendments (i) allow recipients to receive both day support and supported employment services at the same time; (ii) no longer require that the primary unpaid caregiver live in the home of the recipient for respite care reimbursement

purposes; (iii) no longer require that consumer-directed employees receive annual CPR training and flu shots; (iv) modify the rules by which the new waiver slots are allocated; (v) require that personal care, respite care, and companion service aides be able to read and write in English to the extent necessary to accomplish the tasks associated; (vi) no longer require that service facilitators under consumer-directed model have consultation with a registered nurse; (vii) prohibit Personal Emergency Response System (PERS) providers from direct marketing to recipients; and (viii) clarify a number of requirements.

The proposed changes have been in effect since February 2005 under emergency regulations.

Result of analysis. The benefits likely exceed the costs for one or more proposed changes.

Estimated economic impact. These regulations contain rules for Medicaid's Individual and Family Developmental Disabilities Support Waiver (IFDDS). The IFDDS waiver provides a variety of services including in-home residential support, day support, personal care, respite care, skilled nursing, personal emergency response systems, crisis stabilization, supported employment, prevocational services under both an agency directed model and a consumer-directed model. The main goal of these services is to keep waiver recipients in their homes and communities and prevent institutionalization. Also, some services are designed to improve job skills and help with employment.

Most of the proposed amendments are mainly marginal revisions to existing requirements without creating significant economic effects. Even though the effects of most of proposed changes are insignificant, the ones with the non-negligible effects are discussed in this analysis.

One of the proposed changes will allow recipients to receive both day support and supported employment services at the same time. This change will make day support recipients eligible for supported employment services and supported employment recipients eligible for day support services. Currently 26 individuals are receiving day support services and five individuals are receiving supported employment services. While allowing recipients to receive both services at the same time may increase expenditures, an increase in one service may cause a decrease in the other offsetting the increase in expenditures. The net impact of this change will be determined by the number of individuals receiving the service that is not currently received by them and the offsetting reduction in the services they are currently receiving. Because these variables are behavioral in nature and individual specific, it is difficult to produce a good fiscal estimate for this change. The net fiscal impact will also depend on the unit costs of each service. Because day support services are paid by units corresponding to a range of hours and supported employment is paid by hours of service, producing a good estimate is further complicated. While the expenditures could increase somewhat, these individuals will be able to receive any one of these services if needed. Thus, there are benefits expected from this change.

Another change will no longer require the primary unpaid caregiver to live in the home of the recipient for respite care

reimbursement purposes. This being a less restrictive requirement, we may see an increase in the payments made for respite care services as respite care services may be provided to a greater number of recipients. However, the main goal of respite care is to provide temporary relief to the primary care provider. No longer requiring the primary care provider to stay with the recipient does not appear to contradict with the main goal of this service. Instead, providing respite care to those individuals who are not receiving it now seems to have the potential to add to the benefits by making respite care available to those who need it.

The department also proposes to no longer require that consumer-directed employees receive annual CPR training and flu shots. The net economic effect of this change depends on the actual change in the likelihood of preventing death through CPR applied by a consumer-directed employee and the actual change in the likelihood of spreading flu to the recipients through a consumer-directed employee. None of these probabilities are readily available to produce a reliable estimate at this time.

The proposed changes will modify the rules by which the new waiver slots are allocated. Currently, 55% of slots are allocated to budget level one, 40% are allocated to budget level two, and 5.0% are allocated for emergency cases.¹ The proposed changes will reduce budget level one slots to 50% and increase the emergency slots to 10 of the available slots. In order to reach this goal, every one of the three budget level one slots that become available will be allocated to emergency cases. The emergency slots are currently exhausted immediately after these slots become available. Thus, 5.0% does not appear to meet the current need leaving individuals in need of emergency mental retardation services vulnerable. The proposed changes will increase the chances that an individual needing emergency services will get services, while reducing the chances that an individual needing budget level one services will receive services. By definition of emergency, it could be inferred that providing emergency services to individuals who are in need should create net benefits. The fiscal effect, on the other hand, will depend on whether an emergency slot has higher costs than a budget level one slot.

Another change will require that personal care, respite care, and companion service aides be able to read and write in English to the extent necessary to accomplish the tasks associated. Requiring employees to be fluent in English to be able to perform their tasks would definitely create additional benefits. With this change, some potential employees with poor English skills may no longer be hired for tasks they cannot effectively perform.

The proposed changes will no longer require that service facilitators under the consumer-directed model provide registered nurse consultation services. Under the proposed changes, it will be sufficient for a consumer-directed service facilitator to inform the recipient's primary care physician that services are provided. This particular change will likely produce savings for the consumer-directed care providers as

¹ Budget level one slots are expected to cost less than \$25,000 while budget level two slots are expected to cost more.

Proposed Regulations

they will no longer be required to provide nursing consultation services. On the other hand, the expenditures for nursing consultation services will likely increase as they will be provided through the primary care physicians.

The proposed changes will also prohibit providers from direct marketing to recipients. Providers may obtain individual specific information identifying needs of a particular recipient and could possibly use this information for direct marketing purposes. Under the proposed rules such direct marketing activities will be prohibited. Thus, we could expect some net benefits to recipients as the likelihood that they may be exploited by a provider will be lower.

The rest of the proposed changes are clarifications of the current requirements and are not expected to produce any significant economic impacts other than reducing the chances for confusion.

Businesses and entities affected. Currently, the number of individuals IFDDS waiver could serve is 428 through approximately 21 case management providers and 135 waiver services providers.

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

Projected impact on employment. A number of proposed changes could have small employment effects. Allowing recipients to receive day support services and supported employment services may increase the quantity of services provided and increase demand for labor by providers. The requirement that personal care, respite care, and companion service aides have competency in English may make some labor market participants unfit for these positions reducing the supply of labor for these positions. No longer requiring direct care providers to offer nursing consultation services will likely reduce their demand for nurses but increase demand for nurses by physicians.

Effects on the use and value of private property. The proposed regulations may have some small impact on the asset value of some providers but a significant impact is not expected.

Small businesses: costs and other effects. All of the approximately 21 case management providers and 135 waiver services providers could be considered as small businesses. However, the proposed regulations are not likely to create any significant costs or other effects for the affected small businesses.

Small businesses: alternative method that minimizes adverse impact. The proposed regulations are not expected to have a significant adverse impact on small businesses.

Legal mandate. 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, and 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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 Virginia Department of Planning and Budget regarding the Individual and Family Developmental Disabilities Support (IFDDS) Waiver proposed regulation (12 VAC 30-50; 12 VAC 30-120). The department concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The proposed amendments (i) allow recipients to receive both day support and supported employment services at the same time; (ii) no longer require that the primary unpaid caregiver live in the home of the recipient for respite care reimbursement purposes; (iii) no longer require that consumer-directed employees receive annual CPR training and flu shots; (iv) modify the rules by which the new waiver slots are allocated; (v) require that personal care, respite care, and companion service aides be able to read and write in English to the extent necessary to accomplish the tasks associated; (vi) no longer require that service facilitators under consumer-directed model have consultation with a registered nurse; (vii) prohibit Personal Emergency Response System (PERS) providers from direct marketing to recipients; and (viii) clarify a number of requirements.

12 VAC 30-50-490. Case management (support coordination) for individuals with developmental disabilities, including autism.

A. Target group. Medicaid-eligible recipients individuals with related conditions who are six years of age and older and who are ~~eligible to receive~~ on the waiting list or are receiving services under the Individual and Family Developmental Disabilities Support (IFDDS) Waiver.

1. An active client for case management shall mean an individual for whom there is a plan of care in effect that requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including at least one face-to-face contact every 90 days. Billing can be submitted for an active client only for months in which direct or client-related contacts, activity or communications occur.

2. *The unit of service is one month. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management for institutionalized individuals may be billed for no more than two months in a 12-month cycle.*

B. Services will be provided in the entire state.

C. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Social Security Act (Act) is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services. ~~Support coordination Case management~~ services will be provided for ~~recipients Medicaid-eligible individuals~~ with related conditions who are *on the waiting list for or* participants in the home and community-based care IFDDS Waiver. ~~Support coordination Case management~~ services to be provided include:

1. Assessment and planning services, to include developing a consumer service plan (does not include performing medical and psychiatric assessment but does include referral for such assessments);

2. Linking the ~~recipient individual~~ to services and supports specified in the consumer service plan;

3. Assisting the ~~recipient individual~~ directly for the purpose of locating, developing, or obtaining needed services and resources;

4. Coordinating services with other agencies and providers involved with the ~~recipient individual~~;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills and use vocational, civic, and recreational services;

6. Making collateral contacts with the ~~recipient's individual's~~ significant others to promote implementation of the service plan and community adjustment;

7. Following up and monitoring to assess ongoing progress and ensure services are delivered;

8. Education and counseling that guides the ~~recipient individual~~ and develops a supportive relationship that promotes the service plan; and

9. Benefits counseling.

E. Qualifications of providers. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, specific provider qualifications are:

1. To qualify as a provider of services through DMAS for IFDDS Waiver ~~support coordination case management~~, the service provider must meet these criteria:

a. Have the administrative and financial management capacity to meet state and federal requirements;

b. Have the ability to document and maintain recipient case records in accordance with state and federal requirements; and

c. Be ~~certified enrolled~~ as an IFDDS ~~support coordination case management~~ agency by DMAS.

2. Providers may bill for Medicaid ~~support coordination case management~~ only when the services are provided by qualified ~~support coordinators case managers~~. The ~~support coordinator case manager~~ must possess a combination of developmental disability work experience or relevant education, which indicates that the individual possesses the following knowledge, skills, and abilities, at the entry level. These must be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The definition, causes, and program philosophy of developmental disabilities;

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills, training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

(3) Different types of assessments and their uses in program planning;

(4) ~~Recipients' Individuals'~~ rights;

(5) Local service delivery systems, including support services;

(6) Types of developmental disability programs and services;

(7) Effective oral, written, and interpersonal communication principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and the major components of a service plan.

b. Skills in:

(1) Interviewing;

(2) Negotiating with ~~recipient individuals~~ and service providers;

(3) Observing, recording, and reporting behaviors;

(4) Identifying and documenting a ~~recipient's an individual's~~ needs for resources, services, and other assistance;

(5) Identifying services within the established service system to meet the ~~recipient's individual's~~ needs;

(6) Coordinating the provision of services by diverse public and private providers;

(7) Analyzing and planning for the service needs of developmentally disabled persons;

(8) Formulating, writing, and implementing ~~recipient individual-specific individual~~ service plans to promote goal attainment for recipients with developmental disabilities; and

(9) Using assessment tools.

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c. Abilities to:

(1) Demonstrate a positive regard for recipients individuals and their families (e.g., ~~treating recipients as individuals~~, allowing risk taking, avoiding stereotypes of developmentally disabled people, respecting recipients' individuals' and families' privacy, believing recipients individuals can grow);

(2) Be persistent and remain objective;

(3) Work as a team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing positive duties under general supervision;

(5) Communicate effectively, orally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

3. *In addition, case managers who enroll with DMAS to provide case management services after (insert the effective date of these regulations) must possess a minimum of an undergraduate degree in a human services field. Providers who had a Medicaid participation agreement to provide case management prior to February 1, 2005, and who maintain that agreement without interruption may continue to provide case management using the KSA requirements effective prior to February 1, 2005.*

4. *Case managers who are employed by an organization must receive supervision within the same organization. Case managers who are self-employed must obtain one hour of documented supervision every three months when the case manager has active cases. The individual who provides the supervision to the case manager must have a master's level degree in a human services field and/or have five years of satisfactory experience in the field working with individuals with related conditions as defined in 42 CFR 435.1009. A case management provider cannot supervise another case management provider.*

5. *Case managers must complete eight hours of training annually in one or a combination of the areas described in the knowledge, skills and abilities (KSA) subdivision. Case managers must have documentation to demonstrate training is completed. The documentation must be maintained by the case manager for the purposes of utilization review.*

6. *Parents, spouses, or any person living with the individual may not provide direct case management services for their child, spouse or the individual with whom they live or be employed by a company that provides case management for their child, spouse, or the individual with whom they live.*

7. *A case manager may provide services facilitation services. In these cases, the case manager must meet all the case management provider requirements as well as the service facilitation provider requirements. Individuals and family/caregivers have the right to choose whether the case manager may provide services facilitation or to have a separate services facilitator and this choice must be clearly documented in the individual's record. If case managers are not services facilitation providers, the case manager must assist the individual and family/caregiver to locate an available services facilitator.*

8. *If the case manager is not serving as the individual's services facilitator, the case manager may conduct the assessments and reassessment for CD services if the individual or family/caregiver chooses. The individual's choice must be clearly documented in the case management record along with which provider is responsible for conducting the assessments and reassessments required for CD services.*

F. The state assures that the provision of case management (~~support coordination~~) services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of ~~support coordination~~ case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management (~~support coordination~~) services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

12 VAC 30-120-700. Definitions.

"Activities of daily living (ADL)" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. ~~A recipient's~~ *An individual's* degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12 VAC 30-110, Eligibility and Appeals, and 12 VAC 30-20-500 through 12 VAC 30-20-560.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the ~~consumer service~~ plan of care but not available under the State Plan for Medical Assistance that enable recipients individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to ~~their~~ *the* proper functioning of the specialized equipment.

~~"Attendant care" means long-term maintenance or support services necessary to enable the recipient to remain at or return home rather than enter or remain in an Intermediate Care Facility for the Mentally Retarded (ICF/MR). The recipient will be responsible for hiring, training, supervising and firing the personal attendant. If the recipient is unable to independently manage his own attendant care, a family caregiver can serve as the employer on behalf of the recipient. Recipients with cognitive impairments will not be able to manage their own care.~~

"Behavioral health authority" or "BHA" means the local agency, established by a city or county or a combination of counties or cities or cities and counties under Chapter 6 (§ ~~37.1-194~~ 37.2-600 et seq.) of Title 37.2 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.

"CARF" means *the Rehabilitation Accreditation Commission, formerly known as the Commission on Accreditation of Rehabilitation Facilities.*

"Case management" means *services as defined in 12 VAC 30-50-490.*

"Case manager" means *the individual on behalf of the community services board or behavioral health authority staff possessing a combination of mental retardation work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities, at the entry level, as established by the Department of Medical Assistance Services, 12 VAC 30-50-450 provider of case management services as defined in 12 VAC 30-50-490.*

"Centers for Medicare and Medicaid Services" or "CMS" means *the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.*

"Community-based care 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 developmentally disabled recipients who would otherwise require the level of care provided in an ICF/MR a variety of home and community-based services paid for by DMAS as authorized under a § 1915(c) waiver designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services to avoid ICF/MR placement.*

"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 5 (§ 37.1-194 37.2-500 et seq.) of Title 37.2 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 aide" means, for the purpose of these regulations, *a domestic servant who is also exempt from workers' compensation person who provides companion services.*

"Companion services" means *nonmedical care, supervision and socialization, provided to a functionally or cognitively impaired adult age 18 and older. The provision of companion services does not entail hands-on nursing care and is provided in accordance with a therapeutic goal in the consumer service plan of care. This shall not be the sole service used to divert recipients from institutional care.*

"Consumer directed companion care" means *nonmedical care, supervision and socialization provided to a functionally or cognitively impaired adult. The provision of companion services does not entail hands-on nursing care and is provided in accordance with a therapeutic goal in the consumer service plan. This shall not be the sole service used to divert recipients from institutional care. The recipient will be responsible for hiring, training, supervising, and firing the companion. If the recipient is unable to independently*

manage his own consumer directed care, a family caregiver can serve as the employer on behalf of the recipient.

"Consumer directed respite care" means *services given to caretakers of eligible individuals who are unable to care for themselves that are provided on an episodic or routine basis because of the absence or need for relief of those persons residing with the recipient who normally provide the care. The recipient will be responsible for hiring, training, supervising, and firing the personal attendant. If the recipient is unable to independently manage his own consumer directed respite care, a family caregiver can serve as the employer on behalf of the recipient.*

"Consumer-directed employee" means, for purposes of these regulations, *a person who provides consumer-directed services, personal care, companion services and/or respite care, who is also exempt from workers' compensation.*

"Consumer-directed services" means *personal care, companion services and/or respite care services where the individual or family/caregiver is responsible for hiring, training, supervising, and firing of the employee or employees.*

"Consumer-directed (CD) services facilitator" means *the provider contracted by enrolled with DMAS that who is responsible for ensuring development and monitoring of the CSP, management training, and review activities as required by DMAS for attendant care, consumer-directed companion care, and consumer directed respite care services.*

"Consumer service plan" or "CSP" means *that document addressing all needs of recipients of home and community-based care developmental disability services, in all life areas. Supporting documentation developed by service providers is to be incorporated in the CSP by the support coordinator. Factors to be considered when these plans are developed may include, but are not limited to, recipients' ages and levels of functioning.*

"Crisis stabilization" means *direct intervention to for persons with developmental disabilities related conditions who are experiencing serious psychiatric or behavioral problems challenges, or both, that jeopardize their current community living situation. This service must provide 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 recipients individuals and strengthen the current living situations so that recipients can individuals may be maintained in the community during and beyond the crisis period.*

"Current functional status" means *recipients' an individual's degree of dependency in performing activities of daily living.*

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

"DMAS staff" means *individuals DMAS employees who perform utilization review, recommendation of preauthorization for preauthorize service type and intensity, provide technical assistance, and review of recipient individual level of care criteria.*

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"DMHMRSAS" means 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 in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self care, physical development, services and support activities. *These services take place outside of the individual's home/residence.*

"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 IFDDS screening team to meet the eligibility requirements for the waiver, DMAS has approved the individual's plan of care and has assigned an available slot to the individual, and DSS has determined the individual's Medicaid eligibility for home and community-based services.

"Entrepreneurial model" means a small business employing eight or fewer individuals with disabilities on a shift and may involve interactions with the public and coworkers with disabilities.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act, necessary to ensure recipients' individuals' 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 recipients individuals.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines which that prescribe specific preventive and treatment services for Medicaid-eligible children as defined in 12 VAC 30-50-130.

"Face-to-face visit" means the case manager or service provider must meet with the individual in person and that the individual should be engaged in the visit to the maximum extent possible.

"Family/caregiver training" means training and counseling services provided to families or caregivers of recipients individuals receiving services in the IFDDS Waiver.

~~"Fiscal agent" means an agency or organization contracted by DMAS to handle entity handling employment, payroll, and tax responsibilities on behalf of recipients individuals who are receiving consumer-directed attendant, respite, and companion services.~~

"Home" means, for purposes of the IFDDS Waiver, an apartment or single family dwelling in which no more than two individuals who require services live with the exception of siblings living in the same dwelling with family. This does not include an assisted living facility or group home.

~~"Home and community-based care waiver services" means a variety of in-home home and community-based services reimbursed by DMAS as authorized under a § 1915(c) waiver designed to offer recipients individuals an alternative to institutionalization. Recipients Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services to avoid ICF/MR placement.~~

"ICF/MR" means a facility or distinct part of a facility certified 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 residents' total needs including physical, intellectual, social, emotional, and habilitation. An ICF/MR must provide active treatment, as that term is defined in 42 CFR 483.440(a).

"IFDDS screening team" means the persons employed by the entity under contract with DMAS who are responsible for performing level of care screenings for the IFDDS Waiver.

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

"In-home residential support services" means support provided primarily in the developmentally disabled recipient's individual's home, which includes training, assistance, and specialized supervision in enabling to enable the recipient individual to maintain or improve his health; assisting in performing recipient individual care tasks; training in activities of daily living; training and use of community resources; providing life skills training; and adapting behavior to community and home-like environments.

~~"Instrumental activities of daily living (IADL)" means social tasks (e.g., meal preparation, shopping, housekeeping, laundry, and money management). A recipient's degree of independence in performing these activities is part of determining appropriate level of care and services.~~

~~"Legal guardian" means a person who has been legally invested with the authority and charged with the duty to take care of, manage the property of, and protect the rights of a recipient who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the recipient has been determined to be incapacitated.~~

"Mental retardation" means, ~~a disability as defined by the American Association on Mental Retardation (AAMR), being substantially limited in present functioning as characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests itself before age 18. A diagnosis of mental retardation is made if the person's intellectual functioning level is approximately 70 to 75 or below, as diagnosed by a licensed clinical professional; and there are related limitations in two or more applicable adaptive skill areas; and the age of onset is 18 or below. If a valid IQ score is not possible, significantly subaverage intellectual capabilities means a level of performance that is less than that observed in the vast majority of persons of comparable background. In order to be valid, the assessment of the intellectual performance must be free of errors caused by motor, sensory, emotional, language, or cultural factors.~~

"MR Waiver" means the mental retardation waiver.

"Nursing services" means skilled nursing services listed in the consumer service plan which are ordered by a physician and required to prevent institutionalization, not otherwise available under the State Plan for Medical Assistance, are within the scope of the state's Nurse Practice Act (Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.)) of the Code of Virginia, and are provided by a registered professional nurse or by a licensed practical nurse under the supervision of a registered nurse who is licensed to practice in the state.

"Participating provider" means an institution, facility, agency, partnership, corporation, or association entity that meets the standards and requirements set forth by DMAS, and has a current, signed contract provider participation agreement with DMAS.

"Personal attendant" means, for purposes of this regulation, a domestic servant who is also exempt from Workers' Compensation.

"Pend" means delaying the consideration of an individual's request for authorization of services until all required information is received by DMAS.

"Person-centered planning" means a process, directed by the family or the individual with long-term care needs, intended to identify the strengths, capacities, preferences, needs and desired outcomes of the individual.

"Personal care agency provider" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing eligible recipients individuals with personal care aides who to provide personal care services.

"Personal care services" means long-term maintenance or support services necessary to enable recipients individuals to remain in or return to the community rather than enter an Intermediate Care Facility for the Mentally Retarded. Personal care services include assistance with activities of daily living, nutritional support, and the environmental maintenance necessary for recipients to remain in their homes

~~and in the community instrumental activities of daily living, access to the community, medication or other medical needs, and monitoring health status and physical condition. This does not include skilled nursing services with the exception of skilled nursing tasks that may be delegated in accordance with 18 VAC 90-20-420 through 18 VAC 90-20-460.~~

"Personal emergency response system (PERS)" is an electronic device that enables certain recipients individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those recipients 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.

"Plan of care" means a document developed by the individual or family/caregiver and the individual's case manager addressing all needs of individuals of home and community-based waiver services, in all life areas. Supporting documentation developed by waiver service providers is to be incorporated in the plan of care by the case manager. Factors to be considered when these plans are developed must include, but are not limited to, individuals' ages, levels of functioning, and preferences.

"Preauthorized" means the preauthorization agent has approved a service for initiation and reimbursement prior to the commencement of the service by the service provider.

"Primary caregiver" means the main person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation for such care.

"Qualified developmental disabilities professional" or "QDDP" means a professional who (i) possesses at least one year of documented experience working directly with individuals who have related conditions; (ii) is one of the following: a doctor of medicine or osteopathy, a registered nurse, a provider holding at least a bachelor's degree in a human service field including, but not limited to, sociology, social work, special education, rehabilitation engineering, counseling or psychology, or a provider who has documented equivalent qualifications; and (iii) possesses the required Virginia or national license, registration, or certification in accordance with his profession, if applicable.

~~"Qualified mental health professional" means a professional having: (i) at least one year of documented experience working directly with recipients who have developmental disabilities; (ii) at least 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.~~

"Related conditions" means those persons who have autism or who have a severe chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. It is attributable to:
 - a. Cerebral palsy or epilepsy; or
 - b. Any other condition, other than mental illness, found to be closely related to mental retardation because this condition

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results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

2. It is manifested before the person reaches age 22.
3. It is likely to continue indefinitely.
4. It results in substantial functional limitations in three or more of the following areas of major life activity:
 - a. Self-care.
 - b. Understanding and use of language.
 - c. Learning.
 - d. Mobility.
 - e. Self-direction.
 - f. Capacity for independent living.

"Respite care" means services provided to ~~for~~ unpaid ~~caretakers~~ *caregivers* of eligible recipients *individuals* who are unable to care for themselves ~~that is~~ *and are* provided on an episodic or routine basis because of the absence of or need for relief of those *unpaid* persons residing with the recipient *individual* who ~~normally~~ *routinely* provide the care.

"Respite care ~~agency provider~~" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing respite care services ~~to for~~ *unpaid caregivers living in the home of* eligible recipients ~~for their caregivers~~ *individuals*.

"Screening" means the process *conducted by the IFDDS screening team* to evaluate the medical, nursing, and social needs of recipients *individuals* referred for screening; *and to* determine Medicaid eligibility for an ICF/MR level of care; *and* authorize Medicaid-funded ICF/MR care or community-based care ~~for those recipients who meet ICF/MR level of care eligibility and require that level of care.~~

~~"Screening team" means the entity contracted with DMAS which is responsible for performing screening for the IFDDS Waiver.~~

"Skilled nursing services" means nursing services (i) listed in the plan of care that do not meet home health criteria, (ii) required to prevent institutionalization, (iii) not otherwise available under the State Plan for Medical Assistance, (iv) provided within the scope of the state's Nursing Act (§ 54.1-3000 et seq. of the Code of Virginia) and Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), and (v) provided by a registered professional nurse or by a licensed practical nurse under the supervision of a registered nurse who is licensed to practice in the state. Skilled nursing services are to be used to provide training, consultation, nurse delegation as appropriate and oversight of direct care staff as appropriate.

"Slot" means an opening or vacancy of waiver services for an individual.

"Specialized supervision" means staff presence necessary for ongoing or intermittent intervention to ensure an individual's health and safety.

"State Plan for Medical Assistance" or "the Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

~~"Support coordination" means the assessment, planning, linking, and monitoring for recipients referred for the IFDDS community-based care waiver. Support coordination: (i) ensures the development, coordination, implementation, monitoring, and modification of consumer service plans; (ii) links recipients with appropriate community resources and supports; (iii) coordinates service providers; and (iv) monitors quality of care. Support coordination providers cannot be service providers to recipients in the IFDDS Waiver with the exception of consumer-directed service facilitators.~~

"Supporting documentation" means the specific ~~service~~ plan of care developed by the recipient *individual and waiver* service provider related solely to the specific tasks required of that service provider. Supporting documentation helps to comprise the overall *GSP plan of care* for the recipient *individual, developed by the case manager and the individual.*

"Supported employment" means training in specific skills related to paid employment and provision of ongoing or intermittent assistance and specialized supervision to enable ~~a recipient~~ *an individual* to maintain paid employment.

"Therapeutic consultation" means consultation provided by members of psychology, social work, *rehabilitation engineering*, behavioral analysis, speech therapy, occupational therapy, *psychiatry, psychiatric clinical nursing*, therapeutic recreation, or physical therapy *disciplines* or behavior consultation to assist recipients *individuals*, parents, family members, in-home residential support, day support and any other providers of support services in implementing a *GSP plan of care.*

"VDH" means the Virginia Department of Health.

12 VAC 30-120-710. General coverage and requirements for all home and community-based care waiver services.

A. Waiver service populations. Home and community-based services shall be available through a § 1915(c) waiver. Coverage shall be provided under the waiver for recipients *individuals* six years of age and older with related conditions as defined in ~~42 CFR 435.1009~~ 12 VAC 30-120-700, including autism, who have been determined to require the level of care provided in an ~~intermediate care facility for the mentally retarded~~ ICF/MR. The individual must not also have a diagnosis of mental retardation as defined by the American Association on Mental Retardation (AAMR). Mental Retardation (MR) Waiver recipients who are six years of age on or after October 1, 2002, who are determined to not have a diagnosis of mental retardation, and who meet all IFDDS Waiver eligibility criteria, shall be eligible for and shall transfer to the IFDDS Waiver effective with their sixth birthday. Psychological evaluations confirming diagnoses must be completed less than one year prior to the child's sixth birthday.

These recipients transferring from the MR Waiver will automatically be assigned a slot in the IFDDS Waiver. Such slot shall be in addition to those slots available through the screening process described in 12 VAC 30-120-720 ~~C B and D C.~~

B. Coverage statement Covered services.

1. Covered services shall include in-home residential supports, day support, *prevocational services*, supported employment, personal care (*both agency and consumer-directed*), ~~attendant care (consumer directed)~~, respite care (both agency and consumer directed), assistive technology, environmental modifications, *skilled nursing services*, therapeutic consultation, crisis stabilization, personal emergency response systems (PERS), family/caregiver training, and companion ~~care services (both agency and consumer directed)~~.

2. These services shall be ~~medically~~ medically appropriate and medically necessary to maintain these ~~recipients~~ individuals 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 ICFs/MR~~ under the State Plan that would have been made had the waiver not been granted.

3. Under this § 1915(c) waiver, DMAS waives subdivision (a)(10)(B) of §1902 of the Social Security Act related to comparability.

C. Eligibility criteria for emergency access to the waiver.

1. *Subject to available funding and a finding of eligibility under 12 VAC 30-120-720, individuals must meet at least one of the emergency criteria of this subdivision to be eligible for immediate access to waiver services without consideration to the length of time an individual has been waiting to access services. In the absence of waiver services, the individual would not be able to remain in his home. The criteria are as follows:*

- a. *The primary caregiver has a serious illness, has been hospitalized, or has died;*
- b. *The individual has been determined by the DSS to have been abused or neglected and is in need of immediate waiver services;*
- c. *The individual demonstrates behaviors that present risk to personal or public safety;*
- d. *The individual presents extreme physical, emotional, or financial burden at home, and the family or caregiver is unable to continue to provide care; or*
- e. *The individual lives in an institutional setting and has a viable discharge plan in place.*

2. *When emergency slots become available:*

- a. *All individuals who have been found eligible for the IFDDS Waiver but have not been enrolled shall be notified by either DMAS or the individual's case manager.*
- b. *Individuals and family/caregivers shall be given 30 calendar days to request emergency consideration.*

c. *An interdisciplinary team of DMAS professionals shall evaluate the requests for emergency consideration within 10 business days from the 30-day deadline using the emergency criteria to determine who will be assigned an emergency slot. If DMAS receives more requests than the number of available emergency slots, then the interdisciplinary team will make a decision on slot allocation based on need as documented in the request for emergency consideration. A waiting list of emergency cases will not be kept.*

~~C. D. Appeals. Recipient~~ 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 30-20-599.

12 VAC 30-120-720. Recipient Qualification and eligibility requirements; intake process.

A. ~~Recipients~~ 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 435.121 and 435.217. The income level used for 42 CFR 435.121 and 435.217 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~~ individuals 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 ~~recipients~~ individuals as if the ~~recipient~~ 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 following deductions:

a. For ~~recipients~~ 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. 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 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 200% of SSI. If the individual

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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.

(2) For an individual with 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. 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 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 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.

(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.

~~B. Assessment and authorization of home and community-based care services Screening.~~

1. To ensure that Virginia's home and community-based care waiver programs serve only recipients *individuals* who would otherwise be placed in an ICF/MR, home and community-based ~~care~~ waiver services shall be considered only for individuals who are eligible for admission to an ICF/MR, absent a diagnosis of mental retardation *and are age six or older*. Home and community-based ~~care~~ waiver services shall

be the critical service that enables the individual to remain at home rather than being placed in an ICF/MR.

2. *Individuals requesting IFDDS waiver services will be screened and will receive services on a first-come, first-served basis in accordance with available funding based on the date the individuals' applications are received. Individuals who meet at least one of the emergency criteria pursuant to 12 VAC 30-120-710 shall be eligible for immediate access to waiver services if funding is available.*

3. *To be eligible for IFDDS waiver services, the individual must:*

a. *Be determined to be eligible for the ICF/MR level of care;*

b. *Be six years of age or older;*

c. *Meet the related conditions definition as defined in 42 CFR 435.1009 or be diagnosed with autism; and*

d. *Not have a diagnosis of mental retardation as defined by the American Association on Mental Retardation (AAMR).*

~~2-~~ 4. The recipient's individual's status as an individual in need of IFDDS home and community-based ~~care~~ waiver services shall be determined by the IFDDS screening team after completion of a thorough assessment of the recipient's individual's needs and available ~~support~~ supports. Screening ~~of~~ for home and community-based ~~care~~ waiver services by the IFDDS screening team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based ~~care~~ waiver services.

5. *Children under six years of age shall not be screened until three months prior to the month of their sixth birthday. Children under six years of age shall not be added to the waiver or the wait list until the month in which their sixth birthday occurs.*

6. *The IFDDS screening team determines the level of care by applying existing DMAS ICF/MR criteria (Part VI (12 VAC 30-130-430 et seq.) of 12 VAC 30-130).*

~~3-~~ 7. The IFDDS screening team shall gather relevant medical, and social, ~~and psychological~~ data and identify all services received by and supports available to the recipient individual. The IFDDS screening team shall also gather psychological evaluations or refer the individual to a private or publicly funded psychologist for evaluation of the cognitive abilities of each screening applicant. For children to transfer to the IFDDS Waiver at age six, case managers shall submit to DMAS the child's most recent Level of Functioning form, the CSP, and a psychological examination completed no more than one year prior to the child's sixth birthday if they are receiving MR Waiver services. Such documentation must demonstrate that no diagnosis of mental retardation exists in order for this transfer to the IFDDS Waiver to be approved.

4. The case manager shall be responsible for notifying DMAS, DMHMRSAS, and DSS, via the DMAS 122, when a child transfers from the MR Waiver to the IFDDS Waiver.

~~5. Children under six years of age shall not be screened until three months prior to the month of their sixth birthday. Children under six years of age shall not be added to the~~

waiver/wait list until the month in which their sixth birthday occurs.

~~6. An essential part of the IFDDS screening team's assessment process is determining the level of care required by applying existing DMAS ICF/MR criteria (12 VAC 30-130-430 et seq.).~~

~~7. 8. The IFDDS screening team shall explore alternative settings and services to provide the care needed by the individual with the individual and family/caregiver. If placement in an ICF/MR or a combination of other services is determined to be appropriate, the IFDDS screening team shall initiate a referral for service to DMAS. If Medicaid-funded home and community-based care waiver services are determined to be the critical service to delay or avoid placement in an ICF/MR or promote exiting from an institutional setting, the IFDDS screening team shall initiate a referral for service to a support coordinator case manager of the recipient's individual's choice. Referrals are based on the individual choosing either ICF/MR placement or home and community-based waiver services.~~

~~8. 9. Home and community-based care waiver services shall not be provided to any individual who also resides in a nursing facility, an ICF/MR, a hospital, an adult family home licensed approved by the DSS, a group home licensed by DMHMRASAS, or an assisted living facility licensed by the DSS.~~

~~9. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by DMAS. Any Consumer Service Plan for home and community-based care services must be pre-approved by DMAS prior to Medicaid reimbursement for waiver services.~~

~~10. The following five criteria shall apply to all IFDDS Waiver services:~~

~~a. Individuals qualifying for IFDDS Waiver services must have a demonstrated clinical need for the service resulting in significant functional limitations in major life activities. In order to be eligible, a person must be six years of age or older, have a related condition as defined in these regulations and cannot have a diagnosis of mental retardation, and 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;~~

~~b. The Consumer Service Plan and services that are delivered must be consistent with the Medicaid definition of each service;~~

~~c. Services must be approved by the support coordinator based on a current functional assessment tool approved by DMAS or other DMAS approved assessment and demonstrated need for each specific service;~~

~~d. Individuals qualifying for IFDDS Waiver services must meet the ICF/MR level of care criteria; and~~

~~e. The individual must be eligible for Medicaid as determined by the local office of DSS.~~

~~11. 10. The IFDDS screening teams team must submit the results of the comprehensive assessment and a~~

recommendation to DMAS staff for final determination of ICF/MR level of care and authorization for home and community-based care waiver services.

11. For children receiving MR Waiver services prior to age six to transfer to the IFDDS waiver during their sixth year, the individual's MR Waiver case manager shall submit to DMAS the child's most recent Level of Functioning form, the plan of care, and a psychological examination completed no more than one year prior to transferring. Such documentation must demonstrate that no diagnosis of mental retardation exists in order for this transfer to the IFDDS Waiver to be approved. The case manager shall be responsible for notifying DMAS, DMHMRASAS, and DSS, via the DMAS-122, when a child transfers from the MR Waiver to the IFDDS Waiver. Transfers must be completed prior to the child's seventh birthday.

~~C. Screening for the IFDDS Waiver.~~

~~1. Individuals requesting IFDDS Waiver services will be screened and will receive services on a first come, first served basis in accordance with available funding based on the date the recipients' applications are received. Individuals who meet at least one of the emergency criteria pursuant to 12 VAC 30-120-790 shall be eligible for immediate access to waiver services if funding is available.~~

~~2. To be eligible for IFDDS Waiver services, the individual must:~~

~~a. Be determined to be eligible for the ICF/MR level of care;~~

~~b. Be six years of age or older,~~

~~c. Meet the related conditions definition as defined in 42 CFR 435.1009 or be diagnosed with autism; and~~

~~d. Not have a diagnosis of mental retardation as defined by the American Association on Mental Retardation (AAMR) as contained in 12 VAC 30-120-710.~~

~~D. C. Waiver approval process: available funding.~~

~~1. In order to ensure cost effectiveness of the IFDDS Waiver, the funding available for the waiver will be is allocated between two budget levels. The budget will be is the cost of waiver services only and will does not include the costs of other Medicaid covered services. Other Medicaid services, however, must be counted toward cost effectiveness of the IFDDS Waiver. All services available under the waiver are available to both levels.~~

~~2. Level one will be is for individuals whose comprehensive consumer service plan (CSP) is expected to plans of care cost less than \$25,000 per fiscal year. Level two will be is for individuals whose CSP is expected to cost plans of care costs are equal to or more than \$25,000. There will not be a is no threshold for budget level two; however, if the actual cost of waiver services exceeds the average annual cost of ICF/MR care for an individual, the recipient's individual's care will be eordinated is case managed by DMAS staff.~~

~~3. Fifty-five Fifty percent of available waiver funds will be are allocated to budget level one, and 40% of available waiver funds will be are allocated to level two in order to ensure that the waiver will be is cost effective. The remaining 5-0 10% of available waiver funds will be is allocated for emergencies as~~

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defined in ~~12 VAC 30-120-790~~ 12 VAC 30-120-710. Recipients who have been placed in budget level one and who subsequently require additional services that would exceed \$25,000 per fiscal year must meet the emergency criteria as defined in ~~12 VAC 30-120-790~~ to receive additional funding for services. In order to transition an appropriate number of level one slots to emergency slots, every third level one slot that becomes available will convert to an emergency slot until the percentage of emergency slots reaches 10%. Half of emergency slots will be allocated for individuals in institutional settings who are discharge ready and have a viable discharge plan to transition into the community within 60 days. If there are no such individuals who choose to discharge into the community when emergency slots are available for institutionalized individuals, the emergency slot will be allocated to an individual residing in the community who meets emergency criteria.

~~E. Waiver approval process: accessing services~~ D. Assessment and enrollment.

1. The IFDDS screening team shall determine if an individual meets the functional criteria within 45 days of receiving the request for screening from DMAS. Once the IFDDS screening entity ~~has determined~~ team determines that an individual meets the eligibility criteria for IFDDS waiver services and the individual has chosen this service, the IFDDS screening entity ~~will~~ team shall provide the individual with a list of available support coordinators case managers. For MR Waiver recipients transferring to the IFDDS Waiver, the case manager must provide the recipient or family/caregiver with a list of support coordinators. The individual or family/caregiver will shall choose a support coordinator case manager within 10 calendar days of receiving the list of support coordinators case managers and the IFDDS screening entity/case manager will team shall forward the screening materials, CSP, and all MR Waiver related documentation within 10 calendar days of the coordinator's case manager's selection to the selected support coordinator case manager.

2. The support coordinator will case manager shall contact the recipient individual within 10 calendar days of receipt of screening materials. The support coordinator and case manager must meet face-to-face with the recipient or recipient's individual and the individual's family/caregiver, as appropriate, will meet within 30 calendar days to discuss the recipient's individual's needs, existing supports and to develop a preliminary consumer service plan (CSP) which will identify plan of care identifying needed services needed and will estimate estimating the annual waiver cost of the recipient's CSP individual's plan of care. If the recipient's individual's annual waiver services cost is expected to exceed the average annual cost of ICF/MR care for an individual, the recipient's support coordination will be managed individual's case management shall be provided by DMAS.

3. Once the CSP plan of care has been initially developed, the support coordinator will case manager shall contact DMAS to receive prior authorization request approval of the plan of care and to enroll the recipient individual in the IFDDS Waiver. DMAS shall, within 14 days of receiving all supporting documentation, either approve for Medicaid coverage or deny for Medicaid coverage the CSP plan of care.

4. Medicaid will not pay for any home and community-based waiver services delivered prior to the authorization date approved by DMAS. Any plan of care for home and community-based waiver services must be pre-approved by DMAS prior to Medicaid reimbursement for waiver services.

5. The following five criteria shall apply to all IFDDS waiver services:

a. Individuals qualifying for IFDDS waiver services must have a demonstrated clinical need for the service resulting in significant functional limitations in major life activities. In order to be eligible, an individual must be six years of age or older, have a related condition as defined in these regulations, cannot have a diagnosis of mental retardation, and 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 State Plan;

b. The plan of care and services that are delivered must be consistent with the Medicaid definition of each service;

c. Services must be approved by the case manager based on a current functional assessment tool approved by DMAS or other DMAS-approved assessment and demonstrated need for each specific service;

d. Individuals qualifying for IFDDS waiver services must meet the ICF/MR level of care criteria; and

e. The individual must be eligible for Medicaid as determined by the local office of DSS.

6. DMAS shall only authorize a waiver services slot for the recipient individual if funding is available for the entire CSP a slot is available. If DMAS does not have a waiver slot for this individual, the individual shall be placed on the waiting list until such time as a waiver slot becomes available for the individual.

7. DMAS will notify the case manager when a slot is available for the individual and the initial plan of care has been approved.

8. Once this authorization has been received the case manager receives authorization from DMAS, the support coordinator case manager shall inform the recipient individual so that the recipient can individual may apply for Medicaid if necessary and begin choosing waiver service providers for services listed in the CSP plan of care. The case manager shall also notify the local DSS by submitting a DMAS-122 and IFDDS Level of Care Eligibility form.

If DMAS does not have the available funding for this recipient, the recipient will be held on the waiting list until such time as funds are available to cover the cost of the CSP.

9. The case manager forwards a copy of the completed DMAS-122 to DMAS. Upon receipt of the completed DMAS-122, DMAS shall enroll the individual into the IFDDS Waiver.

4- 10. Once the recipient individual has been authorized for determined to be Medicaid eligible and enrolled in the waiver, the recipient individual or support coordinator case manager shall contact the waiver service providers and that the individual or family/caregiver chooses, who shall initiate waiver services within 60 days. During this time, the

~~consumer individual, support coordinator~~ case manager, and waiver service providers ~~will shall~~ meet to complete the CSP provider's supporting documentation for the plan of care, implementing a person-centered planning process. If services are not initiated within 60 days, the ~~support coordinator~~ case manager must submit information to DMAS demonstrating why more time is needed to initiate services and request in writing a 30-day extension, up to a maximum of four consecutive extensions, for the initiation of waiver services. DMAS must receive the request for extension letter within the 30-day extension period being requested. DMAS will review the request for extension and make a determination within 10 business days of receiving the request. DMAS has authority to approve or deny the 30-day extension request ~~in 30-day extensions~~. The waiver service providers ~~will shall~~ develop supporting documentation for each waiver service and ~~will shall~~ submit a copy of ~~these plans~~ this documentation to the ~~support coordinator~~ case manager.

11. The ~~support coordinator~~ ~~will~~ case manager shall monitor the waiver service providers' supporting documentation to ensure that all providers are working toward the identified goals of recipients ~~the individual~~. The ~~support coordinator~~ ~~will~~ case manager shall review and sign off on the supporting documentation ~~and will~~. The case manager shall contact ~~DMAS~~ the preauthorization agent for prior authorization of services and ~~will shall~~ notify the waiver service providers when waiver services are approved.

~~5-~~ 12. The ~~support coordinator~~ ~~will~~ case manager shall contact the ~~recipient individual~~ at a minimum on a monthly basis and as needed to coordinate services and maintain the recipient's CSP conduct case management activities as defined in 12 VAC 30-50-490. DMAS ~~will shall~~ conduct annual level of care reviews in which the ~~recipient individual~~ is assessed to ensure ~~he continues to meet~~ continued waiver criteria eligibility. DMAS ~~will shall~~ review recipients' CSPs individuals' plans of care and ~~will shall~~ review the services provided by ~~support coordinators as well as~~ case managers and waiver service providers.

E. Reevaluation of service need and utilization review.

1. The plan of care.

a. The case manager shall develop the plan of care, implementing a person-centered planning process with the individual, the individual's family/caregiver, other service providers, and other interested parties identified by the individual and/or family/caregiver, based on relevant, current assessment data. The plan of care development process determines the services to be provided for individuals, the frequency of services, the type of service provided, and a description of the services to be offered. All plans of care written by the case managers must be approved by DMAS prior to seeking authorization for services. DMAS is the single state authority responsible for the supervision of the administration of the home and community-based waiver.

b. The case manager is responsible for continuous monitoring of the appropriateness of the individual's services by reviewing supporting documentation and revisions to the plan of care as indicated by the changing needs of the individual. At a minimum, every three months the case manager must:

(1) Review the plan of care face-to-face with the individual and family/caregiver, as appropriate, using a person-centered planning approach;

(2) Review individual provider quarterly reports to ensure goals and objectives are being met; and

(3) Determine whether any modifications to the plan of care are necessary.

c. At least once per plan of care year this review must be performed with the individual present, and family/caregivers as appropriate, in the individual's home environment.

d. DMAS staff shall review the plan of care every 12 months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the plan of care must be approved by DMAS.

2. Annual reassessment.

a. The case manager or DMAS, if DMAS is acting as the individual's case manager, shall complete an annual comprehensive reassessment, in coordination with the individual, family, and service providers. If warranted, the case manager will coordinate a medical examination and a psychological evaluation for every waiver individual. The reassessment, completed in a person-centered planning manner, must include an update of the assessment instrument and any other appropriate assessment data.

b. A medical examination must be completed for adults 18 years of age and older based on need identified by the individual, the family/caregiver, providers, the case manager, or DMAS staff. Medical examinations for children must be completed according to the recommended frequency and periodicity of the EPSDT program.

c. A psychological evaluation or standardized developmental assessment for children over six years of age and adults must reflect the current psychological status (diagnosis), adaptive level of functioning, and cognitive abilities. A new psychological evaluation is required whenever the individual's functioning has undergone significant change and the current evaluation no longer reflects the individual's current psychological status.

3. Documentation required.

a. The case management provider must maintain the following documentation for review by the DMAS staff for each waiver individual:

(1) All assessment summaries and all plans of care completed for the individual are maintained for a period of not less than six years;

(2) All supporting documentation from any provider rendering waiver services for the individual;

(3) All supporting documentation related to any change in the plan of care;

(4) All related communication with the individual, family/caregiver, providers, consultants, DMHMRSAS, DMAS, DSS, DRS, or other related parties;

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(5) *An ongoing log documenting all contacts related to the individual made by the case manager that relate to the individual;*

(6) *The individual's most recent, completed level of functioning;*

(7) *Psychologicals;*

(8) *Communications with DMAS;*

(9) *Documentation of rejection or refusal of services and potential outcomes resulting from the refusal of services communicated to the individual; and*

(10) *Annual DMAS-122s.*

b. The waiver service providers must maintain the following documentation for review by the DMAS staff for each waiver individual:

(1) *All supporting documentation developed for that individual and maintained for a period of not less than six years;*

(2) *An attendance log documenting the date and times services were rendered and the amount and the type of services rendered;*

(3) *Appropriate progress notes reflecting the individual's status and, as appropriate, progress toward the identified goals on the supporting documentation;*

(4) *All communication relating to the individual. Any documentation or communication must be dated and signed by the provider;*

(5) *Prior authorization decisions;*

(6) *Plans of care specific to the service being provided; and*

(7) *Assessments/reassessments as required for the service being provided.*

12 VAC 30-120-730. General requirements for home and community-based care participating providers.

A. Providers approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.

2. Assure freedom of choice to recipients in for individuals seeking medical care services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services were performed.

3. Assure the recipient's individual's freedom to reject medical care and, treatment, and services, and document that potential adverse outcomes that may result from refusal of services were discussed with the individual.

4. Accept referrals for services only when staff is available to initiate services within 30 days and perform such services on an ongoing basis.

5. Provide services and supplies to recipients for individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC §§ 2000d through 2000d-4a et seq.), which

prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (Title 51.5, (§ 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 through 12243 et seq.), which provides comprehensive civil rights protections to recipients individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. Provide services and supplies to recipients 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 recipients for individuals in amounts not to exceed the provider's usual and customary charges to the general public. The provider must and accept as payment in full the amount established by DMAS payment methodology from the first day of eligibility for the waiver services individual's authorization date for 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 care 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 and 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 six 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.

c. An attendance log or similar document must be maintained which indicates the date services were rendered, type of services rendered, and number of hours/units provided (including specific time frame).

10. The provider agrees Agree to furnish information on request and in the form requested to DMAS, 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 premises and records shall survive any termination of the provider participation 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 individuals enrolled in Medicaid.

~~12-~~ B. Pursuant to 42 CFR Part 431, Subpart F, 12 VAC 30-20-90, and any other applicable federal or state law, all providers shall hold confidential and use for DMAS authorized purposes only all medical assistance information regarding recipients individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is are necessary for the functioning of DMAS in conjunction with the cited laws. DMAS shall not disclose medical information to the public.

~~13-~~ C. Change of ownership. When ownership of the provider agency changes, the provider must notify DMAS ~~shall be notified~~ at least 15 calendar days before the date of change.

~~14-~~ D. For (ICF/MR) facilities covered by § 1616(e) of the Social Security Act in which respite care as a home and community-based care waiver service will be provided, the facilities 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, ~~12 VAC 35-102-10 et seq or through DSS-approved standards for adult foster care providers.~~

~~15-~~ E. Suspected abuse or neglect. Pursuant to §§ ~~63.1-55.3 63.2-1509 and 63.1-248.3 63.2-1606~~ of the Code of Virginia, if a participating provider knows or suspects that a home and community-based care recipient 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 agency, as applicable, as well as to DMAS, and, if applicable, to DMHMRSAS Offices of Licensing and Human Rights.

~~16-~~ F. Adherence to provider contract 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 contracts participation agreements and in the DMAS provider manual.

G. Direct marketing. Providers are prohibited from performing any type of direct marketing activities to Medicaid individuals or their family/caregivers.

12 VAC 30-120-740. Participation standards for home and community-based care waiver services participating providers.

A. Requests for participation. Requests will be screened to determine whether the provider applicant meets the basic requirements for participation.

B. Provider participation standards. For DMAS to approve contracts provider participation agreements with home and community-based care waiver providers, the following standards shall be met:

1. For services that have licensure and certification requirements, licensure and certification requirements pursuant to 42 CFR 441.352.

2. Disclosure of ownership pursuant to 42 CFR 455.104 and 455.105.

3. The ability to document and maintain individual case records in accordance with state and federal requirements.

C. Adherence to provider contract participation agreements and special participation conditions. 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 provider contracts participation agreements.

D. Recipient Individual choice of provider agencies entities. The recipient individual will have the option of selecting the provider agency of his choice. The case manager must inform the individual of all available waiver service providers in the community in which he desires services, and he shall have the option of selecting the provider of his choice.

E. Review of provider participation standards and renewal of contracts provider participation agreements. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and recertify each provider for contract 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 contract participation agreement, may result in a written request from DMAS for a corrective action plan which details the steps the provider must take and the length of time permitted to achieve full compliance with the plan to correct the deficiencies which have been cited.

F. Termination of provider participation. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification. ~~DMAS shall be permitted to administratively terminate a provider from participation upon 30 days' written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. 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 as determined by DMAS.~~ Such action precludes further payment by DMAS for services provided to recipients for individuals subsequent to the date specified in the termination notice.

G. Reconsideration of adverse actions. A provider shall have the right to appeal adverse action taken by DMAS. ~~Adverse action includes, 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 (§ 9-6.14:1 et seq. 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~~

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~~agency determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act. Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-560.~~

H. Termination of a provider ~~contract participation agreement~~ upon conviction of a felony. Section 32.1-325 ~~§ D 2~~ 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, D.C., must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider agreement. ~~Reinstatement will be contingent upon provisions of state law.~~ In addition, termination of a provider ~~contract participation agreement~~ will occur as may be required for federal financial participation.

I. ~~Support coordinator's~~ Case manager's responsibility for the ~~Recipient Patient~~ Information Form (DMAS-122). It is the responsibility of the ~~support coordinator case manager~~ to notify DMAS and DSS, in writing, when any of the following circumstances occur:

1. Home and community-based ~~care waiver~~ services are implemented.
2. ~~A recipient~~ An individual dies.
3. ~~A recipient~~ An individual is discharged or terminated from services.
4. Any other circumstances (including hospitalization) that cause home and community-based ~~care waiver~~ services to cease or be interrupted for more than 30 days.
5. A selection by the individual or family/caregiver of a different case management provider.

J. Changes or termination of care. It is the DMAS staff's responsibility to authorize any changes to supporting documentation of a recipient's ~~CSP an individual's plan of care~~ based on the recommendations of the ~~support coordinator case manager~~. ~~Agencies providing direct Waiver service providers~~ are responsible for modifying the supporting documentation if the recipient or parent/legal guardian agrees with the involvement of the individual or family/caregiver. The provider ~~will~~ shall submit the supporting documentation to the ~~support coordinator case manager~~ any time there is a change in the recipient's individual's condition or circumstances that may warrant a change in the amount or type of service rendered. The ~~support coordinator will~~ case manager shall review the need for a change and ~~will~~ shall sign the supporting documentation if he agrees to the changes. The ~~support coordinator will~~ case manager shall submit the revised supporting documentation to the DMAS staff to receive approval for that change. The DMAS staff has the final authority to approve or deny the requested change to recipients' individual's supporting documentation. DMAS shall notify the individual or family/caregiver in writing of their right to appeal the decision or decisions to reduce, terminate, suspend, or deny services pursuant to DMAS client appeals regulations, 12 VAC 30-110, Eligibility and Appeals.

1. Nonemergency termination of home and community-based ~~care waiver~~ services by the participating provider. The participating provider shall give the recipient and individual family/caregiver, and ~~support coordinator case manager~~ 10 days' written notification of the intent to terminate services. The notification letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least 10 days from the date of the termination notification letter.

2. Emergency termination of home and community-based ~~care waiver~~ services by the participating provider. In an emergency situation when the health and safety of the recipient individual or provider agency personnel is endangered, the ~~support coordinator case manager~~ and DMAS must be notified prior to termination. The 10-day written notification period shall not be required. ~~When~~ appropriate, the local DSS adult protective services or child protective services agency must be notified immediately. *DMHMRSAS Offices of Licensing and Human Rights must also be notified as required under the provider's license.*

3. The DMAS termination of eligibility to receive home and community-based ~~care waiver~~ services. DMAS shall have the ultimate responsibility for assuring appropriate placement of the recipient individual in home and community-based ~~care waiver~~ services and the authority to terminate such services to the recipient individual for the following reasons:

- a. The home and community-based ~~care waiver~~ service is not the critical alternative to prevent or delay institutional (ICF/MR) placement;
- b. The recipient individual no longer meets the institutional level of care criteria;
- c. The recipient's individual's environment does not provide for his health, safety, and welfare; or
- d. An appropriate and cost-effective ~~CSP plan of care~~ cannot be developed.

4. In the case of termination of home and community-based waiver services by DMAS staff:

- a. Individuals shall be notified of their appeal rights by DMAS pursuant to 12 VAC 30-110.
- b. Individuals identified by the case manager who no longer meet the level of care criteria or for whom home and community-based waiver services are no longer appropriate must be referred by the case manager to DMAS for review.

12 VAC 30-120-750. In-home residential support services.

A. Service description. In-home residential support services shall be based primarily in the recipient's individual's home. The service shall be designed to enable recipients qualifying for individuals enrolled in the IFDDS Waiver to be maintained in their homes and shall include: (i) training in or reinforcement of engagement and interaction with functional skills and appropriate behavior related to a recipient's individual's health and safety, personal care, activities of daily living and use of community resources; (ii) assistance with medication management and monitoring the recipient's individual's health, nutrition, and physical condition (iii) life

skills training; (iv) cognitive rehabilitation; and (v) assistance with personal care activities of daily living and use of community resources; and (vi) specialized supervision to ensure the individual's health and safety. Service providers shall be reimbursed only for the amount and type of in-home residential support services included in the recipient's approved CSP plan of care. In-home residential support services shall not be authorized in the CSP plan of care unless the recipient individual requires these services and these services exceed services provided by the family or other caregiver. Services will are not be provided by paid staff of the in-home residential services provider for a continuous 24-hour period.

1. This service must be provided on a recipient-specific an individual-specific basis according to the CSP plan of care, supporting documentation, and service setting requirements.

2. ~~This service may not be provided to any recipient who simultaneously receives personal care or attendant care services under the IFDDS Waiver or other residential program that provides a comparable level of care. Individuals may have in-home residential, personal care, and respite care in their plans of care but cannot receive these services simultaneously.~~

3. Room and 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 care for the parent or parents or other unpaid caregivers with whom the recipient individual lives.

B. Criteria.

1. All recipients individuals must meet the following criteria in order for Medicaid to reimburse providers for in-home residential support services. The recipient individual must meet the eligibility requirements for this waiver service as herein defined. The recipient individual shall have a demonstrated need for supports to be provided by staff who are paid by the in-home residential support provider.

2. A functional assessment must be conducted to evaluate each recipient individual in his home environment and community settings.

3. Routine supervision/oversight of direct care staff. To provide additional assurance for the protection or preservation of a recipient's an individual's health and safety, there are specific requirements for the supervision and oversight of direct care staff providing in-home residential support as outlined below. For all in-home residential support services provided under a DMHMRSAS license or CARF accreditation:

a. An employee of the agency provider, typically by position, must be formally designated as the supervisor of each direct care staff person who is providing in-home residential support services.

b. The supervisor must have and document at least one supervisory contact per month with each direct care staff person per month regarding service delivery and direct care staff performance.

c. The supervisor must observe each direct care staff person delivering services at least semi-annually. Staff performance and, service delivery according to in accordance with the CSP should be documented, along with plan of care, and evaluation of and evidence of recipient the individual's satisfaction with service delivery by direct care staff must be documented.

d. ~~Providers of in-home residential supports~~ The supervisor must also have complete and document at least one monthly contact with the recipient individual or family/caregiver regarding satisfaction with services delivered by each direct care staff person. ~~If the recipient has a guardian, the guardian should be contacted.~~

4. The in-home residential support supporting documentation must indicate the necessary amount and type of activities required by the recipient individual, the schedule of in-home residential support services, the total number of hours per day, and the total number of hours per week of in-home residential support. A formal, written behavioral program is required to address behaviors, including self-injury, aggression or self-stimulation.

5. Medicaid reimbursement is available only for in-home residential support services provided when the recipient individual is present and when a qualified provider is providing the services.

C. Service units and service limitations. In-home residential supports shall be reimbursed on an hourly basis for time the in-home residential support direct care staff is working directly with the recipient individual. Total monthly billing cannot exceed the total hours authorized in the CSP plan of care. The provider must maintain documentation of the date and, times that the services are provided, the services that were provided, and specific circumstances which prevented preventing the provision of all of the any scheduled services.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care waiver services participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, each in-home residential support service provider must be licensed by DMHMRSAS as a provider of supportive residential services or have CARF certification accreditation. The provider must also have training in the characteristics of developmental disabilities individuals with related conditions and appropriate interventions, strategies, and support methods for persons with developmental disabilities individuals with related conditions and functional limitations.

1. For DMHMRSAS licensed programs, a CSP plan of care and ongoing documentation of service delivery must be consistent with licensing regulations.

2. Documentation must confirm attendance and the individuals amount of time in services and provide specific information regarding the recipient's individuals response to various settings and supports as agreed to in the supporting documentation objectives. Assessment results must be available in at least a daily note or a weekly summary. Data must be collected as described in the CSP plan of care, analyzed, summarized, and then clearly addressed in the regular supporting documentation.

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3. The supporting documentation must be reviewed by the provider with the ~~recipient individual~~, and this ~~written~~ review submitted to the ~~support coordinator~~ *case manager*, at least semi-annually, with goals, objectives, and activities modified as appropriate.

4. Documentation must be maintained for routine supervision and oversight of all in-home residential support *direct care* staff. All significant contacts described in this section must be documented. ~~A qualified developmental disabilities professional must provide supervision of direct service staff.~~

5. Documentation of *supervision* must be completed ~~and~~, signed by the staff person designated to perform the supervision and oversight, and include *the following*:

- a. Date of contact or observation;
 - b. Person or persons contacted or observed;
 - c. A ~~note regarding summary about direct care staff performance and supporting documentation~~ service delivery for monthly ~~contact contacts~~ and semi-annual home visits;
 - d. Semi-annual observation documentation must also address ~~recipient individual~~ satisfaction with service provision; and
 - e. Any action planned or taken to correct problems identified during supervision and oversight.
- f. *Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.*

12 VAC 30-120-752. Day support services.

A. Service description. Day support services shall include a variety of training, *assistance*, support, and *specialized* supervision offered in a setting (other than the home or ~~recipient individual~~ residence), which allows peer interactions and community integration *for the acquisition, retention, or improvement of self-help, socialization, and adaptive skills*. When services are provided through alternative payment sources, the ~~consumer service~~ plan of care shall not authorize them as a waiver funded expenditure. Service providers are reimbursed only for the amount and type of day support services included in the ~~recipient's individual's~~ approved *GSP plan of care* based on the setting, intensity, and duration of the service to be delivered. *This does not include prevocational services.*

B. Criteria. For day support services, ~~recipients individual's~~ must demonstrate the need for functional training, assistance, and specialized ~~training supervision~~ offered in settings other than the ~~recipient's individual's~~ own residence that allow an opportunity for being productive and contributing members of communities. In addition, day support services will be available for ~~recipients individuals who cannot benefit from supported employment services and, but who need the services for accessing in-home supported living services, increasing levels of independent skills within current daily living situations, or sustaining skills necessary for continuing the level of independence in current daily living situations as an appropriate alternative or in addition to supported employment services.~~

1. A functional assessment ~~should~~ *must* be conducted by the provider to evaluate each ~~recipient individual~~ in his home environment and community settings.

2. *Types and levels of day support.* The amount and type of day support included in the ~~recipient's consumer service individual's plan of care~~ is determined according to the services required for that ~~recipient individual~~. There are two types of day support: center-based, which is provided ~~partly or entirely in a segregated setting; primarily at one location/building,~~ or noncenter-based, which is provided ~~entirely primarily~~ in community settings. Both types of day support may be provided at either intensive or regular levels. To be authorized at the intensive level, the ~~recipient individual~~ must ~~have 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 require requires additional, ongoing support to fully participate in programming and to accomplish his service goals; or the recipient (iii) requires extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. A formal, written behavioral program is required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.*

C. Service units and service limitations. Day support cannot be regularly or temporarily (~~e.g., due to inclement weather or recipient illness~~) provided in a ~~recipient's an individual's~~ home or other residential setting (~~e.g., due to inclement weather or individual's illness~~) without ~~prior written prior~~ approval from DMAS. ~~If prevocational services are offered, the plan of care must contain documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in Special Education services through § 602 (16) and (17) of the Individuals with Disabilities Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver expenditure. Compensation for prevocational services can only be made when the individual's productivity is less than 50% of the minimum wage.~~ Noncenter-based day support services must be separate and distinguishable from ~~either both~~ in-home residential support services ~~or and~~ personal care 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 ~~recipient individual~~. The maximum is 780 units per ~~calendar~~ plan of care year. *If this service is used in combination with prevocational and/or supported employment services, the combined total units for these services can not exceed 780 units per plan of care year.* Transportation shall not be billable as a day support service.

- 1. One unit shall be 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.

Services shall normally be furnished four or more hours per day on a regularly scheduled basis for one or more days per

week unless provided as an adjunct to other day activities included in an individual's plan of care.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based ~~care waiver services~~ participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, day support providers ~~need to~~ *must* meet ~~additional~~ the following requirements:-:

1. For DMHMRSAS programs licensed as day support programs, the ~~GSP plan of care~~, supporting documentation, and ongoing documentation must be consistent with licensing regulations. For programs ~~certified~~ *accredited* by CARF as day support programs, there must be supporting documentation, ~~which that~~ contains, at a minimum, the following elements:

- a. The ~~recipient's individual's~~ strengths, desired outcomes, required or desired supports and training needs;
- b. The ~~recipient's individual's~~ goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;
- c. Services to be rendered and the frequency of services to accomplish the above goals and objectives;
- d. All ~~individuals or organizations~~ *entities* that will provide the services specified in the statement of services;
- e. A timetable for the accomplishment of the ~~recipient's individual's~~ goals and objectives;
- f. The estimated duration of the ~~recipient's individual's~~ needs for services; and
- g. The ~~individual or individuals~~ *entities* responsible for the overall coordination and integration of the services specified in the ~~GSP plan of care~~.

2. Documentation must confirm the ~~recipient's individual's~~ attendance ~~and~~, the amount of the individual's time in services, and provide specific information regarding the ~~recipient's individual's~~ response to various settings and supports as agreed to in the supporting documentation objectives. Assessment results ~~shall~~ *must* be available in at least a daily note or a weekly summary.

- a. The *provider must review the supporting documentation must be reviewed by the provider* with the ~~recipient individual or family/caregiver~~, and this *written review submitted to the support coordinator case manager* at least semi-annually with goals, objectives, and activities modified as appropriate. *For the annual review and anytime the supporting documentation is modified, the revised supporting documentation 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 (including specific time frame).
- c. Documentation must indicate whether the services were center-based or noncenter-based *and regular or intensive level*.

d. If intensive day support services are requested, in order to verify which of these criteria the ~~recipient individual~~ met, documentation must be present in the ~~recipient's individual's~~ record to indicate the specific supports and the reasons they are needed. For reauthorization of intensive day support services, there must be clear documentation of the ongoing needs and associated staff supports.

e. *In instances where day support staff are required to ride with the individual to and from day support, the day support staff time may 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.*

f. *Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.*

3. *Supervision of direct service staff must be provided by a qualified developmental disabilities professional.*

12 VAC 30-120-753. ~~Reserved.~~ 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 for 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 services or programs). Activities included in this service are not primarily directed at teaching specific job skills but at underlying rehabilitative 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 for paid employment that may be offered in a variety of community settings.*

C. *Service units and service limitations. Billing is for one unit of service. This service is limited to 780 units per plan of care year. If this service is used in combination with day support and/or supported employment services, the combined total units for these services cannot exceed 780 units per plan of care year. Prevocational services may be provided in center or noncenter-based settings. There must be documentation about 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). When services are provided through these sources to the individual, they will not be authorized as a waiver service. Prevocational services may only be provided when the individual's compensation is less than 50% of the minimum wage.*

1. *One unit shall be 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.*

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Services shall normally be furnished four or more hours per day on a regularly scheduled basis for one or more days per week unless provided as an adjunct to other day activities included in an individual's plan of care.

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 30-120-730 and 12 VAC 30-120-740, prevocational services providers must also meet the following requirements:

1. The prevocational services provider 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 day support services provider. Providers must ensure and document that persons providing prevocational services have training in the characteristics of related conditions, appropriate interventions, training strategies, and support methods for individuals with related conditions and functional limitations.

2. Required documentation in the individual's record. The provider must maintain a record for each individual receiving prevocational services. At a minimum, the record must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the prevocational environment and community settings.

b. A plan of care containing, at a minimum, the following elements (new DMHMRSAS licensing regulations require the following for plans of care):

(1) The individual's needs and preferences;

(2) Relevant psychological, behavioral, medical, rehabilitation, and nursing needs as indicated by the assessment;

(3) Individualized strategies including the intensity of services needed;

(4) A communication plan for individuals with communication barriers including language barriers; and

(5) The behavior treatment plan, if applicable.

3. The plan of care must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and with written results of these reviews submitted to the case manager. For the annual review and in cases where the plan of care is modified, the plan of care must be reviewed with the individual or family/caregiver.

4. Documentation must confirm the individual's attendance, amount of time spent in services, type of services rendered, and provide specific information about the individual's response to various settings and supports as agreed to in the plan of care.

5. In instances where prevocational staff are required to ride with the individual to and from prevocational services, the prevocational staff time may be billed for prevocational services, provided that the 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 spending the prevocational services for that day.

6. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 from the case manager.

12 VAC 30-120-754. Supported employment services.

A. Service description.

1. Supported employment services shall include training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized training to enable a recipient an individual to maintain paid employment. Each supporting documentation must ~~contain documentation~~ ~~regarding~~ confirm whether supported employment services are available to the individual in vocational rehabilitation agencies through the Rehabilitation Act of 1973 or in special education services through 20 USC § 1401 of the Individuals with Disabilities Education Act (IDEA). Providers of these DRS and IDEA services cannot be reimbursed by Medicaid with the IFDDS Waiver funds. Waiver service providers are reimbursed only for the amount and type of habilitation services included in the recipient's individual's approved CSP plan of care based on the intensity and duration of the service delivered. Reimbursement shall be limited to actual interventions by the provider of supported employment, not for the amount of time the recipient is in the supported employment environment.

2. Supported employment ~~can~~ may be provided in one of two models. ~~Recipient~~ Individual supported employment is defined as intermittent support, usually provided one on one by a job coach to a recipient for an individual in a supported employment position. Group supported employment is defined as continuous support provided by staff to for eight or fewer recipients individuals with disabilities in an enclave, work crew, or bench work/entrepreneurial model. The recipient's individual's assessment and CSP plan of care must clearly reflect the recipient's individual's need for training and supports.

B. Criteria for receipt of services.

1. Only job development tasks that specifically include the recipient individual are allowable job search activities under the IFDDS Waiver supported employment and only after determining this service is not available from DRS or IDEA.

2. In order to qualify for these services, the recipient individual shall have a demonstrated need for training, specialized supervision, or assistance in paid employment and for whom competitive employment at or above the minimum wage is unlikely without this support and who, because of the disability, needs ongoing support, including supervision, training and transportation to perform in a work setting.

3. A functional assessment ~~should~~ must be conducted to evaluate each recipient individual in his home work environment and related community settings.

4. The supporting documentation must ~~provide document~~ the amount of supported employment required by the recipient individual. Service providers are reimbursed only for the amount and type of supported employment included in the

~~recipient's CSP plan of care based on the intensity and duration of the service delivered.~~

C. Service units and service limitations.

1. Supported employment for ~~recipient individual job placement will be billed on an hourly basis is provided in one-hour units. Transportation cannot be billable as a supported employment service.~~

2. Group models of supported employment (enclaves, work crews, *bench work*, and entrepreneurial model of supported employment) will be billed at the unit rate.

a. One unit is 1 to 3.99 hours of service a day.

b. Two units are 4 to 6.99 or more hours of service a day.

c. Three units are 7 or more hours of service a day.

3. *Supported employment services are limited to 780 units per plan of care year. If used in combination with prevocational and day support services, the combined total units for these services cannot exceed 780 units per plan of care year.*

~~3-~~ 4. For the *recipient 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 ~~recipient individual~~ is in the supported employment situation.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, ~~specific provider qualifications are as follows~~ supported employment providers must meet the following requirements:

1. Supported employment services shall be provided by agencies that are programs certified by CARF to provide supported employment services or are DRS vendors of supported employment services.

2. ~~Recipient Individual~~ ineligibility for supported employment services through DRS or ~~Special Education services IDEA~~ must be documented in the *recipient's individual's* record, as applicable. If the *recipient individual* is older than 22 years and, therefore, not eligible for ~~Special Education IDEA~~ funding, documentation is required only for lack of DRS funding. Acceptable documentation would include a copy of a letter from DRS or the local school system or a record of a phone call (name, date, person contacted) documented in the ~~support coordinator's case manager's~~ case notes, Consumer Profile/Social assessment or on the supported employment supporting documentation. Unless the *recipient's individual's* circumstances change, the original verification ~~can~~ may be forwarded into the current record or repeated on the supporting documentation or revised ~~Consumer Profile/Social Assessment~~ on an annual basis.

3. Supporting documentation and ongoing documentation consistent with licensing regulations, if a DMHMRSAS licensed program.

4. For non-DMHMRSAS programs certified as supported employment programs, there must be supporting

documentation that contains, at a minimum, the following elements:

a. The ~~recipient's individual's~~ strengths, desired outcomes, required/desired supports and training needs;

b. The ~~recipient's individual's~~ goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

c. Services to be rendered and the frequency of services to accomplish the above goals and objectives;

d. All ~~individuals or organizations~~ entities that will provide the services specified in the statement of services;

e. A timetable for the accomplishment of the ~~recipient's individual's~~ goals and objectives;

f. The estimated duration of the ~~recipient's individual's~~ needs for services; and

g. ~~Individuals~~ Entities responsible for the overall coordination and integration of the services specified in the plan of care.

5. Documentation must confirm *the individual's* attendance, *the amount of time the individual spent in services*, and must provide specific information regarding the ~~recipient's individual's~~ response to various settings and supports as agreed to in the supporting documentation objectives. Assessment results should be available in at least a daily note or weekly summary.

6. The *provider must review the* supporting documentation ~~must be reviewed by the provider with the recipient individual,~~ and this ~~written~~ review submitted to the ~~support coordinator case manager,~~ at least semi-annually, with goals, objectives and activities modified as appropriate. *For the annual review and in cases where the plan of care is modified, the plan of care must be reviewed with the individual or family/caregiver.*

7. *In instances where supported employment staff are required to ride with the individual to and from supported employment activities, the supported employment staff time may 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 supported employment staff coverage during transportation does not exceed 25% of the total time spent in supported employment for that day.*

8. *There must be a copy of the completed DMAS-122 form in the record. Providers must clearly document efforts to obtain the DMAS-122 form from the case manager.*

12 VAC 30-120-756. Therapeutic consultation.

A. Service description. Therapeutic consultation ~~is available under the waiver for Virginia licensed or certified practitioners in provides expertise, training, and technical assistance in any of the following specialty areas to assist family members, caregivers, and service providers in supporting the individual. The specialty areas include the following:~~ psychology, social work, occupational therapy, physical therapy, therapeutic recreation, rehabilitation, *psychiatry, psychiatric clinical nursing,* and speech/language therapy. ~~Behavior consultation~~

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~~performed by these individuals may also be a covered waiver service.~~ These services may be provided, based on the ~~recipient's CSP individual's plan of care~~, for those ~~recipients individuals~~ for whom specialized consultation is clinically necessary to enable their utilization of waiver services ~~and who have additional challenges restricting their ability to function in the community.~~ Therapeutic consultation services may be provided in ~~in home residential or day support settings or in office settings in the individual's home, in other appropriate community settings,~~ and in conjunction with another waiver service. ~~Only behavior consultation may be offered in the absence of any other waiver service when the consultation provided to informal caregivers is determined to be necessary to prevent institutionalization.~~ These services are intended to facilitate implementation of the individual's desired outcomes as identified in the individual's plan of care. Therapeutic consultation service providers are reimbursed according to the amount and type of service authorized in the ~~CSP plan of care~~ based on an hourly fee for service.

B. Criteria. In order to qualify for these services, the ~~recipient individual~~ shall have a demonstrated need for consultation in any of these services. Documented need must indicate that the ~~CSP plan of care~~ cannot be implemented effectively and efficiently without such consultation from this service.

1. The ~~recipient's CSP individual's plan of care~~ must clearly reflect the ~~recipient's individual's~~ needs, as documented in the social assessment, for specialized consultation provided to ~~family/caregivers and providers~~ in order to implement the ~~CSP plan of care~~ effectively.

2. Therapeutic consultation services may ~~neither~~ not include direct therapy provided to ~~individuals receiving waiver recipients or services,~~ or monitoring activities, and may not duplicate the activities of other services that are available to the ~~recipient individual~~ through the State Plan of Medical Assistance.

C. Service units and service limitations. The unit of service shall equal one hour. The services must be explicitly detailed in the supporting documentation. 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. *Therapeutic consultations shall be available to individuals who are receiving at least one other waiver service and case management services.*

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, professionals rendering therapeutic consultation services, including behavior 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 professional's knowledge, skills, and abilities as defined by DMAS.*

1. Supporting documentation for therapeutic consultation. The following information is required in the supporting documentation:

a. Identifying information: ~~recipient's individual's~~ name and Medicaid number; provider name and provider number; responsible person and telephone number; effective dates for supporting documentation; and semi-annual review dates, if applicable;

b. Targeted objectives, time frames, and expected outcomes;

c. Specific consultation *activities*; and

d. ~~The expected outcomes~~ A written support plan detailing the *interventions or support strategies*.

2. Monthly and contact notes shall include:

a. Summary of consultative activities for the month;

b. Dates, locations, and times of service delivery;

c. Supporting documentation objectives addressed;

d. Specific details of the activities conducted;

e. Services delivered as planned or modified; and

f. Effectiveness of the strategies and ~~recipients' individuals'~~ and caregivers' satisfaction with service.

3. Semi-annual reviews are required by the service provider if consultation extends three months or longer, are to be forwarded to the ~~support coordinator case manager~~, and must include:

a. Activities related to the therapeutic consultation supporting documentation;

b. ~~Recipient Individual~~ status and satisfaction with services; and

c. Consultation outcomes and effectiveness of support plan.

4. If consultation services extend less than three months, the provider must forward monthly contact notes or a summary of them to the ~~support coordinator case manager~~ for the semi-annual review.

5. A written support plan, detailing the interventions and strategies for ~~staff providers~~, family, or caregivers to use to better support the ~~recipient individual~~ in the service.

6. A final disposition summary must be forwarded to the ~~support coordinator case manager~~ within 30 days following the end of this service and must include:

a. Strategies utilized;

b. Objectives met;

c. Unresolved issues; and

d. Consultant recommendations.

12 VAC 30-120-758. Environmental modifications.

A. Service description. ~~Environmental modifications shall be available to recipients who are receiving at least one other waiver service.~~ Environmental modifications shall be defined as those physical adaptations to the *individual's primary home or primary vehicle used by the individual*, ~~required by documented in~~ the individual's ~~CSP plan of care~~, that are necessary to ensure the health, welfare, and safety of the

individual, or that enable the individual to function with greater independence in the *primary* home 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~~ *electrical* and plumbing systems ~~which~~ *that* are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual. Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repairs, central air conditioning, etc. Adaptations that add to the total square footage of the home shall be excluded from this benefit. All services shall be provided *in the individual's primary home* in accordance with applicable state or local building codes. *All modifications must be prior authorized by the prior authorization agent.* Modifications ~~can~~ *may* be made to a vehicle if it is the primary vehicle being used by the individual. *This service does not include the purchase of vehicles.*

B. Criteria. In order to qualify for these services, the ~~recipient~~ *individual* must have a demonstrated need for equipment or modifications of a remedial or medical benefit offered ~~primarily~~ *in a recipient's an individual's primary home, primary vehicle used by the individual, community activity setting, or day program* to specifically improve the ~~recipient's~~ *individual's* personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program. *Environmental modifications shall be covered in the least expensive, most cost-effective manner.*

C. Service units and service limitations. *Environmental modifications shall be available to individuals who are receiving case management services in addition to at least one other waiver service.* A maximum limit of \$5,000 may be reimbursed per ~~calendar~~ *plan of care* year. Costs for environmental modifications shall not be carried over from year to year. All environmental modifications must be prior authorized by DMAS. *Modifications shall not be used to bring a substandard dwelling up to minimum habitation standards. Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act.*

Case managers must, upon completion of each modification, meet face-to-face with the individual and the individual's family as appropriate to ensure that the modification is completed satisfactorily and is able to be used by the individual.

D. Provider requirements. In addition to meeting the general conditions and requirements for ~~HCBG~~ *home and community-based waiver services* participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, environmental modifications must be provided in accordance with all applicable state or local building codes by contractors who have a provider agreement with DMAS. *Providers may not be spouses or parents of the individual.*

12 VAC 30-120-760. Skilled nursing services.

A. Service description. Skilled nursing services shall be provided for ~~recipients~~ *individuals* with serious medical conditions and complex health care needs who require specific skilled nursing services that cannot be provided by non-nursing personnel. Skilled nursing may be provided in the ~~recipient's~~ *recipient's* home or other community setting ~~on a regularly scheduled or intermittent need basis.~~ *It may include consultation and training for other providers.*

B. Criteria. In order to qualify for these services, the ~~recipient~~ *individual* must 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 ~~recipient's CSP~~ *individual's plan of care* must stipulate that this 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. *Services must be explicitly detailed in the CSP and must be specifically ordered by a physician.*

D. Provider requirements. Skilled nursing services shall be provided by ~~either~~ *either* a DMAS-enrolled ~~private duty nursing, home care organization provider or a home health provider,~~ *private duty nursing, home care organization provider or a home health provider,* or a licensed registered nurse or a licensed practical nurse *under the supervision of a licensed registered nurse who is contracted or employed by a Community Services Board DMHMRSAS licensed day support, respite, or residential provider.* In addition to meeting the general conditions and requirements for home and community-based ~~care waiver~~ *participating providers* as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, in order to be ~~approved for~~ *enrolled* as a skilled nursing ~~contracts~~ *provider*, the provider must:

1. If a home health agency, be certified by the VDH for Medicaid participation and have a ~~current~~ *current* DMAS ~~contract~~ *provider participation agreement* for private duty nursing;

2. Demonstrate a prior successful health care delivery business or practice;

3. Operate from a business office; and

4. If community services boards *or behavioral health authority* employ or subcontract with and directly supervise a registered nurse (RN) or a licensed practical nurse (LPN) with a current and valid license issued by the Virginia State Board of Nursing, the RN or LPN must 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, or nursing home.

12 VAC 30-120-762. Assistive technology.

A. Service description. Assistive technology (AT) is available to recipients who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. *Assistive technology (AT) is the specialized medical equipment and supplies, including those devices, controls, or appliances, specified in the plan of care, but not available under the State Plan for Medical Assistance, that enable*

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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 ~~recipient individual~~ must have a demonstrated need for equipment or modification for remedial or *direct* medical benefit primarily in ~~a recipient's~~ *an individual's* primary home, primary vehicle used by the individual, community activity setting, or day program to specifically serve to improve the ~~recipient's~~ individual's personal functioning. This shall encompass those items not otherwise covered under the State Plan for Medical Assistance. Assistive technology shall be covered in the least expensive, most cost-effective manner.

C. Service units and service limitations. *Assistive technology (AT) is available to individuals receiving at least one other waiver service and may be provided in the individual's home or community setting.* A maximum limit of \$5,000 may be reimbursed per ~~calendar~~ *plan of care* year. Costs for assistive technology cannot be carried over from year to year and must be *preauthorized each plan of care year.* AT will not be approved for purposes of convenience of the caregiver/provider or restraint of the individual. An independent, *professional* consultation must be obtained from *qualified professionals who are knowledgeable of that item* for each AT request prior to approval by DMAS. All assistive technology must be prior authorized by DMAS. *Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act.*

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, assistive technology shall be provided by ~~agencies under contract~~ *the providers having a current provider participation agreement* with DMAS as durable medical equipment and supply providers. Independent, *professional* consultants ~~shall be~~ *include* speech/language therapists, physical therapists, occupational therapists, physicians, behavioral therapists, certified rehabilitation specialists, or rehabilitation engineers. *Providers that supply assistive technology for an individual may not perform assessment/consultation, write specifications, or inspect the assistive technology for that individual. Providers of services may not be spouses or parents of the individual.*

12 VAC 30-120-764. Crisis stabilization services.

A. Service description. *Crisis stabilization services involve direct interventions that provide temporary, intensive services and supports that avert emergency, psychiatric hospitalization or institutional placement of individuals who are experiencing serious psychiatric or behavioral problems that jeopardize their current community living situation.* Crisis stabilization services shall ~~provide~~ *include*, as appropriate, neuropsychological, psychiatric, psychological and other functional assessments and stabilization *techniques*, medication management and *monitoring*, behavior assessment and support, and intensive care 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 planning and delivery of services and supports to ~~maintain community placement of the recipient~~ *enable the individual to remain in the community;*
2. Train family members and, other care givers, and service providers in ~~positive behavioral~~ supports to maintain the ~~recipient individual~~ in the community; and
3. Provide temporary crisis supervision to ensure the safety of the ~~recipient individual~~ and others;

B. Criteria.

1. In order to receive crisis stabilization services, the ~~recipient individual~~ must meet at least one of the following criteria:
 - a. The ~~recipient individual~~ is experiencing marked reduction in psychiatric, adaptive, or behavioral functioning;
 - b. The ~~recipient individual~~ is experiencing extreme increase in emotional distress;
 - c. The ~~recipient individual~~ needs continuous intervention to maintain stability; or
 - d. The ~~recipient individual~~ is causing harm to self or others.
2. The ~~recipient individual~~ must be at risk of at least one of the following:
 - a. Psychiatric hospitalization;
 - b. Emergency ICF/MR placement;
 - c. Disruption of community status (living arrangement, day placement, or school); or
 - d. Causing harm to self or others.

C. Service units and service limitations. Crisis stabilization services must be authorized following a documented face-to-face assessment conducted by a qualified ~~mental health~~ *developmental disabilities* professional (QDDP).

1. The unit for each component of the service is one hour. ~~This~~ *Each* service may be authorized in 15-day increments, but no more than 60 days in a ~~calendar~~ *plan of care* year may be used. The actual service units per episode shall be based on the documented clinical needs of the ~~recipients~~ *individuals* being served. Extension of services beyond the 15-day limit per authorization must be authorized following a documented face-to-face reassessment conducted by a qualified professional as described in subsection D of this section.
2. Crisis stabilization services may be provided directly in the following settings (the following examples are not exclusive):
 - a. The home of ~~a recipient~~ *an individual* who lives with family or other primary caregiver or caregivers;
 - b. The home of ~~a recipient~~ *an individual* who lives independently or semi-independently to augment any current services and support;

c. A day program or setting to augment current services and supports; or

d. A respite care setting to augment current services and supports.

3. Crisis supervision may be provided as a component of this service only if clinical or behavioral interventions allowed under this service are also provided during the authorized period. *Crisis supervision must be provided one-on-one and face-to-face with the individual. Crisis supervision must be provided face-to-face with the recipient, if provided as a part of this service, shall be billed separately in hourly service units.*

4. Crisis stabilization services shall not be used for continuous long-term care. Room and 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 care waiver services participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, the following specific crisis stabilization provider qualifications requirements apply:

1. Crisis stabilization services shall be provided by agencies/entities licensed by DMHMRSAS as a provider of outpatient, residential, supportive residential in-home services, or day support services. The provider agency must employ or utilize qualified licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to recipients for individuals with developmental disabilities related conditions who are experiencing serious behavioral problems require crisis stabilization services. Supervision of direct service staff must be provided by a QDDP. Crisis supervision providers must be licensed by DMHMRSAS as providers of residential services, supportive in-home services, or day support services.

2. Crisis stabilization supporting documentation must be developed (or revised, in the case of a request for an extension) and submitted to the support coordinator case manager for authorization within 72 hours of the face-to-face assessment or reassessment.

3. Documentation indicating the dates and times of crisis stabilization services and, the amount and type of service provided, and specific information about the individual's response to the services and supports as agreed to in the supporting documentation must be recorded in the recipient's individual's record.

4. Documentation of provider qualifications of providers must be maintained for review by DMAS staff. This service shall be designed to stabilize the recipient individual and strengthen the current semi-independent living situation, or situation with family or other primary care givers, so the recipient individual can be maintained during and beyond the crisis period.

12 VAC 30-120-766. Personal care and respite care services.

A. Service description. *Services may be provided either through an agency-directed or consumer-directed model.*

1. Personal care services ~~may be means~~ services offered to recipients individuals in their homes and communities as an alternative to more costly institutional care to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. Personal care services substitute for the absence, loss, diminution, or impairment of a physical, behavioral, or cognitive function. This service shall provide care to recipients individuals with activities of daily living (eating, drinking, personal hygiene, toileting, transferring and bowel/bladder control), instrumental activities of daily living (IADL), access to the community, monitoring of self-medication or other medical needs or, and the monitoring of health status or physical condition. Recipients shall be permitted to share service hours for no more than two individuals living in the same home. In order to receive personal care services, the individual must require assistance with their ADLs. When specified in the plan of care, personal care services may include assistance with IADL. Assistance with IADL must be essential to the health and welfare of the individual, rather than the individual's family/caregiver. An additional component to personal care is work or school-related personal care. This allows the personal care provider to provide assistance and supports for individuals in the workplace and for those individuals attending postsecondary educational institutions. Workplace or school supports through the IFDDS Waiver are not provided if they are services that should be provided by the Department of Rehabilitative Services, under IDEA, or if they are an employer's responsibility under the Americans with Disabilities Act or § 504 of the Rehabilitation Act. Work-related personal care services cannot duplicate services provided under supported employment.

2. Respite care means services provided for unpaid caregivers of eligible individuals who are unable to care for themselves that are provided on an episodic or routine basis because of the absence of or need for relief of those unpaid persons who routinely provide the care.

B. Criteria.

1. In order to qualify for these personal care services, the individual must demonstrate a need for such personal care in activities of daily living, reminders to take medication, or other medical needs, or monitoring health status or physical condition.

2. In order to qualify for respite care, individuals must have a primary unpaid caregiver living in the home who requires temporary relief to avoid institutionalization of the individual.

3. 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 30-120-770.

C. Service units and service limitations.

1. The unit of service is one hour.

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2. Respite care services are limited to a maximum of 720 hours per year. Individuals who are receiving services through both the agency-directed and consumer-directed models cannot exceed 720 hours per calendar year combined.

~~Recipients can~~ 3. Individuals may have personal care, respite care, and in-home residential support services in their ~~service~~ plan of care but cannot receive in-home residential supports and personal care or respite care services at the same time.

4. Each ~~recipient~~ individual receiving personal care services must have an ~~emergency~~ back-up plan in case the personal care aide or consumer-directed (CD) employee does not show up for work as expected or terminates employment without prior notice.

5. Individuals must need assistance with ADLs in order to receive IADL care through personal care services.

6. Individuals shall be permitted to share personal care service hours with one other individual (receiving waiver services) who lives in the same home.

7. This service does not include skilled nursing services with the exception of skilled nursing tasks that may be delegated in accordance with 18 VAC 90-20-420 through 18 VAC 90-20-460.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, personal and respite care providers must meet ~~additional~~ the following provider requirements:-

1. ~~Personal care~~ Services shall be provided by:

a. For the agency-directed model, a DMAS ~~certified~~ enrolled personal care/respite care provider or by a DMHMRSAS-licensed residential ~~support~~ supportive in-home provider. All personal care aides must pass an objective standardized test of knowledge, skills, and abilities approved by DMHMRSAS and administered according to DMHMRSAS' defined procedures. ~~2. The personal care provider:~~

~~Providers must:~~ a. demonstrate a prior successful health care delivery business; ~~b. and operate from a business office.~~

e. b. For the consumer-directed model, a service facilitation provider meeting the requirements found in 12 VAC 30-120-770.

2. For DMHMRSAS-licensed providers, a residential supervisor shall provide ongoing supervision for all personal care aides. For DMAS-enrolled personal care/respite care providers, the provider must employ or subcontract with and directly supervise an RN or an LPN who will provide ongoing supervision of all personal care aides. (1) The supervising RN and LPN must be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/MR or nursing facility.

(2) 3. The RN supervisor or case manager/services facilitator must make an ~~initial assessment~~ comprehensive a home visit

to conduct an initial assessment prior to the start of care for all ~~new recipients admitted to personal care~~ individuals requesting services. The RN supervisor or case manager/service facilitator must also perform any subsequent reassessments or changes to the supporting documentation. Under the consumer-directed model, the initial comprehensive visit is done only once upon the individual's entry into the service. If an individual served under the waiver changes CD services facilitation agencies, the new CD services facilitation provider must bill for a reassessment in lieu of a comprehensive visit.

(3) 4. The RN or LPN supervisor or case manager/services facilitator must make supervisory visits as often as needed to ensure both quality and appropriateness of services.

a. For personal care the minimum frequency of these visits is every 30 to 90 days depending on ~~recipient~~ individual needs. For respite care offered on a routine basis, the minimum frequency of these visits is every 30 to 90 days under the agency-directed model and every six months or upon the use of 300 respite care hours (whichever comes first) under the consumer-directed model.

b. Under the agency-directed model, when respite care services are not received on a routine basis, but are episodic in nature, the RN is not required to conduct a supervisory visit every 30 to 90 days. Instead, the RN supervisor must conduct the initial home visit with the respite care aide immediately preceding the start of care and make a second home visit within the respite care period.

c. When respite care services are routine in nature and offered in conjunction with personal care, the 30- to 90-day supervisory visit conducted for personal care may serve as the RN supervisor or case manager/service facilitator visit for respite care. However, the RN supervisor or case manager/services facilitator must document supervision of respite care separately. For this purpose, the same record can be used with a separate section for respite care documentation.

5. Under the agency-directed model, the supervisor shall identify any gaps in the aide's ability to provide services as identified in the individual's plan of care and provide training as indicated based on continuing evaluations of the aide's performance and the individual's needs.

(4) 6. The supervising RN or LPN or case manager/services facilitator must maintain current documentation. This may be done as a summary and must note:

(a) a. Whether personal and respite care services continue to be appropriate;

(b) b. Whether the ~~plan~~ supporting documentation is adequate to meet the ~~need~~ individual's needs or if changes are indicated in the ~~plan~~ supporting documentation;

(c) c. Any special tasks performed by the aide/CD employee and the aide's/CD employee's qualifications to perform these tasks;

(d) ~~Recipient's~~ d. Individual's satisfaction with the service;

~~(e) e. Any hospitalization or change in the individual's medical condition or functioning status;~~

~~(f) f. Other services received and their amount; and~~

~~(g) g. The presence or absence of the aide in the home during the RN's or LPN's visit.~~

~~(5) Employ and directly supervise personal care aides who will provide direct care to personal care recipients. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with minimum qualifications as required by DMAS.~~

7. Qualification of aides/CD employees. Each aide/CD employee must:

a. Be 18 years of age or older and possess a valid social security number;

~~(a) b. For the agency-directed model, be able to read and write English to the degree necessary to perform the tasks required. For the consumer-directed model, possess basic math, reading and writing skills;~~

c. Have the required skills to perform services as specified in the individual's plan of care;

d. Not be the parents of individuals who are minors, or the individual's spouse. Payment will 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 be reimbursed for providing this service must meet the qualifications. In addition, under the consumer-directed model, family/caregivers acting as the employer on behalf of the individual may not also be the CD employee;

e. Additional aide requirements under the agency-directed model:

~~(b) Have completed 40 hours of~~ (1) Complete an appropriate aide training curriculum consistent with the DMAS standards. Prior to assigning an aide to a recipient an individual, the provider agency must ensure that the aide has satisfactorily completed a training program consistent with DMAS standards. DMAS requirements may be met in any of the following ways:

(a) Registration as a certified nurse aide (DMAS-enrolled personal care/respice care providers);

(b) Graduation from an approved educational curriculum that offers certificates qualifying the student as a nursing assistant, geriatric assistant or home health aide (DMAS-enrolled personal care/respice care providers);

(c) Completion of provider-offered training that is consistent with the basic course outline approved by DMAS (DMAS-enrolled personal care/respice care providers);

(d) Completion and passing of the DMHMRSAS standardized test (DMHMRSAS licensed providers);

~~(e) Be physically able to do the work;~~

~~(d) (2) 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~~

~~(e) Not be a member of the recipient's family (family is defined as parents of minor children, spouses, or legally responsible relatives. Payment will not be made for services furnished by other family members unless there is objective written documentation as to why there are no other providers available to provide the care.~~

(3) Be evaluated in his job performance by the supervisor.

f. Additional CD employee requirements under the consumer-directed model:

(1) Submit to a criminal records check and, if the individual is a minor, the child protective services registry. The employee will not be compensated for services provided to the individual if the records check verifies the employee has been convicted of crimes described in § 37.2-314 of the Code of Virginia or if the employee has a complaint confirmed by the DSS child protective services 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 consumer-directed services requirements; and

(4) Receive an annual TB screening.

~~3. 8. Provider inability to render services and substitution of aides (agency-directed model). a. When a personal care aide is absent and the agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients. , the agency provider may either obtain another aide, obtain a substitute aide from another agency provider if the lapse in coverage is to be less than two weeks in duration, or transfer the recipient individual's services to another agency provider.~~

~~b. During temporary, short-term lapses in coverage not to exceed two weeks in duration, the following procedures must apply:~~

~~(1) The personal care agency having recipient responsibility must provide the RN or LPN supervision for the substitute aide.~~

~~(2) The agency providing the substitute aide must send a copy of the aide's signed daily records signed by the recipient to the personal care agency having recipient care responsibility.~~

~~(3) The provider agency having recipient responsibility must bill DMAS for services rendered by the substitute aide.~~

~~e. If a provider agency secures a substitute aide, the provider agency is responsible for ensuring that all DMAS requirements continue to be met including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS' requirements.~~

9. Retention, hiring, and substitution of employees (consumer-directed model). Upon the individual's request, the CD services facilitator shall provide the individual or family

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caregiver with a list of consumer-directed employees on the consumer-directed employee registry that may provide temporary assistance until the employee returns or the individual or family caregiver is able to select and hire a new employee. If an individual or family caregiver is consistently unable to hire and retain an employee to provide consumer-directed services, the services facilitator must contact the case manager and DMAS to transfer the individual, at the individual's or family caregiver's choice, to a provider that provides Medicaid-funded agency-directed personal care or respite care services. The CD services facilitator will make arrangements with the case manager to have the individual transferred.

4. 10. Required documentation in ~~recipients'~~ *individuals'* records. The provider agency must maintain all records of each ~~personal care recipient individual receiving services.~~ Under the agency-directed model, these records must be separated from those of other nonwaiver services, such as home health services. At a minimum these records must contain:

a. The most recently updated ~~GSP~~ *plan of care* and supporting documentation, all provider agency documentation, and all DMAS-122 forms;

b. ~~All the DMAS utilization review forms;~~

~~e.~~ *b.* Initial assessment by the RN supervisory nurse or case manager/services facilitator completed prior to or on the date services are initiated and, subsequent reassessments, and changes to the supporting documentation by the RN supervisory nurse or case manager/services facilitator;

~~d.~~ *Nurses c.* Nurses' or case manager/services facilitator summarizing notes recorded and dated during any contacts with the ~~personal care aide or CD employee~~ and during supervisory visits to the ~~recipient's individual's~~ home;

~~e.~~ *d.* All correspondence to the ~~recipient individual~~ and to DMAS;

~~f.~~ Reassessments made during the provision of services; and

~~g.~~ *e.* Contacts made with family, physicians, DMAS, formal and informal service providers, and all professionals concerning the ~~recipient individual~~;

~~h.~~ *f.* Under the agency-directed model, all ~~personal care aide~~ records. The ~~personal care aide~~ record must contain:

(1) The specific services delivered to the ~~recipient individual~~ by the aide and the ~~recipient's individual's~~ responses;

(2) The aide's arrival and departure times;

(3) The aide's weekly comments or observations about the ~~recipient individual~~ to include observations of the ~~recipient's individual's~~ physical and emotional condition, daily activities, and responses to services rendered; and

(4) The aide's and ~~recipient's individual's~~ weekly signatures to verify that ~~personal care~~ services during that week have been rendered.

~~i.~~ (5) Signatures, times, and dates; *these signatures, times, and dates* shall not be placed on the aide record prior to the last date of the week that the services are delivered.

(6) Copies of all aide records; these records shall be subject to review by state and federal Medicaid representatives.

g. Additional documentation requirements under the consumer-directed model:

(1) All management training provided to the individuals or family caregivers, including the individual's or family caregiver's responsibility for the accuracy of the timesheets.

(2) All documents signed by the individual or the individual's family caregivers that acknowledge the responsibilities of the services.

12 VAC 30-120-768. Respite care services. (Repealed.)

~~A. Service description. Respite care means services specifically designed to provide a temporary but periodic or routine relief to the unpaid primary caregiver of a recipient who is incapacitated or dependent due to physical or cognitive disability. Respite care services include assistance with personal hygiene, nutritional support, and environmental maintenance authorized as either episodic, temporary relief, or as a routine periodic relief of the caregiver. Persons can have respite care and in-home residential support services in their service plan but cannot receive in-home residential supports and respite care services simultaneously.~~

~~B. Criteria. Respite care may only be offered to recipients who have a primary unpaid caregiver living in the home who requires temporary relief to avoid institutionalization of the recipient. Respite care is designed to focus on the need of the caregiver for temporary relief and to help prevent the breakdown of the caregiver due to the physical burden and emotional stress of providing continuous support and care to the dependent recipient.~~

~~C. Service units and service limitations. Respite care services are limited to a maximum of 30 days or 720 hours per year.~~

~~D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, providers must meet the following qualifications:~~

~~1. Respite care services shall be provided by a DMAS-certified personal care provider, a DMHMRSAS licensed supportive in-home residential support provider, respite care services provider (ICF/MR), or in-home respite care provider.~~

~~2. The respite care provider must employ or subcontract with and directly supervise an RN or an LPN who will provide ongoing supervision of all respite care aides.~~

~~a. The RN and LPN must be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience, which may include work in an acute care hospital, public health clinic, home health agency, or nursing facility.~~

~~b. Based on continuing evaluations of the aides' performances and recipients' needs, the RN or LPN supervisor shall identify any gaps in the aides' abilities to function competently and shall provide training as indicated.~~

~~e. The RN supervisor must make an initial assessment visit prior to the start of care for any recipient admitted to respite care. The RN supervisor must also perform any subsequent reassessments or changes to the supporting documentation.~~

~~d. The RN or LPN must make supervisory visits as often as needed to ensure both quality and appropriateness of services.~~

~~(1) When respite care services are received on a routine basis, the minimum acceptable frequency of these supervisory visits shall be every 30 to 90 days.~~

~~(2) When respite care services are not received on a routine basis, but are episodic in nature, the RN or LPN is not required to conduct a supervisory visit every 30 to 90 days. Instead, the nurse supervisor must conduct the initial home visit with the respite care aide immediately preceding the start of care and make a second home visit within the respite care period.~~

~~(3) When respite care services are routine in nature and offered in conjunction with personal care, the 30 to 90 day supervisory visit conducted for personal care may serve as the RN or LPN visit for respite care. However, the RN or LPN supervisor must document supervision of respite care separately. For this purpose, the same recipient record can be used with a separate section for respite care documentation.~~

~~e. The RN or LPN must document in a summary note:~~

~~(1) Whether respite care services continue to be appropriate.~~

~~(2) Whether the supporting documentation is adequate to meet the recipient's needs or if changes need to be made.~~

~~(3) The recipient'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 aide in the home during the visit.~~

~~3. Employ and directly supervise respite care aides who provide direct care to respite care recipients. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with minimum qualifications. Each aide must:~~

~~a. Be able to read and write;~~

~~b. Have completed 40 hours of training consistent with the DMAS standards. Prior to assigning an aide to a recipient, the provider agency must ensure that the aide has satisfactorily completed a training program consistent with the DMAS standards;~~

~~c. Be evaluated in his job performance by the RN or LPN supervisor;~~

~~d. Be physically able to do the work;~~

~~e. 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~~

~~f. Not be a member of a recipient's family (family is defined as parents of minor children, spouses, or legally responsible relatives. Payment will not be made for services furnished by other family members unless there is objective written documentation as to why there are no other providers available to provide the care.~~

~~4. Inability to provide services and substitution of aides. When a respite care aide is absent and the respite care provider agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients.~~

~~a. If a provider agency cannot supply a respite care aide to render authorized services, the agency may either obtain a substitute aide from another agency if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient's care to another agency.~~

~~b. If no other provider agency is available who can supply an aide, the provider agency shall notify the recipient or family so that they may contact the support coordinator to request a screening if ICF/MR placement is desired.~~

~~e. During temporary, short term lapses in coverage, not to exceed two weeks in duration, a substitute aide may be secured from another respite care provider agency or other home care agency. Under these circumstances, the following requirements apply:~~

~~(1) The respite care agency having recipient responsibility is responsible for providing the RN or LPN supervision for the substitute aide.~~

~~(2) The respite care agency having recipient care responsibility must obtain a copy of the aide's daily records signed by the recipient and the substitute aide from the respite care agency providing the substitute aide. All documentation of services rendered by the substitute aide must be in the recipient's record. The documentation of the substitute aide's qualifications must also be obtained and recorded in the personnel files of the agency having recipient care responsibility. The two agencies involved are responsible for negotiating the financial arrangements of paying the substitute aide.~~

~~(3) Only the provider agency having recipient responsibility may bill DMAS for services rendered by the substitute aide.~~

~~d. Substitute aides obtained from other agencies may be used only in cases where no other arrangements can be made for recipient respite care services coverage and may be used only on a temporary basis. If a substitute aide is needed for more than two weeks, the case must be transferred to another respite care provider agency that has the aide capability to serve the recipient or recipients.~~

~~5. Required documentation for recipients' records. The provider agency must maintain all records of each respite care recipient. These records must be separated from those of other nonwaiver services, such as home health services. These records will be reviewed periodically by the DMAS staff. At a minimum these records must contain:~~

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a. The most recent CSP and supporting documentation, all respite care assessments, and all DMAS-122 forms;

b. All DMAS utilization review forms;

c. Initial assessment by the RN supervisory nurse completed prior to or on the date services are initiated and subsequent reassessments and changes to supporting documentation by the RN supervisory nurse;

d. Nurses' notes recorded and dated during significant contacts with the respite care aide and during supervisory visits to the recipient's home;

e. All correspondence to the recipient and to DMAS;

f. Reassessments made during the provision of services; and

g. Significant contacts made with family, physicians, DMAS, and all professionals concerning the recipient.

6. Respite care aide record of services rendered and recipient's responses. The aide record must contain:

a. The specific services delivered to the recipient by the respite care aide and the recipient's response.

b. The arrival and departure time of the aide for respite care services only.

c. Comments or observations recorded weekly about the recipient. Aide comments must include, at a minimum, observation of the recipient's physical and emotional condition, daily activities, and the recipient's response to services rendered.

d. The signature of the aide and the recipient once each week to verify that respite care services have been rendered.

e. Signatures, times, and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered.

7. Copies of all aide records shall be subject to review by state and federal Medicaid representatives.

12 VAC 30-120-770. Consumer-directed services: attendant care, companion care, and respite care model of service delivery.

A. Service definition.

1. a. Attendant services include hands-on care specific to the needs of a recipient. Attendant care includes assistance with ADLs, bowel/bladder programs, range of motion exercises, routine wound care that does not include sterile technique, and external catheter care. Supportive services are those that substitute for the absence, loss, diminution, or impairment of a physical or cognitive function. When specified, supportive services may include assistance with instrumental activities of daily living (IADLs) that are incidental to the care furnished, or that are essential to the health and welfare of the recipient. Attendant care 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. Recipients can have attendant care and in-home residential

support services in their service plan but cannot receive these two services simultaneously.

b. An additional component to attendant care will be work-related attendant services. This service will extend the ability of the personal attendant to provide assistance in the workplace. These services include filing, retrieving work materials that are out of reach, providing travel assistance for a consumer with a mobility impairment, helping a consumer with organizational skills, reading handwritten mail to a consumer with a visual impairment, or ensuring that a sign language interpreter is present during staff meetings to accommodate an employee with a hearing impairment.

2. Consumer-directed respite care means services specifically designed to provide a temporary but periodic or routine relief to the primary unpaid caregiver of a recipient who is incapacitated or dependent due to frailty or physical disability. Respite care services includes assistance with personal hygiene, nutritional support, and environmental maintenance authorized as either episodic, temporary relief, or as a routine periodic relief of the caregiver.

3. Companion care is a covered service when its purpose is to supervise or monitor those individuals who require the physical presence of an aide to insure their safety during times when no other supportive individuals are available.

A. Criteria.

1. The IFDDS Waiver has three services, companion, personal care, and respite, that may be provided through a consumer-directed model.

2. Individuals who are eligible for consumer-directed services must have the capability to hire and train their consumer-directed employees and supervise the employee's work 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. Responsibilities as employer. The individual, or if the individual is unable, then a family caregiver, is the employer in this service and is responsible for hiring, training, supervising, and firing employees. Specific duties include checking references of employees, determining that employees meet basic qualifications, training employees, supervising the employees' performance, and submitting timesheets to the fiscal agent on a consistent and timely basis. The individual or family caregiver must have an emergency back-up plan in case the employee does not show up for work.

4. DMAS shall contract for the services of a fiscal agent for attendant consumer-directed personal care, companion care, and consumer-directed respite care services. The fiscal agent will be reimbursed paid by DMAS to perform certain tasks as an agent for the recipient individual/employer who is receiving consumer-directed services. The fiscal agent will handle responsibilities for the recipient individual for employment taxes. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

5. Individuals choosing consumer-directed services must receive support from a CD services facilitator. Services facilitators assist the individual or family/caregiver as they

become employers for consumer-directed services. This function includes providing the individual or family/caregiver with management training, review and explanation of the Employee Management Manual, and routine visits to monitor the employment process. The CD services facilitator assists the individual/employer with employer issues as they arise. The services facilitator meeting the stated qualifications may also complete the assessments, reassessments, and related supporting documentation necessary for consumer-directed services if the individual or family/caregiver chooses for the CD services facilitator to perform these tasks rather than the case manager. Services facilitation services are provided on an as-needed basis as determined by the individual, family/caregiver, and CD services facilitator. This must be documented in the supporting documentation for consumer-directed services and the services facilitation provider bills accordingly. 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 DMAS so that consumer-directed services may be discontinued and the option given to change to agency-directed services.

B. Criteria:

1. In order to qualify for attendant care, the recipient must demonstrate a need for personal care in activities of daily living, medication or other medical needs, or monitoring health status or physical condition.

2. Consumer directed respite care may only be offered to recipients who have a primary unpaid caregiver living in the home who requires temporary relief to avoid institutionalization of the recipient, and it is designed to focus on the need of the caregiver for temporary relief.

3. The inclusion of companion care in the GSP is appropriate only when the recipient cannot be left alone at any time due to mental or severe physical incapacitation. This includes recipients who cannot use a phone to call for help due to a physical or neurological disability. Recipients can only receive companion care due to their inability to call for help if PERS is not appropriate for them.

4. Attendant care, companion care, and consumer-directed respite services are available to recipients who would otherwise require the level of care provided in an ICF/MR. Recipients who are eligible for consumer-directed services must have the capability to hire and train their own personal attendants or companions and supervise the attendant's or companion's performance. Recipients with cognitive impairments will not be able to manage their own care. If a recipient is unable to direct his own care, a family caregiver may serve as the employer on behalf of the recipient. Recipients are permitted to share hours for no more than two individuals living in the same home.

5. Responsibilities as employer. The recipient, or if the recipient is unable then a family caregiver, is the employer in this service and is responsible for hiring, training, supervising, and firing personal attendants and companions. Specific duties include checking references of personal attendants/companions, determining that personal attendants/companions meet basic qualifications, training

personal attendants/companions, supervising the personal attendant's/companion's performance, and submitting timesheets to the service coordinator and fiscal agent on a consistent and timely basis. The recipient or family caregiver must have an emergency back-up plan in case the personal attendant/companion does not show up for work as expected or terminates employment without prior notice.

G. Service units and service limitations:

1. Consumer-directed respite care services are limited to a maximum of 30 days or 720 hours per calendar year.

2. The amount of companion care time included in the GSP must be no more than is necessary to prevent the physical deterioration or injury to the recipient. In no event may the amount of time relegated solely to companion care on the GSP exceed eight hours per day.

3. Recipients can have consumer-directed respite care and attendant care and in-home residential support services in their service plans but cannot receive these services simultaneously.

4. For attendant care and consumer-directed respite care services, recipients or family caregivers will hire their own personal attendants and manage and supervise the attendants' performances.

The attendant/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 recipient'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 recipient is a minor, the child protective services registry. The personal attendant/companion will not be compensated for services provided to the recipient if the records check verifies the personal attendant/companion has been convicted of crimes described in § 32.1-162.9:1 of the Code of Virginia or if the personal attendant/companion has a complaint confirmed by the DSS child protective services registry.

f. Be willing to attend training at the recipient's or family caregiver's request;

g. Understand and agree to comply with the DMAS IFDDS Waiver requirements;

h. Receive periodic TB screening, CPR training and an annual flu shot; and

i. Be willing to register in a personal attendant registry, which will be maintained by the consumer-directed services facilitator chosen by the recipient or recipient's parent or guardian.

5. Restrictions. Attendants cannot be spouses, parents of minor children, or legally responsible relatives. Payment will not be made for services furnished by other family members

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~~unless there is objective written documentation as to why there are no other providers available to provide the care.~~

~~6. Retention, hiring, and substitution of attendants. Upon the recipient's request, the CD services facilitation provider shall provide the recipient or family caregiver with a list of persons on the personal attendant registry who can provide temporary assistance until the attendant returns or the recipient or family caregiver is able to select and hire a new personal attendant. If a recipient or family caregiver is consistently unable to hire and retain the employment of an attendant to provide attendant or consumer directed respite services, the service coordination provider must contact the support coordinator and DMAS to transfer the recipient, at the recipient's or family caregiver's choice, to a provider that provides Medicaid-funded agency directed personal care, companion care or respite care services. The CD services facilitation provider will make arrangements with the support coordinator to have the recipient transferred.~~

~~D. B. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, provider services facilitators providers must meet the following qualifications:~~

~~1. To be enrolled as a Medicaid CD services facilitation provider and maintain provider status, the CD services facilitation provider must operate from a business office and have sufficient qualified staff who will function as CD services facilitators to perform the needed plans of care development and monitoring, reassessments, service coordination, facilitation and support activities as required. It is preferred that the employee of the CD services facilitation provider 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 individual have CD services facilitator has two years of satisfactory experience in the human services field working with persons individuals with developmental disabilities related conditions.~~

~~2. The individual CD services facilitator must possess a combination of work experience and relevant education which indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the application form, found in supporting documentation, or be observed during the job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:~~

~~a. Knowledge of:~~

~~(1) Types of functional limitations and health problems that are common to different disability types and the aging process as well as strategies to reduce limitations and health problems;~~

~~(2) Physical assistance typically required by people with developmental disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;~~

~~(3) Equipment and environmental modifications commonly used and required by people with developmental disabilities that reduce the need for human help and improves safety;~~

~~(4) (1) Various long-term care program requirements, including nursing home, ICF/MR, and assisted living facility placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal care services;~~

~~(5) IFDDS Waiver (2) DMAS consumer-directed services requirements, as well as and the administrative duties for which the recipient individual will be responsible;~~

~~(6) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning;~~

~~(7) (3) Interviewing techniques;~~

~~(8) (4) The recipient's individual's right to make decisions about, direct the provisions of, and control his attendant care and consumer-directed respite care services, including hiring, training, managing, approving time sheets, and firing an attendant employee;~~

~~(9) (5) The principles of human behavior and interpersonal relationships; and~~

~~(10) (6) General principles of record documentation.~~

~~(7) For CD services facilitators who also conduct assessments and reassessments, the following is also required. Knowledge of:~~

~~(a) Types of functional limitations and health problems that are common to different disability types and the aging process as well as strategies to reduce limitations and health problems;~~

~~(b) Physical assistance typically required by people with developmental disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;~~

~~(c) Equipment and environmental modifications commonly used and required by people with developmental disabilities that reduces the need for human help and improves safety;~~

~~(d) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning.~~

~~b. Skills in:~~

~~(1) Negotiating with recipients individuals, family/caregivers, and service providers;~~

~~(2) Observing, recording, and reporting behaviors;~~

~~(3) Identifying, developing, or providing services to persons with developmental disabilities; and~~

~~(4) Identifying services within the established services system to meet the recipient's individual's needs.~~

~~c. Abilities to:~~

~~(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for persons who have visual impairments;~~

- (2) Demonstrate a positive regard for recipients *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 different types of persons from diverse cultural backgrounds; and

(7) *Interview.*

~~2. If the CD services facilitation staff employed by the CD services facilitation provider is not an RN, the CD services facilitation provider must have RN consulting services available, either by a staffing arrangement or through a contracted consulting arrangement. The RN consultant is to be available as needed to consult with recipients and CD services facilitation providers on issues related to the health needs of the recipient.~~

~~3. If the CD services facilitator is not an 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.~~

~~3- 4. Initiation of services and service monitoring.~~

~~a. Attendant care services. If the services facilitator has responsibility for individual assessments and reassessments, these must be conducted as specified in 12 VAC 30-120-766 and 12 VAC 30-120-776.~~

~~b. Management training.~~

~~(1) The CD services facilitation provider must make an initial comprehensive home visit to develop the supporting documentation with the recipient *individual* or family caregiver and to provide management training. The initial management training is done only once upon the individual's entry into the service. If an individual served under the waiver changes CD services facilitation providers, the new CD services facilitator must bill for a regular management training in lieu of initial management training.~~

~~(2) After the initial visit, two routine onsite visits must occur in the recipient's home within 60 days of the initiation of care or the initial visit to monitor the supporting documentation employment process.~~

~~(3) For personal care services, the CD services facilitation provider will continue to monitor the supporting documentation on an as needed basis, not to exceed a maximum of one routine onsite visit every 30 days but no less than the minimum of one routine onsite visit every 90 days per recipient *individual*. After the initial visit, the CD services facilitator will periodically review the utilization of companion services at a minimum of every six months and for respite services, either every six months or upon the use of 300 respite care hours, whichever comes first.~~

~~The initial comprehensive visit is done only once upon the recipient's entry into the service. If a waiver recipient changes CD services facilitation agencies, the new CD services~~

~~facilitation provider must bill for a reassessment in lieu of a comprehensive visit.~~

~~b. Consumer directed respite and companion services. The CD services facilitation provider must make an initial comprehensive home visit to develop the supporting documentation with the recipient or family caregiver and will provide management training. After the initial visit, the CD services facilitator will periodically review the utilization of companion services at a minimum of every six months or, for respite services, either every six months or upon the use of 300 respite care hours, whichever comes first. The initial comprehensive visit is done only once upon the recipient's entry into the service. If a waiver recipient changes CD services facilitation agencies, the new CD services facilitation provider must bill for a reassessment in lieu of a comprehensive visit.~~

~~4. CD services facilitator reassessments for consumer-directed services. A reassessment of the recipient's level of care will occur six months after initial entry into the program, and subsequent reevaluations will occur at a minimum of every six months. During visits to the recipient's home, the CD services facilitation provider must observe, evaluate, and document the adequacy and appropriateness of personal attendant services with regard to the recipient's current functioning and cognitive status, medical, and social needs. The CD services facilitation provider's summary must include, but not necessarily be limited to:~~

~~a. Whether attendant care or consumer directed respite care services continue to be appropriate and medically necessary to prevent institutionalization;~~

~~b. Whether the service is adequate to meet the recipient's needs;~~

~~c. Any special tasks performed by the attendant/companion and the attendant's/companion's qualifications to perform these tasks;~~

~~d. Recipient's satisfaction with the service;~~

~~e. Hospitalization or change in medical condition, functioning, or cognitive status;~~

~~f. Other services received and their amount; and~~

~~g. The presence or absence of the attendant in the home during the CD services facilitator's visit.~~

~~5. The CD services facilitation provider must be available to the recipient *individual* or family/caregiver by telephone during normal business hours, have voice mail capability, and return phone calls within 24 hours or have an approved back-up CD services facilitator.~~

~~6. The CD services facilitation provider must submit a criminal record check within 15 days of employment pertaining to the personal attendant/companion consumer-directed employees on behalf of the recipient *individual* or family/caregiver and report findings of the criminal record check to the recipient *individual* or the family/caregiver and the program's fiscal agent. Personal attendants/companions will not be reimbursed for services provided to the recipient effective with the date the criminal record check confirms a personal~~

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~~attendant has been found to have been convicted of a crime as described in § 32.1-162.9:1 of the Code of Virginia or if the personal attendant/companion has a confirmed record on the DSS Child Protective Services Registry. If the recipient is a minor, the personal attendant/companion must also be screened through the DSS child protective services registry.~~

7. The CD services facilitation provider shall verify bi-weekly timesheets signed by the recipient *individual* or the family caregiver and the ~~personal attendant/companion employee~~ to ensure that the number of ~~CSP plan of care~~ approved hours are not exceeded. If discrepancies are identified, the CD services facilitation provider must contact the ~~recipient individual~~ to resolve discrepancies and must notify the fiscal agent. If ~~a recipient an individual~~ is consistently being identified as having discrepancies in his timesheets, the CD services facilitation provider must contact the ~~support coordinator case manager~~ to resolve the situation. ~~The CD services facilitation provider cannot verify timesheets for personal attendants/companions who have been convicted of crimes described in § 32.1-162.9:1 of the Code of Virginia or who have a confirmed case with the DSS Child Protective Services Registry and must notify the fiscal agent.~~

8. ~~Personal attendant Consumer-directed employee registry.~~ The CD services facilitation provider must maintain a ~~personal attendant consumer-directed employee registry, updated on an ongoing basis.~~

9. Required documentation in ~~recipients' individuals' records.~~ ~~CD services facilitators responsible for individual assessment and reassessment must maintain records as described in 12 VAC 30-120-766 and 12 VAC 30-120-776.~~ ~~The CD services facilitation provider must maintain all records of each recipient. At a minimum these records must contain For services facilitators conducting management training, the following documentation is required in the individual's record:~~

a. All copies of the ~~CSP plan of care~~, all supporting documentation ~~related to consumer-directed services~~, and all DMAS-122 forms.

~~b. All DMAS utilization review forms.~~

~~c. b.~~ CD services facilitation provider's notes ~~contemporaneously recorded and dated during any contacts with the recipient and during visits to the recipient's home at the time of service delivery.~~

~~d. c.~~ All correspondence to the ~~recipient individual, others concerning the individual~~, and to DMAS.

~~e. Reassessments made during the provision of services.~~

~~f. Records of contacts made with family, physicians, DMAS, formal and informal service providers, and all professionals concerning the recipient.~~

~~g. d.~~ All training provided to the ~~personal attendant/companion or attendants/companions consumer-directed employees~~ on behalf of the ~~recipient individual~~ or family caregiver.

~~h. e.~~ All management training provided to the ~~recipients individuals~~ or family caregivers, including the ~~recipient's individual's~~ or family caregiver's responsibility for the accuracy of the timesheets.

~~i. f.~~ All documents signed by the ~~recipient individual~~ or the ~~recipient's individual's~~ family caregivers that acknowledge the responsibilities of the services.

12 VAC 30-120-772. Family/caregiver training.

A. Service description. Family or caregiver training is the ~~provision of identified training and education related to disabilities, community integration, family dynamics, stress management, behavior interventions and mental health to a parent, other family members or primary caregiver a service that provides training and counseling services to families or caregivers of individuals receiving waiver services.~~ For purposes of this service, "family" is defined as the ~~persons unpaid people~~ who live with or provide care to or ~~support a waiver recipient an individual served on the waiver~~, and may include a ~~parent, spouse, children, relatives, a legal guardian, foster family, or in-laws.~~ "Family" does not include ~~individuals people~~ who are employed to care for the ~~recipient individual~~. All family/caregiver training must be included in the ~~recipient's individual's~~ written ~~CSP plan of care~~.

B. Criteria. The need for the training and the content of the training in order to assist family or caregivers with maintaining the ~~recipient individual~~ at home must be documented in the ~~recipient's CSP individual's plan of care~~. The training must be necessary in order to improve the family or caregiver's ability to give care and support.

C. Service units and service limitations. Services will be billed hourly and must be prior authorized. ~~Recipients Family, as defined in this section, may receive up to 80 hours of family/caregiver training per calendar individual's plan of care year.~~

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based ~~care waiver services~~ participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, ~~family/caregiver training providers~~ must meet the following ~~qualifications requirements~~:

1. Family/caregiver training must be provided on an individual basis, in small groups or through seminars and conferences provided by ~~Medicaid-certified DMAS-enrolled family and caregiver training providers.~~

2. Family/caregiver training must be provided by ~~individuals providers~~ with expertise ~~who work for an agency with in~~, experience in, or demonstrated knowledge of the training topic ~~identified in the plan of care~~, and who work for an agency or organization that ~~has have~~ a provider ~~participation~~ agreement with DMAS to provide these services. ~~Individuals Providers~~ must also have the appropriate licensure or certification as required for the specific professional field associated with the training area. ~~Licensed practical counselors, licensed clinical social workers, and licensed psychologists can enroll as individual practitioners with DMAS to provide family/caregiver training. Providers include the following: qualified staff of provider agencies; psychologists; licensed clinical social workers; and licensed professional counselors. Qualified staff of provider agencies must be licensed and include occupational therapists, physical therapists, speech/language pathologists, physicians, psychologists, licensed clinical social workers, licensed professional counselors, registered nurses,~~

and special education teachers. Provision of services is monitored by the individual, family/caregiver, and/or the case manager.

12 VAC 30-120-774. Personal emergency response system (PERS).

A. Service description. PERS is a service which electronically monitors recipient individual safety in the home and provides access to emergency crisis intervention assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the recipient's individual's home telephone line. PERS may also include medication monitoring devices.

B. Criteria. PERS can may be authorized when there is no one else is in the home who is competent and or continuously available to call for help in an emergency. If the recipient's caregiver has a business in the home, such as a day care center, PERS will only be approved if the recipient is evaluated as being dependent in orientation and behavior pattern.

C. Service units and service limitations.

1. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, and monitoring, and adjustments of the PERS. A unit of service is one-month rental price set by DMAS. The one-time installation of the unit includes installation, account activation, recipient individual and caregiver instruction, and removal of PERS equipment.

2. PERS services must be capable of being activated by a remote wireless device and be connected to the recipient's individual's telephone line. The PERS console unit must provide hands-free voice-to-voice communication with the response center. The activating device must be waterproof, automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the recipient individual.

3. PERS cannot be used as a substitute for providing adequate supervision of the individual.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-730 and 12 VAC 30-120-740, providers must also meet the following qualifications requirements:

1. A PERS provider is a certified home health or personal care agency, a durable medical equipment provider, a hospital or a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance and service calls), and PERS monitoring.

2. The PERS provider must provide an emergency response center staff with fully trained operators that are capable of receiving signals for help from a recipient's individual's PERS equipment 24 hours a day, 365, or 366 as appropriate, days per year; of determining whether an emergency exists; and of notifying an emergency response organization or an emergency responder that the PERS recipient individual needs emergency help.

3. A PERS provider must comply with all applicable Virginia statutes and, all applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed.

4. The PERS provider has the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the recipient's individual's notification of a malfunction of the console unit, activating devices or medication-monitoring unit while the original equipment is being repaired.

5. The PERS provider must properly install all PERS equipment into a PERS recipient's the functioning telephone line of an individual receiving PERS and must furnish all supplies necessary to ensure that the system is installed and working properly.

6. The PERS installation includes local seize line circuitry, which guarantees that the unit will have priority over the telephone connected to the console unit should the phone be off the hook or in use when the unit is activated.

7. A PERS provider must maintain all installed PERS equipment in proper working order.

8. A PERS provider must maintain a data record for each individual receiving PERS recipient at no additional cost to DMAS. The record must document all of the following:

- a. Delivery date and installation date of the PERS;
- b. Enrollee Individual or family/caregiver signature verifying receipt of PERS device;
- c. Verification by a test that the PERS device is operational, monthly or more frequently as needed;
- d. Updated and current recipient individual responder and contact information, as provided by the recipient individual or the recipient's individual's care provider, or case manager; and
- e. A case log documenting recipient system the individual's utilization and recipient of the system and contacts and communications with the individual, family/caregiver, case manager, or responder-contacts and communications.

9. The PERS provider must have back-up monitoring capacity in case the primary system cannot handle incoming emergency signals.

10. Standards for PERS equipment. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard Number 1635 for Digital Alarm Communicator System Units and Number 1637, which is the UL safety standard for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation ensuring that subsequent signals can be transmitted without requiring manual reset by the recipient individual.

11. A PERS provider must furnish education, data, and ongoing assistance to DMAS and case managers to

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familiarize staff with the service, allow for ongoing evaluation and refinement of the program, and must instruct the recipient individual, family/caregiver, and responders in the use of the PERS service.

12. The emergency response activator must be activated either by breath, by touch, or by some other means, and must be usable by persons who are visually or hearing impaired or physically disabled. The emergency response communicator must be capable of operating without external power during a power failure at the recipient's individual's home for a minimum period of 24 hours and automatically transmit a low battery alert signal to the response center if the back-up battery is low. The emergency response console unit must also be able to self-disconnect and redial the back-up monitoring site without the recipient individual resetting the system in the event it cannot get its signal accepted at the response center.

13. Monitoring agencies must be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It is the PERS provider's responsibility to ensure that the monitoring agency and the agency's equipment meets the following requirements. The monitoring agency must be capable of simultaneously responding to multiple signals for help from recipients' multiple individuals' PERS equipment. The monitoring agency's equipment must include the following:

- a. A primary receiver and a back-up receiver, which must be independent and interchangeable;
- b. A back-up information retrieval system;
- c. A clock printer, which must print out the time and date of the emergency signal, the PERS recipient's individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;
- d. A back-up power supply;
- e. A separate telephone service;
- f. A toll free number to be used by the PERS equipment in order to contact the primary or back-up response center; and
- g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds.

14. The monitoring agency must maintain detailed technical and operations manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures.

15. The PERS provider shall document and furnish *within 30 days of the action taken* a written report to the support coordinator case manager for each emergency signal that results in action being taken on behalf of the recipient individual. This excludes test signals or activations made in error.

16. *The PERS provider is prohibited from performing any type of direct marketing activities.*

12 VAC 30-120-776. Companion care ~~agency-directed model of care services.~~

A. Service description. Companion care services is a covered service when its purpose is to supervise or monitor those individuals who require the physical presence of an aide to ensure their safety during times when no other supportive individuals people are available. *This service may be provided either through an agency-directed or a consumer-directed model.*

B. Criteria.

1. The inclusion of companion care services in the CSP plan of care is appropriate only when the recipient individual cannot be left alone at any time due to mental or severe physical incapacitation. This includes recipients individuals who cannot use a phone to call for help due to a physical or neurological disability. ~~Recipients can only~~ Individuals may receive companion care services due to their inability to call for help if PERS is not appropriate for them.

2. ~~Recipients who have~~ Individuals having a current, uncontrolled medical condition ~~which would make~~ making them unable to call for help during a rapid deterioration ~~can~~ may be approved for companion care services if there is documentation that the recipient individual has had recurring attacks during the two-month period prior to the authorization of companion care services. Companion care services shall not be covered if required only because the recipient individual does not have a telephone in the home or because the recipient individual does not speak English.

3. There must be a clear and present danger to the recipient individual as a result of being left unsupervised. Companion care services cannot be authorized for persons individuals whose only need for companion care services is for assistance exiting the home in the event of an emergency.

4. *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 30-120-770.*

C. Service units and service limitations.

1. The amount of companion care service time included in the CSP plan of care must be no more than is necessary to prevent the physical deterioration or injury to the recipient individual. In no event may the amount of time relegated solely to companion care service on the CSP plan of care exceed eight hours per day.

2. A companion care aide cannot provide supervision to recipients who are individuals on ventilators ~~or, requiring~~ continuous tube feedings, or those who require requiring suctioning of their airways.

3. Companion care services will be authorized for family members to sleep either during the day or during the night when the recipient individual cannot be left alone at any time due to the recipient's individual's severe agitation and/or physically wandering behavior. Companion aide services must be necessary to ensure the recipient's individual's safety if the recipient individual cannot be left unsupervised due to health and safety concerns.

4. Companion ~~care can~~ services may be authorized when no one else is in the home ~~who~~ is competent to call for help in an emergency.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12VAC30-120-730 and 12 VAC 30-120-740, *companion service providers must meet the following qualifications requirements:*

1. *Companion services providers shall include:*

a. *For the agency-directed model: companion providers include DMHMRSAS-licensed residential services providers; DMHMRSAS-licensed supportive, in-home residential service providers; DMHMRSAS-licensed day support service providers; DMHMRSAS-licensed respite service providers; and DMAS-enrolled personal care/respite care providers.*

b. *For the consumer-directed model: a services facilitator must meet the requirements found in 12 VAC 30-120-770.*

~~4.~~ 2. Companion aide qualifications. ~~Agencies must employ individuals to provide companion care who~~ Companions must meet the following requirements:

a. Be at least 18 years of age;

b. Possess basic *math skills and English* reading- and writing skills, ~~and math skills to the degree necessary to perform the tasks required;~~

c. Be capable of following a ~~care~~ plan of care with minimal supervision;

d. Submit to a criminal history record check *and if providing services to a minor, submit to a record check under the State's Child Protective Services Registry.* The companion will not be compensated for services provided to the ~~recipient individual~~ if the records check verifies the companion has been convicted of crimes described in § ~~32.1-162.9-1~~ 37.2-416 of the Code of Virginia;

e. Possess a valid Social Security number; and

f. ~~Be capable of aiding in the activities of daily living or instrumental activities of daily living.~~ Have the required skills to perform services as specified in the individual's plan of care.

g. *Additional CD employee requirements under the consumer-directed model:*

(1) *Be willing to attend training at the individual's or family caregiver's request;*

(2) *Understand and agree to comply with the DMAS consumer-directed services requirements; and*

(3) *Receive an annual TB screening.*

3. *Companions may not be 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 services. Companion services shall not be provided by adult foster care/family care providers or any other paid caregivers.*

4. *Family members who are reimbursed to provide companion services must meet the companion qualifications.*

~~2.~~ 5. *For the agency-directed model, companions will be are employees of agencies entities that will contract enroll with DMAS to provide companion services. Agencies will be Providers are required to have a companion care services supervisor to monitor companion care services. The supervisor must be a certified Home Health Aide, an LPN, or an RN, and must have a current license or certification to practice in the Commonwealth, and have at least one year of experience working with individuals with related conditions; or must have a bachelor's degree in a human services field and at least one year of experience working with individuals with related conditions.*

6. *Retention, hiring, and substitution of companions (consumer-directed model). Upon the individual's request, the CD services facilitator shall provide the individual or family caregiver with a list of consumer-directed employees on the consumer-directed employee registry that may provide temporary assistance until the companion returns or the individual or family caregiver is able to select and hire a new companion. If an individual or family caregiver is consistently unable to hire and retain a companion to provide consumer-directed services, the CD services facilitator must contact the case manager and DMAS to transfer the individual, at the individual's or family caregiver's choice, to a provider that provides Medicaid-funded agency-directed companion services. The CD services facilitator will make arrangements with the case manager to have the individual transferred.*

~~3.~~ 7. The provider ~~agency~~ or case manager/services facilitator must conduct an initial home visit ~~within the first three days of~~ prior to initiating companion ~~care~~ services to document the efficacy and appropriateness of services and to establish a ~~service~~ plan of care for the ~~recipient individual~~. Under the *agency-directed model*, the ~~agency~~ provider must provide follow-up home visits *quarterly or as often as needed* to monitor the provision of services ~~every four months or as often as needed~~. Under the *consumer-directed model*, the case manager/services facilitator will periodically review the utilization of companion services at a minimum of every six months or more often as needed. The ~~recipient individual~~ must be reassessed for services every six months.

8. *Required documentation. The provider or case manager/services facilitator must maintain a record of each individual receiving companion services. At a minimum these records must contain the following:*

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 supporting documentation must be reviewed by the provider or case manager/services facilitator quarterly under the agency-directed model, semiannually under the consumer-directed model, annually, and more often, as needed, modified as appropriate, and the written results of these reviews submitted to the case manager. For the annual review and in cases where the supporting documentation is modified, the plan of care must be reviewed with the individual or family/caregiver.*

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c. All correspondence to the individual, family/caregiver, case manager, and DMAS.

d. Contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual.

e. The companion services supervisor or case manager/service facilitator must document in the individual's record a summary note following significant contacts with the companion and quarterly or semiannual home visits with the individual. This summary must include the following at a minimum:

- (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 visit.

f. A copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

g. Additional documentation requirements under the consumer-directed model:

- (1) All training provided to the companion on behalf of the individual or family caregiver.
- (2) All management training provided to the individuals or family caregivers, including the individual's or family caregiver's responsibility for the accuracy of the timesheets.
- (3) All documents signed by the individual or the individual's family caregivers that acknowledge the responsibilities of the services.

h. Under the agency-directed model, all companion records. The companion record must contain the following:

- (1) The specific services delivered to the individual by the companion, dated the day of service delivery, and the individual's response;
- (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.

12 VAC 30-120-780. Reevaluation of service need and utilization review. (Repealed.)

A. The Consumer Service Plan (CSP).

1. The CSP shall be developed by the support coordinator mutually with other service providers, the recipient, the recipient's parents or legal guardians for minors, consultants, and other interested parties based on relevant, current

assessment data. The CSP process determines the services to be rendered to recipients, the frequency of services, the type of service provider, and a description of the services to be offered. All CSPs developed by the support coordinators are subject to approval by DMAS. DMAS is the single state authority responsible for the supervision of the administration of the community-based care waiver.

2. The support coordinator is responsible for continuous monitoring of the appropriateness of the recipient's supporting documentation and revisions to the CSP as indicated by the changing needs of the recipient. At a minimum, the support coordinator 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.

3. The DMAS staff shall review the CSP every 12 months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the CSP must be authorized by DMAS.

B. Review of level of care.

1. DMAS shall complete an annual comprehensive reassessment, in coordination with the recipient, family, and service providers. If warranted, DMAS will coordinate a medical examination and a psychological evaluation for every waiver recipient. The reassessment must include an update of the assessment instrument and any other appropriate assessment data.

2. A medical examination must be completed for adults based on need identified by the provider, recipient, support coordinator, or DMAS staff. Medical examinations for children must be completed according to the recommended frequency and periodicity of the EPSDT program.

3. A psychological evaluation or standardized developmental assessment for children over six years of age must reflect the current psychological status (diagnosis), adaptive level of functioning, and cognitive abilities. A new psychological evaluation is required whenever the recipient's functioning has undergone significant change and is no longer reflective of the past psychological evaluation.

C. Documentation required.

1. The support coordination agency must maintain the following documentation for review by the DMAS staff for each waiver recipient:

a. All assessment summaries and all CSPs completed for the recipient and maintained for a period of not less than five years;

b. All individual providers' supporting documentation from any provider rendering waiver services to the recipient;

c. All supporting documentation related to any change in the CSP;

d. All related communication with the providers, recipient, consultants, DMHMRSAS, DMAS, DSS, DRS or other related parties; and

e. An ongoing log which documents all contacts made by the support coordinator related to the waiver recipient.

~~2. The recipient service providers must maintain the following documentation for review by the DMAS staff for each waiver recipient:~~

- ~~a. All supporting documentation developed for that recipient and maintained for a period of not less than five years;~~
- ~~b. An attendance log which documents the date services were rendered and the amount and type of services rendered; and~~
- ~~c. Appropriate progress notes reflecting recipient's status and, as appropriate, progress toward the goals on the supporting documentation.~~

12 VAC 30-120-790. Eligibility criteria for emergency access to the waiver. (Repealed.)

~~A. Subject to available funding, individuals must meet at least one of the emergency criteria to be eligible for immediate access to waiver services without consideration to the length of time an individual has been waiting to access services. In the absence of waiver services, the individual would not be able to remain in his home.~~

~~B. The criteria are:~~

- ~~1. The primary caregiver has a serious illness, has been hospitalized, or has died;~~
- ~~2. The individual has been determined by the DSS to have been abused or neglected and is in need of immediate waiver services;~~
- ~~3. The individual has behaviors which present risk to personal or public safety; or~~
- ~~4. The individual presents extreme physical, emotional, or financial burden at home and the family or caregiver is unable to continue to provide care.~~

VA.R. Doc. No. R05-119; Filed July 5, 2006, 11:39 a.m.

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Title of Regulation: 12 VAC 30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12 VAC 30-90-264).

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

Public Hearing Date: N/A - Public comments may be submitted until September 22, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Diane Hankins, Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (084) 786-5379, FAX (804) 786-1680, or e-mail diane.hankins@dmass.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 DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements.

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

Purpose: The purpose of this action is to implement a reasonable limit on the reimbursement for specialized care ancillary services. Over the past several years, specialized care ancillary service costs have markedly increased and wide variation in costs among facilities have been observed. The wide variation does not appear to correspond to differing levels of severity among specialized care populations and do not always appear to be associated with the severity of the patient's needs. This action is designed to ensure that Medicaid recipients continue to receive appropriate specialized care ancillary services in an efficient manner while maintaining adequate reimbursement.

Substance: DMAS determined that the appropriate ceiling for specialized ancillary care services is \$238.81 per day for calendar year 2004. This ceiling is 150% of average ancillary costs in provider fiscal year 2003 inflated to calendar year 2004. The regulation also provides for a mechanism to inflate the ceiling to the provider fiscal year using an indexing methodology similar to that used for regular nursing home reimbursement. The specific change is found in 12 VAC 30-90-264 (8) (a), and consists in adding the following language:

Effective for specialized care days on or after July 1, 2006, reimbursement for reasonable costs shall be subject to a ceiling. The ceiling shall be \$238.81 per day for calendar year 2004 (150% of average costs) and shall be inflated to the appropriate provider fiscal year. For cost report years beginning in each calendar year, ancillary ceilings will be inflated using the moving average for the second quarter of the year, taken from the Virginia Specific Nursing Home Input Price Index published by Global Insight or its successor for the fourth quarter of the previous year.

Issues: The primary advantage to the Commonwealth and to the agency is that this change in regulations addresses the increased and wide variation in ancillary costs among specialized facilities. This action provides a reimbursement methodology similar to other long-term care payment methodologies by evaluating per diem rates among the facilities providing services to specialized care residents statewide and calculating a statewide ceiling equal to 1.5 times the average ancillary cost. A ceiling that is 150% of the average costs is designed to ensure that Medicaid recipients continue to receive appropriate specialized care ancillary services in an efficient manner while maintaining adequate reimbursement. There are no disadvantages to the agency or to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed regulation. The proposed regulations will establish, effective on July 1, 2006, a ceiling on specialized care ancillary service reimbursements to nursing facilities providing services to Medicaid recipients.

Result of analysis. The benefits likely exceed the costs for all proposed changes. A different design would likely yield

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greater benefits at the same cost for at least one proposed change.

Estimated economic impact. These regulations contain provisions for determining Medicaid reimbursements for specialized care services provided by nursing homes. Currently, there is no ceiling on the Medicaid specialized care ancillary service reimbursements. Nursing homes are reimbursed for the reasonable costs for covered ancillary services. The proposed regulations will establish a ceiling on the reimbursements for ancillary care services at \$238.31 per day that will be adjusted for inflation.

According to DMAS, over the past several years a wide variation in the cost of ancillary services has emerged among the facilities. This variation does not appear to be related to the severity of the patient's needs. The intent of the proposed ceiling is to reduce the variation in Medicaid reimbursements among the providers for similar services.

The main economic effect of the proposed regulations is to reduce reimbursements to four of the ten nursing homes providing ancillary services to Medicaid. The proposed ceiling corresponds to 150% of the average specialized care ancillary costs out of 10 facilities providing these services to Medicaid recipients. Based on the most recent information, four of the ten facilities had costs over the proposed ceiling. Thus, four facilities are likely to receive lower reimbursements. The reduction in reimbursements for specialized care ancillary services to four facilities is estimated to be \$464,400, or approximately 7% of the total reimbursements for ancillary services. One-half of this amount will be saved by the Commonwealth and the remaining half will be a reduction in federal matching funds.

Reduced funding to four hospitals providing ancillary services may weaken their incentives to continue to participate in Virginia's Medicaid program. However, because these hospitals will still be receiving up to 150% of their reported costs, any adverse incentives in terms of discontinuing to provide services to Medicaid recipients are probably insignificant. Thus, no significant deterioration on Medicaid recipients' access to medical care is expected.

Approximately one-half of the Medicaid reimbursements is financed from the federal government. The loss of approximately \$232,200 in federal funds represents a net leakage from Virginia's economy and expected to have a contracting effect on the economic activity. However, the size of the loss in federal funds is so small relative to the size of the Commonwealth's economy that it is unlikely to have any significant economic impact.

The fact that the ceiling is established from cost data when there were no cost containment incentives is likely to overstate the true average cost and the dollar value of 150th percentile. As mentioned, there appears to be a wide variation in costs for similar services among facilities. This suggests that the costs reported by some facilities are probably outliers. Inclusion of outliers when calculating averages results in overstatement of the true average. This issue could be addressed by recalculating the average from cost data that results in the presence of cost containment incentives. More specifically, the proposed ceiling will provide incentives to the

provider facilities not to exceed it and reduce the chances of an outlier occurring. Thus, if the ceiling is recalculated after a reasonably long period of time such as three years, the recalculated ceiling is more likely to be reflective of the true 150th percentile of the costs.

Businesses and entities affected. Currently, 10 facilities are receiving reimbursements for specialized care ancillary services.

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

Projected impact on employment. The proposed regulations are not expected to have a significant impact on employment.

Effects on the use and value of private property. The proposed ceiling is expected to reduce Medicaid reimbursements to four of the ten facilities providing ancillary services. A reduction in their revenues is likely to reduce their profitability and consequently their asset values.

Small businesses: costs and other effects. According to DMAS, of the four facilities expected to experience a reduction in their Medicaid revenues, one is a small business. This particular facility is estimated to receive \$188,000 less in its Medicaid specialized care ancillary services payments.

Small businesses: alternative method that minimizes adverse impact. There is no known alternative method to minimize impact on the affected small business.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Methods and Standards for Establishing Payment Rates—Long Term Care: Reimbursement for NF Specialized

Care Ancillary Services (12 VAC 30-90-264); the agency raises no issues with this analysis.

Summary:

Under existing regulations, DMAS reimburses reasonable costs without limit for covered nursing facility specialized care ancillary services, except kinetic therapy devices. In response to both the escalating costs and the need for greater consistency in charges submitted for these services, the proposed amendments place a ceiling on ancillary services reimbursement to no more than 150% of average specialized care ancillary costs. The ceiling will be adjusted annually for inflation.

12 VAC 30-90-264. Specialized care services.

Specialized care services provided in conformance with 12 VAC 30-60-40 E and H, 12 VAC 30-60-320 and 12 VAC 30-60-340 shall be reimbursed under the following methodology. The nursing facilities that provide adult specialized care for the categories of Ventilator Dependent Care, will be placed in one group for rate determination. The nursing facilities that provide pediatric specialized care in a dedicated pediatric unit of eight beds or more will be placed in a second group for rate determination.

1. Routine operating cost. Routine operating cost shall be defined as in 12 VAC 30-90-271 and 12 VAC 30-90-272. To calculate the routine operating cost reimbursement rate, routine operating cost shall be converted to a per diem amount by dividing it by actual patient days.

2. Allowable cost identification and cost reimbursement limitations. The provisions of Article 5 (12 VAC 30-90-50 et seq.) of Subpart II of Part II of this chapter and of Appendix III (12 VAC 30-90-290) of Part III of this chapter shall apply to specialized care cost and reimbursement.

3. Routine operating cost rates. Each facility shall be reimbursed a prospective rate for routine operating costs. This rate will be the lesser of the facility-specific prospective routine operating ceiling, or the facility-specific prospective routine operating cost per day plus an efficiency incentive. This efficiency incentive shall be calculated by the same method as in 12 VAC 30-90-41.

4. Facility-specific prospective routine operating ceiling. Each nursing facility's prospective routine operating ceiling shall be calculated as:

a. Statewide ceiling. The statewide routine operating ceiling shall be the weighted average (weighted by 1994 days) of specialized care rates in effect on July 1, 1996, reduced by statewide weighted average ancillary and capital cost per day amounts based on audited 1994 cost data from the 12 facilities whose 1994 FY specialized care costs were audited during 1996. This routine operating ceiling amount shall be adjusted for inflation by the percentage of change in the moving average of the Virginia specific Skilled Nursing Facility Market Basket of Routine Service Costs, as developed by DRI/McGraw-Hill, using the second quarter 1996 DRI table. The respective statewide operating ceilings will be adjusted each quarter in which the provider's most recent fiscal year ends, by adjusting the most recent interim ceiling by

100% of historical inflation and 50% of forecasted inflation to the end of the provider's next fiscal year.

b. The portion of the statewide routine operating ceiling relating to nursing salaries (as determined by the 1994 audited cost report data, or 67.22%) will be wage adjusted using a normalized wage index. The normalized wage index shall be the wage index applicable to the individual provider's geographic location under Medicare rules of reimbursement for skilled nursing facilities, divided by the statewide average of such wage indices across the state. This normalization of wage indices shall be updated January 1, after each time the Health Care Financing Administration (HCFA) publishes wage indices for skilled nursing facilities. Updated normalization shall be effective for fiscal years starting on and after the January 1 for which the normalization is calculated.

c. The percentage of the statewide routine operating ceiling relating to the nursing labor and nonlabor costs (as determined by the 1994 audited cost report data or 71.05%) will be adjusted by the nursing facility's specialized care average Resource Utilization Groups, Version III (RUG-III) Nursing-Only Normalized Case Mix Index (NCMI). The NCMI for each nursing facility will be based on all specialized care patient days rendered during the six-month period prior to that in which the ceiling applies (see subdivision 6 of this section).

5. Normalized case mix index (NCMI). Case mix shall be measured by RUG-III nursing-only index scores based on Minimum Data Set (MDS) data. The RUG-III nursing-only weights developed at the national level by the Health Care Financing Administration (HCFA) (see 12 VAC 30-90-320) shall be used to calculate a facility-specific case mix index (CMI). The facility-specific CMI, divided by the statewide CMI shall be the facility's NCMI. The steps in the calculation are as follows:

a. The facility-specific CMI for purposes of this rate calculation shall be the average of the national RUG-III Nursing-Only weights calculated across all patient days in the facility during the six months prior to the six-month period to which the NCMI shall be applied to the facility's routine operating cost and ceiling.

b. The statewide CMI for purposes of this rate calculation shall be the average of the national RUG-III Nursing-Only weights calculated across all specialized care patient days in all Specialized Care Nursing facilities in the state during the six months prior to the six-month period to which the NCMI shall be applied. A new statewide CMI shall be calculated for each six-month period for which a provider-specific rate must be set.

c. The facility-specific NCMI for purposes of this rate calculation shall be the facility-specific CMI from subdivision 5 a of this section divided by the statewide CMI from subdivision 5 b of this section.

d. Each facility's NCMI shall be updated semiannually, at the start and the midpoint of the facility's fiscal year.

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- e. Patient days for which the lowest RUG-III weight is imputed, as provided in subdivision 14 c of this section, shall not be included in the calculation of the NCMI.
6. Facility-specific prospective routine operating base cost per day: The facility-specific routine operating cost per day to be used in the calculation of the routine operating rate and the efficiency incentive shall be the actual routine cost per day from the most recent fiscal year's cost report, adjusted (using DRI-Virginia inflation factors) by 50% of historical inflation and 50% of the forecasted inflation, and adjusted for case mix as described below:
- a. An NCMI rate adjustment shall be applied to each facility's prospective routine nursing labor and nonlabor operating base cost per day for each semiannual period of the facility's fiscal year.
- b. The NCMI calculated for the second semiannual period of the previous fiscal year shall be divided by the average of that (previous) fiscal year's two semiannual NCMI's to yield an "NCMI cost rate adjustment" to the prospective nursing labor and nonlabor operating cost base rate in the first semiannual period of the subsequent fiscal year.
- c. The NCMI determined in the first semiannual period of the subsequent fiscal year shall be divided by the average of the previous fiscal year's two semiannual NCMI's to determine the NCMI cost rate adjustment to the prospective nursing labor and nonlabor operating base cost per day in the second semiannual period of the subsequent fiscal year.
- See 12 VAC 30-90-310 for an illustration of how the NCMI is used to adjust routine operating cost ceilings and semiannual NCMI adjustments to the prospective routine operating base cost rates.
7. Interim rates. Interim rates, for processing claims during the year, shall be calculated from the most recent settled cost report and Minimum Data Set (MDS) data available at the time the interim rates must be set, except that failure to submit cost and MDS data timely may result in adjustment to interim rates as provided elsewhere.
8. Ancillary costs. Specialized care ancillary costs will be paid on a pass-through basis for those Medicaid specialized care patients who do not have Medicare or any other sufficient third-party insurance coverage. Ancillary costs will be reimbursed as follows:
- a. All covered ancillary services, except kinetic therapy devices, will be reimbursed for reasonable costs as defined in the current NHPS. *Effective for specialized care days on or after July 1, 2006, reimbursement for reasonable costs shall be subject to a ceiling. The ceiling shall be \$238.81 per day for calendar year 2004 (150% of average costs) and shall be inflated to the appropriate provider fiscal year. For cost report years beginning in each calendar year, ancillary ceilings will be inflated using the moving average for the second quarter of the year, taken from the Virginia Specific Nursing Home Input Price Index published by Global Insight or its successor for the fourth quarter of the previous year. See 12 VAC 30-90-290 for the cost reimbursement limitations.*
- b. Kinetic therapy devices will have a limit per day (based on 1994 audited cost report data inflated to the rate period). See 12 VAC 30-90-290 for the cost reimbursement limitations.
- c. Kinetic therapy devices will be reimbursed only if a resident is being treated for wounds that meet the following wound care criteria. Residents receiving this wound care must require kinetic bed therapy (that is, low air loss mattresses, fluidized beds, and/or rotating/turning beds) and require treatment for a grade (stage) IV decubitus, a large surgical wound that cannot be closed, or second to third degree burns covering more than 10% of the body.
9. Covered ancillary services are defined as follows: laboratory, X-ray, medical supplies (e.g., infusion pumps, incontinence supplies), physical therapy, occupational therapy, speech therapy, inhalation therapy, IV therapy, enteral feedings, and kinetic therapy. The following are not specialized care ancillary services and are excluded from specialized care reimbursement: physician services, psychologist services, total parenteral nutrition (TPN), and drugs. These services must be separately billed to DMAS. An interim rate for the covered ancillary services will be determined (using data from the most recent settled cost report) by dividing allowable ancillary costs by the number of patient days for the same cost reporting period. The interim rate will be retroactively cost settled based on the specialized care nursing facility cost reporting period.
10. Capital costs. Effective July 1, 2001, capital cost reimbursement shall be in accordance with 12 VAC 30-90-35 through 12 VAC 30-90-37 inclusive, except that the 90% occupancy requirement shall not be separately applied to specialized care. Capital cost related to specialized care patients will be cost settled on the respective nursing facility's cost reporting period. In this cost settlement the 90% occupancy requirement shall be applied to all the nursing facility's licensed nursing facility beds inclusive of specialized care.
- To apply this requirement, the following calculation shall be carried out.
- a. Licensed beds, including specialized care beds, times days in the cost reporting period shall equal available days.
- b. 90% of available days shall equal 90% occupancy days.
- c. 90% occupancy days, minus actual resident days including specialized care days shall equal the shortfall of days if it is positive. It shall be set to zero if it is negative.
- d. Actual resident days not including specialized care days, plus the shortfall of days shall equal the minimum number of days to be used to calculate the capital cost per day.
11. Nurse aide training and competency evaluation programs and competency evaluation programs (NATCEP) costs. NATCEPS costs will be paid on a pass-through basis in accordance with the current NHPS.

12. Pediatric routine operating cost rate. For pediatric specialized care in a distinct part pediatric specialized care unit, one routine operating cost ceiling will be developed. The routine operating cost ceiling will be computed as follows:

- a. The Complex Health Care Payment Rate effective July 1, 1996, and updated for inflation, will be reduced by (i) the weighted average capital cost per day developed from the 1994 audit data and (ii) the weighted average ancillary cost per day from the 1994 audit data updated for inflation in the same manner as described in subdivision 4 a of this subsection.
- b. The statewide operating ceiling shall be adjusted for each nursing facility in the same manner as described in subdivisions 4 and 5 of this section.
- c. The final routine operating cost reimbursement rate shall be computed as described for other than pediatric units in subdivision 3 of this section.

13. Pediatric unit capital cost. Pediatric unit capital costs will be reimbursed in accordance with the current NHPS, except that the occupancy requirement shall be 70% rather than 90%.

14. MDS data submission. MDS data relating to specialized care patients must be submitted to the department in a submission separate from that which applies to all nursing facility patients.

- a. Within 30 days of the end of each month, each specialized care nursing facility shall submit to the department, separately from its submission of MDS data for all patients, a copy of each MDS Version 2.0 which has been completed in the month for a Medicaid specialized care patient in the nursing facility. This shall include (i) the MDS required within 14 days of admission to the nursing facility (if the patient is admitted as a specialized care patient), (ii) the one required by the department upon admission to specialized care, (iii) the one required within 12 months of the most recent full assessment, and (iv) the one required whenever there is a significant change of status.
- b. In addition to the monthly data submission required in subdivision 14 a of this section, the same categories of MDS data required in subdivision 14 a of this section shall be submitted for all patients receiving specialized care from January 1, 1996, through December 31, 1996, and shall be due February 28, 1997.
- c. If a provider does not submit a complete MDS record for any patient within the required timeframe, the department shall assume that the RUG-III weight for that patient, for any time period for which a complete record is not provided, is the lowest RUG-III weight in use for specialized care patients. A complete MDS record is one that is complete for purposes of transmission and acceptance by the Health Care Financing Administration.

15. Case mix measures in the initial semiannual periods. In any semiannual periods for which calculations in 12 VAC 39-90-310 requires an NCMI from a semiannual period beginning before January 1996, the case mix used shall be

the case mix applicable to the first semiannual period beginning after January 1, 1996, that is a semiannual period in the respective provider's fiscal period. For example, December year-end providers' rates applicable to the month of December 1996, would normally require (in Appendix I (12 VAC 30-90-270 et seq.) of Part III of this chapter) an NCMI from July to December 1995, and one from January to June 1996, to calculate a rate for July to December 1996. However, because this calculation requires an NCMI from a period before January 1996, the NCMI that shall be used will be those applicable to the next semiannual period. The NCMI from January to June 1996, and from July to December 1996, shall be applied to December 1996, as well as to January to June 1997. Similarly, a provider with a March year end would have its rate in December 1996, through March 1997, calculated based on an NCMI from April through September 1996, and October 1996, through March 1997.

16. Cost reports of specialized care providers are due not later than 150 days after the end of the provider's fiscal year. Except for this provision, the requirements of 12 VAC 30-90-70 and 12 VAC 30-90-80 shall apply.

VA.R. Doc. No. R04-210; Filed July 5, 2005, 11:25 a.m.

Title of Regulation: 12 VAC 30-120. Waivered Services (adding 12 VAC 30-120-1500 through 12 VAC 30-120-1550).

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

Public Hearing Date: N/A - Public comments may be submitted until September 22, 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 DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services, and § 1915(c) of the Social Security Act provides for home and community-based waiver programs such as the Day Support Waiver for Individuals with Mental Retardation.

Purpose: The purpose of this action is to establish a new program, the Day Support Waiver for Individuals with Mental Retardation (Day Support Waiver), to provide day support and prevocational services for individuals who are waiting to receive services under the Mental Retardation Waiver (MR Waiver). In September 2005, there were approximately 2,900 individuals waiting to receive services under the MR Waiver.

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Individuals in the Day Support Waiver program will receive services until they are no longer eligible for Day Support Waiver services.

Substance: New regulations containing the policy and procedures for the Day Support Waiver were developed in consultation with members of the General Assembly and in collaboration with DMHMRSAS and the MR Waiver Advisory Committee. The regulations are contained in six new sections that contain definitions of Day Support Waiver terms, contain general coverage and requirements for Day Support Waiver services, outline individual eligibility requirements, define general requirements for home and community-based participating providers, define participation standards for home and community-based waiver services participating providers, and define the covered services and outlines requirements for providers of these services.

This waiver covers only those individuals who have a diagnosis of mental retardation. Day support services include 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. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level. Prevocational services are those services aimed at preparing an individual for paid or unpaid employment. They 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.

The regulations are necessary to have operational authority for the waiver that is currently operating under emergency regulations. The emergency regulations expired on June 30, 2006.

Issues: The primary advantage of these proposed regulations is that the Day Support Waiver provides an alternative for those individuals on the MR Waiver waiting list who could benefit from day support and prevocational services. By providing services to individuals with mental retardation in the community, the waiver is also intended to help delay or prevent institutional placement. There are no known disadvantages of these regulations to the agency, the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed regulation. The proposed regulations establish a Medicaid waiver program to provide day support and pre-vocational services to individuals with mental retardation. The proposed rules have been in effect since July 2005 under emergency regulations.

Result of analysis. The benefits likely exceed the costs for all proposed changes.

Estimated economic impact. Pursuant to Item 326 LLL of the 2005 Acts of Assembly, these regulations establish Mental Retardation (MR) Day Support Waiver program for individuals with mental retardation. The program has been in effect since July 2005 under the emergency regulations. The waiver

program is established under section 1915(c) of the federal Social Security Act, which encourages the states to provide home and community based services as alternatives to institutionalized care. The main purpose of waiver programs is to prevent or delay placement of persons in institutions by providing care for individuals in their homes and communities consequently avoiding high long-term care costs. States wishing to implement such waiver programs are required to demonstrate that the costs would be lower under a waiver than they would be without it.

The proposed waiver program provides day support services and pre-vocational services to individuals with diagnosis of mental retardation. The main goals of day support services include improving or maintaining the functional level of an individual through training, assisting, and supervising in self help, socialization, and adaptive skills. Pre-vocational services do not include specifically job-task related skills, but provide training for accepting supervision, attendance, task completion, problem solving, and safety.

MR Day Support services are likely to have economic effects on the recipients, the state, and the health care system. Individuals are expected to benefit from these services in terms of being exposed to stimulating activities and social interaction and being provided support for employment. These services provide an alternative to MR waiver services and are likely to reduce the likelihood of institutionalization. Keeping individuals with mental retardation in their communities is known to reduce total health care costs. Currently, 3,154 individuals are on the waiting list for MR Waiver services. Of these, 1,566 need the services urgently. Even though the provision of day support services is believed to reduce the costs of institutional care, no data is available to indicate the magnitude of expected savings.

Despite the expected overall savings, the provision of day support services is not free. Currently, funding is provided for 300 individuals. The estimated fiscal cost for medical and administrative expenses is approximately \$5.8 million. One-half of these funds is provided by the Commonwealth while the other half is provided by the federal government.

The administrative costs to the Department of Medical Assistance Services is estimated at 15% of a full-time employee position in total valued at about \$15,000 including benefits, office supplies etc. There are additional administrative costs borne by the Department of Mental Health, Mental Retardation, and Substance Abuse Services for the operation of the program. These costs are estimated to be about \$7,500 corresponding to 3.0% of four staff persons time.

Businesses and entities affected. Currently, the number of individuals MR Day Support waiver could serve is 300 through approximately 119 day support providers and 55 prevocational providers.

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

Projected impact on employment. The proposed changes are expected to increase the demand for labor by providers in order to provide day support and prevocational services to recipients. Also, the administration of the program adds to the

staffing needs of the Department of Medical Assistance Services and the Department of Mental Health, Mental Retardation, and Substance Abuse Services creating a positive effect on demand for labor.

Effects on the use and value of private property. The proposed regulations are expected to increase the asset value of providers as their revenues and profits are expected to be positively affected.

Small businesses: costs and other effects. All of the 119 day support providers and 55 prevocational providers except about 30 community service boards could be considered as small businesses. However, the proposed regulations are not likely to create any significant costs for the affected small businesses.

Small businesses: alternative method that minimizes adverse impact. The proposed regulations are not expected to have any adverse impact on small businesses.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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 Virginia Department of Planning and Budget regarding the proposed regulation (12 VAC 30-120). The department concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The proposed regulatory action establishes a new program, the Day Support Waiver for Individuals with Mental Retardation (Day Support Waiver) to provide day support and prevocational services for individuals who are waiting to receive services under the Mental Retardation Waiver (MR Waiver). The proposed regulatory action contains definitions

of MR Day Support Waiver terms; contains general coverage and requirements; outlines individual eligibility requirements; defines general requirements for home and community-based participating providers; defines participation standards for home and community-based waiver services participating providers; and further defines the covered services and outlines requirements for providers of these services.

**PART X.
DAY SUPPORT WAIVER FOR INDIVIDUALS WITH MENTAL
RETARDATION.**

12 VAC 30-120-1500. Definitions.

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

"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.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county under Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the locality that it serves.

"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 who performs case management services on behalf of the community services board or behavioral health authority, and who possesses a combination of mental retardation work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities as established by the Department of Medical Assistance Services in 12 VAC 30-50-450.

"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.

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 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.

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"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 service plan" or "CSP" means documents addressing needs in all life areas of individuals who receive Day Support Waiver services, and is comprised of individual service plans as dictated by the individual's health care and support needs. The case manager incorporates the individual service plans in the CSP.

"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.

"Day Support Waiver for Individuals with Mental Retardation" or "Day Support Waiver" is the program that provides day support and prevocational services to individuals on the Mental Retardation Waiver waiting list who have been assigned a Day Support Waiver slot.

"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.

"Enroll" means that the individual has been determined by the case manager to meet the eligibility requirements for the Day Support Waiver and DMHMRSAS has verified the availability of a Day Support Waiver slot for that individual, and DSS has determined the individual's Medicaid eligibility for home and community-based services.

"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.

"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 who would otherwise require the level of care provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR).

"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.

"Intermediate Care Facility for the Mentally Retarded" or "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.

"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.

"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, 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). 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.

"Slot" means an opening or vacancy of waiver services for an individual.

"State Plan for Medical Assistance" or "Plan" means the 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.

12 VAC 30-120-1510. General coverage and requirements for Day Support 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 individuals with mental retardation who have been determined to require the level of care provided in an ICF/MR.

B. Covered services.

1. Covered services shall include day support services and prevocational services.

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 an ICF/MR 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 30-50-440. 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.

4. Under this § 1915(c) waiver, DMAS waives § 1902(a)(10)(B) of the Social Security Act related to comparability.

C. 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.

D. Slot allocation.

1. DMHMRSAS will maintain one waiting list, the MR Waiver waiting list described in Part IV (12 VAC 30-120-211 et seq.) of this chapter, which will be used to assign slots in both the MR Waiver and Day Support Waiver. For Day Support Waiver services, DMHMRSAS will assign slots based on the application date reported by the case manager when the individual was placed on the MR Waiver waiting list while assuring that each CSB has at least one Day Support Waiver slot. Individuals interested in receiving Day Support Waiver services who are not currently on the MR Waiver waiting list may apply for services through the local CSB and if found eligible will be placed on the MR Waiver waiting list until a slot is available.

2. Each CSB will be assigned one Day Support Waiver slot by DMHMRSAS. This slot will remain a CSB slot that, when vacated, will be offered to the next individual on the MR Waiver waiting list from that CSB. The remaining slots will be distributed to the CSBs by DMHMRSAS based on the statewide MR Waiver waiting list. When vacated, these slots will be assigned by DMHMRSAS to the next individual on the waiting list, based upon the application date.

3. Individuals may remain on the MR Waiver waiting list while receiving Day Support Waiver services.

E. 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 30-120-1520 D. Providers shall meet the documentation requirements as specified in 12 VAC 30-120-1530 B.

12 VAC 30-120-1520. Individual eligibility requirements.

A. Individuals receiving services under the Day Support Waiver must meet the following requirements. Virginia will apply the financial eligibility criteria contained in the Title XIX State Plan for Medical Assistance 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 the Day Support 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. 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.

(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 spouse or children 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

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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. 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.

(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 Plan for Medical Assistance.

B. Assessment and 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 with a diagnosis of mental retardation. For the case manager to make a recommendation for waiver services, Day Support 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.

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 beginning 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 beginning waiver services;

c. The level of care required by applying the existing DMAS ICF/MR criteria, Part VI (12 VAC 30-130-430 et seq.) of 12 VAC 30-130, completed no more than six months prior to the start of waiver services. 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.

3. The case manager shall provide the individual and family/caregiver with the choice of Day Support Waiver services or ICF/MR placement.

4. The case manager shall send the appropriate forms to DMHMRSAS to enroll the individual in the Day Support Waiver or, if no slot is available, to place the individual on the Mental Retardation Waiver waiting list. DMHMRSAS shall only enroll the individual if a slot is available.

C. Waiver approval process; authorizing and accessing services.

1. Once the case manager has determined an individual meets the criteria for Day Support Waiver services, has determined that a slot is available, and that the individual has chosen this service, the case manager shall submit updated enrollment information to DMHMRSAS to confirm level of care eligibility and the availability of a slot.

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 enrollment confirmation 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 following the receipt of written notification 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 provides the individual and family/caregiver with choice of needed services available under the Day Support Waiver, alternative settings and providers. A CSP shall be developed with 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. 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. Only services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.

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 Individual Service Plans (ISP) 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. The ISP from each waiver service provider shall be incorporated into the CSP.

5. If waiver services are not initiated within 60 days from receipt of enrollment confirmation, 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, up to a maximum of four consecutive extensions, or to 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.

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 preauthorization is required.

7. Day Support 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 and 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; 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 shall be the single state agency authority responsible for the supervision of the administration of the Day Support Waiver and is responsible for conducting utilization review activities. DMHMRSAS shall conduct preauthorization of waiver services.

D. Reevaluation of service need.

1. The consumer service plan.

a. The case manager shall update the CSP annually based on relevant, current assessment data; in updating the CSP, the case manager shall work with the individual, the individual's family/caregiver, other service providers, consultants, and other interested parties.

b. The case manager shall be 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 approved by the individual or family/caregiver and authorized by DMHMRSAS.

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.

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 visits at the assisted living facility or approved adult foster care placement for all Day Support Waiver individuals residing in DSS-licensed or DSS-regulated placements.

5. The 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.

Proposed Regulations

12 VAC 30-120-1530. 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 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 six 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. 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 premises 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. Hold confidential and use for authorized purposes only all medical assistance information regarding individuals served, pursuant to 42 CFR Part 431, Subpart F, 12 VAC 30-20-90, and any other applicable state or federal law;
 13. Notify DMAS when ownership of the provider changes at least 15 calendar days before the date of change;
 14. Properly report cases of 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
 15. Adhere to the provider participation agreement and the DMAS provider 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 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;

e. An ongoing log that documents all contacts made by the case manager related to the individual and family/caregiver; and

f. A copy of the current DMAS-122 form.

2. The service providers must maintain, for a period of not less than six years from the individual's last date of service, documentation necessary to support services billed. DMAS staff shall conduct utilization review of individual-specific documentation. This documentation shall contain, up to and including the last date of service, all of the following:

a. All assessments and reassessments;

b. All ISPs developed for that individual and the written reviews;

c. An attendance log that documents the date services were rendered, as well as documentation of 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; and

f. A copy of the current DMAS-122 form.

C. An individual's case manager shall not be the direct staff person or the immediate supervisor of a staff person who provides Day Support Waiver services for the individual.

12 VAC 30-120-1540. Participation standards for home and community-based waiver services participating providers.

A. Requests for provider 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. 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. The individual 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.

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 of termination.

F. A provider shall have the right to appeal 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.

G. Section 32.1-325 D 2 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, D.C., 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 DMHMRSAS and DSS, in writing, within five business days of being informed of any of the circumstances described in this subsection:

1. Home and community-based waiver services are initiated.

2. A recipient dies.

3. A recipient is discharged from Day Support 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. DMHMRSAS 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 them to the case manager any time there is a change in the individual's condition or circumstances that 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 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 of receipt of the request for change.

Proposed Regulations

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 10 calendar 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 calendar days prior written notice of the provider's intent to discontinue services. The notification letter shall provide the reasons why and the effective date the provider is discontinuing services. The effective date that services will be discontinued shall be at least 12 calendar days from the date of the notification letter.

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 the provider 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 30-120-1550. Services: day support services and prevocational services.

A. Service descriptions.

1. 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.

2. Prevocational services means 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). 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.

B. Criteria.

1. 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 allow an opportunity for being productive and contributing members of communities.

2. For prevocational services, the individual must demonstrate the 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 types. The amount and type of services included in the individual's service plan is determined according to the services required for that individual. There are two types of services: center-based, which is provided primarily at one location/building, and noncenter-based, which is provided primarily in community settings. Both types of services may be provided at either intensive or regular levels.

D. Intensive level criteria. To be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) 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 his 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.

E. Service units. 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.

F. Service limitations.

1. There must be separate supporting documentation for each service and each must be clearly differentiated in documentation and corresponding billing.

2. The supporting documentation must provide an estimate of the amount of services required by the individual. Service providers are reimbursed only for the amount and type of services included in the individual's approved ISP based on the setting, intensity, and duration of the service to be delivered.

3. Services shall be limited to a total of 780 units per CSP year. If an individual receives a combination of day support and prevocational services, the combined total shall not exceed 780 units per CSP year.

4. For day support services:

a. 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.

b. Noncenter-based day support services must be separate and distinguishable from other services.

G. 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, service providers must meet the following requirements:

1. The provider of day support services must be licensed by DMHMRSAS as a provider of day support services. 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. In addition to any licensing requirements, persons providing services are required to participate in training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations prior to providing direct services. All providers of 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:

a. A functional assessment conducted by the provider to evaluate each individual in the service environment and community settings.

b. An ISP that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports and training needs;

(2) The individual's goals and, for a training goal, a sequence of measurable 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 as appropriate;

(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. Documentation confirming the individual's attendance and amount of time in services, type of services rendered, and 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.

d. Documentation indicating whether the services were center-based or noncenter-based.

e. In instances where staff are required to ride with the individual to and from the service in order to provide needed supports as specified in the ISP, the staff time can be billed as day support or prevocational services, provided that the billing for this time does not exceed 25% of the total time spent in the day support or prevocational activity for that day. Documentation must be maintained to verify that billing for staff coverage during transportation does not exceed 25% of the total time spent in the service for that day.

f. If intensive services are requested, documentation indicating the specific supports and the reasons they are needed. For ongoing intensive services, there must be clear documentation of the ongoing needs and associated staff supports.

g. The ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed 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.

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.

i. For prevocational services, 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 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 such services as a waiver expenditure. Prevocational services can only be provided when the individual's compensation is less than 50% of the minimum wage.

VA.R. Doc. No. R05-247; Filed July 5, 2006, 11:37 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18 VAC 85-20-290).

Statutory Authority: §§ 54.1-2400 and 54.1-2910.1 of the Code of Virginia.

Public Hearing Date: August 11, 2006 - 8:15 a.m.

Public comments may be submitted until September 22, 2006.

(See Calendar of Events section for additional information)

Proposed Regulations

Agency Contact: William L. Harp, M.D., Executive Director, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, or e-mail william.harp@dhp.virginia.gov.

Basis: The proposed regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. The statutory requirements for paid malpractice claims to be reported on the Practitioner Profile System are found in § 54.1-2910.1 of the Code of Virginia. In addition, § 54.1-2909 of the Code of Virginia requires any settlement or judgment of a malpractice claim be reported within 30 days of its occurrence.

Purpose: The intent of the Practitioner Profile System is to make information available to the public that will assist them in choosing appropriate practitioners who can safely deliver health care. Since the payment of a malpractice claim is not always an indicator of a practitioner's ability to practice with skill and safety, the following disclaimer is displayed before a consumer can scroll down to the malpractice information on the Profile.

When considering malpractice paid claims data, please keep in mind:

Some studies have shown little correlation between the existence of a malpractice paid claims history and the practitioner's competence to provide care.

Malpractice paid claims histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation.

Some doctors work primarily with high-risk patients. These doctors may have malpractice paid claims histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.

Settlement of a claim may occur for a variety of reasons, which do not necessarily reflect negatively on the professional competence or conduct of the practitioner. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

The incident causing the malpractice paid claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to move through the legal system.

Presentation of Required Data:

Practitioners are required to report all paid claims in the last 10 years. For doctors practicing less than 10 years, the data covers their total years of practice.

To provide perspective regarding the reported data, the Board displays information about the paid claims experience of the practitioner's specialty along with the practitioner's history of paid claims. In reporting the data in this manner, each practitioner is seen relative to other

practitioners in the specialty, rather than to all practitioners in all specialties.

Paid claims are not expressed in dollar amounts. Each paid claim has been analyzed and assigned to one of three statistical categories: below average, average, or above average. This analysis was made relative to the other claims in the specialty in which the claim occurred.

The information provided, in the manner provided, should offer perspective about this aspect of medical practice. You could miss an opportunity for high quality care by excluding a doctor based solely on the presence of a malpractice history. You may wish to discuss information provided in this report, and malpractice generally, with your doctor.

With a disclaimer about paid claims in general and about the characterization of such claims on the profile, the board believes the malpractice information that is presented is an important element for informed patients in making health care decisions that affect their health and safety and should be inclusive of all paid claims regardless of the method of payment.

Substance: The board proposes to repeat the statutory requirement in § 54.1-2909 of the Code of Virginia for reporting of a paid malpractice claim within 30 days. However, claims are sometimes paid through structured settlements or in installments, so an additional amendment will clarify that the report must be made within 30 days of the initial payment rather than after completion of the settlement.

A subsection is added to specify the definition and requirements for a malpractice paid claim. By doing so, the board will clarify provisions for practitioners who have raised questions about what is considered a paid claim and therefore is required to be reported.

The board will specify that, for purposes of reporting required under this section, a malpractice paid claim is a payment for the benefit of a doctor of medicine, osteopathic medicine, or podiatry in satisfaction in whole or in part of a settlement or a judgment based on the provision of or failure to provide healthcare services by that practitioner. A claim is considered a paid claim when a lump sum payment is made or when the first payment of multiple payments is made and must be reported at that time. A claim is reportable even if payment is made from personal funds or if a payment was made on behalf of a doctor of medicine, osteopathic medicine, or podiatry by a corporation or entity comprised only of the doctor of medicine, osteopathic medicine, or podiatry.

The regulations also specify that when a doctor of medicine, osteopathic medicine or podiatry who was named in the claim is dismissed independently of the settlement, judgment or release, then the payment is not reportable. However, if the doctor is dismissed as a condition of, or in consideration of the settlement, judgment or release, then the payment is reportable.

Issues: The primary advantage to the public is the availability of malpractice information on the patient's current doctors or in seeking a doctor to provide medical care. With a more explicit definition of what constitutes a paid claim, there should be more consistency in reporting and more valid information.

While the practitioners would argue that reporting of paid claims is not of benefit to them, the specificity should create a level playing field so all doctors are reporting the same occurrences. Without such specificity, some practitioners are penalized by full reporting while others are choosing to limit reporting to an individual interpretation of a "paid claim." There are no disadvantages to the public in having more complete information about a doctor's malpractice history.

The primary advantage to the agency is consistency and clarity in the rules; it may alleviate the number of calls received by the board asking for interpretations of the law and regulations. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed regulation. The Board of Medicine (board) proposes to amend Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic to clarify the meaning of "malpractice paid claim" and to specify the period of time in which affected entities must report malpractice paid claims to the board.

Result of analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated economic impact. Current regulation requires that doctors of medicine, osteopathic medicine and podiatry report "all malpractice paid claims in the most recent 10-year period." To make this regulation better reflect both the letter and spirit of statutory mandates in § 54.1-2909 as amended by Chapter 762 of the 2003 Acts of Assembly, the board proposes to add language that specifically requires malpractice paid claims be reported within 30 days of initial payment. Although the board already requires regulated entities to report malpractice paid claims within 30 days, this requirement has not been written into the regulation. In addition to clarifying that regulants have 30 days to report malpractice claims, the board proposes to set the initial payment for any malpractice claim as the event that will start the clock on the 30-day reporting time limit. This change should eliminate any confusion that may currently exist as to when settlements that involve payments over multiple years must be reported.

Since this regulatory change addresses only the timing and not the substance of malpractice claim reporting, and that timing has already been required by statute since 2003, regulants are unlikely to incur any additional compliance costs due to the promulgation of this portion of the proposed regulation. Both regulants and the general public, however, will benefit from this rule change. Regulants will be less likely to run afoul of the law if the rules they are expected to follow are more explicitly defined. The general public will also certainly benefit from having a more complete database of malpractice paid claims information that can help them make informed health care decisions.

The board also proposes to explicitly list the situations that would qualify as a malpractice paid claim. Specifically, the proposed regulation requires reporting of any "payment for the benefit of a doctor of medicine, osteopathic medicine, or podiatry in satisfaction in whole or in part of a settlement or a judgment in response to a written demand for monetary payments for damages based on the provision of health care

or professional services rendered"; payments will have to be reported whether they are paid out from a doctor's personal funds, by an insurance company or from corporate funds. Malpractice paid claims will also have to be reported for entities that are named parties in a malpractice suit who are dismissed from that suit as a condition of its settlement. This regulatory change is consistent with Code of Virginia requirements and will eliminate any confusion about what constitutes a malpractice paid claim so that there is consistent reporting from all regulants.

Again, this clarification will benefit the public, who will be able to access more complete information to help them make healthcare decisions, and regulants, who will now know exactly what rules they are expected to follow. Regulants who, intentionally or inadvertently, have not been reporting malpractice claims that are paid out of personal funds, or that are paid on the condition that a regulant is dropped as a named party in the claim suit, will certainly suffer a loss of reputation under this clarification of rules. To the extent that malpractice paid claims can serve as a proxy for poor medical practice on the part of regulants, however, that loss of reputation is neither undeserved nor unfair. In any case, the benefits of this proposed regulatory change for both regulants and the general public very likely outweigh the costs.

Businesses and entities affected. There are 26,982 active doctors of medicine, 816 active doctors of osteopathic medicine and 414 active doctors of podiatric medicine licensed by the Commonwealth. All of these individuals are subject to malpractice payment reporting requirements. And will, therefore, be affected by the proposed regulation.

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

Projected impact on employment. To the extent that the proposed regulation causes malpractice paid claims to now be reported where they have not been in the past, involved regulants may individually lose their employment. General employment in these regulated fields, however, will very likely not be affected.

Effects on the use and value of private property. To the extent that the proposed regulation causes malpractice paid claims to now be reported where they have not been in the past, involved regulants will likely suffer a loss of reputation that could decrease the number of patients who are willing to contract their services. This will decrease the value of any medical practice owned by these regulants and will decrease the value of the medical schooling they have received in the past.

Small businesses: costs and other effects. The board does not know how many active doctors own or are employed by small businesses. According to the Virginia Employment Commission (VEC), there are 1,191 medical enterprises that have open unemployment insurance accounts and also fall under the Code of Virginia definition of small business. This number is likely a subset of the total number of small businesses that will be affected by the proposed regulation since VEC numbers would not include doctors who are self-employed and, so, would not have to carry unemployment

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insurance. No new bookkeeping costs should be accrued because of the proposed regulation.

Small businesses: alternative method that minimizes adverse impact. The proposed regulation effectively minimizes the adverse impact on the regulated community given the constraints mandated by the legislature.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 85-20 on requirements for posting of malpractice information on the physician profile.

Summary:

The proposed amendments clarify ambiguous provisions and specify more clearly the timing of a malpractice report, the reported data the board may release, and the definition of a malpractice paid claim.

18 VAC 85-20-290. Reporting of malpractice paid claims and board actions.

A. In compliance with requirements of § 54.1-2910.1 of the Code of Virginia, a doctor of medicine, osteopathic medicine, or podiatry licensed by the board shall report all malpractice paid claims in the most recent 10-year period *within 30 days of the initial payment*. Each report of a settlement or judgment shall indicate:

1. The year the claim was paid.
2. The specialty in which the doctor was practicing at the time the incident occurred that resulted in the paid claim.
3. The total amount of the paid claim in United States dollars.

4. The city, state, and country in which the paid claim occurred.

B. The board shall not release individually identifiable numeric values of reported paid claims but shall use the information provided to determine the relative frequency of paid claims described in terms of the number of doctors in each specialty and the percentage ~~who have made malpractice payments~~ *with malpractice paid claims* within the most recent 10-year period. The statistical methodology used will include any specialty with more than 10 paid claims. For each specialty with more than 10 paid claims, the top 16% of the paid claims will be displayed as above average payments, the next 68% of the paid claims will be displayed as average payments, and the last 16% of the paid claims will be displayed as below average payments.

C. *For purposes of reporting required under this section, a malpractice paid claim shall mean a payment for the benefit of a doctor of medicine, osteopathic medicine, or podiatry in satisfaction in whole or in part of a settlement or a judgment in response to a written demand for monetary payment for damages based on the provision of health care or professional services rendered, or that should have been rendered. A malpractice paid claim shall include:*

1. *A lump sum payment or the first payment of multiple payments;*
2. *A payment made from personal funds;*
3. *A payment on behalf of a doctor of medicine, osteopathic medicine, or podiatry by a corporation or entity comprised solely of that doctor of medicine, osteopathic medicine, or podiatry; or*
4. *A payment on behalf of a doctor of medicine, osteopathic medicine or podiatry named in the claim where that doctor is dismissed as a condition of, or in consideration of the settlement, judgment or release. If the doctor is dismissed independently of the settlement, judgment or release, then the payment is not reportable.*

VA.R. Doc. No. R05-236; Filed July 5, 2006, 9:57 a.m.

* * * * *

Title of Regulation: **18 VAC 85-130. Regulations Governing the Practice of Licensed Midwives (adding 18 VAC 85-130-10 through 18 VAC 85-130-170).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.9 of the Code of Virginia.

Public Hearing Date: August 11, 2006 - 8:15 a.m.

Public comments may be submitted until September 22, 2006.

(See Calendar of Events section for additional information)

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, or e-mail william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of the Code of

Virginia. Section 54.1-2400 provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. The specific authority to regulate and license midwives is in Chapter 29 (§ 54.1-2900 et seq.) of Title of 54.1 of the Code of Virginia.

Purpose: The purpose of the regulatory action is compliance with a statutory mandate for the licensure of midwives. The goal is to adopt the minimal requirements for licensure and practice within the parameters set in law, but to add those provisions and disclosures that encourage the client to make an informed choice for midwifery care. Regulations also establish standards for ethical practice, including provisions for client confidentiality, informed consent for care, responsible action by the midwife in emergency situations, collaboration with other professions, recordkeeping, sexual contact and other standards consistent with a licensed professional.

Substance: The substantive provisions of these regulations include definitions for certain words and terms, fees for applicants and licensees, requirements for initial licensure and practice while enrolled in an accredited midwifery program, biennial renewal of licensure and criteria for inactive licensure and reinstatement of licensure. Practice standards are established including requirements for disclosures to clients; confidentiality; maintenance and disclosure of client records; practitioner-client relationships; practitioner responsibility; advertising ethics; recommending vitamins, minerals and food supplements; solicitations and referrals; sexual contact; and refusal to provide information.

Issues: The primary advantage to the public would be assurance that a person practicing midwifery and providing care to an expectant mother and her newborn has met certain standards for minimal competency and for her practice. With licensure, the public is better protected because there is a regulatory system within the Board of Medicine to check credentials and license qualified individuals and then to take disciplinary action if a licensee violates a provision of law or regulation in the practice of midwifery.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed amendments to regulation. Pursuant to Chapters 719 and 917 of the 2005 Acts of Assembly, the Board of Medicine (board) proposes to introduce licensure regulations for the midwife profession.

Result of analysis. The benefits likely exceed the costs for all proposed changes.

Estimated economic impact. Section 54.1-2957.7 of the Code of Virginia defines *midwife* as "any person who provides primary maternity care by affirmative act or conduct prior to, during, and subsequent to childbirth, and who is not licensed as a doctor of medicine or osteopathy or certified nurse midwife." For nearly two years midwifery was illegal in Virginia. Chapter 641 of the 2003 Acts of Assembly "repealed Article 4 of Chapter 5 of Title 32.1 (§ 32.1-145 et seq.) and amended § 54.1-2901 of the Code of Virginia to eliminate the

registration and allowance of the practice of non-nurse midwifery."¹ The repeal was effective December 31, 2003. Chapters 719 and 917 of the 2005 Acts of Assembly reintroduced the profession of midwifery to Virginia law. Pursuant to these chapters, emergency regulations permitting the licensure and practice of midwifery became effective on December 21, 2005. Thus, midwifery was illegal from December 31, 2003, to December 20, 2005.

Pursuant to Chapters 719 and 917 of the 2005 Acts of Assembly, the board proposes these permanent licensure regulations for the midwife profession. In order to become licensed, midwives must (i) pay a \$277 application fee, (ii) hold a current Certified Professional Midwife (CPM) credential issued by the North American Registry of Midwives (NARM), and (iii) submit a report from NARM indicating whether there has ever been any adverse action taken against the applicant. A candidate can obtain the CPM credential through any one of four alternative routes: (a) graduation from a Midwifery Education Accreditation Council accredited program, (b) certification by the American College of Nurse-Midwives Certification Council as a Certified Nurse Midwife or a Certified Midwife, (c) legal recognition in states/countries previously evaluated for educational equivalency, or (d) completion of NARM's portfolio evaluation process. Each route to the CPM credential has further requirements that are described in the NARM document called "How to Become a Certified Professional Midwife (CPM)."² All routes include a written test, clinical experience and a minimum of \$700 in fees.³

The American Public Health Association recommends that access to out-of-hospital maternity care services with direct entry midwives be increased.⁴ Research studies such as Johnson and Daviss' (2005) "Outcomes of planned home births with certified professional midwives: large prospective study in North America" have found that planned home births supervised by midwives for women with low-risk pregnancies are associated with similar safety to low-risk hospital births.⁵ Additionally, the costs for home births tend to be much lower than hospital births.⁶ Consequently, permitting well-trained and certified midwives to legally provide maternity care for women with low-risk pregnancies will likely produce net benefits for the Commonwealth.

Businesses and entities affected. Midwives and their clients are affected by the proposed regulations. According to the Department of Health Professions, seven midwives have thus far become licensed since the emergency regulations became effective. Hospitals will likely be very slightly affected by having a small reduction in potential births.

¹ Source: Virginia General Assembly Legislative Information System Editor's Note to Administrative Code 12 VAC 5-400-10 to 12 VAC 5-400-90. [Repealed]

² "How to Become a Certified Professional Midwife (CPM)" appeared on the North American Registry of Midwives website (<http://www.narm.org/>) on the date of this report's publication, April 7, 2006.

³ All details concerning CPM requirements were obtained from "How to Become a Certified Professional Midwife (CPM)." This document appeared on the North American Registry of Midwives website (<http://www.narm.org/>) on the date of this report's publication, April 7, 2006.

⁴ Source: American Public Health Association (2002)

⁵ Sources: Johnson and Daviss (2005)

⁶ Sources: Anderson and Anderson (1999) and Johnson and Daviss (2005)

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Localities particularly affected. The proposed regulations affect all Virginia localities. There may be disproportionate demand for midwives in rural areas where hospitals can be relatively distant.

Projected impact on employment. The proposed regulations will likely increase the number of active midwives in the Commonwealth.

Effects on the use and value of private property. The proposed regulations will likely increase the number of active midwife practices in the Commonwealth.

Small businesses: costs and other effects. The proposed regulations, in concert with the 2005 legislation, permit midwife practices to legally operate. This is clearly positive for these small businesses.

Small businesses: alternative method that minimizes adverse impact. The proposed regulations, in concert with the 2005 legislation, permit midwife practices to legally operate. This is clearly positive for these small businesses.

References.

American Public Health Association, "2001-3: increasing access to out-of-hospital maternity care services through state-regulated and nationally-certified direct-entry midwives," *American Journal of Public Health* 2002; 92:453-5.

Anderson RE, Anderson DA, "The cost-effectiveness of home birth," *Journal of Nurse-Midwifery* 1999; 44:30-5.

Johnson KC, Daviss BA, "Outcomes of planned home births with certified professional midwives: large prospective study in North America," *British Medical Journal* 2005; 330:1416.

North American Registry of Midwives, "How to Become a Certified Professional Midwife (CPM)," (<http://www.narm.org/>) June 2005.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 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. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of

the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the economic impact analysis prepared on April 7, 2006, by the Department of Planning and Budget for 18 VAC 85-130, Regulations Governing the Practice of Licensed Midwives.

Summary:

The proposed regulation establishes the qualifications for the licensure of midwives, the requirements for disclosure to a client seeking midwifery care, and the standards for ethical practice, which are taken from the standards of the North American Registry of Midwives and the standards set for all professions licensed by the board.

CHAPTER 130. REGULATIONS GOVERNING THE PRACTICE OF LICENSED MIDWIVES.

PART I. GENERAL PROVISIONS.

18 VAC 85-130-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2957.7 of the Code of Virginia.

"Midwife"

"Practicing midwifery"

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

"Board" means the Virginia Board of Medicine.

"Client" means a person receiving midwifery care and shall be considered synonymous with the word "patient."

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI as set out in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"CPM" means the Certified Professional Midwife credential issued by the North American Registry of Midwives.

"NARM" means the North American Registry of Midwives.

18 VAC 85-130-20. Public participation.

A separate board regulation, 18 VAC 85-10-10, provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.

18 VAC 85-130-30. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as a midwife shall be \$277.

2. The fee for biennial active license renewal shall be \$312; the additional fee for late renewal of an active license within one renewal cycle shall be \$105.

3. The fee for biennial inactive license renewal shall be \$168; the additional fee for late renewal of an inactive license within one renewal cycle shall be \$55.

4. The fee for reinstatement of a license that has expired for a period of two years or more shall be \$367 in addition to the late fee for each year in which the license has been lapsed, not to exceed a total of four years. The fee shall be submitted with an application for licensure reinstatement.

5. The fee for a letter of good standing/verification of a license to another jurisdiction shall be \$10.

6. The fee for an application for reinstatement if a license has been revoked or if an application for reinstatement has been previously denied shall be \$2,000.

7. The fee for a duplicate wall certificate shall be \$15.

8. The fee for a duplicate renewal license shall be \$5.

9. The fee for a returned check shall be \$25.

PART II.

REQUIREMENTS FOR LICENSURE AND RENEWAL OF LICENSURE.

18 VAC 85-130-40. Criteria for initial licensure.

A. An applicant for board licensure shall submit:

1. The required application on a form provided by the board and the application fee as prescribed in 18 VAC 85-130-30;

2. Evidence satisfactory to the board of current certification as a CPM; and

3. A report from NARM indicating whether there has ever been any adverse action taken against the applicant.

B. If an applicant has been licensed or certified in another jurisdiction, the applicant shall provide information on the status of each license or certificate held and on any disciplinary action taken or pending in that jurisdiction.

18 VAC 85-130-45. Practice while enrolled in an accredited midwifery education program.

A person may perform tasks related to the practice of midwifery under the direct and immediate supervision of a licensed doctor of medicine or osteopathic medicine, a certified nurse midwife, or a licensed midwife while enrolled in an accredited midwifery education program or during completion of the North American Registry of Midwives' Portfolio Evaluation Process Program without obtaining a license issued by the board until such person has taken and received the results of any examination required for CPM certification or for a period of three years, whichever occurs sooner. For good cause shown, a person may request that the board grant any extension of time beyond the three years, for a period not to exceed one additional year.

18 VAC 85-130-50. Biennial renewal of licensure.

A. A licensed midwife shall renew licensure biennially during the midwife's birth month in each odd-numbered year by:

1. Paying to the board the renewal fee as prescribed in 18 VAC 85-130-30; and

2. Attesting to having current, active CPM certification by NARM.

B. A licensed midwife whose license has not been renewed by the first day of the month following the month in which renewal is required shall not be considered licensed in Virginia.

C. An additional fee to cover administrative costs for processing a late application renewal shall be imposed by the board as prescribed by 18 VAC 85-130-30.

18 VAC 85-130-60. Inactive licensure.

A. A licensed midwife who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license.

1. The holder of an inactive license shall not be required to maintain current, active certification by NARM.

2. An inactive licensee shall not be entitled to perform any act requiring a license to practice midwifery in Virginia.

B. An inactive licensee may reactivate licensure by:

1. Payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure for the biennium in which the license is being reactivated; and

2. Submission of documentation of having current, active certification by NARM.

C. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provision of this chapter.

18 VAC 85-130-70. Reinstatement.

A. A licensed midwife who allows licensure to lapse for a period of two years or more and chooses to resume practice shall submit to the board a reinstatement application, information on practice and licensure in other jurisdictions for the period in which the license was lapsed in Virginia, proof of current, active certification by NARM, and the fee for reinstatement of licensure as prescribed in 18 VAC 85-130-30.

B. A licensed midwife whose license has been revoked by the board and who wishes to be reinstated must make a new application to the board, hold current, active certification by NARM, and pay the fee for reinstatement of a revoked license as prescribed in 18 VAC 85-130-30.

PART III.
PRACTICE STANDARDS.

18 VAC 85-130-80. Disclosure requirements.

A licensed midwife shall provide written disclosures to any client seeking midwifery care. The licensed midwife shall review each disclosure item and obtain the client's signature as evidence that the disclosures have been received and explained. Such disclosures shall include:

1. A description of the licensed midwife's qualifications, experience, and training;

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2. A written protocol for medical emergencies, including hospital transport, particular to each client;
3. A statement as to whether the licensed midwife has hospital privileges;
4. A statement that a licensed midwife is prohibited from prescribing, possessing or administering controlled substances;
5. A description of the midwife's model of care;
6. A copy of the regulations governing the practice of midwifery;
7. A statement as to whether the licensed midwife carries malpractice or liability insurance coverage and, if so, the extent of that coverage;
8. An explanation of the Virginia Birth-Related Neurological Injury Compensation Fund and a statement that licensed midwives are currently not covered by the fund; and
9. A description of the right to file a complaint with the Board of Medicine and with NARM and the procedures and contact information for filing such complaint.

18 VAC 85-130-90. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

18 VAC 85-130-100. Client records.

A. Practitioners shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of client records.

B. Practitioners shall provide client records to another practitioner or to the client or the client's personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage client records and shall maintain timely, accurate, legible and complete client records. Practitioners shall clearly document objective findings, decisions and professional actions based on continuous assessment for ongoing midwifery care.

D. Practitioners shall document a client's decisions regarding choices for care, including informed consent or refusal of care. Practitioners shall clearly document when a client's decisions or choices are in conflict with the professional judgment and legal scope of practice of the licensed midwife.

E. Practitioners shall maintain a client record for a minimum of six years following the last client encounter with the following exceptions:

1. Records of a minor child shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last client encounter regardless of the age of the child;
2. Records that have previously been transferred to another practitioner or health care provider or provided to the client

or the client's personal representative do not have to be kept for a minimum of six years following the last client encounter; or

3. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

F. From (insert effective date of regulations) practitioners shall in some manner inform all clients concerning the time frame for record retention and destruction. Client records shall only be destroyed in a manner that protects client confidentiality, such as by incineration or shredding.

G. When a practitioner is closing, selling or relocating a practice, the practitioner shall meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the client's choice or provided to the client.

18 VAC 85-130-110. Practitioner-client communication; termination of relationship.

A. Communication with clients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately inform a client or the client's legally authorized representative of the client's assessment and prescribed plan of care. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure directed by the practitioner.

2. A practitioner shall present information relating to the client's care to a client or the client's legally authorized representative in understandable terms and encourage participation in the decisions regarding the client's care.

3. Before any invasive procedure is performed, informed consent shall be obtained from the client. Practitioners shall inform clients of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent licensed midwife practicing in Virginia would tell a client. In the instance of a minor or a client who is incapable of making an informed decision on the client's own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

B. Termination of the practitioner/client relationship.

1. The practitioner or the client may terminate the relationship. In either case, the practitioner shall make a copy of the client record available, except in situations where denial of access is allowed by law.

2. Except as provided in § 54.1-2962.2 of the Code of Virginia, a practitioner shall not terminate the relationship or make services unavailable without documented notice to the client that allows for a reasonable time to obtain the services of another practitioner.

18 VAC 85-130-120. Practitioner responsibility.

A. A practitioner shall:

1. Transfer care immediately in critical situations that are deemed to be unsafe to a client or infant and remain with the client until the transfer is complete;

2. Work collaboratively with other health professionals and refer a client or an infant to appropriate health care professionals when either needs care outside the midwife's scope of practice or expertise; and

3. Base choices of interventions on empirical and/or research evidence that would indicate the probable benefits outweigh the risks.

B. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of the midwife's practice or for which the midwife is not trained and individually competent;

2. Knowingly allow apprentices or subordinates to jeopardize client safety or provide client care outside of the apprentice's or subordinate's scope of practice or area of responsibility. Practitioners shall delegate client care only to those who are properly trained and supervised; and

3. Exploit the practitioner/client relationship for personal gain.

18 VAC 85-130-130. Advertising ethics.

A. Any statement specifying a fee, whether standard, discounted or free, for professional services that does not include the cost of all related procedures, services and products that, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment that is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bona fide emergency. This provision may not be waived by agreement of the client and the practitioner.

C. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.

D. A licensee shall disclose the complete name of the board that conferred the certification when using or authorizing the use of the term "board certified" or any similar words or phrase calculated to convey the same meaning in any advertising for the licensee's practice.

E. A licensee of the board shall not advertise information that is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness

of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner or practitioners responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.

18 VAC 85-130-140. Vitamins, minerals and food supplements.

A. The recommendation or direction for the use of vitamins, minerals or food supplements and the rationale for that recommendation shall be documented by the practitioner. The recommendation or direction shall be based upon a reasonable expectation that such use will result in a favorable client outcome, including preventive practices, and that a greater benefit will be achieved than that which can be expected without such use.

B. Vitamins, minerals, or food supplements, or a combination of the three, shall not be sold, dispensed, recommended, prescribed, or suggested in doses that would be contraindicated based on the individual client's overall medical condition and medications.

C. The practitioner shall conform to the standards of the practitioner's particular branch of the healing arts in the therapeutic application of vitamins, minerals or food supplement therapy.

18 VAC 85-130-150. Solicitation or remuneration in exchange for referral.

A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility as defined in § 37.2.100 of the Code of Virginia, or hospital as defined in § 32.1-123 of the Code of Virginia.

Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by 42 USC § 1320a-7b(b), as amended, or any regulations promulgated thereto.

18 VAC 85-130-160. Sexual contact.

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior that:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the client, or both; or

2. May reasonably be interpreted as romantic involvement with a client regardless of whether such involvement occurs in the professional setting or outside of it.

B. Sexual contact with a client.

1. The determination of when a person is a client for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative

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of this issue. A person is presumed to remain a client until the client-practitioner relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a client does not change the nature of the conduct nor negate the statutory prohibition.

C. Sexual contact between a practitioner and a former client after termination of the practitioner-client relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care. For purposes of this section, key third party of a client shall mean: spouse or partner, parent or child, guardian, or legal representative of the client.

E. Sexual contact between a supervisor and a trainee or apprentice shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care.

18 VAC 85-130-170. Refusal to provide information.

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.

NOTICE: The forms used in administering 18 VAC 85-130, Regulations Governing the Practice of Licensed Midwives, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Instructions for Completing a Licensed Midwife Application (rev. 6/06).

Application for a License to Practice as a Licensed Midwife (rev. 10/05).

Form A, Claims History (rev. 8/05).

Form B (rev. 10/05).

Form C (rev. 10/05).

VA.R. Doc. No. R06-149; Filed July 5, 2006, 10:01 a.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Title of Regulation: 18 VAC 95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (adding 18 VAC 95-30-10 through 18 VAC 95-30-210).

Statutory Authority: §§ 54.1-2400 and 54.1-3102 of the Code of Virginia.

Public Hearing Date: September 12, 2006 - 9 a.m.

Public comments may be submitted until 5 p.m. on September 22, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Sandra Reen, Executive Director, Department of Health Professions, Alcoa Bldg., 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, or e-mail sandra.reen@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Subdivision 6 § of 54.1-2400 provides the Board of Long-Term Care Administrators the authority to promulgate regulations to administer the regulatory system.

Chapters 610 and 924 of the 2005 Acts of Assembly require the Board of Long-Term Care Administrators to promulgate regulations for the licensure and regulation of administrators in assisted living facilities.

The specific authorization to promulgate regulations for implementation of licensure of assisted living facility administrators is found in § 54.1-3102 of the Code of Virginia.

Purpose: Pursuant to Chapters 610 and 924 of the 2005 Acts of Assembly, the Board of Long-Term Care Administrators has a mandate to promulgate regulations for the licensure of assisted living facility administrators. Section 54.1-3102 was amended to mandate licensure: "In order to engage in the general administration of an assisted living facility, it shall be necessary to hold an assisted living facility administrator's license or a nursing home administrator's license issued by the board. However, an administrator of an assisted living facility licensed only to provide residential living care, as defined in § 63.2-100, shall not be required to be licensed."

Proponents of legislation for enhanced oversight and accountability of assisted living facilities, including licensure of the administrators, argued that the current regulatory scheme was insufficient to ensure the health, safety and welfare of residents who are increasingly becoming a more frail population in need of a higher level of competency for caregivers. In the current healthcare environment, residents of assisted living facilities often have similar characteristics to patients in nursing homes, so additional competencies and accountability are necessary through licensure by the board.

Substance: The regulations establish criteria for licensure, including educational and experiential qualifications and a competency assessment; standards for practice; and provisions for renewal and reinstatement. The board is mandated to have regulations for licensure in effect by July 1, 2007.

The board's goal is to develop regulations that provide some assurance that the administrator is sufficiently educated and trained to handle the increasing complexity of an assisted living facility and to adequately protect and care for the residents of that facility. Since the regulation excludes from the licensure requirement any assisted living facility licensed only to provide residential living care, as defined in § 63.2-100 of the Code of Virginia, only the facilities that provide assisted living care (which tend to be the larger facilities) will be required to have a licensed administrator, as provided for in law.

Issues: The primary advantage to the public is the assurance that administrators who operate assisted living facilities will be adequately trained and deemed competent by passage of a national and state examination and completion of an Administrator-in-Training (AIT) program. In addition, there will be some accountability for the work and behaviors of administrators who must practice under standards set by the board or face possible disciplinary action. Without the statutory requirement for licensure, persons who engaged in a pattern of errors or who abused a resident may be fired by an employer but could be rehired by another facility. There are no disadvantages of the regulations unless the requirement to be licensed results in a shortage of persons to serve as administrators. Costs may be a negative factor for some individuals who have a very small population of residents with limited resources or living on limited public assistance.

The licensure of assisted living facility administrators creates a large new program under the Board of Long-Term Care Administrators and the department, requiring new expenditures and new personnel for upcoming budgets. To the extent those positions are approved and can be funded with revenue generated by fees from applications for licensure and renewals, there should be no disadvantages to the agency or the Commonwealth. To the extent funding or new positions do not become available, the management of a new licensing program, investigations and disciplinary proceedings for ALF administrators could not occur in a timely manner and could negatively affect other programs.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed amendments to regulation. The Board of Long-Term Care Administrators (board) proposes to promulgate regulations for the licensure of assisted living facility administrators. Administrators of assisted living facilities that are licensed only to provide residential living care will not be required to hold licensure. Other assisted living facility administrators are required to be licensed.

Result of analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated economic impact. Pursuant to the 2005 Acts of Assembly (Chapters 610 and 924), the board has a mandate to promulgate regulations for the licensure of assisted living facility administrators. Section 54.1-3102 was amended as follows to mandate licensure: "In order to engage in the general administration of an assisted living facility, it shall be

necessary to hold an assisted living facility administrator's license or a nursing home administrator's license issued by the board. However, an administrator of an assisted living facility licensed only to provide residential living care, as defined in § 63.2-100, shall not be required to be licensed." Section 63.2-100 of the Code of Virginia defines "residential living care" as "a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living."

Assisted living facility administrators are already regulated through the Department of Social Services regulations, 22 VAC 40-71, Standards and Regulations for Licensed Assisted Living Facilities (DSS ALF). The DSS ALF requirements for assisted living facility administrators include:¹

1. Being at least 21 years of age.
2. Being able to read, write and understand the regulations.
3. Being able to perform the duties and to carry out the responsibilities required by the regulations.
4. Being a high school graduate or having a GED.
5. Having completed at least one year of successful postsecondary education from an accredited college or institution or at least one year of administrative or supervisory experience in caring for adults in a group care facility.
6. Submitting a criminal history record report upon application for licensure as an assisted living facility.
7. Not being a resident of the facility.

Under the proposed board regulations, 18 VAC 95-30, Regulations Governing the Practice of Assisted Living Facility Administrators, there are essentially five routes to becoming licensed as an assisted living facility administrator. Up until one year from the effective date of these proposed regulations, any person who has served full-time as the administrator of record or as an assistant administrator in a Virginia-licensed assisted living facility for at least two of the three years immediately preceding the effective date can become licensed by passing a board-approved state examination and paying a \$200 fee. There will be an additional examination fee to be paid directly to board-hired contractors who will administer the examinations.

The other four routes to licensure remain available beyond the year after the effective date of the proposed regulations. Licensure by endorsement can be obtained by individuals who (i) hold a current, unrestricted license, certificate or registration as an assisted living facility administrator from any state or the District of Columbia; (ii) have not been the subject of a disciplinary action taken by any jurisdiction in which violation of law or regulation governing practice was found and which, in the judgment of the board, has not been remediated; (iii) have successfully completed a state examination on the laws and regulations governing the practice of an assisted living facility administrator; and (iv) either have practiced as the administrator of record in an assisted living facility for at

¹ This list is not comprehensive.

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least two of the three years immediately preceding application to the board or have education and experience substantially equivalent to qualifications required by the proposed regulations and have provided written evidence of those qualifications at the time of application for licensure.

The remaining three routes to licensure, administrator-in-training program, certificate program, and degree plus practical experience, all require that the applicant pass both a national credentialing examination for administrators of assisted living facilities and a jurisprudence exam on the laws and regulations governing the practice of assisted living facility administrators in Virginia. According to the Department of Health Professions (department), the board will most likely contract with the National Association of Boards of Examiners of Long Term Care Administrators (NAB)² for the required national credentialing examination.

The administrator-in-training program route further requires that the applicant either complete at least 30 semester hours in an accredited college or university with courses in the content areas of (i) client/resident care, (ii) human resources management, (iii) financial management, (iv) physical environment, and (v) leadership and governance, and 500 hours in an administrator-in-training program within one year or complete at least 30 semester hours in an accredited college or university in any subject and 1,000 hours in an administrator-in-training program within two years.

The certificate program route requires the following in addition to paying the \$200 application fee and passing both a national credentialing examination and a jurisprudence exam: hold a baccalaureate or higher degree in a field unrelated to health care from an accredited college or university and successfully complete a certificate program with a minimum of 21 semester hours study in a health care related field³ from an accredited college or university and successfully complete an internship lasting at least 320 hours in a licensed assisted living facility as part of the certificate program under the supervision of a preceptor registered by the board.

The degree plus practical experience route requires the following in addition to paying the \$200 application fee and passing both a national credentialing examination and a jurisprudence exam: hold a baccalaureate or higher degree in a health care-related field⁴ from an accredited college or university and have completed not less than a 320-hour internship in a licensed assisted living facility as part of the degree program under the supervision of a preceptor registered by the board.

Under the proposed regulations, licensees must pay a \$225 renewal fee and complete 20 hours of approved continuing education for each renewal year. Up to 10 of the 20 hours

may be obtained through Internet or self-study courses and up to 10 continuing education hours in excess of the number required may be credited to the next renewal year. According to the department, continuing education fees can be expected to be approximately \$15 to \$20 per hour. Also, the Adult Care Education Center (a NAB-approved continuing education provider) provides a variety of free courses online. Adult Care Education Center annual membership costs \$95.⁵ Thus, licensees could potentially satisfy their annual continuing education requirement by taking classes with per course and membership fees totaling in the \$245 to \$295 range. Licensees would also incur costs associated with transportation and the time spent taking the courses. Accounting for the renewal fee, course fees, transportation and time, renewal costs will be in excess of \$500 annually.

The 2005 legislation was passed due to concern that there has been a problem in the Commonwealth with poorly run assisted living facilities. The belief was that the requirements for administrators under the current DSS ALF regulations allow individuals who are not fully competent to ensure the health, safety and welfare of assisted living facility residents to serve as administrators. The increased competency requirements will very likely result in fewer individuals employed as assisted living facility administrators who do not possess the knowledge and skill sufficient to ensure the health, safety and welfare of assisted living facility residents. The proposed licensure requirements will result in fewer individuals being qualified to serve as administrators and will increase the costs to assisted living facilities. A small number of assisted living facilities may not stay in business due to the increased cost and difficulty in finding a qualified administrator. Other facilities that do have a qualified administrator may obtain increased business as a result.

Businesses and entities affected. The Virginia Department of Social Services has approximately 620 facilities licensed to provide assisted living - both in residential care and assisted living care. Approximately 90% of those are licensed to provide assisted living care and would be required to employ a licensed administrator. With the exception of a few nationally owned and operated chain facilities, most are small businesses. Organizations that offer continuing education courses for assisted living administrators will be affected as well.

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

Projected impact on employment. Some individuals who currently qualify to work as an assisted living facility administrator will no longer be qualified under the proposed regulations. These individuals may seek other employment. Employment at organizations that offer continuing education courses for assisted living administrators may moderately increase.

Effects on the use and value of private property. As detailed above, the proposed licensure requirements will increase expenses for assisted living facility administrators, particularly those who do not already meet most of the proposed

² Information concerning NAB can be found at their website: www.nabweb.org.

³ The minimum 21 semester hours must be distributed as follows: six semester hours on resident/client services management, three semester hours on human resource management, three semester hours on financial management, three semester hours on physical environment management, three semester hours on leadership and governance, and three semester hours for an internship.

⁴ The healthcare related field degree must include a minimum of 21 semester hours must be distributed as follows: six semester hours on resident/client services management, three semester hours on human resource management, three semester hours on financial management, three semester hours on physical environment management, three semester hours on leadership and governance, and three semester hours for an internship.

⁵ Source: Department of Health Professions.

qualification requirements. Even those administrators who already meet the initial qualifying requirements will face new expenses with licensure fees. These individuals may also not have already been obtaining 20 hours of continuing education every year and will face additional expenses in meeting this proposed licensure renewal requirement. Thus, the net worth for some assisted living facility administrators may decline. On the other hand, since fewer individuals will legally qualify to work as assisted living facility administrators, those individuals whose qualifications do meet the proposed requirements will likely command higher salaries. This will in turn increase costs for assisted living facilities.

A small number of assisted living facilities may not stay in business due to the increased cost and difficulty in finding a qualified administrator. Other facilities that do have a qualified administrator may get increased business as a result.

Organizations that offer continuing education courses for assisted living administrators will likely gain business due to the proposed continuing education requirements for licensure renewal. Consequently, the value of these organization will likely increase.

Small businesses: costs and other effects. The required licensure of assisted living facility administrators will increase costs for assisted living facilities, most of which are small businesses. Those facilities whose administrator already meets most of the proposed licensure requirements will face less additional cost than those facilities whose administrator falls far short of the proposed requirements. The latter facilities may need to hire a different administrator who commands higher pay.

Providers of continuing education, many of which are likely small businesses, will likely gain some business due to the proposed licensure renewal requirement of 20 hours of continuing education per year.

Small businesses: alternative method that minimizes adverse impact. The 2005 Acts of Assembly require the board to license assisted living facility administrators due to concerns about the health, safety and welfare of assisted living facility residents. The proposed regulations effectively create five routes to licensure. The board believes that the requirements of the proposed routes to licensure are necessary to ensure health, safety and welfare. Other than reducing the required hours of training and education, there is no clear alternative method that minimizes adverse impact. It is possible that health, safety and welfare would not be substantially affected with a modest reduction in the proposed requirements, but no data is currently known to exist to accurately assess this possibility.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Long-Term Care Administrators concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 95-30, Regulations Governing the Practice of Assisted Living Facility Administrators.

Summary:

The proposed regulations for the licensure of assisted living facility administrators include requirements for initial licensure to include a minimum of 30 hours of college-level courses, training in assisted living care, and passage of both a national credentialing examination and a state jurisprudence examination. Persons who have been serving as an administrator of an assisted living facility for two of the three years immediately preceding the effective date of these regulations will be able to apply for licensure with documentation of their service and passage of the state jurisprudence examination. The regulations include provisions for licensure by endorsement of persons who have held a license, certification or registration in another state and set out requirements for an administrator-in-training program, including registration of persons who serve as preceptors, the number of training hours required, the program content, and approved facilities for training.

The proposed regulations establish fees for applicants and licensees, which are the same as those charged for nursing home administrators. For annual renewal of licensure, the regulations provide for 20 hours of continuing education and for recognition and documentation of approved courses. Finally, the regulations set out the acts of unprofessional conduct that may cause the board to refuse to license an applicant or to take disciplinary action against a licensee.

CHAPTER 30.

REGULATIONS GOVERNING THE PRACTICE OF ASSISTED LIVING FACILITY ADMINISTRATORS.

18 VAC 95-30-10. Definitions.

A. The following words and terms when used in this chapter shall have the definitions ascribed to them in § 54.1-3100 of the Code of Virginia:

"Assisted living facility"

"Assisted living facility administrator"

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"Board"

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

"Domains of practice" means the content areas of tasks, knowledge and skills necessary for administration of a residential care/assisted living facility as approved by the National Association of Boards of Examiners of Long Term Care Administrators.

"NAB" means the National Association of Boards of Examiners of Long Term Care Administrators.

18 VAC 95-30-20. Posting of license.

Each licensee shall post his license in a main entrance or place conspicuous to the public in each facility in which the licensee is administrator-of-record.

18 VAC 95-30-30. Accuracy of information.

A. All changes of mailing address or name shall be furnished to the board within 30 days after the change occurs.

B. All notices required by law and by this chapter to be mailed by the board to any licensee shall be validly given when mailed to the latest address on file with the board and shall not relieve the licensee, trainee, or preceptor of the obligation to comply.

18 VAC 95-30-40. Required fees.

A. The applicant or licensee shall submit all fees below that apply:

1. A.I.T. program application	\$185
2. Preceptor application	\$125
3. Licensure application	\$200
4. Verification of licensure requests from other states	\$25
5. Assisted living facility administrator license renewal	\$225
6. Preceptor renewal	\$100
7. Penalty for assisted living facility administrator late renewal	\$65
8. Penalty for preceptor late renewal	\$35
9. Assisted living facility administrator reinstatement	\$315
10. Preceptor reinstatement	\$150
11. Duplicate license	\$15
12. Duplicate wall certificates	\$25
13. Returned check	\$35

B. Fees shall not be refunded once submitted.

C. Examination fees are to be paid directly to the service or services contracted by the board to administer the examinations.

18 VAC 95-30-50. Practice by a licensed nursing home administrator.

Pursuant to § 54.1-3102 B of the Code of Virginia, a person who holds a license as a nursing home administrator issued by the board may engage in the general administration of an assisted living facility.

PART II. RENEWALS AND REINSTATEMENTS.

18 VAC 95-30-60. Renewal requirements.

A. A person who desires to renew his license or preceptor registration for the next year shall, not later than the expiration date of March 31 of each year, submit a completed renewal application and fee.

B. The renewal application and fee shall be received no later than the expiration date. Postmarks shall not be considered.

C. An assisted living facility administrator license or preceptor registration not renewed by the expiration date shall be invalid.

18 VAC 95-30-70. Continuing education requirements.

A. In order to renew an assisted living administrator license, an applicant shall attest on his renewal application to completion of 20 hours of approved continuing education for each renewal year.

1. Up to 10 of the 20 hours may be obtained through Internet or self-study courses and up to 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.

2. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following initial licensure.

B. In order for continuing education to be approved by the board, it shall be related to the domains of practice for residential care/assisted living and approved or offered by NAB, an accredited educational institution, or a governmental agency.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files for a period of three renewal years complete documentation of continuing education including evidence of attendance or participation as provided by the approved sponsor for each course taken.

2. Evidence of attendance shall be an original document provided by the approved sponsor and shall include:

a. Date or dates the course was taken;

b. Hours of attendance or participation;

c. Participant's name; and

d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion

on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters.

18 VAC 95-30-80. Late renewal.

A. A person who fails to renew his license or preceptor registration by the expiration date shall, within one year of the initial expiration date:

1. Submit the renewal notice or request renewal by mail to the board;
2. Submit the applicable renewal fee and penalty fee;
3. Provide evidence as may be necessary to establish eligibility for renewal.

B. The documents required in subsection A of this section shall be received in the board office within one year of the initial expiration date. Postmarks shall not be considered.

18 VAC 95-30-90. Reinstatement for an assisted living facility administrator license or preceptor registration.

A. The board may reinstate an assisted living facility administrator license or preceptor registration that was not renewed within one year of the initial expiration date.

B. An applicant for assisted living facility administrator license reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and provide one of the following:

1. Evidence of the equivalent of 20 hours of continuing education for each year since the last renewal, not to exceed a total of 60 hours.
2. Evidence of active practice in another state or U.S. jurisdiction or in the U.S. armed services during the period licensure in Virginia was lapsed.
3. Evidence of requalifying for licensure by meeting the requirements prescribed in 18 VAC 95-30-100 and 18 VAC 95-30-110.

C. An applicant for preceptor reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and meet the current requirements for a preceptor in effect at the time of application for reinstatement.

PART III. REQUIREMENTS FOR LICENSURE.

18 VAC 95-30-100. Educational and training requirements for initial licensure.

A. Until (insert date of one year from the effective date of the regulations), any person who has served full time as the administrator of record in accordance with requirements of 22 VAC 40-71-60 and 22 VAC 40-71-630, or an assistant administrator in an assisted living facility licensed in the Commonwealth of Virginia, for the period of two of the three

years immediately preceding (insert the effective date of these regulations) may be licensed by the board if he provides:

1. Documentation that he was the full-time administrator of record or the full-time assistant administrator for an assisted living facility licensed in the Commonwealth of Virginia for the specified time period; and
2. Documentation of a passing grade on a state examination approved by the board.

B. To be qualified for initial licensure as an assisted living facility administrator, an applicant shall hold a high school diploma or general education diploma and hold one of the following qualifications:

1. Degree and practical experience. Hold a baccalaureate or higher degree in a health care-related field that meets the course content requirements of subsection C of this section from an accredited college or university and have completed not less than a 320-hour internship that addresses the Domains of Practice as specified in 18 VAC 95-30-160 in a licensed assisted living facility as part of the degree program under the supervision of a preceptor registered by the board; or
2. Certificate program. Hold a baccalaureate or higher degree in a field unrelated to health care from an accredited college or university and successfully complete a certificate program with a minimum of 21 semester hours study in a health care related field that meets course content requirements of subsection C of this section from an accredited college or university and successfully complete not less than a 320-hour internship that addresses the Domains of Practice as specified in 18 VAC 95-30-160 in a licensed assisted living facility as part of the certificate program under the supervision of a preceptor registered by the board; or
3. Administrator-in-training program.

a. Complete at least 30 semester hours in an accredited college or university with courses in the content areas of (i) client/resident care, (ii) human resources management, (iii) financial management, (iv) physical environment, and (v) leadership and governance, and 500 hours in an administrator-in-training program within one year; or

b. Complete at least 30 semester hours in an accredited college or university in any subject, and 1,000 hours in an administrator-in-training program within two years;

C. To meet the educational requirements for a degree in a health care-related field, an applicant must provide a transcript from an accredited college or university that documents successful completion of a minimum of 21 semester hours of coursework concentrated on the administration and management of health care services to include a minimum of six semester hours in the content area set out in subdivision 1 of this subsection, three semester hours in each of the content areas in subdivisions 2 through 5 of this subsection, and three semester hours for an internship.

1. Resident/client services management;
2. Human resource management;

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3. Financial management;
4. Physical environment management;
5. Leadership and governance.

18 VAC 95-30-110. Examination requirements for initial licensure.

To be licensed under subsection B of 18 VAC 95-30-100, an applicant shall provide evidence of passing grades on examinations acceptable to the board to include:

1. A national credentialing examination for administrators of assisted living facilities; and
2. A jurisprudence examination on the laws and regulations governing the practice of an assisted living facility administrator in Virginia.

18 VAC 95-30-120. Qualifications for licensure by endorsement.

The board may issue a license to any person who:

1. Holds a current, unrestricted license, certificate or registration as an assisted living facility administrator from any state or the District of Columbia;
2. Has not been the subject of a disciplinary action taken by any jurisdiction in which he was found to be in violation of law or regulation governing practice and which, in the judgment of the board, has not remediated;
3. Meets one of the following conditions:
 - a. Has practiced as the administrator of record in an assisted living facility that provides assisted living care as defined in § 63.2-100 of the Code of Virginia for at least two of the three years immediately preceding application to the board; or
 - b. Has education and experience substantially equivalent to qualifications required by this chapter and has provided written evidence of those qualifications at the time of application for licensure; and
4. Has successfully completed a state examination on the laws and regulations governing the practice of an assisted living facility administrator.

18 VAC 95-30-130. Application package.

A. An application for licensure shall be submitted after the applicant completes the qualifications for licensure.

B. An individual seeking licensure as an assisted living facility administrator or registration as a preceptor shall submit simultaneously:

1. A completed application as provided by the board;
2. Additional documentation as may be required by the board to determine eligibility of the applicant; and
3. The applicable fee.

C. With the exception of school transcripts, examination scores, and verifications from other state boards, all parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one

year, after which time the application shall be destroyed and a new application and fee shall be required.

PART IV.

ADMINISTRATOR-IN-TRAINING PROGRAM.

18 VAC 95-30-140. Training qualifications.

A. To be approved as an administrator-in-training, a person shall:

1. Have received a passing grade on a total of 30 semester hours of education from an accredited college or university;
2. Obtain a preceptor to provide training;
3. Submit the application provided by the board and the fee prescribed in 18 VAC 95-30-40; and
4. Submit additional documentation as may be necessary to determine eligibility of the applicant and the number of hours required for the A.I.T. program.

B. With the exception of school transcripts, all required parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year after which time the application shall be destroyed and a new application and fee shall be required.

18 VAC 95-30-150. Required hours of training.

A. The A.I.T. program shall consist of 1,000 hours of continuous training in a facility as prescribed in 18 VAC 95-30-170 to be completed within 24 months. An extension may be granted by the board on an individual case basis. The board may reduce the required hours for applicants with certain qualifications as prescribed in subsection B and C of this section.

B. An A.I.T. applicant with prior health care work experience may request approval to receive a maximum 500 hours of credit toward the total 1,000 hours as follows:

1. An applicant who has been employed full time for four of the past five years immediately prior to application as an assistant administrator in a licensed assisted living facility or nursing home;
2. An applicant who has been employed full time for four of the past five years immediately prior to application as a hospital administrator having responsibilities in all of the following areas:
 - a. Regulatory/compliance;
 - b. Fiscal;
 - c. Supervisory;
 - d. Personnel; and
 - e. Management; or
3. An applicant who holds a license as a nurse and who has held an administrative level supervisory position in nursing for at least four of the past five consecutive years, in a training facility as prescribed in 18 VAC 95-30-170.

C. An A.I.T. applicant with the following educational qualifications shall meet these requirements:

1. An applicant with a master's or a baccalaureate degree in health care-related field or a comparable field that meets the requirements of subsection C of 18 VAC 95-30-100 with no internship shall complete 320 hours in an A.I.T. program;
2. An applicant with a master's degree in an unrelated field shall complete 320 hours in an A.I.T. program; or
3. An applicant with a baccalaureate degree in an unrelated field shall complete 500 hours in an A.I.T. program.

18 VAC 95-30-160. Required content of an administrator-in-training program.

A. Prior to the beginning of the training program, the preceptor shall develop and submit for board approval a training plan that shall include and be designed around the specific training needs of the administrator-in-training. The training plan shall include the tasks and the knowledge and skills required to complete those tasks as approved by NAB as the domains of practice for residential care/assisted living in effect at the time the training is being provided. An A.I.T. program shall include training in each of the learning areas in the domains of practice.

B. An A.I.T. shall be required to serve weekday, evening, night and weekend shifts and to receive training in all areas of an assisted living facility operation.

18 VAC 95-30-170. Training facilities.

Training in an A.I.T. program or for an internship shall be conducted only in:

1. An assisted living facility or unit licensed by the Virginia Board of Social Services or by a similar licensing body in another jurisdiction;
2. An assisted living facility owned or operated by an agency of any city, county, or the Commonwealth or of the United States government; or
3. An assisted living unit located in and operated by a licensed hospital as defined in § 32.1-123 of the Code of Virginia, a state-operated hospital, or a hospital licensed in another jurisdiction.

18 VAC 95-30-180. Preceptors.

A. Training in an A.I.T. program or an internship shall be under the supervision of a preceptor who is registered or recognized by a licensing board.

B. To be registered by the board as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia assisted living facility administrator or nursing home administrator license;
2. Be employed full time as an administrator in a training facility or facilities for a minimum of two of the past three years immediately prior to registration; and
3. Submit an application and fee as prescribed in 18 VAC 95-30-40.

C. A preceptor shall:

1. Provide direct instruction, planning and evaluation;

2. Be routinely present with the trainee in the training facility; and

3. Continually evaluate the development and experience of the trainee to determine specific areas needed for concentration.

D. A preceptor may supervise no more than two trainees at any one time.

18 VAC 95-30-190. Reporting requirements.

A. The preceptor shall maintain progress reports on forms prescribed by the board for each month of training.

B. The trainee's certificate of completion plus the accumulated original monthly reports shall be submitted by the preceptor to the board within 30 days following the completion of the program.

18 VAC 95-30-200. Interruption or termination of program.

A. If the program is interrupted because the registered preceptor is unable to serve, the trainee shall notify the board within five working days and shall obtain a new preceptor who is registered with the board within 60 days.

1. Credit for training shall resume when a new preceptor is obtained and approved by the board.

2. If an alternate training plan is developed, it shall be submitted to the board for approval before the trainee resumes training.

B. If the training program is terminated prior to completion, the trainee and the preceptor shall each submit a written explanation of the causes of program termination to the board within five working days. The preceptor shall also submit all required monthly progress reports completed prior to termination.

PART V.
REFUSAL, SUSPENSION, REVOCATION, AND
DISCIPLINARY ACTION.

18 VAC 95-30-210. Unprofessional conduct.

The board may refuse to admit a candidate to an examination, refuse to issue or renew a license or approval to any applicant, suspend a license for a stated period of time or indefinitely, reprimand a licensee, place his license on probation with such terms and conditions and for such time as it may designate, impose a monetary penalty, or revoke a license for any of the following causes:

1. Conducting the practice of assisted living administration in such a manner as to constitute a danger to the health, safety, and well-being of the residents, staff, or public;
2. Failure to comply with federal, state, or local laws and regulations governing the operation of an assisted living facility;
3. Conviction of a felony or any misdemeanor involving abuse, neglect or moral turpitude;
4. Failure to comply with any regulations of the board; or
5. Inability to practice with skill or safety.

Proposed Regulations

VA.R. Doc. No. R06-42; Filed July 5, 2006, 9:56 a.m.

ORDER ESTABLISHING PROCEEDING

TITLE 20. PUBLIC UTILITIES AND TELECOMUUNICATIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20 VAC 5-315. Regulations Governing Net Energy Metering (amending 20 VAC 5-315-10 and 20 VAC 5-315-20).

Statutory Authority: §§ 12.1-13 and 56-594 of the Code of Virginia.

Public Hearing Date: If requested.

Agency Contact: Kara Hart, Attorney, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9240, or e-mail kara.hart@scc.virginia.gov.

Summary:

The proposed amendments revise and expand the definition of "eligible customer-generator" to conform the regulation with § 56-594 of the Code of Virginia as amended by Chapter 470 of the 2006 Acts of Assembly. The amendment of the definition of "eligible customer-generator" provides that it include not only a customer who owns and operates an electrical generating facility, but also one who contracts with other persons to own, operate, or both, the electrical generating facility. The proposed amendments also (i) expand the types of permissible fuels for the electrical generating facility to include energy from waste, wave motion, tides, and geothermal power and (ii) provide that the generator be located on the customer's premises and be connected to the customer's wiring on the customer's side of its interconnection with the distributor.

Comments on the proposed amendments as well as requests for a hearing on the proposed net energy metering regulations may be filed with the State Corporation Commission on or before August 21, 2006.

AT RICHMOND, JUNE 23, 2006

COMMONWEALTH OF VIRGINIA ex rel.
STATE CORPORATION COMMISSION

CASE NO. PUE-2006-00073

Ex Parte: In the matter of amending regulations governing net energy metering

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Restructuring Act"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.

Chapter 470 of the 2006 Acts of Assembly amended Va. Code § 56-594 to revise the definition of eligible customer-generator. As amended, eligible customer-generator means a customer that owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility that: (i) has a capacity of not more than 10 kilowatts for residential customers and 500 kilowatts for nonresidential customers; (ii) uses as its total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements. The current Net Energy Metering Rules must be revised first to reflect an expansion of the definition of eligible customer-generator such that it will include not only a customer who owns and operates an electrical generating facility, but also one who contracts with other persons to own, operate, or both, the electrical generating facility. The Net Energy Metering Rules must also be revised to reflect the expansion of the types of permissible fuels for the electrical generating facility. In addition to previously permitted solar, wind, and hydro, energy from waste, wave motion, tides, and geothermal power are now permissible fuels.¹ It is also now required that not only must the generator be located on the customer's premises, but must also be connected to the customer's wiring on the customer's side of its interconnection with the distributor.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that a proceeding should be established to amend the Net Energy Metering Rules to revise the definition of eligible customer-generator as described herein and to determine how the amendment of Va. Code § 56-594 pursuant to Chapter 470 of the 2006 Acts of Assembly otherwise may need to be reflected. The Commission is proposing amendments to the Net Energy Metering Rules as appear in the proposed draft regulations attached hereto ("Proposed Rules"). We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. Individuals should be specific in their comments, proposals, or supplements to

¹ Va. Code § 56-576. Renewable energy does not include energy derived from coal, oil, natural gas or nuclear power.

the Proposed Rules and address only those issues pertaining to the amendment of Va. Code § 56-594 pursuant to Chapter 470 of the 2006 Acts of Assembly. Issues outside the scope of implementing this amendment will not be open for consideration.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUE-2006-00073.

(2) The Commission's Division of Information Resources shall forward a copy of this Order to the Registrar of Regulation for publication in the Virginia Register.

(3) On or before July 24, 2006, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF A PROCEEDING TO
AMEND REGULATIONS FOR NET ENERGY
METERING PURSUANT TO § 56-594 OF THE CODE
OF VIRGINIA
CASE NO. PUE-2006-00073

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Restructuring Act"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.

Chapter 470 of the 2006 Acts of Assembly amended Va. Code § 56-594 to revise the definition of eligible customer-generator. As amended, eligible customer-generator means a customer that owns and operates, or contracts with other persons to own, operate or both, an electrical generating facility that (i) has a capacity of not more than 10 kilowatts for residential customers and 500 kilowatts for nonresidential customers; (ii) uses as its total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements.

The Commission has established a proceeding and proposed amendments to the Net Energy Metering Rules to reflect the changes required by the revision of Va. Code § 56-594 ("Proposed Rules"). Interested persons are encouraged to obtain a copy of the Commission Order and the proposed amendments in

this proceeding. Copies are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday, 8:15 a.m. to 5 p.m., or may be downloaded from the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

On or before August 21, 2006, any interested person may file an original and fifteen (15) copies of any written comments on or proposed modifications or supplements to the Proposed Rules with the Clerk of the Commission at the address set forth below. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of Va. Code § 56-594 pursuant to Chapter 470 of the 2006 Acts of Assembly. Issues outside the scope of implementing this amendment will not be open for consideration.

On or before August 21, 2006, any interested person may file an original and fifteen (15) copies of any requests for hearing with the Clerk of the Commission at the address set forth below. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If sufficient request for hearing is not received, the Commission may enter an order based upon the papers filed. Persons expecting to participate as a respondent in any hearing that may be scheduled shall include with their request for hearing an original and fifteen (15) copies of a notice of participation in accordance with 5 VAC 5-20-80 of the Commission Rules of Practice and Procedure, 5 VAC 5-20-10 et seq.

All filings in this proceeding shall be directed to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. PUE-2006-00073.

STATE CORPORATION COMMISSION

(4) On or before August 21, 2006, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing an original and fifteen (15) copies of such comments or requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of Va. Code § 56-594 pursuant to Chapter 470 of the 2006 Acts of Assembly. Issues outside the scope of implementing this amendment will not be open for consideration. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein. Interested parties shall

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refer in their comments or requests to Case No. PUE-2006-00073. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(5) Also on or before August 21, 2006, persons filing a request for hearing and expecting to participate as a respondent in any hearing that may be scheduled in this matter shall file an original and fifteen (15) copies of a notice of participation in accordance with 5 VAC 5-20-80 of the Commission Rules of Practice and Procedure, 5 VAC 5-20-10 et seq. Interested parties shall refer in their notices to Case No. PUE-2006-00073. All notices of participation shall be filed with the Clerk of the Commission at the address set forth in Paragraph (4) above.

(6) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

20 VAC 5-315-10. Applicability and scope.

These regulations are promulgated pursuant to the provisions of § 56-594 of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia) They establish requirements intended to facilitate net energy metering for customers owning and operating, *or contracting with persons to own or operate, or both*, an electrical generator that uses *renewable energy, as defined by § 56-576 of the Code of Virginia* as its total fuel source ~~solar, wind or hydro energy~~. These regulations will standardize the interconnection requirements for such facilities and will govern the metering, billing and contract requirements between net metering customers, electric distribution companies and energy service providers.

20 VAC 5-315-20. Definitions.

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

"Billing period" means, as to a particular customer, the time period between the dates on which the electric distribution company or energy service provider, as the case may be, issues the customer's bills.

"Electric distribution company" means the entity that owns and/or operates the distribution facilities delivering electricity to the net metering customer's premises.

"Energy service provider" means the entity providing electric energy to a net metering customer, either as a tariffed, competitive, or default service pursuant to § 56-585 of the Code of Virginia.

"Net metering customer" means a customer owning and operating, *or contracting with other persons to own or operate,*

or both, a renewable fuel generator under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the date of final interconnection of the renewable fuel generator with the electric distribution company's facilities.

"Net metering service" means measuring the difference, over the net metering period between electricity supplied to a net metering customer from the electric grid and the electricity generated and fed back to the electric grid by the net metering customer, using a single meter or, as provided in 20 VAC 5-315-70, additional meters.

"Renewable fuel generator" means an electrical generating facility that:

1. Has an alternating current capacity of not more than 10 kilowatts for residential customers and not more than 500 kilowatts for nonresidential customers;
2. Uses *renewable energy, as defined by § 56-576 of the Code of Virginia*, as its total fuel source ~~solar, wind, or hydro energy~~;
3. ~~Is owned and operated by the net metering customer and is located on the customer's premises~~ *The net metering customer owns and operates, or has contracted with other persons to own, operate, or both;*
4. *Is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor;*
4. 5. Is interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's facilities; and
5. 6. Is intended primarily to offset all or part of the net metering customer's own electricity requirements.

VA.R. Doc. No. R06-280; Filed June 28, 2006, 11:09 a.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 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 20-150. **Pertaining to the Dredging of Conchs (Also Known as Whelks) (amending 4 VAC 20-150-70).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 28, 2006.

Agency Contact: Betty Warren, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2069, FAX (757) 247-2002 or e-mail betty.warren@mrc.virginia.gov.

Summary:

The amendments add horseshoe crabs to the list of species that may be harvested from defined areas Number 2 and 4 and repeal the prohibitions on harvest and possession of horseshoe crabs from May 1 to June 7 in defined areas Number 3 and 5.

4 VAC 20-150-70. Limitation of catch.

A. In Area Number 2 and Area Number 4, ~~conchs~~ only *conchs and horseshoe crabs* may shall be taken, harvested or possessed. All other shellfish, crustaceans, finfish, and other marine life caught during dredging shall be returned immediately to the water. Possession of such for a time longer than is necessary to return to the water will be in violation of this chapter.

~~B. In Area Number 3 and Area Number 5, it shall be unlawful to harvest, take or possess horseshoe crabs from May 1 through June 7. Possession of horseshoe crabs for a time longer than is necessary to return them to the water will be in violation of this chapter.~~

VA.R. Doc. No. R06-281; Filed June 28, 2006, 3:20 p.m.

* * * * *

Title of Regulation: 4 VAC 20-252. **Pertaining to the Taking of Striped Bass (amending 4 VAC 20-252-30 and 4 VAC 20-252-50; adding 4 VAC 20-252-115).**

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: July 1, 2006.

Agency Contact: Betty Warren, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2069 or e-mail betty.warren@mrc.virginia.gov.

Summary:

The amendments allow for the possession of striped bass of sizes within the unlawful slot size when the person is fishing as part of a tournament approved under the provisions of 4 VAC 20-252-115. The amendments also specify the conditions that must be met by any recreational striped bass fishing tournament in order for fish taken in that tournament to be exempt from certain size and season limitations.

4 VAC 20-252-30. General prohibitions and requirements.

A. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, except in accord with the provisions of Title 28.2 of the Code of Virginia and in accord with the provisions of this chapter.

B. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, during a time, from an area, and with a gear type when there is no open season set forth in this chapter for such time, area, and gear type.

C. Except for those persons permitted in accordance with 4 VAC 20-252-170, it shall be unlawful for any person to possess any striped bass less than 18 inches total length at any time.

D. It shall be unlawful for any person to possess any striped bass that measures less than the minimum size or more than the maximum size applicable to the open season when fishing occurs, *except as described in 4 VAC 20-252-115.*

E. Total length measurement of striped bass shall be in a straight line from tip of nose to tip of tail.

F. It shall be unlawful for any person while aboard any boat or vessel or while fishing from shore or pier to alter any striped bass or to possess any altered striped bass such that its total length cannot be determined.

G. It shall be unlawful for any person to spear or gaff, or attempt to spear or gaff any striped bass at any time.

H. It shall be unlawful for any person to use a commercial hook and line within 300 feet of any bridge, bridge-tunnel, jetty, or pier during Thanksgiving Day and the following day or during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through 6 a.m. Friday.

I. Unless specified differently in other regulations, it shall be unlawful to place, set, or fish any gill net within 300 feet of any

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bridge, bridge-tunnel, jetty, or pier during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through midnight Wednesday.

J. During the period April 1 through May 31, inclusive, it shall be unlawful for any person to set or fish any anchored gill net or staked gill net, for any purpose, within the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers. Drift or float gill nets may be set and fished within the spawning reaches of these rivers during this period, provided that the person setting and fishing the net remains with the net during the time it is fishing and all striped bass that are caught shall be returned to the water immediately.

K. Holding any permit issued by the commission to fish for striped bass, recreationally or commercially, shall authorize any commission personnel or their designees to inspect, measure, weigh, or take biological samples from any striped bass in possession of the permit holder.

L. Nothing in this chapter shall preclude any person, who is legally eligible to fish, from possessing any striped bass tagged with a Virginia Institute of Marine Science (VIMS) fluorescent green tag. Possession of these VIMS-tagged striped bass shall not count towards the personal recreational possession limit, and permitted commercial striped bass individual transferable quota (ITQ) holders shall not be required to apply a tamper evident, numbered tag provided by the commission, in order to possess any striped bass tagged with a VIMS-inscribed green fluorescent tag. It shall be unlawful for any person to retain any of these VIMS-tagged striped bass for a period of time that is longer than necessary to provide the VIMS-tagged striped bass to a VIMS representative. Under no circumstance shall any VIMS-tagged striped bass be stored for future use or sale or delivered to any person who is not a VIMS representative.

4 VAC 20-252-50. Concerning recreational fishing: general.

A. It shall be unlawful for any person fishing recreationally to take or to catch striped bass with any gear other than hook and line, rod and reel, or hand line.

B. It shall be unlawful for any person fishing recreationally to possess any striped bass while fishing in an area where or at a time when there is no open recreational striped bass season, *except as described in 4 VAC 20-252-115*. Striped bass caught contrary to this provision shall be returned to the water immediately.

C. It shall be unlawful for any person fishing recreationally to possess and retain any striped bass in excess of the possession limit applicable for the area and season being fished within the 24-hour period of 12 a.m. through 11:59 p.m. Striped bass taken in excess of the possession limit shall be returned to the water immediately.

When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the applicable personal possession limit. The captain or operator

of the boat or vessel shall be responsible for any boat or vessel possession limit.

D. It shall be unlawful to combine possession limits when there is more than one area or season open at the same time.

E. It shall be unlawful for any person while actively fishing pursuant to a recreational fishery to possess any striped bass that are smaller than the minimum size limit or larger than the maximum size limit for the area and season then open and being fished, *except as described in 4 VAC 20-252-115*. Any striped bass caught that does not meet the applicable size limit shall be returned to the water immediately.

F. It shall be unlawful for any person to sell, offer for sale, trade or barter any striped bass taken by hook and line, rod and reel, or hand line provided, however, this provision shall not apply to persons possessing a commercial hook-and-line license and a striped bass permit and meeting the other requirements of this chapter.

G. It shall be unlawful for any person fishing recreationally to transfer any striped bass to another person, while on the water or while fishing from a pier or shore.

H. It shall be unlawful for the captain of any charter boat or charter vessel to take hook-and-line, rod-and-reel, or hand line fishermen for hire unless the captain has obtained a permit from the commission and is the holder of a Coast Guard charter license.

I. Charter boat captains shall report to the commission, on forms provided by the commission, all daily quantities of striped bass caught and harvested, and daily fishing hours for themselves or their customers, respectively. The written report shall be forwarded to the commission no later than 15 days following the last day of any open season. In addition, charter boat captains engaging in the Bay and Coastal Spring Trophy-size Striped Bass Recreational Fishery and the Potomac River Tributaries Spring Striped Bass Recreational Fishery shall provide the report required by 4 VAC 20-252-60 and 4 VAC 20-252-70, respectively. Failure to provide these reports is a violation of this chapter.

4 VAC 20-252-115. Exemptions from size limits and closed fishing seasons for recreational striped bass fishing tournaments.

A. *The commissioner or his designee may grant exemptions for any recreational fishing tournament from size and season limitations described in 4 VAC 20-252-80, 4 VAC-20-252-90, 4 VAC 20-252-100 and 4 VAC 20-252-110 provided that the tournament meets all of the following conditions:*

- 1. The tournament operates for a limited duration, with a maximum of three consecutive days.*
- 2. The tournament format provides for the live release of all fish and significant penalties for entrants bringing in or weighing in dead striped bass.*
- 3. The tournament director submits a written proposal to the commissioner detailing the measures the tournament will use to ensure the survivability of fish entered in the tournament, to include capture, handling and storage of fish by tournament entrants on the water during the competition,*

by tournament officials at the weigh-in, by tournament officials when transporting and returning the fish to the water, and any penalties that will apply to entrants bringing in or weighing dead fish. Such proposal must be submitted no later than 120 days prior to the tournament, and the proposal must be determined by the commissioner to adequately address potential mortality issues.

4. Tournament officials must agree to provide any or all fish entered in the tournament to the Marine Resources Commission, or to any designee of the Marine Resources Commission, upon written request, and tournament officials agree to allow Marine Resources Commission staff access to all tournament areas during the event for the purposes of observation and assessment, upon request.

B. Any determination by the commissioner or his designee that approval of any requested recreational striped bass tournament could jeopardize the status of the striped bass stock or prove to be an issue of compliance with the interstate fishery management plan will result in disapproval of that request.

VA.R. Doc. No. R06-282; Filed June 28, 2006, 3:19 p.m.

* * * * *

Title of Regulation: 4 VAC 20-900. Pertaining to Horseshoe Crab (amending 4 VAC 20-900-10 through 4 VAC 20-900-30).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 2006.

Agency Contact: Betty Warren, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2069, FAX (757) 247-2002 or e-mail betty.warren@mrc.virginia.gov.

Summary:

The amendment adds a definition for "COLREGS Line." The amendments also make unlawful the landing of horseshoe crabs in Virginia that were harvested from federal waters from January 1 through June 7; make the harvest and landing of horseshoe crabs unlawful after the harvest quota has been attained and announced as taken; provide that no more than 40% of the total harvest quota may be taken from coastal water and when that portion of the quota is taken, harvest from this area is prohibited; require harvests of horseshoe crabs from coastal waters to consist of a ratio of male horseshoe crabs to female horseshoe crabs of at least 2:1; specify that holders of restricted horseshoe crab endorsement licenses must use crab dredges only to harvest horseshoe crabs; and limit fishermen who do not possess a horseshoe crab endorsement license to 500 crabs per vessel.

4 VAC 20-900-10. Purpose.

The purpose of this chapter is to establish commercial fisheries management measures and monitoring requirements in accordance with the Interstate Fishery Management Plan for Horseshoe Crab, to establish a commercial landings quota in number of horseshoe crabs, to

~~establish a prohibition on harvesting horseshoe crabs by dredge, and to license and identify, for fishery management data gathering purposes, those persons harvesting horseshoe crabs by hand.~~

4 VAC 20-900-20. Definition.

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

"COLREGS Line" means the COLREGS Demarcation Lines, as specified in Coastal Pilot, 35th and 36th editions by Lighthouse Press.

"Horseshoe crab" means any crab of the species *Limulus polyphemus*.

"Land" or "landing" means to enter port with horseshoe crabs on board any boat or vessel, to begin offloading horseshoe crabs, or to offload horseshoe crabs.

4 VAC 20-900-25. Commercial fisheries management measures.

A. It shall be unlawful for any person to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. From January 1 through June 7 of each year, it shall be unlawful for any person to land, in Virginia, any horseshoe crab harvested from federal waters.

C. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

~~D. The commercial landings quota of horseshoe crab for each calendar year shall be 152,495 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the landings commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any buyer of seafood to receive any Horseshoe Crab after any commercial harvest or landing quota as described in this section has been attained and announced as such person to harvest from Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.~~

During each calendar year no more than 40% of Virginia's horseshoe crab quota and any and all transfers of quota from other jurisdictions shall be harvested from waters east of the COLREGS Line. It shall be unlawful for any person to harvest horseshoe crabs from waters east of the COLREGS Line, or to land horseshoe crabs, in Virginia, that are harvested east of the COLREGS Line, after 40% of Virginia's horseshoe crab quota and any and all transfers of quota have been attained for this designated area and announced as such.

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~~E. It shall be unlawful for any person whose harvest of horseshoe crabs is from waters east of the COLREGS Line to possess aboard a vessel or to land in Virginia any quantity of horseshoe crabs that, in aggregate, is not comprised of at least a minimum ratio of two male horseshoe crabs to one female horseshoe crab.~~

~~D. During each calendar year, 85% of Virginia's horseshoe crab quota and any and all transfers from other jurisdictions shall be allocated to those individuals who hold a valid horseshoe crab endorsement license as established in 4 VAC 20-900-30 C. F. Limitations on the daily harvest and possession of horseshoe crabs for any vessel described below are as follows:~~

1. It shall be unlawful for any person who meets the requirements of 4 VAC 20-900-30 D and holds a valid horseshoe crab endorsement license to possess aboard any vessel or to land any number of horseshoe crabs in excess of 5,000, except that when it is projected and announced that 85% of the ~~calendar year~~ commercial quota is taken it shall be unlawful for any person who meets the requirements of 4 VAC 20-900-30 D and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 2,500.

2. It shall be unlawful for any person who meets the requirements of 4 VAC 20-900-30 E and holds a valid horseshoe crab endorsement license to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,000, except that when it is projected and announced that 85% of ~~any~~ the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4 VAC 20-900-30 D and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 1,000. *The harvest of horseshoe crabs, described in this subdivision, shall be restricted to using only crab dredge.*

~~E. During each calendar year, 15% of Virginia's horseshoe crab quota shall be reserved for bycatch. This portion of the annual quota shall be allocated to those individuals who do not qualify for a horseshoe crab endorsement license as established in 4 VAC 20-900-30 C.~~ 3. It shall be unlawful for any ~~person~~ registered commercial fisherman or seafood landing licensee who does not hold possess a valid horseshoe crab endorsement license to possess aboard any vessel *more than 500 horseshoe crabs* or for any vessel to land any number of horseshoe crabs in excess of 500.

~~F. G. It shall be unlawful for any fisherman issued a horseshoe crab endorsement license to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.~~

~~G. It shall be unlawful for any person to harvest from Virginia waters, to possess aboard any vessel, or to land in Virginia any horseshoe crab for commercial purposes after the landing quota described in subsection C, D or E of this section has been attained and announced as such.~~

~~H. It shall be unlawful for any buyer of seafood to receive any horseshoe crab after any commercial harvest or landing quota~~

~~as described in this section has been attained and announced as such.~~

4 VAC 20-900-30. License requirements and exemption.

A. It shall be unlawful for any person to harvest horseshoe crabs by hand for commercial purposes without first obtaining a commercial fisherman registration license and a horseshoe crab hand harvester license.

B. The taking by hand of as many as five horseshoe crabs in any one day for personal use only shall be exempt from the above licensing requirement.

C. *Except as provided for in 4 VAC 20-900-25 F 3*, it shall be unlawful for any boat or vessel to land horseshoe crabs in Virginia for commercial purposes without first obtaining a horseshoe crab endorsement license as described in this section. The horseshoe crab endorsement license shall be required of each boat or vessel used to land horseshoe crabs for commercial purposes. Possession of any quantity of horseshoe crabs that exceeds the limit described in subsection B of this section shall be presumed for commercial purposes. There shall be no fee for the license.

D. To be eligible for ~~a~~ *an unrestricted* horseshoe crab endorsement license, the boat or vessel shall have landed and sold at least 500 horseshoe crabs in Virginia in at least one year during the period 1998-2000, except as described in subsection E of this section.

1. The owner shall complete an application for each boat or vessel by providing to the Marine Resources Commission a notarized and signed statement of applicant's name, address, telephone number, boat or vessel name and its registration or documentation number.

2. The owner shall complete a notarized authorization to allow the Marine Resources Commission to obtain copies of landings data from the National Marine Fisheries Service.

E. Any Virginia registered commercial fisherman is eligible for a horseshoe crab endorsement license that is restricted to using a crab dredge to harvest horseshoe crabs provided his boat or vessel shall have landed at least 10,000 pounds of whelk in any one year from 2002 through 2005.

1. The Virginia registered commercial fisherman shall complete an application for each boat or vessel by providing to the Marine Resources Commission a notarized and signed statement of the applicant's name, address, telephone number, boat or vessel name and its registration or documentation number.

2. The Virginia registered commercial fisherman shall complete a notarized authorization to allow the Marine Resources Commission to obtain copies of whelk landings data from the National Marine Fisheries Service.

VA.R. Doc. No. R06-283; Filed June 28, 2006, 3:20 p.m.



TITLE 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Titles of Regulations: **8 VAC 40-30. Regulations Governing the Approval of Certain Institutions to Confer Degrees, Diplomas and Certificates (REPEALED).**

8 VAC 40-31. Regulations 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.

Effective Date: August 24, 2006.

Agency Contact: Linda H. Woodley, Coordinator, Private and Out-of-State Postsecondary Education, State Council of Higher Education for Virginia, James Monroe Building, 101 N. 14th Street, Richmond, VA 23219, telephone (804) 371-2938, FAX (804) 786-2027, or e-mail lindawoodley@schev.edu.

Summary:

The regulation administers the certification of private and out-of-state postsecondary schools, which includes institutions of higher education and noncollege degree schools. Noncollege degree schools may be academic-career-technical or career-technical schools. It combines the previous regulations used by SCHEV regulating institutions of higher education (8 VAC 40-30) and the regulations used by the Board of Education to regulate the career-technical schools (8 VAC 20-350) and replaces the current emergency regulation (8 VAC 40-31) effective since November 2004. Major changes include:

1. *The initial fee for certification is increased from \$300 to \$2,500 for all new career-technical schools.*
2. *The renewal fee structure for career-technical schools, which was \$150 plus 0.1% of gross tuition receipts for the prior assessment year, is changed. The renewal fees will be \$500 for schools with gross tuition equal to or less than \$50,000; \$1,000 for schools with gross tuition between \$50,000 and \$100,000; \$1,500 for schools with gross tuition between \$100,000 and \$150,000; and \$2,500 for schools with gross tuition above \$150,000.*
3. *The annual payment to the Student Tuition Guaranty Fund (STGF) is eliminated.*
4. *Some individual fees are eliminated for certain actions such as change of location (\$100), addition of programs (\$100), program deletion (\$50), addition of branch campus (\$100), revised program review and approval/program name change (\$50), extension classroom/additional space approval (\$50), and catalog review (\$50).*
5. *Career-technical schools offering exclusively religious instruction continue to be exempted, but they are required to apply every five years to continue the exemption if the exemption is granted after July 1, 2002.*

The most substantive change made to the proposed regulation is the creation of a refund policy for programs offered via distance learning. The refund policy, required only of nonaccredited schools or schools accredited by accrediting bodies that do not provide a specific refund policy, is fair and equitable to the student as well as the school and is similar in nature to the refund policy used by traditional schools.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 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 or graduate credit with nontime-based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

"Academic-vocational" refers to a noncollege degree school that offers degree and nondegree credit courses.]

"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" means 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~~ offers courses that consist] of a large number of unit subjects [~~which that~~] comprise a program of education or a set curriculum large enough to allow pursuit on a continuing basis.

"Agent" means a person who is employed by any institution of higher education or noncollege degree school, whether such

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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.

["Avocational" means instructional programs that are not intended to prepare students for employment but are intended solely for recreation, enjoyment, personal interest, or as a hobby.]

"Branch" means an additional location, operated by a school 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.

"Career-technical school" means a school that does not offer courses for degree credit [; same as academic-vocational school].

["Certificate" or "diploma" means an award that represents a level of educational attainment at or below the associate degree level and that is given for successful completion of a curriculum comprised of two or more courses.]

"Certification" means the process of securing authorization to operate a private or out-of-state postsecondary school or institution of higher education and/or degree, certificate, or diploma program in the Commonwealth of Virginia.

"Change of ownership" means 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 schools 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 [in the Classification of Instructional Programs (CIP) taxonomy maintained by the National Center for Education Statistics].

"Clock (or contact) hour" means a minimum of 50 minutes of supervised or directed instruction and appropriate breaks.

"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 school, a specific program, or a certain [~~course(s)~~] course].

"Credit" means (i) the quantitative measurement assigned to a course generally stated in semester hours, quarter hours, or clock hours or (ii) the recognition awarded upon successful completion of coursework.

"Credit hour" means a unit by which a school may measure its [~~course-work~~] coursework. The number of credit hours assigned to a traditionally delivered course is usually defined by a combination of the number of hours per week in class, the number of hours per week in a laboratory, and/or the number of hours devoted to externship [~~times multiplied by~~] the number of hours in the term. One unit of credit is usually equivalent to, at a minimum, one hour of classroom study and outside preparation, two hours of laboratory experience, or three hours of internship or practicum, or a combination of the three [~~times multiplied by~~] the number of weeks in the term. Emerging delivery methodologies may necessitate determining a unit of undergraduate [or graduate] credit with nontime-based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to [~~insure~~] ensure these courses are equivalent to traditionally delivered courses.

"Degree" means any earned award at the associate, baccalaureate, master's, first professional, or doctoral level [~~which that~~] 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 that represents a level of educational attainment at or below the associate degree level and that is given for successful completion of a curriculum comprised of two or more courses.

"Existing institution" or "existing postsecondary school" means any postsecondary school that [either] (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 a school; (ii) principal employment is with that school; 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 that~~] 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. An out-of-state institution shall be deemed an in-state institution for the purposes of certification as a degree-granting institution if (i) [~~# the institution~~] has no instructional campus in the

jurisdiction in which it was formed, chartered, established, or incorporated and (ii) [~~the~~ institution] 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 that has received certification from the council and [either]: (i) offers courses or programs of study or instruction that lead to, or that may reasonably be understood to be applicable to, a degree; (ii) operates a facility as a college or university or other entity of whatever kind that 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 a school [~~and~~] who 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.

"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~~ neither] operated in [another state as a postsecondary institution] nor has been approved to operate [in another state] as a postsecondary institution [~~in another state~~].

"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-career-technical or career-technical.

"Out-of-state institution" means an institution of higher education that is formed, chartered, established or incorporated outside Virginia.

"Part-time faculty" means a person whose: (i) annual employment is based upon an official contract, appointment, or agreement with a school [; and] (ii) [~~principal employment is with an entity other than that school; and~~] (iii) course load of [~~include at least one course during at least two terms within the academic year~~] is of lesser quantity than that expected of a full-time faculty member and/or is of lesser quantity than the school's definition of a full load of courses [].

"Postsecondary education" means 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 It~~] includes programs of an academic, career-technical, and continuing professional education purpose, and excludes avocational 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 any entity offering 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, career-technical, 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 [school]" means a privately owned and managed, profit-making 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~~ may or may 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 [closed or closing] 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.

"Unearned tuition" means the portion of tuition charges billed to the student but not yet earned by the institution; the unearned tuition represents future educational services to be rendered to presently enrolled students.

"University" means any institution offering programs leading to degrees or degree credit beyond the baccalaureate level.

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8 VAC 40-31-20. Prohibited acts.

A. Except as in accordance with this chapter, no person [7] 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 that 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 school may represent that credits earned at or granted by that person, firm, or school 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 Title 23 of the Code of Virginia 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 [an] individual [~~proprietorships, associations, co-partnerships or corporations~~ proprietorship, association, co-partnership or corporation] that [use uses] the words "college" or "university" in [~~their~~ its] training programs solely for [~~their~~ its] employees or customers, that [~~de~~ does] not offer degree-granting programs, and whose name includes the word "college" or "university" in a context from which it [~~clearly appears~~ is clear] that such entity is not an educational school.

E. The council may refuse to certify school names and terms that have the potential to mislead the general public about the school'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 (i) [a clear statement] that the council has certified the school to operate in Virginia and (ii) a complete address of the main campus and all branch locations within Virginia.

[B. A school certified to operate by council in accordance with this chapter shall include in all publicity, advertisement and promotional materials (i) a clear statement that the council has certified the school to operate in Virginia, (ii) the school's complete name as indicated on the Certificate to Operate, and (iii) the address of at least one branch campus located in Virginia.]

[~~B. C.~~ C.] A school with its main campus not located in Virginia that has a physical presence in Virginia shall state in its course registration materials distributed in Virginia that:

1. Each course or degree, diploma, or certificate program offered in Virginia is approved by the governing body of the school; and

2. The appropriate state agency, if any, in the state where the main campus of the school is located has granted whatever approval may be necessary for the school 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. [Ensure that] any credit earned for coursework offered by the school in Virginia [~~can~~ may] be transferred to the school's principal location outside Virginia as part of an existing degree, diploma, or certificate program offered by the school.

[~~C. D.~~ D.] No advertisement, announcement, or any other material produced by or on behalf of a postsecondary school shall in any way indicate that the school 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 [by the Commonwealth of Virginia] in the future.

8 VAC 40-31-50. Religious institutions.

A. The council shall exempt from the provisions of Chapter [~~24~~ 21.1] (§ 23-276.1 et seq.) of Title 23 of the Code of Virginia [7] any school whose primary purpose is to provide

religious training or theological education, provided that the school:

1. Awards only degrees, diplomas, or certificates [that] (i) [~~whose~~ carry] titles [that] indicate the school's primary purpose plainly upon their face and (ii) [~~which~~] state that the school is excluded from the requirement of state certification; and

2. States plainly in its catalogs and other publications that (i) the school's primary purpose is to provide religious training or theological education; (ii) the school's degrees, diplomas, or certificates are so titled and worded; and (iii) the school is exempt from the requirement of state certification.

B. The title of each degree, diploma, or certificate awarded by a school that claims an exemption under the provisions of this section must reflect that the school's primary purpose is religious education.

1. The titles of religious degrees that may be awarded include, but are not limited to, (i) Bachelor of [~~Christian~~] Education [in a specific religion], (ii) Master of Divinity, and (iii) Doctor of Sacred Theology.

2. The titles of secular degrees that may not be awarded in any discipline, including religion, [~~Christian~~ religious] 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.

C. Exemptions granted after July 1, 2002, will be for a maximum of five years. [~~Schools~~ A school] wishing to maintain an exempt status must reapply to council at least six months prior to the expiration of the exemption period. [An] exempt [~~schools~~ school] shall not make claims of "approval," "endorsement," or other such terms by the council in any of [~~their~~ its] promotional materials. [An] exempt [~~schools~~ school] shall clearly state in [~~their~~ its] catalogs and promotional materials that [~~they are~~ it is] exempt from the requirements of state regulation and oversight.

D. A school that awards secular degrees in addition to religious degrees, certificates or diplomas, as defined in subsections A and B of this section [,] must comply with the provisions for certification for all nonreligious degree programs.

E. Each school requesting full or partial exemption must apply on forms provided by and in a manner prescribed by the council.

F. The council, on its own motion, may initiate formal or informal inquiries to confirm that this chapter is not applicable to a religious school if the council has reason to believe that the school may be in violation of the provisions of this section.

1. Any school that claims an exemption under subsections A and B 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 a school is not exempt under subsections A and B of this section.

3. The council assumes no jurisdiction or right to regulate religious beliefs under this chapter.

G. A school whose claim for exemption under subsections A and B 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. Schools, programs, degrees, diplomas, and certificates exempt [~~by from~~] council action.

A. The following activities or programs offered by schools [and] not leading to a degree [, diploma] or certificate 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 a school, 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 that 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 nursing education program offered by a school to the extent that the program is regulated by the Virginia Board of Nursing.

a. The Virginia Board of Nursing is the state agency [~~that~~ is] authorized to license registered nurses and to approve nursing programs with regard to the adequacy of the [~~curriculum~~ curricula] and resources for preparing students to take the licensing examination.

b. [In order] to offer a degree in nursing, a school must [~~have obtained~~ obtain council certification] prior [~~council certification~~ to seeking approval from the Virginia Board of Nursing].

4. Any professional program for professional or occupational training offered by a school to the extent that the program [is] (i) [~~is~~] subject to approval by a regulatory board pursuant to Title 54.1 of the Code of Virginia; or (ii) [~~is~~] subject to approval by any other state or federal agency; and (iii) [~~the school~~ offered by a school that] is not seeking degree-granting status such that [~~they~~ it] would be required to obtain prior council certification.

5. Any course or program of study given by or approved by any professional body, fraternal organization, civic club, or benevolent order principally for [continuing or] professional education [~~or advancement~~] or similar purpose and for which no certificate, degree, or degree credit is awarded.

6. Courses or programs offered through approved multistate compacts, including but not limited to [,] the Southern Regional Education Board's Electronic Campus.

7. Those courses offered and delivered by a postsecondary school that is accredited by an entity recognized by the U.S.

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Department of Education [(USDOE)] for accrediting purposes, if such courses are provided solely on a contractual basis for which no individual is charged tuition and for which [~~there is~~] no advertising [has been made] for open enrollment.

8. 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.

9. Any public or private high school accredited or recognized by the [Virginia] 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 of the Code of Virginia, in the case of a public school, or pursuant to regulations prescribed by the relevant governing body of such private school.

10. 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.

11. Schools of fine arts or other avocational courses that are conducted solely to further artistic appreciation, talent, or for personal development or information.

B. Notwithstanding the exemptions provided in this section, a school 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 school 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 Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 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. of the Code of Virginia).

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 a school's name.

3. Authorize religious exemptions.

4. [Authorize emergency action] pursuant to § 23-276.7 of the Code of Virginia, [~~authorize emergency action~~] in the event a school has received an adverse action by the [~~United States Department of Education~~ USDOE] or by its accrediting agency that threatens a disruption of the operation of the school 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 actions as it may deem necessary. The authority of the executive director in these instances includes the [~~ability~~ authority] to:

a. Suspend new enrollment in specified programs, degree levels or in all programs and degree levels.

b. Require the school 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.

B. The executive director may delegate certain administrative responsibilities to the council staff.

8 VAC 40-31-100. Role of the council staff.

A. The council staff shall:

1. Provide oversight and administration for purposes of compliance with Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 of the Code of Virginia.

2. Review initial and annual certification requirements for all schools.

3. Perform random and periodic site visits to review, inspect and investigate school 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.

B. The executive director may delegate other responsibilities as deemed appropriate.

PART IV.

SCHOOLS FOR WHICH CERTIFICATION IS REQUIRED.

8 VAC 40-31-110. Certain existing approvals and 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 school's approval or authorization is revoked by the council in accordance with 8 VAC 40-31-200.

B. A Virginia institution that is approved or authorized to confer degrees by the council, the [State Virginia] 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 [at the time the approval or authorization was granted].

8 VAC 40-31-120. Certification required for new and existing postsecondary schools.

A. [Unless otherwise exempted from these regulations,] all instructional offerings [of a new or existing postsecondary school] in Virginia [~~that are not exempted from these regulations~~] are subject to this chapter, even [though when] 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, mail correspondence courses, or at a site within the Commonwealth.

1. The determination for certification of telecommunications activities or mail correspondence courses may be based upon, but not limited to, physical presence.

2. [With the exception of degree programs, academic credit and other courses offered exclusively from outside the Commonwealth of Virginia through individual and private interstate communication, all] telecommunications activities and mail correspondence courses [~~, 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 recertify 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. [Noncertified] postsecondary schools [~~not previously certified in Virginia seeking that seek~~] 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 and (ii) criteria designed to ensure that all postsecondary schools that are subject to this chapter meet minimal academic or career-technical 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.

A. This section shall apply to each institution for which certification is required.

B. 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 as follows:

1. For terminal occupational/technical programs leading to the Associate of Occupational Science (A.O.S.) degree, general education courses must compose at least 15% 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 from an accredited college or university, 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:

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a. If teaching general education courses or in programs in the liberal arts and sciences, hold a baccalaureate degree from an accredited college or university, 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 from an accredited college or university.

b. Exception to academic preparation requirements for instructional faculty may be made in instances where substantial documentation of professional and scholarly achievements [and/or demonstrated competences in the discipline] can be shown. [The institution must document and justify any such exception.]

7. All instructional faculty teaching in a program at the master's level or higher shall hold a doctoral or other terminal degree from an accredited college or university. Exception to academic preparation requirements for instructional faculty may be made in instances where substantial documentation of professional and scholarly achievements [and/or demonstrated competences in the discipline] can be shown. [The institution must document and justify any such exception.]

C. In addition to the instructor qualifications in subsection B of this section, 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 holds either full-time, part-time, or adjunct appointments.

4. The institution's academic programs [~~meet the following criteria~~] shall ensure that: (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. [~~There is~~] A plan [~~to provide for~~] is in place that ensures interaction between student and faculty, and among students.

8 VAC 40-31-150. Certification criteria for career-technical schools.

A. The criteria in this section shall apply to each career-technical school for which certification is required.

B. 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 career-technical programs not leading to a degree and not offered as degree credit, must [~~hold~~] either (i) [hold] an associate degree related to the area of instruction or (ii) [~~have~~ possess] a minimum of two years of technical/occupational experience in the area of teaching responsibility or a related area.

C. In addition to the instructor qualifications in subsection B of this section, the career-technical school must certify that:

1. Courses of study conform to state, federal, trade, or manufacturing standards of training for the occupational fields in which such standards have been established or conform to recognized training practices in those fields.

2. [~~It has~~] A plan [~~to provide for~~] is in place that ensures interaction between student and faculty, and among students.

8 VAC 40-31-160. Certification criteria for all postsecondary schools.

A. The criteria in this section shall apply to all postsecondary schools for which certification is required.

B. 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 [as well as a statement demonstrating that the school's proposed offerings are consistent with its stated purpose];

4. A description of the postsecondary school's activities including telecommunications activities away from its principal location, and 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 and a list of the degree programs currently offered or planned to be offered in Virginia;

6. [For each Virginia location, and for the most recent academic year,] the [total] number of students [who

were] enrolled [~~in each program offered~~ as well as the total number and percentage of students claiming Virginia residence who were enrolled in each program offered];

7. [For each Virginia location,] the [total] number of students that [~~graduate~~ completed/graduated] from the school [~~each calendar year~~ as of the end of the last academic year and the total number and percentage of students claiming Virginia residence who completed/graduated from each program offered by the school as of the end of the last academic year];

[~~8. The percent of those that enroll that subsequently successfully graduate;]~~

[~~9. 8. For unaccredited institutions of higher education and career-technical schools only,] the [total] number of students [~~reporting~~ claiming Virginia residence who report] employment in their field of study within [(i)] six months [~~after graduation; 10. The number of students reporting employment in their field of study within of graduation/completion and (ii)] one year of graduation [~~and /completion.]~~~~~~

[~~11. A statement of the postsecondary school's long-range plans.]~~

C. 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 school;
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; [and]
4. The students, if students participate in school governance.

D. The postsecondary school shall have [and,] maintain [,] and provide to all applicants a policy document accurately defining the minimum requirements for eligibility for admission to the school and for acceptance at the specific degree level or into all specific degree programs offered by the postsecondary school that 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;
4. Students' rights, privileges, and responsibilities; [and]
5. [The established grievance process of the school, which shall indicate] that students [~~shall~~ should] follow [~~the established grievance this~~] process [~~of the school~~] and may contact [SCHEV council staff to file a complaint about the school] as a last resort [~~to file a complaint about a school~~].

E. The postsecondary school shall maintain records on all enrolled students. [At a minimum,] 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 that 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~~ a minimum of three] years after the student's last date of attendance.
2. A 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 an electronic] 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. A record of all financial transactions between each individual student and the school including payments from the student, payments from other sources on the student's behalf, and refunds. Fiscal records must be maintained for a minimum of three years after the student's last date of attendance.]

[4. 5.] A written, binding agreement transacted 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. State-supported, public schools originating in a state other than Virginia and operating a campus within Virginia may choose to enter into a written, binding agreement regarding [student] records with the university system of which they are a part.

F. Each school shall provide or make available to students, prospective students, and other interested persons a catalog, bulletin [or] brochure [, or electronic media] containing, at a minimum, the following information:

1. The number of students [claiming Virginia residency] enrolled in each program offered.
2. [~~The number of students that graduate from the school each calendar year.~~ For each Virginia location, the total number of students that completed/graduated from the school as of the end of the last academic year and the total number and percentage of students claiming Virginia residence who completed/graduated from each program offered by the school as of the end of the last academic year.]

[~~3. The percent of those graduating out of the total number that enroll each year.]~~

[4. 3.] A description of any financial aid offered [at by] the school including repayment obligations, standards of academic progress required for continued participation in

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the program, sources of loans or scholarships, the percentage of students receiving federal financial aid (if applicable) and the average student indebtedness at graduation.

[~~5~~. 4.] A broad description, including academic and/or career-technical 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.

[~~6~~. 5.] 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.

[~~7~~. 6.] The school's refund policy for tuition and fees pursuant to subsection N 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 initiation of a complaint proceeding.

[~~8~~. 7.] The name and address of the school's accrediting body, if applicable.

[~~9~~. 8.] The minimum requirements for satisfactory completion of each degree level and degree program, or nondegree [~~certifications~~ certificates] /diplomas.

[~~10~~. 9.] A statement that all school officials accurately represent the transferability of any courses or programs and [~~state if that indicates whether~~] any of the associate degrees offered by the school are considered terminal degrees.

[~~11~~. 10.] A statement that ensures that all school officials accurately represent the transferability of any diplomas or certificates offered by the school.

[~~12~~. 11.] If the institution offers programs leading to the Associate of Applied Science or Associate of Occupational Science degree, a statement that these programs are terminal occupational/technical programs and [~~that~~ their] credits generally [earned in these programs] are not applicable to other degrees.

[~~13~~. 12.] The academic or course work schedule for the period covered by the publication.

[~~14~~. 13.] A statement that accurately details the type and amount of career advising and] placement services [~~and employment opportunities accurately stated to include the number of students reporting employment in their field of study within six months and within one year of graduation offered by the school~~].

[~~15~~. 14.] The name, location, and address of the main campus, branch or site operating in Virginia.

G. 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 [must] include, but not be limited to:

1. An explanation of how each program is consistent with the mission of the school.

2. [An explanation of] the written process for evaluating each degree level and program, or career-technical program, once initiated and [~~written~~ an explanation of the] 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 [and career-technical] programs [offered by the school].

H. 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)~~ USDOE] Financial Ratio (composite score).

1. Institutions of higher education shall provide the results of an annual audited [~~financial statement~~], reviewed [~~financial statement~~], or [a] compiled financial statement. [~~Noncollege degree~~ Career-technical] schools shall provide the results of an annual audited [~~financial statement~~], reviewed [~~financial statement~~], or [a] compiled financial statement or the school may elect to provide financial information on forms provided by [~~SCHEV~~ council staff].

2. The [~~USDE~~ USDOE] 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 I of this section; 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.

I. 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 [, that is] 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 non-Title IV funds that 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 (non-Title IV) Tuition Liability. [~~Schools~~ A school] certified under this regulation shall be exempt from the surety instrument requirement if [~~they~~ it] can demonstrate a [~~U.S. Department of Education~~ USDOE] composite financial responsibility score of 1.5 or greater on [~~their~~ its] current [~~audited or reviewed~~] financial statement; or if [~~they~~ it] can demonstrate a composite score between 1.0 and 1.4 on [~~their~~ its] current [~~audited or reviewed~~] financial statement and [~~have~~ has] scored at least 1.5 on [~~an audited or reviewed~~ a] financial statement in either of the prior two years.

1. Public postsecondary schools originating in a state other than Virginia that are operating a branch campus or site in the Commonwealth of Virginia are exempt from the surety bond requirement.

2. New schools and unaccredited existing schools must complete at least two calendar years of academic instruction to qualify for the surety waiver [/exemption].

J. The school shall have a current written policy on faculty accessibility [~~which~~ that] 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 [a course's] regularly scheduled class hours at each site [~~when a course is offered~~] and throughout the period during which the course is offered.

K. All recruitment personnel must provide prospective students with current and accurate information on the school 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 shall knowingly make any statement or representation that is false, inaccurate or misleading regarding the school.

L. All programs offered via telecommunications must be comparable in content, faculty, and resources to those offered in residence, and [must] include regular student-faculty interaction by computer, telephone, mail, or face-to-face meetings.

M. 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 school. Library resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The school shall maintain a continuous plan for library resource development and support, including objectives and selections of materials. 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. Career-technical schools shall provide adequate and appropriate resources for completion of course work.

N. 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 [, and if those requirements describe specific refund terms. Otherwise, accredited institutions, as well as] 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 subdivision 2 of this subsection, 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 prior to the start of the program, or is dismissed prior to the start of the program.

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 nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.

3. The school shall provide a period of at least three business days, [excluding] weekends and holidays [~~excluded~~], during which a student applicant may cancel his enrollment without financial obligation other than the nonrefundable fee described in subdivision 2 of this subsection.

4. Following the period described in subdivision 3 of this subsection, 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~~ The school] 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~~ The school is] 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. [~~Institutions~~ An institution] that [~~provide~~ provides] the majority of [~~their~~ its] program offerings through distance learning shall have a plan for student termination, which shall be provided to [~~SCHEV~~ council staff] for review with [~~the~~ its] annual or recertification application.

6. The minimum refund policy for [~~schools which~~ a school that] financially [~~obligate~~ obligates] 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.

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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~~ a school that] financially ~~[obligate obligates]~~ 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 school]~~ but withdraws or is terminated during the first ~~[1/4 quartile~~ (25%)] 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 quartile~~ (more than 25% but less than 50%)] 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 quartile~~ (more than 50% but less than 75%)] 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 more than three quartiles]~~ (75%) of the program shall not be entitled to a refund.

[8. The minimum refund policy for a school that offers its programs completely via telecommunications shall be as follows:

a. For a student canceling after the 5th calendar day following the date of enrollment but prior to receipt by the school of the first completed lesson assignment, all moneys paid to the school shall be refunded, except the nonrefundable fee described in subdivision 2 of this subsection.

b. If a student enrolls and withdraws or is discontinued after submission of the first completed lesson assignment, but prior to the completion of the program, minimum refunds shall be calculated as follows:

(1) A student who starts the program but withdraws up to and including completion of the first quartile (25%) of the program is entitled to receive as a refund a minimum of 75% of the stated cost of the course or program for the period.

(2) A student who starts the program but withdraws after completing up to the second quartile (more than 25%, but less than 50%) of the program is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.

(3) A student who starts the program but withdraws after completing up to the third quartile (more than 50%, but less than 75%) of the program is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.

(4) A student who withdraws after completing the third quartile (75%) or more of the program is not entitled to a refund.

c. The percentage of the program completed shall be determined by comparing the number of completed lesson assignments received by the school to the total number of lesson assignments required in the program.]

~~[9. 9.]~~ 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~~ 10.] Expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges, deposits, and all other charges ~~[are not required to]~~ 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 The school]~~ shall adopt and adhere to reasonable policies regarding the handling of these expenses when calculating the refund and ~~[shall]~~ submit the policies to ~~[the department council staff]~~ for approval.

~~[10. 11.]~~ For programs longer than one year, the policy outlined in subdivisions 7 and 8 of this subsection shall apply separately for each academic year or portion thereof.

~~[11. 12.]~~ 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. 13.]~~ When notes, contracts or enrollment agreements are sold to third parties, the school ~~[continues shall continue]~~ 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.

O. ~~[Schools The school]~~ shall keep official transcripts for all teaching faculty to document that each has the appropriate educational credentials ~~[or other relevant documentation to support reported experience in the area of teaching responsibility or documentation of professional competencies and/or scholarly achievements]~~.

PART VI. CERTIFICATION REQUIREMENTS.

8 VAC 40-31-170. Initial certification.

A. An institution shall not use the term "college" or "university" ~~[or words of similar meaning]~~ until it has received acknowledgment from ~~[SCHEV council staff]~~ that the name is not in violation of 8 VAC 40-31-20.

1. A school seeking certification must notify ~~[SCHEV council staff]~~ 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 school's certificate from the Virginia State Corporation Commission authorizing it to transact business in the

Commonwealth under the acknowledged name must be submitted [to council staff].

B. A school shall not operate in the Commonwealth of Virginia without first receiving certification to operate from the council. Certified schools shall not enter into any agreement to deliver or develop courses or programs of study in Virginia with noncertified postsecondary schools.

[C. An out-of-state postsecondary school seeking certification to operate in the Commonwealth of Virginia must secure written documentation from the higher education coordinating and/or approving agency in the state or country in which the school is formed, chartered, established, or incorporated indicating that the school is operating in good standing. If the school formerly operated in another state or country but is not operating there at the time of its application to operate in Virginia, the school must secure from the higher education coordinating and/or approving agency documentation that it closed in good standing and would be allowed to re-establish a postsecondary school in that state or country. These written documentations must be provided to council staff.]

[~~C. Schools~~ D. A school] submitting [~~their~~ its] initial application for certification will have 180 days to complete the application process, after which time [~~their applications~~ its application] will be withdrawn by the council and [~~they~~ it] will receive a refund of the application fee minus the nonrefundable handling charge of \$300.

[~~D. E.~~ E.] All certifications shall expire on the certificate expiration date. Applications for recertification must be submitted to [~~SCHEV~~ council staff] at least 60 days prior to the expiration date of the current certification.

[~~E. F.~~ F.] Certification is not transferable. In the event of a change of ownership of a certified school, the new owner or governing body must secure certification. The school must apply for certification within 45 business days following a change of ownership. During the 45-day period and the time required for the council [staff] to process the new application, up to and not exceeding 90 days, the old certification [~~remains shall remain~~] in effect provided that [~~there are~~] no changes [have been made] in the academic [~~or course work~~] programs, policies, or financial considerations such that the change would constitute or create a violation of [~~SCHEV's~~ council's] policies.

[~~F. SCHEV~~ G. Council staff] will process all applications and provide notice to applicants within 45 business days of receipt of a completed application package.

[~~G. Certificate valid dates and recertification due dates~~ H. Valid-through dates of Certificates to Operate and due dates of recertification applications] are as follows:

1. Out-of-state private degree-granting and career-technical school certificates are valid for one year beginning on September 1 of the calendar year and ending on August 31 of the following calendar year. Applications are due not later than July 2.

2. Out-of-state public institution certificates are valid for one year beginning on September 15 of the calendar year and ending on September 14 of the following calendar year. Applications are due not later than July 16.

3. In-state private nonprofit institution certificates are valid for one year beginning on October 1 of the calendar year and ending on September 30 of the following calendar year. Applications are due not later than August 2.

4. In-state proprietary degree-granting and [~~academic~~] career-technical school certificates are valid for one year beginning on October 15 of the calendar year and ending on October 14 of the following calendar year. Applications are due not later than August 16.

5. In-state proprietary career-technical school certificates (letters A-D) are valid for one year beginning on November 1 of the calendar year and ending on October 31 of the following calendar year. Applications are due not later than September 2.

6. In-state proprietary career-technical school certificates (letters E-P) are valid for one year beginning on November 15 of the calendar year and ending on November 14 of the following calendar year. Applications are due not later than September 16.

7. In-state proprietary career-technical school certificates (letters Q-Z and others) are valid for one year beginning on December 1 of the calendar year and ending on November 30 of the following calendar year. Applications are due not later than October 2.

8 VAC 40-31-180. Application requirements.

A. Each certification to operate attests that the school is in compliance with Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 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~~ council staff].

2. A statement regarding the school's accreditation status [, if applicable].

a. Career-technical schools must provide a statement that the 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 and career-technical schools requesting [initial] certification must be accredited by an accrediting organization recognized by the [~~United States Department of Education~~ USDOE].

c. Unaccredited institutions that offer courses for degree credit and existing [unaccredited] out-of-state career-technical schools must submit a plan of action for securing accreditation from an organization recognized by the [~~United States Department of Education~~ USDOE], including the name of the accrediting organization and timeframe. In order to remain eligible for certification, the postsecondary school must secure, at a minimum, candidacy status or equivalent within three years of its initial date of certification, and initial accreditation no later than six years after initial certification. [Changes to the

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plan of action timeframe for accreditation will be granted only at the discretion of the council.]

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 transacted surety instrument form [, with the State Council of Higher Education for Virginia named as the obligee].

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 school's certificate, if incorporated, from the State Corporation Commission providing authorization to transact business within the Commonwealth.

7. For schools whose main campus is not in Virginia, a copy of the school'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~~ programs offered] at the site.

9. For new postsecondary school applicants, a signed and notarized statement provided by the president or CEO, [~~which~~ that] attests to any previous involvement in the operation of a postsecondary school or any previous involvement by any administrator, owner, controlling shareholder, or member of the school's governing board in the operation of a postsecondary school. At a minimum, this statement shall include the name(s) of previous schools, the dates of the involvement, the positions held within the school, the location, the status (open/closed, and accredited/nonaccredited) of the school, any known violation of [federal or state] financial aid rules by the school, any known violations of the policies of an accreditor of the school, any bankruptcy filings by the school, and conviction or civil penalty levied by any legal entity in connection with this or any other educational entity [in which] he was employed [~~by~~] or invested [~~in~~].

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 schools must also include their estimated annual enrollment projections and number of students per program; and

b. Schools that are renewing certificates to operate shall include from the previous year the following information:

(1) The number of degrees, certificates, or diplomas conferred for each [~~type given~~ program offered] by a school.

(2) The number of students graduating and the number enrolled.

[~~3~~] c. Unaccredited institutions of higher education and career-technical schools shall include,] from follow-up surveys of graduates, the number of students reporting placement in jobs relating to their field of study within six months [;] and one year of graduation.

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 B and C.

D. When a branch campus or site of a school is under different ownership or different school name than the main campus of the school, the branch campus or site must submit an application for certification to operate and must pay a separate certification fee than the main campus of the school.

E. All proprietary postsecondary schools must provide evidence of a valid business license from the locality within which it seeks to operate. [~~Upon~~ If and when council receives] confirmation that a school 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 school.

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 (8 VAC 40-31-130 et seq.) of this chapter.

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~~ shall be] 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 school provides instruction; and/or
2. Consist of council staff.

C. Audits shall be random or triggered by, but not limited to, the following events:

1. [Council] staff concerns based on questionable [information in the] initial or recertification application [information].
2. [Greater than average] volume and frequency of negative student complaints or adverse publicity.
3. Difficulty securing accreditation within the specified time period.
4. Adverse action by the [~~U.S. Department of Education~~ USDOE] or the school's accrediting agency.
5. A [~~USDE~~ USDOE] composite financial responsibility score of less than 1.0.

D. Following an audit of the school, council staff [~~will~~ shall] 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 a 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~~ exist that require] 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 that may have a bearing on the proposed action at a fact-finding conference. If [~~there is~~] no withdrawal [occurs], 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. [~~Schools who wish~~ A school wishing] to waive [~~their~~ its] 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~~ the party's/representative's] 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~~ practical], in the county or city in which the school 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.

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PART VIII.
CRIMINAL PROSECUTION FOR VIOLATION; CIVIL
ENFORCEMENT.

8 VAC 40-31-230. Criminal prosecution for violation.

A. [Any violation of any provision of § 23-276.12 of the Code of Virginia that is found by council to have been committed by] any person, firm, association, postsecondary school, trust, or other entity that [~~violates any provision of § 23-276.12 of the Code of Virginia or that, 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 punishable as~~] 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 [the] Code [of Virginia] to deter illegal or improper acts that may violate the requirement for school certification. [Pursuant to § 23-276.15 of the Code of Virginia, upon confirmation of any notification or discovery of any postsecondary school operating without its certification or approval, the council shall notify, in writing, the relevant local commissioner of the revenue or other official serving such equivalent functions of the postsecondary school's violation of such certification or approval requirements, and shall recommend revocation of the school's business license.]

8 VAC 40-31-240. Civil enforcement.

Upon the determination of the council that any school, 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. All fees collected by council staff will be deposited in the State Treasury.

B. 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 of \$300.

C. Fees must be paid with a company check and made payable to the Treasurer of Virginia.

D. The flat fee schedule is as follows:

Initial fee for all new institutions of higher education =	\$6,000
Initial fee for all new career-technical schools =	\$2,500
Annual fee for all unaccredited institutions of higher education =	\$6,000
Annual fee for all unaccredited out-of-state career-technical schools	\$2,500
Renewal fee for all postsecondary schools with gross tuition collected greater than \$150,000 [, as recorded on most recent financial statement] =	\$2,500
Renewal fee for all postsecondary schools with gross tuition collected greater than \$100,000 but less than or equal to \$150,000 [, as recorded on most recent financial statement] =	\$1,500
Renewal fee for all postsecondary schools with gross tuition collected greater than \$50,000 but less than or equal to \$100,000 [, as recorded on most recent financial statement] =	\$1,000
Renewal fee for all postsecondary schools with gross tuition collected less than or equal to \$50,000 [, as recorded on most recent financial statement] =	\$500
Late fee =	\$100/day for first 10 business days after expiration of annual certification (Maximum fee = \$1,000) (11th day institution notified to cease and desist and matter referred for prosecution)
Returned check fee =	\$35
Noncompliance administrative fees =	\$1,000 for each occurrence of noncompliance found as a result of audit
Initial or renewed exemption application/request for name acknowledgement/agent registration =	\$300
Nonrefundable handling charge (withdrawal of application) =	\$300

[E. If a late fee is assessed, the school must submit the assessed fee, required certification fee and all required certification documents prior to the issuance of the Certificate to Operate.

F. A school that submits a payment that is returned for any reason must resubmit the required payment, any applicable

late fee, and the assessed returned check fee of \$35 via a money order or certified bank check only.]

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:

State Council of Higher Education for Virginia
ATTN: Private and Out-of-State Postsecondary School
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 school:

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~~ A roster] showing the name, address, and current academic status of [all] enrolled students.

D. In the event of school closure or revocation of certification, the council may facilitate the transfer of student records to the designated repository.

E. The council shall be responsible for securing and preserving student records until the designated repository accepts [~~them~~ the records].

F. The council shall seek the advice of the Career College Advisory Board on matters relating to [~~school~~] closures [of its member schools].

8 VAC 40-31-290. Waiver by council.

The council may waive or modify the certification requirements for an accredited school if the council finds that such waiver or modification will not conflict with the intent of the regulations and that in light of the school's mission, literal application of such requirement(s) creates an unreasonable hardship on the school.

8 VAC 40-31-300. Freedom of Information Act to apply.

All materials submitted by a school 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 (§ 2.2-3700 et seq. of the Code of Virginia) and shall be available for public inspection in accordance with the provisions of § 2.2-3704 of the Code of Virginia.

8 VAC 40-31-310. Student Tuition Guaranty Fund.

A. The executive director shall appoint in writing a Director of the Student Tuition Guaranty Fund.

B. The purpose of the fund is to reimburse tuition and fees due students at schools 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 that 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~~ its recertification].

D. A claim shall be made against the fund only if it arises out of the cessation of operation by a school [at which the student was enrolled or was on an approved leave of absence at the time of the closure and the closure prevented the student from completing the program of study for which he enrolled] on or after [(insert the effective date of this chapter) July 1, 2004]. If the school holds a surety bond or other guaranty instrument, [~~the first priority shall be to file filing~~] a claim against the guaranty instrument [shall be the initial response]. 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~~ period shall] not [be] 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

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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~~ these parties] 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 that 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~~ shall thereby be] 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 [was] involved, [then] refunds will be made to the student.

8 VAC 40-31-320. Agent registration.

A. Agents representing [one or more] noncertified accredited postsecondary schools must:

1. Register with the council prior to soliciting in Virginia; and
2. Pay an annual fee of \$300 per school represented [~~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.

D. Agent permits expire on December 31 of each calendar year. An application for an agent permit renewal must be submitted to [~~SCHEV~~ council staff] at least 60 days prior to the expiration date.

NOTICE: The forms used in administering 8 VAC 40-31, Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates, 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 State Council of Higher Education for Virginia, 101 N. 14th Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Institutional Certification Application Form: Religious Exemption (rev. 10/04).

Institutional Certification Application Form (rev. [~~11/04~~ 4/06]).

Institutional Certification Checklist for Institutions of Higher Education (rev. 10/04).

Institutional Certification Checklist for Postsecondary Schools (rev. [~~11/04~~ 4/06]).

[Enrollment Data Worksheet (eff. 8/06).]

Institutional Sites Listing (rev. [~~11/04~~ 4/06]).

Acknowledgement of Prior Postsecondary Involvement (rev. 11/04).

Surety [~~Bond Instrument~~] Calculation Worksheet [(rev. 4/06)].

Surety Bond (rev. [~~11/04~~ 4/06]).

Sample Clean Irrevocable Letter of Credit; Surety Information and Bond Checklist [(rev. 4/06)].

Certificate, Diploma, or Degree Program Information (rev. [~~11/04~~ 4/06]).

Chart of Accounts; Income Statement; Balance Sheet.

Change of Location Application.

Change of Ownership Application.

Buyer/Seller Affidavit and Certification.

Statement of Responsibility of Refund Liability.

Report on the Closing of a Campus.

Institutional Change of Name Application.

Private Nonprofit School Financial Composite Score Calculation Worksheet.

Proprietary School Financial Composite Score Calculation Worksheet.

VA.R. Doc. No. R05-77; Filed July 5, 2006, 9:05 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9 VAC 5-20. General Provisions (amending 9 VAC 5-20-203 and 9 VAC 5-20-204).

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

Effective Date: September 1, 2006.

Agency Contact: Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510 or e-mail kgsabastea@deq.virginia.gov.

Summary:

The amendments (i) revise the geographic delineation of the maintenance areas to correspond to the recent federal promulgation and (ii) revise the geographic delineation of the nonattainment areas to correspond to the recent federal promulgation.

The Fredericksburg Ozone Maintenance Area (Spotsylvania County, Stafford County, and Fredericksburg City) and the Shenandoah National Park Ozone Maintenance Area (the portions of Madison County and Page County located in Shenandoah National Park) have been added to the list of maintenance areas. The Fredericksburg Ozone Nonattainment Area (Spotsylvania County, Stafford County, and Fredericksburg City) and the Shenandoah National Park Ozone Nonattainment Area (the portions of Madison County and Page County located in Shenandoah National Park) have been deleted from the list of nonattainment areas.

9 VAC 5-20-203. Maintenance areas.

Maintenance areas are geographically defined below by locality for the criteria pollutants indicated.

1. Ozone.

Fredericksburg Ozone Maintenance Area.

<i>Spotsylvania County</i>	<i>Fredericksburg City</i>
<i>Stafford County</i>	

Hampton Roads Ozone Maintenance Area.

James City County	Poquoson City
York County	Portsmouth City
Chesapeake City	Suffolk City
Hampton City	Virginia Beach City
Newport News City	Williamsburg City
Norfolk City	

Richmond Ozone Maintenance Area.

Charles City County*	Colonial Heights City
Chesterfield County	Hopewell City
Hanover County	Richmond City
Henrico County	

*Beginning at the intersection of State Route 156 and the Henrico/Charles City County Line, proceeding south along State Route 5/156 to the intersection with State Route 106/156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County line, proceeding west along the Prince George/Charles City

County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/Charles City County line to State Route 156.

Shenandoah National Park Ozone Maintenance Area.

Madison County (portions located in Shenandoah National Park)

Page County (portions located in Shenandoah National Park)

2. Carbon monoxide.

Northern Virginia Carbon Monoxide Maintenance Area.

Arlington County	Alexandria City
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3. All other pollutants.

None.

9 VAC 5-20-204. Nonattainment areas.

A. Nonattainment areas are geographically defined below by locality for the criteria pollutants indicated. Following the name of each ozone nonattainment area, in parentheses, is the classification assigned pursuant to § 181(a) of the federal Clean Air Act (42 USC § 7511(a)) and 40 CFR 51.903(a).

1. Ozone (1-hour).

Northern Virginia Ozone Nonattainment Area (severe).

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

2. Ozone (8-hour).

~~Fredericksburg Ozone Nonattainment Area (moderate).~~

Spotsylvania County	Fredericksburg City
Stafford County	

Northern Virginia Ozone Nonattainment Area (moderate).

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

Hampton Roads Ozone Nonattainment Area (marginal).

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

Richmond Ozone Nonattainment Area (marginal).

Charles City County	Colonial Heights City
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Chesterfield County
Hanover County
Henrico County
Prince George County

Hopewell City
Petersburg City
Richmond City

Summary:

Article 8 (9 VAC 5-80-1605 et seq.) of Part II of 9 VAC 5-80 establishes a new source review (NSR) permit program whereby owners of sources locating in prevention of significant deterioration (PSD) areas are required to obtain a permit prior to construction of a new facility or modification (physical change or change in the method of operation) of an existing one. Article 9 (9 VAC 5-80-2000 et seq.) of Part II of 9 VAC 5-80 establishes an NSR permit program whereby owners of sources locating in nonattainment areas are required to obtain a permit prior to construction of a new facility or modification of an existing one.

Articles 8 and 9 apply to the construction or reconstruction of new major stationary sources or major modifications to existing ones. The owner must obtain a permit from the board prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as may be needed to enable the board to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, and to assess the impact of the emissions from the facility on air quality. The regulation also provides the basis for the board's final action (approval or disapproval) on the permit depending on the results of the preconstruction review.

Article 8 requires a facility to use the best available control technology (BACT) to control emissions from the proposed facility, and requires a facility to control emissions from the proposed facility such that the air quality standards or increments are not violated. Article 9 requires a facility to use the lowest achievable emission rate (LAER) as the limit to control emissions from the proposed facility, and requires the facility to obtain emission reductions from existing sources to offset the proposed project's emissions increases.

EPA's new major NSR reform rule originally incorporated five main elements: (i) changes to the method for determining baseline actual emissions; (ii) changes to the method for determining emissions increases due to operational change; (iii) provisions to exclude pollution control projects (PCPs) from NSR; (iv) provisions for determining applicability of NSR requirements for units designated as Clean Units; and (v) provisions to allow for compliance with plantwide applicability limits (PALs). The current state NSR regulations have been amended in order to meet these new requirements except for the Clean Unit and PCP provisions, which have been vacated by a federal court and can no longer be legally implemented. The minor NSR regulation (Article 6) has also been revised to remove provisions for PCPs.

In addition, Article 8 has been revised in order to be consistent with other NSR regulations. This consists of (i) removing federal enforceability of certain provisions that should be enforceable by the state (toxics and odor) in order to prevent state-only terms and conditions from being designated as federally enforceable in a permit; (ii) deleting provisions covered elsewhere regarding circumvention, and reactivation and permanent shutdown; and (iii) adding provisions regarding changes to permits, administrative

~~Shenandoah National Park Ozone Nonattainment Area (basic).~~

~~Madison County (portions located in Shenandoah National Park)~~

~~Page County (portions located in Shenandoah National Park)~~

3. PM_{2.5} (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers).

Northern Virginia PM_{2.5} Nonattainment Area.

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

4. All other pollutants.

None.

B. Subdivision A 1 of this section shall not be effective after June 15, 2005.

VA.R. Doc. No. R06-279, Filed June 27, 2006, 3:48 p.m.

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Titles of Regulations: **9 VAC 5-50. New and Modified Stationary Sources (Rev. E03) (amending 9 VAC 5-50-250, 9 VAC 5-50-270, 9 VAC 5-50-280).**

9 VAC 5-80. Permits for Stationary Sources (amending 9 VAC 5-80-1100, 9 VAC 5-80-1110, 9 VAC 5-80-2000 through 9 VAC 5-80-2020, 9 VAC 5-80-2040 through 9 VAC 5-80-2070, 9 VAC 5-80-2090, 9 VAC 5-80-2110, ~~9 VAC 5-80-2120, through 9 VAC 5-80-2140, 9 VAC 5-80-2180, 9 VAC 5-80-2210~~ 9 VAC 5-80-2200 through 9 VAC 5-80-2240; adding 9 VAC 5-80-1605 through 9 VAC 5-80-1865, 9 VAC 5-80-1925 through 9 VAC 5-80-1995, 9 VAC 5-80-2091, 9 VAC 5-80-2141 through 9 VAC 5-80-2144; repealing 9 VAC 5-80-1310, 9 VAC 5-80-1700 through 9 VAC 5-80-1970).

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

Effective Date: September 1, 2006.

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

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.

permit amendments, minor permit amendments, significant amendment procedures, and reopening for cause. Finally, Article 4 of 9 VAC 5 Chapter 50, which contains general requirements for new and modified stationary sources, has been revised to be consistent with the control technology provisions of Articles 8 and 9.

In 21:22 VA.R. 3003-3083 July 11, 2005, the board published for public comment a proposal to amend Articles 8 and 9 in order to implement EPA's rules. In response to that request, comments were submitted that resulted in several changes be made to the original proposal. On December 8, 2005, the board adopted final amendments to its regulations concerning major new source review reform, with an effective date of February 22, 2006. The final regulation amendments as adopted were published in the Virginia Register in 22:10 VA.R. 1562-1637 January 23, 2006. Pursuant to § 2.2-4007 K of the Code of Virginia, at least 25 persons requested an opportunity to submit oral and written comments on the changes to the proposed regulation. Because of the substantive nature of these additional changes and the requests from petitioners, the board reopened the proposal for public comment on those changes to the final regulation and suspended the effective date of the final regulation.

The petitions submitted under § 2.2-4007 K identified the following as the change that will have a substantial impact and is of concern: the proposed regulations excluded emission increases that could be accommodated and are unrelated to the project, including demand growth, from projected actual emissions. This exclusion was removed from the final.

On June 21, 2006, the Virginia State Air Pollution Control Board reconsidered its original December 8, 2005, decision on the major NSR reform final regulation. In its reconsideration decision, the board reinstated the accommodation exclusion; but in doing so, made changes to clarify the intent of the provision and ensure consistency in its application. Since December 2005, changes have been made to 9 VAC 5-80-1605 G 6, 9 VAC 5-80-1615 C (definition of "projected actual emissions"), 9 VAC 5-80-1785 B 1 c (definition of "projected actual emissions"), 9 VAC 5-80-2000 G 6 and 9 VAC 5-80-2091 B 1 c.

Article 4.

Standards of Performance for Stationary Sources (Rule 5-4).

9 VAC 5-50-250. Definitions.

A. For the purpose of the Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-40 et seq.), unless otherwise required by context.

C. Terms defined.

"Best available control technology" means a standard of performance (including a visible emission standard) based on the maximum degree of emission reduction for any pollutant which would be emitted from any proposed stationary source

which the board, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source through the application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard in Article 5 (9 VAC 5-50-400 et seq.) of this part or Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60. If the board determines that technological or economic limitations on the application of measurement methodology to particular emissions unit would make the imposition of an emission standard infeasible, a design, equipment, work practice, operational standard, or combination of them, may be prescribed instead of requiring the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results. In determining best available control technology for stationary sources subject to Article 6 (9 VAC 5-80-1100 et seq.) of Part II of 9 VAC 5 Chapter 80, consideration shall be given to the nature and amount of the new emissions, emission control efficiencies achieved in the industry for the source type, and the cost effectiveness of the incremental emission reduction achieved.

"Lowest achievable emission rate" means for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or
2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

~~"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.), or Article 9 (9 VAC 5-80-2000 et seq.) of 9 VAC 5 Chapter 80.~~

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9 VAC 5-

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80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of 9 VAC 5 Chapter 80.

9 VAC 5-50-270. Standard for major stationary sources (nonattainment areas).

A. For major stationary sources located in nonattainment areas, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from the lowest achievable emission rate, as reflected in any condition that may be placed upon the permit approval for the facility.

B. A major stationary source shall apply lowest achievable emission rate for each ~~qualifying~~ *regulated NSR pollutant (as defined in 9 VAC 5-80-2010)* that it would emit.

C. A major modification shall apply the lowest achievable emission rate to each new or modified emission unit which would increase the emissions of a ~~qualifying~~ *regulated NSR pollutant*.

D. In the case of a reconstruction, the determination of lowest achievable emission rate shall take into account any economic or technical limitations on compliance with applicable standards of performance (as specified in Article 5 (9 VAC 5-50-400 et seq.) of this chapter) which are inherent in the proposed replacements.

E. For phased construction projects, the determination of lowest achievable emission rate shall be reviewed, and modified as appropriate, at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate for the source.

9 VAC 5-50-280. Standard for major stationary sources (prevention of significant deterioration areas).

A. For major stationary sources located in prevention of significant deterioration areas, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility.

B. A major stationary source shall apply best available control technology for each ~~pollutant subject to regulation under the federal Clean Air Act~~ *regulated NSR pollutant (as defined in 9 VAC 5-80-1615)* that it would have the potential to emit in significant amounts.

C. A major modification shall apply best available control technology for each *regulated NSR pollutant* ~~subject to regulation under the federal Clean Air Act~~ for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of physical change or change in the method of operation in the unit.

D. For phased construction projects, the determination of best available control technology shall be reviewed, and modified as appropriate, at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

Article 6.

Permits for New and Modified Stationary Sources.

9 VAC 5-80-1100. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to the construction, reconstruction, relocation or modification of any stationary source.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article do not apply to any stationary source, emissions unit or facility that is exempt under the provisions of 9 VAC 5-80-1320. Exemption from the requirement to obtain a permit under this article shall not relieve any owner of the responsibility to comply with any other applicable provisions of regulations of the board or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction. Any stationary source, emissions unit or facility which is exempt from the provisions of this article based on the criteria in 9 VAC 5-80-1320 but which exceeds the applicability thresholds for any applicable emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-~~40 et seq.~~) if it were an existing source or any applicable standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-~~40 et seq.~~) shall be subject to the more restrictive of the provisions of either the emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-~~40 et seq.~~) or the standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-~~40 et seq.~~).

D. The fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article. The provisions of this article do not apply to a stationary source or modification that would be subject to this article only if fugitive emissions, to the extent quantifiable, are considered in calculating the actual emissions of the source or net emissions increase.

E. An affected facility subject to Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 shall not be exempt from the provisions of this article, except where:

1. The affected facility would be subject only to recordkeeping or reporting requirements or both under Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50; or
2. The affected facility is constructed, reconstructed or modified at a stationary source which has a current permit for similar affected facilities that requires compliance with emission standards and other requirements that are not less stringent than the provisions of Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

G. ~~Except as provided in 9 VAC 5-80-1310,~~ No provision of this article shall be construed as exempting any stationary source or emissions unit from the provisions of the major new source review program. Accordingly, no provision of the major new source review program regulations shall be construed as exempting any stationary source or emissions unit from this article.

H. Unless specified otherwise, the provisions of this article are applicable to various sources as follows:

1. Provisions referring to "sources," "new or modified sources, or both" or "stationary sources" are applicable to the construction, reconstruction or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of the major new source review program.

2. Provisions referring to "major stationary sources" are applicable to the construction or reconstruction of all major stationary sources subject to this article. Provisions referring to "major modifications" are applicable to major modifications of stationary sources subject to this article.

3. In cases where the provisions of the major new source review program conflict with those of this article, the provisions of the major new source review program shall prevail.

4. Provisions referring to "state and federally enforceable" or "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9 VAC 5-80-1120 F.

9 VAC 5-80-1110. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

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

C. Terms defined.

"Actual emissions" means the actual rate of emissions (expressed in tons per year) of a pollutant from a stationary source or portion thereof, as determined in accordance with the provisions of this definition.

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period that precedes the particular date and that is representative of normal source operation. The board ~~shall~~ will allow the use of a different time period upon a determination that it is

more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2. The board may presume that source-specific allowable emissions for the emissions unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Allowable emissions" means the emission rate of a stationary source calculated by using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

1. Applicable emission standards;

2. The emission limitation specified as a state and federally enforceable permit condition, including those with a future compliance date; and

3. Any other applicable emission limitation, including those with a future compliance date.

"Applicable federal requirement" means all of , *but not limited to*, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

2. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

3. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

5. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

6. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

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7. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

8. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

9. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

10. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

12. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements and (ii) requirements regarding increments or visibility as provided in Article 8 (~~9 VAC 5-80-1700~~ 9 VAC 5-80-1605 et seq.) of this part.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.

"Commence," as applied to the construction, reconstruction or modification of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

1. Begun, or caused to begin, a continuous program of actual on-site construction, reconstruction or modification of the unit, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction, reconstruction or modification of the unit, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and that the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means fabrication, erection or installation of an emissions unit.

"Emergency" means, in the context of 9 VAC 5-80-1320 B 2, a situation where immediate action on the part of a source is needed and where the timing of the action makes it impractical to meet the requirements of this article, such as

sudden loss of power, fires, earthquakes, floods or similar occurrences.

"Emissions cap" means any limitation on the rate of emissions of any ~~regulated~~ air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated air pollutant.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

1. Are permanent;
2. Contain a legal obligation for the owner to adhere to the terms and conditions;
3. Do not allow a relaxation of a requirement of the implementation plan;
4. Are technically accurate and quantifiable;
5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with 9 VAC 5-80-1180 and other regulations of the board; and
6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal hazardous air pollutant new source review program" means a program for the preconstruction review and approval of new sources or expansions to existing ones in accordance with regulations specified below and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.
2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9 VAC 5-60-90 et seq.) of 9 VAC 5 Chapter 60.
3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT approval prior to the construction of a new emissions unit. These provisions of the federal hazardous air pollutant new source review

program shall be implemented through this article and Article 3 (9 VAC 5-60-120 et seq.) of (9 VAC 5 Chapter 60.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act, as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.
4. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.
5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by the EPA in accordance with 40 CFR Part 51.
6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by the EPA into an implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.
7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
8. Individual consent agreements that the EPA has legal authority to create.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9 VAC 5-80-1250.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Major modification" means any modification defined as such in ~~9 VAC 5-80-1740 C~~ 9 VAC 5-80-1615 C or 9 VAC 5-80-2010 C, as may apply.

~~"Major new source review (major NSR program)" means a program for the preconstruction review of changes which are subject to review as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Major stationary source" means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant.

~~"Minor new source review (minor NSR program)" means a program for the preconstruction review of changes which are subject to review as new or modified sources and which do not qualify as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that do not qualify for review under the major new source review program; (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.) of this part.

"Modification" means any physical change in, change in the method of operation of, or addition to, a stationary source that would result in a net emissions increase of any regulated air pollutant emitted into the atmosphere by the source or which results in the emission of any regulated air pollutant into the atmosphere not previously emitted, except that the following shall not, by themselves (unless previously limited by permit conditions), be considered modifications under this definition:

1. Maintenance, repair and replacement which the board determines to be routine for a source type and which does not fall within the definition of ~~reconstruction~~ "reconstruction";
2. An increase in the production rate of a unit, if that increase does not exceed the operating design capacity of that unit;
3. An increase in the hours of operation;
4. Use of an alternative fuel or raw material if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the source was designed to accommodate that alternative use. A source shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications;

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5. Use of an alternative fuel or raw material if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the source was not designed to accommodate that alternative use and the owner demonstrates to the board that as a result of trial burns at the source or other sources or of other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased;

6. The addition, replacement or use of any system or device whose primary function is the reduction of air pollutants, except when a system or device that is necessary to comply with applicable air pollution control laws and regulations is replaced by a system or device which the board considers to be less efficient in the control of air pollution emissions; or

7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or device is not necessary for the source to comply with any applicable air pollution control laws or regulations.

"Modified source" means any stationary source (or portion of it), the modification of which commenced on or after March 17, 1972.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the implementation plan.

"Net emissions increase" means the amount by which the sum of the following exceeds zero: (i) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source and (ii) any other increases and decreases in actual emissions at the source that are concurrent with the particular change and are otherwise creditable. An increase or decrease in actual emissions is concurrent with the increase from the particular change only if it is directly resultant from the particular change. An increase or decrease in actual emissions is not creditable if the board has relied on it in issuing a permit for the source under the new source review program and that permit is in effect when the increase in actual emissions from the particular change occurs. Creditable increases and decreases shall be federally enforceable or enforceable as a practical matter.

"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

~~"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.~~

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or

modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Nonroad engine" means any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers);
2. In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or
3. That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.

An internal combustion engine is not a nonroad engine if:

1. The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under § 202 of the federal Clean Air Act; or
2. The engine otherwise included in subdivision 3 above remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.

For purposes of this definition, a location is any single site at a building, structure, facility or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at the single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

~~"Pollution control project" means physical or operational changes whose primary function is the reduction of emissions of targeted regulated air pollutants but which results in an increase in emissions of nontargeted regulated air pollutants that qualify as a major modification as defined in 9 VAC 5-80-1740 or 9 VAC 5-80-2010. The fabrication, manufacture or production of pollution control/prevention equipment and inherently less polluting fuels or raw materials is not a pollution control project. A pollution control project shall be so designated by the board.~~

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being

moved from one location to another for the purpose of operating at multiple locations and storage when idle. Indications of portability include, but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction" means the replacement of an emissions unit or its components to such an extent that:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit;
2. The replacement significantly extends the life of the emissions unit; and
3. It is technologically and economically feasible to meet the applicable emission standards prescribed under regulations of the board.

Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

1. The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;
2. The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;
3. The extent to which the components being replaced cause or contribute to the emissions from the unit; and
4. Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound;
2. Any pollutant for which an ambient air quality standard has been promulgated;
3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act;
4. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal

Clean Air Act concerning hazardous air pollutants and any pollutant regulated under 40 CFR Part 63; or

5. Any pollutant subject to a regulation adopted by the board.

"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Secondary emissions" means emissions which occur or would occur as a result of the construction, reconstruction, modification or operation of a stationary source, but do not come from the stationary source itself. For the purpose of this article, secondary emissions must be specific, well-defined, and quantifiable; and must ~~impact upon~~ *affect* the same general areas as the stationary source which causes the secondary emissions. Secondary emissions include emissions from any off site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"State enforceable" means all limitations and conditions which are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

~~"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9 VAC 5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit, and practicable enforceability.~~

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9 VAC 5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any watercraft or any nonroad engine. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9 VAC 5-20-21).

"Synthetic minor" means a stationary source whose potential to emit is constrained by state enforceable and federally enforceable limits, so as to place that stationary source below

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the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

~~"Targeted regulated air pollutants" means regulated air pollutants that are reduced as a result of physical or operational changes whose primary function is the reduction of emissions of regulated air pollutants to meet an applicable federal requirement, exclusive of the new source review program.~~

9 VAC 5-80-1310. Pollution control projects. (Repealed.)

~~A. This section shall apply only to pollution control projects at major stationary sources and shall be the administrative mechanism, along with the other applicable provisions of this article, for issuing pollution control project permits. This section shall not apply to air pollution controls and emissions associated with a proposed new stationary source or emissions unit.~~

~~B. The approval of a permit for a proposed project under this section constitutes a determination by the board that the project is a pollution control project and qualifies for an exclusion from review under Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

~~C. Notwithstanding the definitions for major modification and net emissions increase as defined in 9 VAC 5-80-1710 and 9 VAC 5-80-2010, any physical or operational change consistent with the terms and conditions of a pollution control project permit issued under this section (i) shall not constitute a major modification for the pollutants covered by the pollution control project and (ii) qualifies for the exclusion in subsection B of this section.~~

~~D. No owner or other person shall begin construction of a proposed project that may qualify as a pollution control project without a permit issued pursuant to this section.~~

~~E. The provisions of this article shall apply to any pollution control project, except that 9 VAC 5-50-260 shall not apply. This subsection shall not be construed as preventing the board from prescribing any control measure it finds necessary to make a determination under subdivision H 4 of this section.~~

~~F. Approval of a pollution control project permit shall not provide the owner the license to engage in any activity that (i) will cause emissions from the stationary source that result in violations of or exacerbate violations of, or interfere with the attainment and maintenance of, any ambient air quality standard or (ii) is not in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan.~~

~~G. The owner of a stationary source may request the board to approve a pollution control project permit for any one or more pollutants by submitting an application that meets the following criteria:~~

- ~~1. The application shall meet the requirements of 9 VAC 5-80-1140.~~
- ~~2. The application shall contain the information required by 9 VAC 5-80-1150.~~

~~3. Where a significant increase in emissions has not been previously analyzed for its air quality impact and raises the possibility of (i) a violation of an ambient air quality standard or prevention of significant deterioration increment in 9 VAC 5-80-1730 or (ii) adversely affecting visibility or other air quality related values, the application shall include an air quality analysis sufficient to demonstrate the impact of the project.~~

~~4. In the case of nonattainment areas, the application shall include legally enforceable mechanisms to ensure offsetting emissions reductions will be available for any significant increase in a nonattainment pollutant from the pollution control project.~~

~~H. The board may approve a pollution control project for a stationary source in accordance with this subsection.~~

~~1. In considering this request, the board will afford the public an opportunity to review and comment on the source's application for this exclusion in accordance with 9 VAC 5-80-1170. The board will provide a copy of the public notice required by 9 VAC 5-80-1170 F, the permit, and any preliminary review and analysis documents to the regional administrator, U.S. Environmental Protection Agency, prior to promulgation of the public notice required by 9 VAC 5-80-1170 F.~~

~~2. The board will determine that the proposed pollution control project, after consideration of the reduction in the targeted regulated air pollutant and any collateral effects, will be environmentally beneficial. A project that would result in an unacceptable increased risk due to the release of air toxics shall not be considered environmentally beneficial. Unless there is reason to believe otherwise, the board will presume that the projects by their nature will result in reduced risk from air toxics. If a significant collateral increase of a nonattainment pollutant resulting from a pollution control project is not offset on at least a one-to-one ratio, the pollution control project shall not qualify as environmentally beneficial. Pollution prevention projects that increase utilization rate may not qualify as environmentally beneficial. Therefore, the emissions rate after the change would be the product of the new emissions rate times the existing utilization rate. However, if the increased utilization results from debottlenecking, these projects may qualify, but all the debottlenecked emissions increases should be viewed as collateral and evaluated to determine whether the project is still environmentally beneficial and meets all applicable safeguards.~~

~~3. The board will determine that the proposed pollution control project will not (i) cause or contribute to a violation of an ambient air quality standard or prevention of significant deterioration increment in 9 VAC 5-80-1730 or (ii) adversely affect visibility or other air quality related values. The analysis for this determination will include a case-by-case assessment of the pollution control project's net emissions and overall impact on the environment and the specific impact.~~

~~4. With regard to the increase in nontargeted regulated air pollutants, the board will determine that the collateral~~

~~increase will be minimized and will not result in environmental harm.~~

~~5. The board will include in the permit terms and conditions to ensure that adverse collateral environmental impacts from the project are identified, minimized, and, where appropriate, mitigated.~~

~~6. The board will not approve as a pollution control project any project that constitutes the replacement of an existing emissions unit with a newer or different one (albeit more efficient and less polluting) or the reconstruction of an existing emissions unit.~~

Article 8.

Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas.

9 VAC 5-80-1605. Applicability.

A. ~~The provisions of this article apply to the construction of any new major stationary source or any project at an existing major stationary source.~~

B. ~~The provisions of this article apply in prevention of significant deterioration areas designated in 9 VAC 5-20-205.~~

C. ~~At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not yet commenced on the source or modification.~~

D. ~~Unless specified otherwise, the provisions of this article apply as follows:~~

~~1. Provisions referring to "sources," "new or modified sources" or "stationary sources" apply to the construction or modification of all major stationary sources and major modifications.~~

~~2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

~~3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9 VAC 5-80-1625 G.~~

~~E. For purposes of applying subsection F of this section and other provisions of this article, the effective date of the amendments adopted by the board on [insert adoption date] shall be the date 30 days after the date on which a notice is published in the Virginia Register acknowledging that the administrator has approved the amendments adopted by the board on [insert adoption date].~~

~~F. Unless otherwise approved by the board or prescribed in these regulations, when this article is amended, the previous~~

~~provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9 VAC 5-80-1775 A prior to the effective date of the amended article [February 22 September 1], 2006. Any permit applications that have not been determined to be complete as of the effective date of the amendments [February 22 September 1], 2006, shall be subject to the new provisions.~~

~~G. F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.~~

~~H. G. The requirements of this article will be applied in accordance with the following principles:~~

~~1. Except as otherwise provided in subsections I and J subsection H of this subsection, and consistent with the definition of "major modification," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.~~

~~2. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3 through 6 and 4 of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.~~

~~3. The actual-to-projected-actual applicability test for projects that only involve existing emissions units shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, is significant for that pollutant.~~

~~4. The actual-to-potential test for projects that only involve construction of a new emissions unit shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project is significant for that pollutant.~~

~~[5.] The emission test for projects that involve Clean Units shall be conducted as provided in this subdivision. For a project that will be constructed and operated at a Clean Unit~~

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~~without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.~~

~~6. The hybrid test for projects that involve multiple types of emissions units shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 through 5 of this subsection as applicable with respect to each emissions unit, for each type of emissions unit is significant for that pollutant. For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and using the method specified in subdivision 5 of this subsection for the Clean Unit.~~

[5. The hybrid test for projects that involve multiple types of emissions units shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 and 4 of this subdivision as applicable with respect to each emissions unit, for each type of emissions unit is significant for that pollutant. For example, if a project involves both an existing emissions unit and a new unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and using the method specified in subdivision 4 of this subsection for the new unit.]

~~I. H. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 9 VAC 5-80-1865.~~

~~J. An owner undertaking a PCP shall comply with the requirements under 9 VAC 5-80-1865.~~

~~K. I. The provisions of 40 CFR Part 60, Part 61 and Part 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 and Article 1 (9 VAC 5-60-60 et seq.) and Article 2 (9 VAC 5-60-90 et seq.) of Part II of 9 VAC 5 Chapter 60.~~

~~L. J. The provisions of 40 CFR Part 51 and Part 58 cited in this article apply only to the extent that they are incorporated by reference in 9 VAC 5-20-21.~~

9 VAC 5-80-1615. Definitions.

A. As used in this article, all words or 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.

B. For the purpose of this article, 9 VAC 5-80-280 and 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:

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9 VAC 5-80-1865. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards as set forth in 40 CFR Parts 60, 61, and 63;

b. The applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of , but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

- a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.
- b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.
- c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.
- d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
- f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
- g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.
- h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.
- i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.
- j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.
- k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act unless the administrator has determined that such requirements need not be contained in a permit issued under this article.
- l. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements

regarding increments or visibility as provided in this article.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required under this article, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission

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limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the board has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9 VAC 5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this subsection.

"Baseline area":

a. Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 µg/m³ (annual average) of the pollutant for which the minor source baseline date is established.

b. Area redesignations under § 107(d)(3) of the federal Clean Air Act cannot intersect or be smaller than the area

of impact of any major stationary source or major modification that:

(1) Establishes a minor source baseline date; or

(2) Is subject to this article or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

c. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that such baseline area shall not remain in effect if the board rescinds the corresponding minor source baseline date in accordance with subdivision d of the definition of "baseline date."

"Baseline concentration"

a. Means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision b of this definition; and

(2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

a. "Major source baseline date" means:

(1) In the case of particulate matter and sulfur dioxide, January 6, 1975; and

(2) In the case of nitrogen dioxide, February 8, 1988.

b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this article submits a complete application under this article. The trigger date is:

(1) In the case of particulate matter and sulfur dioxide, August 7, 1977; and

(2) In the case of nitrogen dioxide, February 8, 1988.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act for the pollutant on the date of its complete application under this article or 40 CFR 52.21; and

(2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the board may rescind any such minor source baseline date where it can be shown, to the satisfaction of the board, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or

persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., that have the same first two-digit code) as described in the Standard Industrial Classification Manual (see 9 VAC 5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

~~"Clean unit" means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with such BACT/LAER requirements, and qualifies as a Clean Unit pursuant to 9 VAC 5-80-1835; any emissions unit that has been designated by the board as a Clean Unit, based on the criteria in 9 VAC 5-80-1845 C 1 through 4; or any emissions unit that has been designated by the administrator as a Clean Unit in accordance with 40 CFR 52.21(y)(3)(i) through (iv).~~

"Commence" as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

- a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, that cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to

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sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

~~"Effective date of this revision" means the effective date determined in accordance with 9 VAC 5-80-1605-E.~~

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this definition, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

- a. Are permanent;
- b. Contain a legal obligation for the owner to adhere to the terms and conditions;
- c. Do not allow a relaxation of a requirement of the implementation plan;
- d. Are technically accurate and quantifiable;
- e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits on a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and
- f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

- a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
- b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- c. All terms and conditions (unless expressly designated as not federally enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.
- d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.
- e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review permit issued under regulations approved by the EPA into the implementation plan.
- f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

(1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act;

(2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA;

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable";

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

g. Limitations and conditions in a regulation of the board or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that the EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9 VAC 5-80-50 et seq.), Article 2 (9 VAC 5-80-310 et seq.), Article 3 (9 VAC 5-80-360 et seq.), and Article 4 (9 VAC 5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Lowest achievable emission rate" or "LAER" is as defined in 9 VAC 5-80-2010 C.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Low terrain" means any area other than high terrain.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant for nonattainment areas in an amount that is equal to or greater than the major source threshold for the PAL pollutant in

subdivision a 4 (1) of the definition of "major stationary source" in 9 VAC 5-80-2010 C.

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant, and a significant net emissions increase of that pollutant from the major stationary source.

b. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the federal Power Act.

(3) Use of an alternative fuel by reason of any order or rule under § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter; and

(c) The owner demonstrates to the board that as a result of trial burns at the source or other sources or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) ~~The addition, replacement or use of a PCP at an existing emissions unit meeting the requirements of 9 VAC 5-80-1855. A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.~~ (9) The installation, operation, cessation, or removal of a temporary clean coal technology

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demonstration project, provided that the project complies with:

(a) The applicable implementation plan, and

(b) Other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

~~(40)~~ (9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

~~(44)~~ (10) The reactivation of a very clean coal-fired electric utility steam generating unit.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 9 VAC 5-80-1865 for a PAL for that pollutant. Instead, the definition of "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant:

(a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(b) Coal cleaning plants (with thermal dryers).

(c) Kraft pulp mills.

(d) Portland cement plants.

(e) Primary zinc smelters.

(f) Iron and steel mill plants.

(g) Primary aluminum ore reduction plants.

(h) Primary copper smelters.

(i) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(j) Hydrofluoric acid plants.

(k) Sulfuric acid plants.

(l) Nitric acid plants.

(m) Petroleum refineries.

(n) Lime plants.

(o) Phosphate rock processing plants.

(p) Coke oven batteries.

(q) Sulfur recovery plants.

(r) Carbon black plants (furnace process).

(s) Primary lead smelters.

(t) Fuel conversion plants.

(u) Sintering plants.

(v) Secondary metal production plants.

(w) Chemical process plants.

(x) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input.

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(z) Taconite ore processing plants.

(aa) Glass fiber processing plants.

(bb) Charcoal production plants.

(2) Notwithstanding the stationary source size specified in subdivision a (1) of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision a (1) or a (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

- (9) Hydrofluoric, sulfuric, or nitric acid plants.
- (10) Petroleum refineries.
- (11) Lime plants.
- (12) Phosphate rock processing plants.
- (13) Coke oven batteries.
- (14) Sulfur recovery plants.
- (15) Carbon black plants (furnace process).
- (16) Primary lead smelters.
- (17) Fuel conversion plants.
- (18) Sintering plants.
- (19) Secondary metal production plants.
- (20) Chemical process plants.
- (21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (23) Taconite ore processing plants.
- (24) Glass fiber processing plants.
- (25) Charcoal production plants.
- (26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- (27) Any other stationary source category that, as of August 7, 1980, is being regulated under 40 CFR Parts 60 and 61.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) which do not qualify for review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under NSR programs that are part of the applicable implementation plan.

"Net emissions increase"

a. Means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

- (1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9 VAC 5-80-1605 #G; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

- (1) The date five years before construction on the particular change commences; and
- (2) The date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if (i) it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and (ii) the board has not relied on it in issuing a permit for the source under this [~~chapter~~ article] (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs ; ~~and (iii) the increase or decrease in emissions did not occur at a Clean Unit except as provided in 9 VAC 5-80-1835 H and 9 VAC 5-0-1845 J.~~

d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that:

- (1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
- (2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
- (3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change ; ~~and.~~
- ~~(4) The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under 40 CFR 52.21(y), 9 VAC 5-80-1845 or 9 VAC 5-80-2142. That is, once an emissions unit has~~

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~~been designated as a Clean Unit, the owner cannot later use the emissions reduction from the air pollution control measures that the Clean Unit designation is based on in calculating the net emissions increase for another emissions unit (i.e., must not use that reduction in a "netting analysis" for another emissions unit). However, any new emission reductions that were not relied upon in a PCP excluded pursuant to 9 VAC 5-80-1855 or for a Clean Unit designation are creditable to the extent they meet the requirements in 9 VAC 5-80-1855 F-4 for the PCP and 9 VAC 5-80-1835 H or 9 VAC 5-80-1845 J for a Clean Unit.~~

g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

h. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9 VAC 5-80-1865.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the major NSR permit, the minor NSR permit, the state operating permit, or the federal operating permit issued by the board that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

~~"Pollution control project" or "PCP" means any activity, set of work practices or project (including pollution prevention) undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. The following projects are presumed to be environmentally beneficial pursuant to 9 VAC 5-80-1855 B 1. Projects not listed in this definition may qualify for a case-specific PCP exclusion pursuant to the requirements of 9 VAC 5-80-1855 B and E.~~

~~a. Conventional or advanced flue gas desulfurization or sorbent injection for control of SO₂.~~

~~b. Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.~~

~~c. Flue gas recirculation, low-NO_x burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion (for IC engines), and oxidation/absorption catalyst for control of NO_x.~~

~~d. Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbents, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this article, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.~~

~~e. Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:~~

~~(1) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05% sulfur diesel (i.e., from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05% sulfur #2 diesel);~~

~~(2) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;~~

~~(3) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood;~~

~~(4) Switching from coal to #2 fuel oil (0.5% maximum sulfur content); and~~

~~(5) Switching from high sulfur coal to low sulfur coal (maximum 4.2% sulfur content).~~

~~f. Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance~~

~~(ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:~~

~~(1) The productive capacity of the equipment is not increased as a result of the activity or project.~~

~~(2) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, the following procedures shall be conducted:~~

~~(a) Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B.~~

~~(b) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS.~~

~~(c) Calculate the projected ODP-weighted amount by multiplying the projected annual usage of the new substance by its ODP.~~

~~(d) If the value calculated in subdivision (b) is more than the value calculated in subdivision (c), then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.~~

~~"Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.~~

~~"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally and state enforceable or enforceable as a practical matter by the state.~~

~~"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂~~

concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner of the major stationary source:

a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved implementation plan;

b. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; [and or]

~~c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or~~

[c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or]

[d. or] In lieu of using the method set out in subdivisions a [through c and b] of this definition, may elect to use the emissions unit's potential to emit, in tons per year.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

a. Has not been in operation for the two-year period prior to the enactment of the federal Clean Air Act Amendments of 1990, and the emissions from such unit

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continue to be carried in the department's emissions inventory at the time of enactment;

b. Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

c. Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

d. Is otherwise in compliance with the requirements of the federal Clean Air Act.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means:

a. Any pollutant for which an ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds are precursors for ozone);

b. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act;

c. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act; or

d. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act; except that any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act or added to the list pursuant to § 112(b)(2), which have not been delisted pursuant to § 112(b)(3), are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Repowering" means:

a. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

b. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

c. The board may give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under § 409 of the federal Clean Air Act.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM ₁₀	15 tpy
PM _{2.5}	10 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H ₂ S)	10 tpy
Total Reduced Sulfur (including H ₂ S)	10 tpy
Reduced Sulfur Compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and HCl)	40 tpy
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	50 tpy

b. In reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subdivision a of this definition does not list, any emissions rate.

c. Notwithstanding subdivision a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 µg/m³ (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is significant for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9 VAC 5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

9 VAC 5-80-1625. General.

A. No owner or other person shall begin actual construction of any new major stationary source or major modification without first obtaining from the board a permit to construct and operate such source. The permit will state that the major stationary source or major modification shall meet all the applicable requirements of this article.

B. The requirements of this article apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this article otherwise provides.

C. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining a permit from the board to relocate the unit.

D. Prior to the decision of the board, all permit applications will be subject to a public comment period, a public hearing will be held as provided in 9 VAC 5-80-1775.

E. If the board and the owner make a mutual determination that it facilitates the efficient processing and issuing of permits for projects that are to be constructed concurrently, the board may combine the requirements of and the permits for

emissions units within a stationary source subject to the major new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by any provision of the major new source review program be combined into one application.

F. The board may not incorporate the terms and conditions of a state operating permit, a minor new source review permit, or a PAL permit into a permit issued pursuant to this article. ~~The permit issued pursuant to this article may supersede the state operating permit provided the public participation provisions of the state operating permit program are followed.~~

G. All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9 VAC 5-40-130 et seq.) of 9 VAC 5 Chapter 40, Article 2 (9 VAC 5-50-130 et seq.) of 9 VAC 5 Chapter 50, Article 4 (9 VAC 5-60-200 et seq.) of 9 VAC 5 Chapter 60, or Article 5 (9 VAC 5-60-300) of 9 VAC 5 Chapter 60.

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

H. Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

9 VAC 5-80-1635. Ambient air increments.

In areas designated as class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Class I

Particulate matter:	
PM ₁₀ , annual arithmetic mean	4
PM ₁₀ , 24 hour maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
Three-hour maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5

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<i>Class II</i>	
<i>Particulate matter:</i>	
<i>PM₁₀, annual arithmetic mean</i>	17
<i>PM₁₀, 24 hour maximum</i>	30
<i>Sulfur dioxide:</i>	
<i>Annual arithmetic mean</i>	20
<i>24-hour maximum</i>	91
<i>Three-hour maximum</i>	512
<i>Nitrogen dioxide:</i>	
<i>Annual arithmetic mean</i>	25
<i>Class III</i>	
<i>Particulate matter:</i>	
<i>PM₁₀, annual geometric mean</i>	34
<i>PM₁₀, 24 hour maximum</i>	60
<i>Sulfur dioxide:</i>	
<i>Annual arithmetic mean</i>	40
<i>24-hour maximum</i>	182
<i>Three-hour maximum</i>	700
<i>Nitrogen dioxide:</i>	
<i>Annual arithmetic mean</i>	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

9 VAC 5-80-1645. Ambient air ceilings.

No concentration of a pollutant shall exceed:

1. The concentration permitted under the secondary ambient air quality standard, or
2. The concentration permitted under the primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

9 VAC 5-80-1655. Applications.

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures acceptable to the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

B. For projects with phased development, a single application may be submitted covering the entire project.

C. Any application form, report, or certification submitted to the board shall comply with the provisions of 9 VAC 5-20-230.

9 VAC 5-80-1665. Compliance with local zoning requirements.

No provision of this part or any permit issued thereunder shall relieve an owner of the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

9 VAC 5-80-1675. Compliance determination and verification by performance testing.

A. Compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30.

B. Testing required by this section shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

C. The requirements of this section shall be met unless the board:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
2. Approves the use of an equivalent method;
3. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;
4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or
5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

D. The provisions for the granting of waivers under subsection C of this section are intended for use in determining the initial compliance status of a source. The granting of a waiver does not obligate the board to grant any waivers once the source has been in operation for more than one year beyond the initial startup date.

E. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirements of the implementation plan, or any other applicable federal requirements promulgated under the federal Clean Air Act.

9 VAC 5-80-1685. Stack heights.

A. The provisions of 9 VAC 5-50-20 H apply.

B. Prior to issuing a permit with a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by subdivision 1 or 2 of the GEP definition in 9 VAC 5-10-20, the board will notify the public of the availability of the demonstration study specified in subdivision 3 of the GEP definition and will provide opportunity for public hearing on it using the procedures set forth in 9 VAC 5-80-1775.

9 VAC 5-80-1695. Exemptions.

A. The requirements of this article shall not apply to a particular major stationary source or major modification; if:

1. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- a. Coal cleaning plants (with thermal dryers).
- b. Kraft pulp mills.
- c. Portland cement plants.
- d. Primary zinc smelters.
- e. Iron and steel mills.
- f. Primary aluminum ore reduction plants.
- g. Primary copper smelters.
- h. Municipal incinerators capable of charging more than 250 tons of refuse per day.
- i. Hydrofluoric acid plants.
- j. Sulfuric acid plants.
- k. Nitric acid plants.
- l. Petroleum refineries.
- m. Lime plants.
- n. Phosphate rock processing plants.
- o. Coke oven batteries.
- p. Sulfur recovery plants.
- q. Carbon black plants (furnace process).
- r. Primary lead smelters.
- s. Fuel conversion plants.
- t. Sintering plants.
- u. Secondary metal production plants.
- v. Chemical process plants.
- w. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.
- x. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- y. Taconite ore processing plants.
- z. Glass fiber processing plants.
- aa. Charcoal production plants.
- bb. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

cc. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60 or 61; or

2. The source or modification is a portable stationary source that has previously received a permit under this article, and

- a. The owner proposes to relocate the source and emissions of the source at the new location would be temporary;
- b. The emissions from the source would not exceed its allowable emissions;
- c. The emissions from the source would ~~impact~~ affect no class I area and no area where an applicable increment is known to be violated; and
- d. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

B. The requirements of this article shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9 VAC 5-20-204.

C. The requirements of 9 VAC 5-80-1715, 9 VAC 5-80-1735, and 9 VAC 5-80-1755 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

- 1. Would ~~impact~~ affect no class I area and no area where an applicable increment is known to be violated, and
- 2. Would be temporary.

D. The requirements of 9 VAC 5-80-1715, 9 VAC 5-80-1735, and 9 VAC 5-80-1755 as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E. The board may exempt a proposed major stationary source or major modification from the requirements of 9 VAC 5-80-1735 with respect to monitoring for a particular pollutant if:

- 1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 $\mu\text{g}/\text{m}^3$, 8-hour average

Nitrogen dioxide - 14 $\mu\text{g}/\text{m}^3$, annual average

Particulate matter - 10 $\mu\text{g}/\text{m}^3$ of PM_{10} , 24-hour average

Sulfur dioxide - 13 $\mu\text{g}/\text{m}^3$, 24-hour average

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Ozone [^{4*}]

Lead - 0.1 µg/m³, 3-month average

Fluorides - 0.25 µg/m³, 24-hour average

Total reduced sulfur - 10 µg/m³, 1-hour average

Hydrogen sulfide - 0.2 µg/m³, 1-hour average

Reduced sulfur compounds - 10 µg/m³, 1-hour average; or

[^{4*}] No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to this article would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision 1 of this subsection, or the pollutant is not listed in subdivision 1 of this subsection.

9 VAC 5-80-1700. (Repealed.)

9 VAC 5-80-1705. Control technology review.

A. A major stationary source or major modification shall meet each applicable emissions limitation under the implementation plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60, 61 and 63.

B. A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

C. A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

D. For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time that occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

9 VAC 5-80-1710. (Repealed.)

9 VAC 5-80-1715. Source impact analysis.

A. The owner of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

1. Any ambient air quality standard in any air quality control region; or

2. Any applicable maximum allowable increase over the baseline concentration in any area.

B. The following applies to any new major stationary source or major modification if it would cause or contribute to a violation of any ambient air quality standard.

1. A new major stationary source or major modification will be considered to cause or contribute to a violation of an ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable air quality standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO ₂	1.0 µg/m ³	5.0 µg/m ³		25.0 µg/m ³	
PM ₁₀	1.0 µg/m ³	5.0 µg/m ³			
NO ₂	1.0 µg/m ³				
CO			500 µg/m ³		2000 µg/m ³

2. A proposed new major stationary source or major modification may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the new major stationary source or major modification would otherwise cause or contribute to a violation of any ambient air quality standard. In the absence of such emission reductions, the board will deny the proposed construction.

3. The requirements of this subsection do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9 VAC 5-20-204.

9 VAC 5-80-1720. (Repealed.)

9 VAC 5-80-1725. Air quality models.

A. All applications of air quality modeling involved in this article shall be based on the applicable air quality models, data bases, and other requirements specified in Appendix W to 40 CFR Part 51.

B. Where an air quality impact model specified in Appendix W to 40 CFR Part 51 is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis, or, where appropriate, on a generic basis for a specific state program. Written approval of the administrator shall be obtained for any modification or substitution. In addition, use of a modified or substituted model shall be subject to notice and opportunity for public comment under procedures developed in accordance with 9 VAC 5-80-1775.

9 VAC 5-80-1730. (Repealed.)

9 VAC 5-80-1735. Air quality analysis.

A. Preapplication analysis - shall be conducted as follows:

1. Any application for a permit under this article shall contain an analysis of ambient air quality in the area that the

major stationary source or major modification would affect for each of the following pollutants:

- a. For the source, each pollutant that it would have the potential to emit in a significant amount;
- b. For the modification, each pollutant for which it would result in a significant net emissions increase.

2. With respect to any such pollutant for which no ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the board determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

3. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

4. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the board determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

5. The owner of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of § IV of Appendix S to 40 CFR Part 51 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.

~~B. Post construction monitoring.~~ The owner of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the board determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

~~C. Operation of monitoring stations.~~ The owner of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 during the operation of monitoring stations for purposes of satisfying this section.

9 VAC 5-80-1740. (Repealed.)

9 VAC 5-80-1745. Source information.

The owner of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this article.

A. With respect to a source or modification to which 9 VAC 5-80-1705, 9 VAC 5-80-1715, 9 VAC 5-80-1735, and 9 VAC 5-80-1755 apply, such information shall include:

- 1. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;
- 2. A detailed schedule for construction of the source or modification;
- 3. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

B. Upon request of the board, the owner shall also provide information on:

- 1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and
- 2. The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth that has occurred since the baseline date in the area the source or modification would affect.

9 VAC 5-80-1750. (Repealed.)

9 VAC 5-80-1755. Additional impact analyses.

A. The owner shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

B. The owner shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

C. The board may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the board deems necessary and appropriate.

9 VAC 5-80-1760. (Repealed.)

9 VAC 5-80-1765. Sources affecting federal class I areas - additional requirements.

~~A. Notice to administrator.~~ The board shall transmit to the administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of the following actions related to the consideration of such permit:

- 1. Notification of the permit application status as provided in ~~subsection A of 9 VAC 5-80-1775 A.~~
- 2. Notification of the public comment period on the application as provided in ~~subsection F 5 of 9 VAC 5-80-1775 F 5.~~

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3. Notification of the final determination on the application and issuance of the permit as provided in ~~subsection F 9 of 9 VAC 5-80-1775 F 9.~~

4. Notification of any other action deemed appropriate by the board.

~~B. Notice to federal land managers.~~ The board shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The board shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under ~~subsection F of 9 VAC 5-80-1775 F,~~ and shall make available to them any materials used in making that determination, promptly after the board makes such determination. Finally, the board shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.

~~C. Federal land manager.~~ The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the board, whether a proposed source or modification will have an adverse impact on such values.

~~D. Visibility analysis.~~ The board shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by subsection B of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the board finds that such an analysis does not demonstrate to the satisfaction of the board that an adverse impact on visibility will result in the federal class I area, the board shall, in the notice of public hearing on the permit application, either explain this decision or give notice as to where the explanation can be obtained.

~~E. Denial — impact on air quality related values.~~ The federal land manager of any such lands may demonstrate to the board that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the board concurs with such demonstration, then it shall not issue the permit.

~~F. Class I variances.~~ The owner of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of

any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with such demonstration and so certifies, the board may, provided that the applicable requirements of this article are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Particulate matter:	
PM ₁₀ , annual geometric mean	17
PM ₁₀ , 24 hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
Three-hour maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

~~G. Sulfur dioxide variance by governor with federal land manager's concurrence.~~ The owner of a proposed source or modification that cannot be approved under subsection F of this section may demonstrate to the governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to the federal land manager's concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the board shall issue a permit to such source or modification pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

~~H. Variance by the governor with the president's concurrence.~~ In any case whether the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president. The president may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the board shall issue a permit pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

~~I. Emission limitations for presidential or gubernatorial variance.~~ In the case of a permit issued pursuant to subsection G or H of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that would

exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

Period of exposure	MAXIMUM ALLOWABLE INCREASE (micrograms per cubic meter)	
	Low terrain areas	High terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

9 VAC 5-80-1770. (Repealed.)

9 VAC 5-80-1775. Public participation.

A. Within 30 days after receipt of an application, the board will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application will be provided by the board in writing and will include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application shall be, for the purpose of this article, the date on which the board received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

B. No later than 30 days after receiving the initial determination notification required under subsection A of this section, the applicant shall notify the public about the proposed source as required in subsection C of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection D of this section.

C. The public notice required under subsection B of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the name, location, and type of the source, and the time and place of the informational briefing.

D. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the

total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board will attend and provide information and answer questions on the permit application review process.

E. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection C of this section and for providing the informational briefing as required in subsection D of this section.

F. Within one year after receipt of a complete application, the board will make a final determination on the application. This involves performing the following actions in a timely manner:

1. Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.
2. Make available in at least one location in each air quality control region in which the proposed source or modification would be constructed a copy of all materials the applicant submitted (exclusive of confidential information under 9 VAC 5-170-60), a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.
3. If appropriate, hold a public briefing on the preliminary determination prior to the public comment period but no later than the day before the beginning of the public comment period. The board will notify the public of the time and place of the briefing, by advertisement in a newspaper of general circulation in the air quality control region in which the proposed source or modification would be constructed. The notification will be published at least 30 days prior to the day of the briefing.
4. Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The notification will contain a statement of the estimated local impact of the proposed source or modification, which at a minimum will provide information regarding specific pollutants and the total quantity of each which may be emitted, and will list the type and quantity of any fuels to be used. The notification will be published at least 30 days prior to the day of the hearing. Written comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.
5. Send a copy of the notice of public comment to the applicant, the administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: local air pollution control agencies, the chief elected official and chief

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administrative officer of the city and county where the source or modification would be located and any other locality particularly affected, the planning district commission, and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

6. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

7. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The board will consider the applicant's response in making a final decision. The board will make all comments available for public inspection in the same locations where the board made available preconstruction information relating to the proposed source or modification.

8. Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this article.

9. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the board made available preconstruction information and public comments relating to the source or modification.

G. In order to facilitate the efficient issuance of permits under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of this part, upon request of the applicant the board will process the permit application under this article using public participation procedures meeting the requirements of this section and 9 VAC 5-80-270 or 9 VAC 5-80-670, as applicable.

9 VAC 5-80-1780. (Repealed.)

9 VAC 5-80-1785. Source obligation.

A. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in 9 VAC 5-80-1985.

B. The provisions of this subsection apply to projects at an existing emissions unit at a major stationary source (other than projects at a ~~Clean Unit~~ or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner elects to use the method specified in subdivisions a [through c ~~and b~~] of the definition of "projected actual emissions" for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner shall document and maintain a record of the following information:

a. A description of the project;

b. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, [the amount of emissions excluded under subdivision c of the definition of "projected actual emissions" and an explanation for why such amount was excluded,] and any netting calculations, if applicable.

2. If the emissions unit is an existing electric utility steam generating unit, no less than 30 days before beginning actual construction, the owner shall provide a copy of the information set out in subdivision 1 of this subsection to the board. Nothing in this subdivision shall be construed to require the owner of such a unit to obtain any determination from the board before beginning actual construction.

3. The owner shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subdivision 1 b of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner shall submit a report to the board within 60 days after the end of each calendar year during which records must be generated under subdivision 3 of this subsection setting out the unit's annual emissions during the calendar year that preceded submission of the report.

5. If the unit is an existing unit other than an electric utility steam generating unit, the owner shall submit a report to the board if the annual emissions, in tons per year, from the project identified in subdivision 1 of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to subdivision 1 c of this subsection), by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subdivision 1 c of this subsection. Such report shall be submitted to the board within 60 days after the end of such calendar year. The report shall contain the following:

a. The name, address and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to subdivision 3 of this subsection; and

c. Any other information that the owner wishes to include in the report (for example, an explanation as to why the emissions differ from the preconstruction projection).

C. The owner of the source shall make the information required to be documented and maintained pursuant to subsection B of this section available for review upon a request for inspection by the board or the general public pursuant to the requirements contained in 9 VAC 5-170-60.

D. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the implementation plan and any other requirements under local, state or federal law.

E. For each project subject to subsection B of this section, the owner shall provide notice of the availability of the information set out in subdivision B 1 of this section to the board no less than 30 days before beginning actual construction. The notice shall include the location of the information and the name, address and telephone number of the contact from whom the information may be obtained. Should subsequent information become available to the board to indicate that a given project subject to subsection B is a part of a major modification that resulted in a significant emissions increase, the board will proceed as if the owner is in violation of 9 VAC 5-80-1625 A and may institute appropriate enforcement action as provided in subsection A of this section. Nothing in this subsection shall be construed to require the owner of the source to obtain any determination from the board before beginning actual construction.

9 VAC 5-80-1790. (Repealed.)

9 VAC 5-80-1795. Environmental impact statements.

Whenever any proposed source or modification is subject to action by a federal agency that might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 USC 4321), review conducted pursuant to this article shall be coordinated by the administrator with the broad environmental reviews under that Act and under § 309 of the federal Clean Air Act to the maximum extent feasible and reasonable.

9 VAC 5-80-1800. (Repealed.)

9 VAC 5-80-1805. Disputed permits.

If a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any state that the governor of an affected state or Indian governing body of an affected tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected state or Indian reservation, the governor or Indian governing body may request the administrator to enter into negotiations with the persons involved to resolve such dispute. If requested by any state or Indian governing body involved, the administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the persons involved do not reach agreement, the administrator shall resolve the dispute. The administrator's determination, or the results of agreements reached through other means, shall become part of the applicable implementation plan and shall be enforceable as part of such plan.

9 VAC 5-80-1810. (Repealed.)

9 VAC 5-80-1815. Interstate pollution abatement.

A. The owner of each source or modification, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any air quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels that may be affected by such source at least 60 days prior to the date of commencement of construction.

B. Any state or political subdivision may petition the administrator for a finding that any source or modification emits or would emit any air pollutant in amounts that will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the implementation plan for such state. Within 60 days after receipt of such petition and after a public hearing, the administrator will make such a finding or deny the petition.

C. Notwithstanding any permit granted pursuant to this article, no owner or other person shall commence construction or modification or begin operation of a source to which a finding has been made under the provisions of subsection B of this section.

9 VAC 5-80-1820. (Repealed.)

9 VAC 5-80-1825. Innovative control technology.

A. Prior to the close of the public comment period under 9 VAC 5-80-1775, an owner of a proposed major stationary source or major modification may request, in writing, that the board approve a system of innovative control technology.

B. The board, with the consent of the governor(s) of affected state(s), will determine that the source or modification may employ a system of innovative control technology, if:

1. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
2. The owner agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under 9 VAC 5-80-1705 B by a date specified by the board. Such date shall not be later than four years from the time of startup or seven years from permit issuance;
3. The source or modification would meet the requirements of 9 VAC 5-80-1705 and 9 VAC 5-80-1715 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the board;
4. The source or modification would not, before the date specified by the board:

~~(a)~~ a. Cause or contribute to a violation of an applicable ambient air quality standard; or

~~(b)~~ ~~Impact~~ b. Affect any area where an applicable increment is known to be violated;

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5. All other applicable requirements including those for public participation have been met; and

6. The provisions of 9 VAC 5-80-1765 (relating to class I areas) have been satisfied with respect to all periods during the life of the source or modification.

C. The board will withdraw any approval to employ a system of innovative control technology made under this article, if:

1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

3. The board decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

D. If a source or modification fails to meet the requirement level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection C of this section, the board may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

9 VAC 5-80-1830. (Repealed.)

9 VAC 5-80-1835. Clean Unit Test for emissions units that are subject to BACT or LAER. (Reserved.)

A. An owner of a major stationary source may use the Clean Unit Test according to the provisions of this section to determine whether emissions increases at a Clean Unit are part of a project that is a major modification. The provisions of this section apply to any emissions unit for which the board has issued a major NSR permit within the last five years.

B. The general provisions set forth in this subsection shall apply to Clean Units:

1. Any project for which the owner begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection D of this section) and before the expiration date (as determined in accordance with subsection E of this section) will be considered to have occurred while the emissions unit was a Clean Unit.

2. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subdivision F 4 of this section, the emissions unit remains a Clean Unit.

3. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subdivision F 4 of this section,

then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit requalifies as a Clean Unit pursuant to subdivision C 3 of this section). If the owner begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

4. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of 9 VAC 5-80-1605 H 1 through 4 and 9 VAC 5-80-1605 H 6 as if the emissions unit is not a Clean Unit.

C. An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in subdivisions 1 and 2 of this subsection. After the original Clean Unit designation expires in accordance with subsection E of this section or is lost pursuant to subdivision B 3 of this section, such emissions unit may requalify as a Clean Unit under either subdivision 3 of this subsection, or under the Clean Unit provisions in 9 VAC 5-80-1845. To requalify as a Clean Unit under subdivision 3 of this subsection, the emissions unit shall obtain a new major NSR permit issued in accordance with this article and meet all the criteria in subdivision 3 of this subsection. The Clean Unit designation applies individually for each pollutant emitted by the emissions unit.

1. The emissions unit shall have received a major NSR permit within the last five years. The owner shall maintain and be able to provide information that would demonstrate that this permitting requirement is met.

2. Air pollutant emissions from the emissions unit shall be reduced through the use of qualifying air pollution control technology (which includes pollution prevention or work practices) that meets both of the following requirements:

a. The control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a major NSR permit within the past five years. However, the emissions unit is not eligible for the Clean Unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

b. The owner made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

3. In order to requalify for the Clean Unit designation, the emissions unit shall obtain a new major NSR permit that requires compliance with the current-day BACT (or LAER), and the emissions unit shall meet the requirements in subdivisions 1 and 2 of this subsection.

D. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner may begin to use the Clean Unit test to determine whether a project at the emissions unit is a major modification) is determined according to one of the following:

~~1. For original Clean Unit designation and for emissions units that requalify as Clean Units by implementing new control technology to meet current day BACT, the effective date is the date the emissions unit's air pollution control technology is placed into service, or three years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the effective date of this revision.~~

~~2. For emissions units that requalify for the Clean Unit designation using an existing control technology, the effective date is the date the new major NSR permit is issued.~~

~~E. An emissions unit's Clean Unit designation expires (i.e., the date on which the owner may no longer use the Clean Unit Test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to one of the following:~~

~~1. For any emissions unit that automatically qualifies as a Clean Unit under subdivisions C 1 and 2 of this section or requalifies by implementing new control technology to meet current day BACT under subdivision C 3 of this section, the Clean Unit designation expires five years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner fails to comply with the provisions for maintaining the Clean Unit designation in subsection G of this section.~~

~~2. For any emissions unit that requalifies as a Clean Unit under subdivision C 3 of this section using an existing control technology, the Clean Unit designation expires five years after the effective date; or, it expires any time the owner fails to comply with the provisions for maintaining the Clean Unit designation in subsection G of this section.~~

~~F. After the effective date of the Clean Unit designation, and in accordance with the provisions of the applicable federal operating permit program, but no later than when the federal operating permit is renewed, the federal operating permit for the major stationary source shall include the following terms and conditions:~~

~~1. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this designation applies.~~

~~2. If the effective date is not known when the Clean Unit designation is initially recorded in the federal operating permit (e.g., because the air pollution control technology is not yet in service), the permit shall describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is determined, the owner shall notify the board of the exact date. This specific effective date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~3. If the expiration date is not known when the Clean Unit designation is initially recorded into the federal operating permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the expiration date (e.g., the date the~~

~~control technology is placed into service). Once the expiration date is determined, the owner shall notify the board of the exact date. The expiration date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~4. All emission limitations and work practice requirements adopted in conjunction with BACT, and any physical or operational characteristics that formed the basis for the BACT determination (e.g., possibly the emissions unit's capacity or throughput).~~

~~5. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation (see subsection G of this section).~~

~~6. Terms reflecting the owner's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection G of this section.~~

~~G. To maintain the Clean Unit designation, the owner shall conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.~~

~~1. The Clean Unit shall comply with the emission limitations and work practice requirements adopted in conjunction with the BACT that are recorded in the major NSR permit, and subsequently reflected in the federal operating permit. The owner may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT determination (for example, the emissions unit's capacity or throughput).~~

~~2. The Clean Unit shall comply with any terms and conditions in the federal operating permit related to the unit's Clean Unit designation.~~

~~3. The Clean Unit shall continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.~~

~~H. Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase (i.e., shall not be used in a "netting analysis"), unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally and~~

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state enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

~~1. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it may requalify under the requirements that are currently applicable in the area.~~

9 VAC 5-80-1840. (Repealed.)

~~9 VAC 5-80-1845. Clean Unit provisions for emissions units that achieve an emission limitation comparable to BACT. (Reserved.)~~

~~A. An owner of a major stationary source has the option of using the Clean Unit Test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the provisions of this section. The provisions of this section apply to emissions units that do not qualify as Clean Units under 9 VAC 5-80-1835, but that are achieving a level of emissions control comparable to BACT, as determined by the board in accordance with this section.~~

~~B. The general provisions set forth in this subsection shall apply to Clean Units.~~

~~1. Any project for which the owner begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection E of this section) and before the expiration date (as determined in accordance with subsection F of this section) will be considered to have occurred while the emissions unit was a Clean Unit.~~

~~2. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection D of this section) to be comparable to BACT, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subdivision H 4 of this section, the emissions unit remains a Clean Unit.~~

~~3. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection D of this section) to be comparable to BACT, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subdivision H 4 of this section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit re-qualifies as a Clean Unit pursuant to subdivision C 4 of this section). If the owner begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends~~

~~immediately prior to the time when actual construction begins.~~

~~4. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of 9 VAC 5-80-1605 G 1 through 4 and 9 VAC 5-80-1605 G 6 as if the emissions unit is not a Clean Unit.~~

~~C. An emissions unit qualifies as a Clean Unit when the unit meets the criteria in subdivisions 1 through 3 of this subsection. After the original Clean Unit designation expires in accordance with subsection F of this section or is lost pursuant to subdivision B 3 of this section, such emissions unit may requalify as a Clean Unit under either subdivision 4 of this subsection, or under the Clean Unit provisions in 9 VAC 5-80-1835. To requalify as a Clean Unit under subdivision 4 of this subsection, the emissions unit shall obtain a new permit issued pursuant to the requirements in subsections G and H of this section and meet all the criteria in subdivision 4 of this subsection. The board will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.~~

~~1. Air pollutant emissions from the emissions unit shall be reduced through the use of qualifying air pollution control technology (which includes pollution prevention or work practices) that meets both of the following requirements:~~

~~a. The owner has demonstrated that the emissions unit's control technology is comparable to BACT according to the requirements of subsection D of this section. However, the emissions unit is not eligible for a Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (e.g., if the BACT determinations to which it is compared have resulted in a determination that no control measures are required).~~

~~b. The owner made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~2. The board must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or have an adverse impact on an air quality related value (such as visibility) that has been identified for a federal class I area by a Federal Land Manager and for which information is available to the general public.~~

~~3. An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed before the effective date of this revision. However, for such emissions units, the owner shall apply for the Clean Unit designation within two years after the effective date of this revision. For technologies installed on and after the effective date of this revision, the owner shall apply for the Clean Unit designation at the time the control technology is installed.~~

~~4. In order to requalify as a Clean Unit, the emissions unit shall obtain a new permit (pursuant to requirements in subsections G and H of this section) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day BACT, and the emissions unit shall meet the requirements in subdivisions 1 a and 2 of this subsection.~~

~~D. The owner may demonstrate that the emissions unit's control technology is comparable to BACT for purposes of subdivision C 1 of this section according to either subdivisions 1 or 2 of this subsection. Subdivision 3 of this subsection specifies the time for making this comparison.~~

~~1. The emissions unit's control technology is presumed to be comparable to BACT if it achieves an emission limitation that is equal to or better than the average of the emission limitations achieved by all the sources for which a BACT or LAER determination has been made within the preceding five years and entered into the RACT/BACT/LAER Clearinghouse (RBLC), and for which it is technically feasible to apply the BACT or LAER control technology to the emissions unit. The board will also compare this presumption to any additional BACT or LAER determinations of which the board is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to BACT is correct.~~

~~2. The owner may demonstrate that the emissions unit's control technology is substantially as effective as BACT (the "substantially as effective test"). In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT during the public participation process required under subsection G of this section. The board will consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT.~~

~~3. The provisions governing the time for making the comparison under this subsection shall be as follows:~~

~~a. The owner of an emissions unit with control technologies that are installed before the effective date of this revision may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements. The expiration date of the Clean Unit designation will depend on which option the owner uses, as specified in subsection F of this section.~~

~~b. The owner of an emissions unit with control technologies that are installed after the effective date of this revision shall demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.~~

~~E. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner may begin to use the Clean Unit test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by subsection G of this section is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.~~

~~F. If the owner demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, then the Clean Unit designation expires five years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires five years from the effective date of the Clean Unit designation, as determined according to subsection E of this section. In addition, for all emissions units, the Clean Unit designation expires any time the owner fails to comply with the provisions for maintaining the Clean Unit designation in subsection I of this section.~~

~~G. The board will designate an emissions unit a Clean Unit only by issuing a permit through a NSR program that includes requirements for public notice of the proposed Clean Unit designation and opportunity for public comment. Such permit shall also meet the requirements in subsection H of this section.~~

~~H. The permit required by subsection G of this section shall include the terms and conditions set forth in subdivisions 1 through 6 of this subsection. Such terms and conditions shall be incorporated into the major stationary source's federal operating permit in accordance with the provisions of the federal operating permit program, but no later than when the federal operating permit is renewed.~~

~~1. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this designation applies.~~

~~2. If the effective date of the Clean Unit designation is not known when the board issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is known, then the owner shall notify the board of the exact date. This specific effective date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~3. If the expiration date of the Clean Unit designation is not known when the board issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is known, then the owner shall notify the board of the exact date. The expiration date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal~~

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~~operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~4. All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT (e.g., possibly the emissions unit's capacity or throughput).~~

~~5. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation (see subsection I of this section).~~

~~6. Terms reflecting the owner's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection I of this section.~~

~~I. To maintain the Clean Unit designation, the owner shall conform to all the restrictions listed in subdivisions 1 through 5 of this subsection. This subsection applies independently to each pollutant for which the board has designated the emissions unit a Clean Unit. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.~~

~~1. The Clean Unit shall comply with the emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT.~~

~~2. The owner may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT (e.g., the emissions unit's capacity or throughput).~~

~~3. The Clean Unit shall comply with any terms and conditions in the federal operating permit related to the unit's Clean Unit designation.~~

~~4. The Clean Unit shall continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.~~

~~J. Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase ("netting analysis") unless such use occurs before the effective date of this revision or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally and state enforceable. For purposes of determining creditable net emissions increases~~

~~and decreases, the reductions shall also be enforceable as a practical matter.~~

~~K. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost pursuant to 9 VAC 5-80-1835 B 3 and subdivision B 3 of this section, it shall requalify under the requirements that are currently applicable.~~

9 VAC 5-80-1850. (Repealed.)

9 VAC 5-80-1855. Pollution control project (PCP) exclusion procedural requirements. (Reserved.)

~~A. Before an owner begins actual construction of a PCP, the owner shall either submit a notice to the board if the project is listed in subdivisions a through f of the definition of "pollution control project," or if the project is not listed in subdivisions a through f of the definition of "pollution control project," then the owner shall submit a permit application and obtain approval to use the PCP exclusion from the board consistent with the requirements of subsection E of this section. Regardless of whether the owner submits a notice or a permit application, the project shall meet the requirements in subsection B of this section, and the notice or permit application shall contain the information required in subsection C of this section.~~

~~B. Any project that relies on the PCP exclusion shall meet the following requirements:~~

~~1. The environmental benefit from the emissions reductions of pollutants regulated under the federal Clean Air Act shall outweigh the environmental detriment of emissions increases in pollutants regulated under the federal Clean Air Act. A statement that a technology from subdivisions a through f of the definition for "pollution control project" is being used shall be presumed to satisfy this requirement.~~

~~2. The emissions increases from the project will not cause or contribute to a violation of any ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or have an adverse impact on an air quality related value (such as visibility) that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.~~

~~C. In the notice or permit application sent to the board, the owner shall include, at a minimum, the following information:~~

~~1. A description of the project.~~

~~2. The potential emissions increases and decreases of any pollutant regulated under the federal Clean Air Act and the projected emissions increases and decreases using the methodology in 9 VAC 5-80-1605 H, that will result from the project, and a copy of the environmentally beneficial analysis required by subdivision B 1 of this section.~~

~~3. A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial.~~

~~Methods should be sufficient to meet the requirements in the federal operating permit program.~~

~~4. A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection B of this section, with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.~~

~~5. Demonstration that the PCP will not have an adverse air quality impact (e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise) as required by subdivision B 2 of this section. An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.~~

~~D. For projects listed in subdivisions a through f of the definition of "pollution control project," the owner may begin actual construction of the project immediately after notice is sent to the board (unless otherwise prohibited under requirements of the applicable implementation plan). The owner shall respond to any requests by the board for additional information that the board determines is necessary to evaluate the suitability of the project for the PCP exclusion.~~

~~E. Before an owner may begin actual construction of a PCP project that is not listed in subdivisions a through f of the definition for "pollution control project" (an "unlisted project"), the project must be approved by the board and recorded in an NSR permit, state operating permit, or federal operating permit. The permit procedures must include the requirement that the board provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the administrator to submit comments. The board will address all material comments received by the end of the comment period before taking final action on the permit.~~

~~F. Upon installation of the PCP, the owner shall comply with the following operational requirements:~~

~~1. The owner shall operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection B of this section, with information submitted in the notice or permit application required by subsection C of this section, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.~~

~~2. The owner shall maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision 1 of this subsection.~~

~~3. The owner shall comply with any provisions in the applicable permit related to use and approval of the PCP exclusion.~~

~~4. Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (e.g., taking an operational restriction on the hours of operation). The owner may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally and state enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

9 VAC 5-80-1860. (Repealed.)

9 VAC 5-80-1865. Actuals plantwide applicability limits (PALs).

A. The board may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

1. Any physical change in or change in the method of operation of a major stationary source that maintains its total sourcewide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

- a. Is not a major modification for the PAL pollutant;
- b. Does not have to be approved through this article; and
- c. Is not subject to the provisions in 9 VAC 5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

2. Except as provided under subdivision 1 c of this subsection, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. As part of a permit application requesting a PAL, the owner of a major stationary source shall submit the following information to the board for approval:

1. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

3. The calculation procedures that the major stationary source owner proposes to use to convert the monitoring

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system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.

C. The general requirements set forth in this subsection shall apply to the establishment of PALs.

1. The board may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met:

a. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

b. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.

c. The PAL permit shall contain all the requirements of subsection F of this section.

d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

e. Each PAL shall regulate emissions of only one pollutant.

f. Each PAL shall have a PAL effective period of five years.

g. The owner of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections M through O of this section for each emissions unit under the PAL through the PAL effective period.

2. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 9 VAC 5-80-2120 F through N unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

D. PALs for existing major stationary sources shall be established, renewed, or increased through the public participation procedures of 9 VAC 5-80-1775 prescribed in the applicable permit programs identified in the definition of PAL permit. ~~This includes the requirement that the board provide~~ In no case may the board issue a PAL permit unless the board provides the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public

comment. The board will address all material comments before taking final action on the permit.

E. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant (as reflected in the definition of "significant") level for the PAL pollutant. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. The same consecutive 24-month period shall be used for each different PAL pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances. Emissions associated with units that were permanently shutdown after this 24-month period shall be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period shall be added to the PAL level in an amount equal to the potential to emit of the units. The board will specify a reduced PAL level or levels (in tons per year) in the PAL permit to become effective on the future compliance dates of any applicable federal or state regulatory requirements that the board is aware of prior to issuance of the PAL permit. For instance, if the source owner will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such units.

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable sourcewide emission limitation in tons per year.

2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

3. Specification in the PAL permit that if a major stationary source owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the board, or until the board determines that the revised PAL permit will not be issued.

4. A requirement that emission calculations for compliance purposes shall include emissions from startups, shutdowns, and malfunctions.

5. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection I of this section.

6. The calculation procedures that the major stationary source owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subdivision N 1 of this section.

7. A requirement that the major stationary source owner monitor all emissions units in accordance with the provisions under subsection M of this section.

8. A requirement to retain the records required under subsection N of this section on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subsection O of this section by the required deadlines.

10. Any other requirements that the board deems necessary to implement and enforce the PAL.

G. The PAL effective period shall be five years.

H. The requirements for the reopening of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. During the PAL effective period, the board will reopen the PAL permit to:

a. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

b. Reduce the PAL if the owner of the major stationary source creates creditable emissions reductions for use as offsets under 9 VAC 5-80-2120 F through N; and

c. Revise the PAL to reflect an increase in the PAL as provided under subsection L of this section.

2. The board may reopen the PAL permit for any of the following reasons:

a. Reduce the PAL to reflect newly applicable federal requirements (e.g., NSPS) with compliance dates after the PAL effective date.

b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the board may impose on the major stationary source.

c. Reduce the PAL if the board determines that a reduction is necessary to avoid causing or contributing to a violation of an ambient air standard or ambient air increment in 9 VAC 5-80-1635, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.

I. Any PAL that is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:

1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

a. Within the time frame specified for PAL renewals in subdivision J 2 of this section, the major stationary source shall submit a proposed allowable emission limitation for

each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the board) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision J 5 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The board will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the board determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The board may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the board issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR program requirements if such change meets the definition of "major modification."

5. The major stationary source owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, or NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9 VAC 5-80-1605 C, but were eliminated by the PAL in accordance with the provisions in subdivision A 1 c of this section.

J. The requirements for the renewal of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The board will follow the procedures specified in subsection D of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the board.

2. A major stationary source owner shall submit a timely application to the board to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the

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revised permit with the renewed PAL is issued, or until the board determines that the revised permit with the renewed PAL will not be issued, and a permit is issued pursuant to subsection I of this section.

3. The application to renew a PAL permit shall contain the following information:

- a. The information required in subsection B of this section.
- b. A proposed PAL level.
- c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).
- d. Any other information the owner wishes the board to consider in determining the appropriate level for renewing the PAL.

K. The requirements for the adjustment of the PAL set forth in this subsection shall apply to actuals PALs. In determining whether and how to adjust the PAL, the board will consider the options outlined in subdivisions 1 and 2 of this subsection. However, in no case may any such adjustment fail to comply with subdivision 3 of this subdivision.

1. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the board may renew the PAL at the same level without considering the factors set forth in subdivision 2 of this subsection; or

2. The board may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the board in a written rationale.

3. Notwithstanding subdivisions 1 and 2 of this subsection:

- a. If the potential to emit of the major stationary source is less than the PAL, the board will adjust the PAL to a level no greater than the potential to emit of the source; and
- b. The board will not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection L of this section.

4. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the board has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

L. The requirements for increasing a PAL during the PAL effective period set forth in this subsection shall apply to actuals PALs.

1. The board may increase a PAL emission limitation only if the owner of the major stationary source complies with the following provisions:

a. The owner of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

b. As part of this application, the major stationary source owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding five years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.

c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 of this subsection, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the major NSR program process (e.g., BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

3. The board will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.

M. The requirements for monitoring the PAL set forth in this subsection apply to actuals PALs.

1. The general requirements for monitoring a PAL set forth in this subdivision apply to actuals PALs.

a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation.

Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subdivision and must be approved by the board.

c. Notwithstanding subdivision 1 b of this subdivision, the owner may also employ an alternative monitoring approach that meets subdivision 1 a of this subsection if approved by the board.

d. Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

2. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 3 through 9 of this subsection:

a. Mass balance calculations for activities using coatings or solvents;

b. CEMS;

c. CPMS or PEMS; and

d. Emission factors.

3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the highest value of the range to calculate the PAL pollutant emissions unless the board determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. CEMS shall comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B; and

b. CEMS shall sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the board, while the emissions unit is operating.

6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the board determines that testing is not required.

7. A source owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subdivisions 3 through 7 of this subsection, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the board will, at the time of permit issuance:

a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the board. Such testing shall occur at least once every five years after issuance of the PAL.

N. The requirements for recordkeeping in the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The PAL permit shall require an owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

2. The PAL permit shall require an owner to retain a copy of the following records for the duration of the PAL effective period plus five years:

a. A copy of the PAL permit application and any applications for revisions to the PAL; and

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b. Each annual certification of compliance pursuant to the federal operating permit and the data relied on in certifying the compliance.

O. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the board in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the board within 30 days of the end of each reporting period. This report shall contain the following information:

a. The identification of owner and operator and the permit number.

b. Total annual emissions (tons per year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision N 1 of this section.

c. All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

d. A list of any emissions units modified or added to the major stationary source during the preceding six-month period.

e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision M 7 of this section.

g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

2. The major stationary source owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 9 VAC 5-80-110 F 2 B shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 9 VAC 5-80-110 F 2 B. The reports shall contain the following information:

a. The identification of owner and operator and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official (as defined by the applicable federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the board the results of any revalidation test or method within three months after completion of such test or method.

P. The board will not issue a PAL that does not comply with the requirements of this section after ~~the effective date of this revision~~ [~~February 22~~ September 1], 2006. The board may supersede any PAL that was established prior to ~~the effective date of this revision~~ [~~February 22~~ September 1], 2006, with a PAL that complies with the requirements of this section.

9 VAC 5-80-1870. (Repealed.)

9 VAC 5-80-1880. (Repealed.)

9 VAC 5-80-1890. (Repealed.)

9 VAC 5-80-1900. (Repealed.)

9 VAC 5-80-1910. (Repealed.)

9 VAC 5-80-1920. (Repealed.)

9 VAC 5-80-1925. Changes to permits.

A. The general requirements for making changes to permits issued under this article are as follows:

1. Except as provided in subdivision 3 of this subsection changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9 VAC 5-80-1935 through 9 VAC 5-80-1965.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part shall be made as specified in Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part.

~~4. This section shall not be applicable to general permits. Under no circumstances may a permit issued under this article be changed in order to (i) incorporate the terms and conditions necessary to implement any provision of the new source review program for a project that qualifies as a modification under the new source review program or (ii) incorporate the terms and conditions necessary to implement any provision of the new source review program for a PAL permit.~~

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit ~~revisions~~ changes can be found in 9 VAC 5-80-1935 through 9 VAC 5-80-1955.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-1965.

9 VAC 5-80-1930. (Repealed.)

9 VAC 5-80-1935. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.
2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.
3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-2170 have been fulfilled.

~~4. The combining of permits under the new source review program as provided in 9 VAC 5-80-1625 E.~~

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.
2. The board will incorporate the changes without providing notice to the public under 9 VAC 5-80-1775. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.
3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9 VAC 5-80-1940. (Repealed.)

9 VAC 5-80-1945. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement ;
2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements ;
3. Do not require or change a case-by-case determination of an emission limitation or other standard ;
4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source

has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include ~~;-a-~~ , but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program ~~or § 112 of the federal Clean Air Act;~~ and.

~~b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;~~

~~5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and~~

~~6. 5. Are not required to be processed as a significant amendment under 9 VAC 5-80-1955; or as an administrative permit amendment under 9 VAC 5-80-1935.~~

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.
2. Require more frequent monitoring or reporting by the permittee ~~or to reduce the level of an emissions cap.~~
3. Designate any term or permit condition that meets the criteria in 9 VAC 5-80-1625 G 1 as state-only enforceable as provided in 9 VAC 5-80-1625 G 2 for any permit issued under this article or any regulation from which this article is derived.

~~C. Notwithstanding subsection A of this section, Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable. In order for the underlying statutory or regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated NSR pollutant.~~

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.
2. A request that such procedures be used.

E. The public participation requirements of 9 VAC 5-80-1775 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.
2. Deny the permit amendment request.

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3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

9 VAC 5-80-1950. (Repealed.)

9 VAC 5-80-1955. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9 VAC 5-80-1945 or as administrative amendments under 9 VAC 5-80-1935.

2. Significant amendment procedures shall be used for those permit amendments that meet any of the following criteria:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include ~~-(1)~~, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program or ~~§ 112 of the federal Clean Air Act; and~~

~~(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.~~

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that

will apply if the change occurs. The applicant may, at his discretion, include a suggested draft permit amendment.

C. The provisions of 9 VAC 5-80-1775 shall apply to requests made under this section.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required or if a public hearing is conducted under 9 VAC 5-80-1775.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9 VAC 5-80-1960. (Repealed.)

9 VAC 5-80-1965. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.

~~4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.~~

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

9 VAC 5-80-1970. (Repealed.)

9 VAC 5-80-1975. Transfer of permits.

A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

D. The provisions of this section concerning the transfer of a permit from one location to another shall not apply to the relocation of portable facilities that are exempt from the provisions of this article by 9 VAC 5-80-1695 A 2.

9 VAC 5-80-1985. Permit invalidation, suspension, revocation, and enforcement.

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction, ~~reconstruction~~ or modification is not commenced within ~~the latest of the following time frames:~~ 1. Eighteen 18 months from the date the permit is granted.

~~2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any government entity.~~

~~3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).~~

B. A permit granted pursuant to this article shall become invalid if a program of construction, ~~reconstruction~~ or modification is discontinued for a period of 18 months or more or if a program of construction, ~~reconstruction~~ or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase shall commence construction within 18 months of the projected and approved commencement date.

C. The board may extend the periods prescribed in subsections A and B of this section upon satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted using the procedures for minor amendments in 9 VAC 5-80-1945.

D. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article, or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.

F. The board may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments thereto;
2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Causes emissions from the stationary source that result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of this article.

G. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection B of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in 9 VAC 5 Chapter 20 (9 VAC 5-20) and the Virginia Air Pollution Control Law.

J. The board will notify the applicant in writing of its decision, with its reasons to change, suspend or revoke a permit, or to render a permit invalid.

9 VAC 5-80-1995. Existence of permit no defense.

The existence of a permit under this article shall not constitute a defense to a violation of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia) or the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

Article 9.

Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region.

9 VAC 5-80-2000. Applicability.

A. The provisions of this article apply to ~~any person seeking to construct or reconstruct~~ the construction of any new major stationary source or ~~to make a major modification to a major stationary source,~~ if the source or modification is or would be that is major for the pollutant for which the area is designated as nonattainment.

B. The provisions of this article apply in (i) nonattainment areas designated in 9 VAC 5-20-204 or (ii) the Ozone Transport Region as defined in 9 VAC 5-80-2010 C. This article applies to all localities in the Ozone Transport Region regardless of a locality's nonattainment status.

C. If the Ozone Transport Region is designated attainment for ozone, sources located or planning to locate in the ~~Ozone~~

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~~Transport~~ region shall be subject to the offset requirements for areas classified as moderate in 9 VAC 5-80-2120 B 2. *If the Ozone Transport Region is designated nonattainment for ozone, sources located or planning to locate in the region shall be subject to the offset requirements of 9 VAC 5-80-2120 B depending on the classification except if the classification is marginal or there is no classification, the classification shall be moderate for purpose of applying 9 VAC 5-80-2120 B.*

D. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not commenced on the source or modification.

~~E. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this article and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this article. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.~~

~~E. E.~~ Unless specified otherwise, the provisions of this article apply as follows:

1. Provisions referring to "sources," "new and/or modified sources" or "stationary sources" apply to the construction, reconstruction or modification of all major stationary sources and major modifications.
2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), or Article 8 (~~9 VAC 5-80-1700~~ 9 VAC 5-80-1605 et seq.) of this part.
3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9 VAC 5-80-2020 E ~~E~~.

~~F. For purposes of applying subsection G of this section and other provisions of this article, the effective date of the amendments adopted by the board on [insert adoption date] shall be the date 30 days after the date on which a notice is published in the Virginia Register acknowledging that the administrator has approved the amendments adopted by the board on [insert adoption date].~~

~~G. F.~~ Unless otherwise approved by the board or prescribed in these regulations, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of subsection A of 9 VAC 5-80-2060 A prior to the effective date of the amended article [February 22 September 1], 2006.

Any permit applications that have not been determined to be complete as of ~~the effective date of the amended article~~ [February 22 September 1], 2006, shall be subject to the new provisions.

~~G. H.~~ Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

~~H.~~ The requirements of this article will be applied in accordance with the following principles:

1. Except as otherwise provided in ~~subsections J and K~~ subsection I of this section, and consistent with the definition of "major modification," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: (i) a significant emissions increase and (ii) a significant net emissions increase. A project is not a major modification if it does not cause a significant emissions increase. If a project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

2. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3 ~~through 6~~ and 4 of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the source (i.e., the second step of the process) is contained in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

3. The actual-to-projected-actual applicability test for projects that only involve existing emissions units shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

4. The actual-to-potential test for projects that only involve construction of a new emissions unit shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

~~5. The emission test for projects that involve Clean Units shall be as provided in this subdivision. For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.~~

~~6. The hybrid test for projects that involve multiple types of emissions units shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 through 5 of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and using the method specified in subdivision 5 of this subsection for the Clean Unit.~~

[5. The hybrid test for projects that involve multiple types of emissions units shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 and 4 of this subsection as applicable with respect to each emissions unit, for each type of emissions unit is significant for that pollutant. For example, if a project involves both an existing emissions unit and a new unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and using the method specified in subdivision 4 of this subsection for the new unit.]

~~J. I. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 9 VAC 5-80-2144.~~

~~K. An owner undertaking a PCP shall comply with the requirements under 9 VAC 5-80-2143.~~

~~L. J. The provisions of 40 CFR Part 60, Part 61 and Part 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 and Article 1 (9 VAC 5-60-60 et seq.) and Article 2 (9 VAC 5-60-90 et seq.) of Part II of 9 VAC 5 Chapter 60.~~

~~M. K. The provisions of 40 CFR Part 51 and Part 58 cited in this article apply only to the extent that they are incorporated by reference in 9 VAC 5-20-21.~~

9 VAC 5-80-2010. Definitions.

A. As used in this article, all words or terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10), unless otherwise required by context.

B. For the purpose of this article, 9 VAC 5-50-270 and any related use, the words or terms shall have the meanings given them in subsection C of this section.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has

occurred, or for establishing a PAL under 9 VAC 5-80-2144. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two-year~~ consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The board shall will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit which that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards set forth in 40 CFR Parts 60 and ~~61, 61 and 63;~~

b. Any applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of , but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any

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source-specific provisions such as consent agreements or orders.

b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (~~9 VAC 5-80-1700~~ 9 VAC 5-80-1605 et seq.) of this part.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board may allow the use

of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the source shall currently comply, had such source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such

emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9 VAC 5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and b (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this definition.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the board determines that technological or economic limitations on the application of measurement methodology to a

particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9 VAC 5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

~~"Clean Unit" means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, that is complying with such BACT or LAER requirements, and qualifies as a Clean Unit pursuant to 9 VAC 5-80-2141; or any emissions unit that has been designated by a board as a Clean Unit, based on the criteria in 9 VAC 5-80-2142 C 1 through C 4; or any emissions unit that has been designated as a Clean Unit by the Administrator in accordance with 40 CFR 52.21(y)(3)(i) through (iv).~~

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

- a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and

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the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) ~~which~~ that would result in a change in actual emissions.

"Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter values on a continuous basis.

~~"Effective date of this revision" means the effective date determined in accordance with 9 VAC 5-80-2000-F.~~

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatt electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions cap" means any limitation on the rate of emissions of any regulated air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant ~~subject to regulation under the federal Clean Air Act~~ any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this article, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

- a. Are permanent;

- b. Contain a legal obligation for the owner to adhere to the terms and conditions;

- c. Do not allow a relaxation of a requirement of the implementation plan;

- d. Are technically accurate and quantifiable;

- e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with ~~9 VAC 5-80-2050~~ this article and other regulations of the board; and

- f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

- a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

- b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

- c. All terms and conditions (*unless expressly designated as not federally enforceable*) in a federal operating permit, including any provisions that limit a source's potential to emit; ~~unless expressly designated as not federally enforceable.~~

- d. Limitations and conditions that are part of an implementation plan established pursuant to § 110 ~~or § 111(d)~~, § 111(d), or § 129 of the federal Clean Air Act.

- e. Limitations and conditions (*unless expressly designated as not federally enforceable*) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA ~~in accordance with 40 CFR Part 54 into the implementation plan.~~

- f. Limitations and conditions (*unless expressly designated as not federally enforceable*) that are part of an a state operating permit ~~issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability where the permit and the permit program pursuant to which it was issued meet all of the following criteria:~~

(1) *The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.*

(2) *The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.*

(3) *The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable."*

(4) *The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.*

(5) *The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.*

g. Limitations and conditions in a Virginia regulation of the board or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9 VAC 5-80-50 et seq.), Article 2 (9 VAC 5-80-310 et seq.), Article 3 (9 VAC 5-80-360 et seq.), and Article 4 (9 VAC 5-80-710 et seq.) of this part.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Lowest achievable emissions rate (LAER)" means for any source, the more stringent rate of emissions based on the following:

a. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner

of the proposed stationary source demonstrates that such limitations are not achievable; or

b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant for nonattainment areas in subdivision a 4 (1) of the definition of "major stationary source."

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in (i) a significant net emissions increase of any qualifying nonattainment pollutant a regulated NSR pollutant; and (ii) a significant net emissions increase of that pollutant from the source.

b. Any net significant emissions increase from any emissions units or net emissions increase at a source that is considered significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement;

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(3) Use of an alternative fuel by reason of an order or rule § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source which:

(a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter; and

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(c) *The owner demonstrates to the board that as a result of trial burns at the source or other sources or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased.*

~~(3)~~ (6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

~~(8) The addition, replacement or use of a PCP at an existing emissions unit meeting the requirements of 9 VAC 5-80-2143. A replacement control technology shall provide more effective emissions control than that of the replaced control technology to qualify for this exclusion.~~ (9) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) *The applicable implementation plan, and*

(b) *Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.*

d. *This definition shall not apply with respect to a particular regulated NSR pollutant when the source is complying with the requirements under 9 VAC 5-80-2144 for a PAL for that pollutant. Instead, the definition for "PAL major modification" shall apply.*

"Major new source review (major NSR)" means a program for the ~~preconstruction review of changes that are subject to review as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, (i) 100 tons per year or more of ~~any nonattainment~~ a regulated NSR pollutant, (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9 VAC 5-20-204, (iii) 25 tons per year or more of volatile organic compounds or

nitrogen oxides in ozone nonattainment areas classified as severe in 9 VAC 5-20-204, or (iv) 100 tons per year or more of nitrogen oxides or 50 tons per year of volatile organic compounds in the Ozone Transport Region; or

(2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators (or combinations of them) capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric acid plants.

(10) Sulfuric acid plants.

(11) Nitric acid plants.

(12) Petroleum refineries.

(13) Lime plants.

(14) Phosphate rock processing plants.

(15) Coke oven batteries.

(16) Sulfur recovery plants.

(17) Carbon black plants (furnace process).

(18) Primary lead smelters.

(19) Fuel conversion plants.

(20) Sintering plants.

(21) Secondary metal production plants.

(22) Chemical process plants.

(23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

- (25) Taconite ore processing plants.
- (26) Glass fiber manufacturing plants.
- (27) Charcoal production plants.
- (28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.
- (29) Any other stationary source category which, as of August 7, 1980, is being regulated under ~~§ 111 of § 112 of the federal Clean Air Act~~ 40 CFR Part 60, 61 or 63.

~~"Minor new source review (minor NSR)" means a program for the preconstruction review of changes that are subject to review as new or modified sources and that do not qualify as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

~~"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.~~

~~"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that do not qualify for review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.) of this part.~~

~~"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which the NSR program that are part of the applicable implementation plan.~~

"Net emissions increase"

a. Means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

- (1) ~~Any~~ The increase in actual emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9 VAC 5-80-2000 ~~H~~; and
- (2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or

severe in 9 VAC 5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

(1) It occurs between the date five years before construction on the particular change specified in subdivision a (1) of this definition commences and the date that the increase specified in subdivision a (1) of this definition from the particular change occurs; and

(2) The board has not relied on it in issuing a permit for the source pursuant to this [chapter article] which permit is in effect when the increase in actual emissions from the particular change occurs ~~and~~.

~~(3) The increase or decrease in emissions did not occur at a Clean Unit, except as provided in 9 VAC 5-80-2144 H and 9 VAC 5-80-2142 J.~~

d. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is federally and state enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) The board has not relied on it in issuing any permit pursuant to this chapter or the board has not relied on it in demonstrating attainment or reasonable further progress in the implementation plan; and

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change .;

~~(5) The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under 40 CFR 52.21(y) or under regulations approved pursuant to 9 VAC 5-80-1855 or 9 VAC 5-80-2142. That is, once an emissions unit has been designated as a Clean Unit, the owner cannot later use the emissions reduction from the air pollution control measures that the Clean Unit designation is based on in calculating the net emissions increase for another emissions unit (i.e., shall not use that reduction in a "netting analysis" for another emissions unit). However, any new emissions reductions that were not relied upon in a PGP excluded pursuant to 9 VAC 5-80-2143 or for a Clean Unit designation are creditable to the extent~~

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~~they meet the requirements in 9 VAC 5-80-2143 F 4 for the PCP and 9 VAC 5-80-2144 H or 9 VAC 5-80-2142 J for a Clean Unit.~~

f. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

g. *Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.*

"New source review (NSR) permit" means a permit issued under the new source review program.

~~"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.~~

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Nonattainment major new source review (NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9 VAC 5-80-2000 et seq.) of this part. Any permit issued under such a program is a major NSR permit.

"Nonattainment pollutant" means, within a nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.

"Ozone transport region" means the area established by § 184(a) of the federal Clean Air Act or any other area established by the administrator pursuant to § 176A of the federal Clean Air Act for purposes of ozone. For the purposes of this article, the Ozone Transport Region consists of the following localities: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

"Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9 VAC 5-80-2144.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase," any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the major NSR permit, the minor NSR permit, the state operating permit, or the federal operating permit issued by the board that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

~~"Pollution control project (PCP)" means any activity, set of work practices, or project (including pollution prevention) undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in subdivisions a through f of this definition are presumed to be environmentally beneficial pursuant to 9 VAC 5-80-2143 B 1. Projects not listed in these subdivisions may qualify for a case-specific PCP exclusion pursuant to the requirements of 9 VAC 5-80-2143 B and E.~~

~~a. Conventional or advanced flue gas desulfurization or sorbent injection for control of SO₂.~~

~~b. Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.~~

~~c. Flue gas recirculation, low-NO_x burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion (for IC engines), and oxidation/absorption catalyst for control of NO_x.~~

~~d. Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbors, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this article, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons~~

~~and containing no more than 230 mg/dscm hydrogen sulfide.~~

~~e. Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:~~

~~(1) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05% sulfur diesel (i.e., from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05% sulfur #2 diesel);~~

~~(2) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;~~

~~(3) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood;~~

~~(4) Switching from coal to #2 fuel oil (0.5% maximum sulfur content); and~~

~~(5) Switching from high sulfur coal to low sulfur coal (maximum 1.2% sulfur content).~~

~~f. Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:~~

~~(1) The productive capacity of the equipment is not increased as a result of the activity or project; and~~

~~(2) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS, determined as follows:~~

~~(a) Determine the ODP of the substances by consulting 40 CFR Part 82, subpart A, appendices A and B.~~

~~(b) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS.~~

~~(c) Calculate the projected ODP-weighted amount by multiplying the projected future annual usage of the new substance by its ODP.~~

~~(d) If the value calculated in subdivision (b) of this subdivision is more than the value calculated in subdivision (c) of this subdivision, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.~~

~~"Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.~~

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally ~~and state~~ enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Prevention of significant deterioration (PSD) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9 VAC 5-80-1605 et seq.) of this part.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the source. In determining the projected actual emissions before beginning actual construction, the owner shall:

a. Consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan;

b. Include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; [and ~~or~~]

c. Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's

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~~emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or~~

[c. Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or]

[d. ~~e.~~] In lieu of using the method set out in subdivisions a [through c ~~and b~~] of this definition, may elect to use the emissions unit's potential to emit, in tons per year, as defined under the definition of potential to emit.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

~~"Qualifying pollutant" means, with regard to a major stationary source, any pollutant emitted in such quantities or at such rate as to qualify the source as a major stationary source.~~

"Reasonable further progress" means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of an implementation plan and regular reductions thereafter) which are sufficient in the judgment of the board to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the implementation plan for such area.

~~"Reconstruction" means when the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of subdivisions a through c of this definition. A reconstructed stationary source will be treated as a new stationary source for purposes of this article.~~

~~a. The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility.~~

~~b. The estimated life of the facility after the replacements compared to the life of a comparable entirely new facility.~~

~~c. The extent to which the components being replaced cause or contribute to the emissions from the facility.~~

"Regulated air NSR pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound;

- b. Any pollutant for which an ambient air quality standard has been promulgated; or

- c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act that is a constituent or precursor of a general pollutant listed under subdivisions a and b of this definition, provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

- ~~d. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under 40 CFR Part 63; or~~

- ~~e. Any pollutant subject to a regulation adopted by the board.~~

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions ~~must~~ shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

- a. Ozone nonattainment areas classified as serious or severe in 9 VAC 5-20-204.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Ozone	25 tpy of volatile organic compounds
Lead	0.6 tpy

- b. Other nonattainment areas.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
PM ₁₀	15 tpy
PM _{2.5}	10 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount

that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means ~~a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9 VAC 5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability~~ an operating permit program (i) for issuing limitations and conditions for stationary sources, (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability, and (iii) codified in Article 5 (9 VAC 5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation which emits or may emit ~~any air pollutant subject to regulation under the federal Clean Air Act~~ a regulated NSR pollutant.

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9 VAC 5-80-2020. General.

A. No owner or other person shall begin actual construction, ~~reconstruction~~ or modification of any new major stationary source or major modification without first obtaining from the board a permit to construct and operate such source. *The permit will state that the major stationary source or major modification shall meet all the applicable requirements of this article.*

B. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining from the board a permit to relocate the unit.

~~C. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining a permit from the board to relocate the unit.~~

C. ~~D.~~ If the board and the owner make a mutual determination that it facilitates the efficient processing and issuing of permits for projects that are to be constructed concurrently, the board may combine the requirements of and the permits for emissions units within a stationary source subject to the major new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by any provision of the major new source review program be combined into one application.

D. ~~E.~~ The board may not incorporate the terms and conditions of a state operating permit, a minor new source review permit, or a PAL permit into a permit issued pursuant to this article. ~~The permit issued pursuant to this article may supersede the state operating permit provided the public participation provisions of the state operating permit program are followed.~~

E. ~~F.~~ All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9 VAC 5-40-130 et seq.) ~~or Article 3 (9 VAC 5-40-160 et seq.)~~ of 9 VAC 5 Chapter 40 ~~or, Article 2 (9 VAC 5-50-130 et seq.) or Article 3 (9 VAC 5-50-160 et seq.)~~ of 9 VAC 5 Chapter 50, Article 4 (9 VAC 5-60-200 et seq.) of 9 VAC 5 Chapter 60, or Article 5 (9 VAC 5-60-300) of 9 VAC 5 Chapter 60.

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

F. ~~G.~~ Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

9 VAC 5-80-2040. Application information required.

A. The board ~~shall~~ will furnish application forms to applicants. Completion of these forms serves as initial registration of new and modified sources.

B. Each application for a permit shall include such information as may be required by the board to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emissions standards which are

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applicable. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.
2. A description of the source's processes and products (by Standard Industrial Classification Code).
3. All emissions of regulated air NSR pollutants.
 - a. A permit application shall describe all emissions of regulated air NSR pollutants emitted from any emissions unit or group of emissions units to be covered by the permit.
 - b. Emissions shall be calculated as required in the permit application form or instructions.
 - c. Fugitive emissions shall be included in the permit application to the extent quantifiable.
4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.
5. Actual emission rates in tons per year and other information as may be necessary to determine the net emissions increase of actual emissions.
6. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.
7. Identification and description of air pollution control equipment and compliance monitoring devices or activities.
8. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air NSR pollutants at the source.
9. Calculations on which the information in subdivisions 3 through 8 of this subsection are based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.
10. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit, including the submission of measured air quality data at the proposed site prior to construction, ~~reconstruction~~ or modification. Such measurements shall be accomplished using procedures acceptable to the board.
11. For major stationary sources, the location and registration number for all stationary sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control with the applicant) in the Commonwealth.
12. For major stationary sources, the analyses required by 9 VAC 5-80-2090 2 shall be provided by the applicant. Upon request, the board will advise an applicant of the reasonable geographic limitation on the areas to be subject to an analysis to determine the air quality impact at the proposed source.

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

9 VAC 5-80-2050. Standards and conditions for granting permits.

A. No permit will be granted pursuant to this article unless it is shown to the satisfaction of the board that the following standards and conditions have been met:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50).
2. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board or the applicable control strategy portion of the implementation plan.
3. The board determines that the following occurs:
 - a. By the time the source is to commence operation, sufficient offsetting emissions reductions shall have been obtained in accordance with 9 VAC 5-80-2120 such that total allowable emissions of qualifying nonattainment pollutants from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources, as determined in accordance with the requirements of this article, prior to the application for such permit to construct or modify so as to represent (when considered together with any applicable control measures in the implementation plan) reasonable further progress; or
 - b. In the case of a new or modified major stationary source which is located in a zone, within the nonattainment area, identified by the administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources in the implementation plan; and
 - c. Any emission reductions required as a precondition of the issuance of a permit under subdivision ~~3 a or 3 b of this subsection~~ *a or b of this subdivision* shall be state and federally enforceable before such permit may be issued.
4. The applicant shall demonstrate that all major stationary sources owned or operated by such applicant (or by any entity controlling, controlled by, or under common control with such applicant) in the Commonwealth are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under these regulations.
5. The administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is

to be constructed or modified in accordance with the requirements of this article.

6. The applicant shall demonstrate, through an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source, that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

~~B. Permits may be granted to stationary sources or emissions units that contain emission caps provided the limits or caps are made enforceable as a practical matter using the elements set forth in subsection D of this section.~~ C. Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article and 9 VAC 5-50-270. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.
2. In no case shall a standard result in emissions that would exceed the emissions rate based on the potential to emit of the emissions unit.
3. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

~~D.~~ C. Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.
2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:
 - a. Limit on fuel sulfur content.
 - b. Limit on production rates with time frames as appropriate to support the emission standards.
 - c. Limit on raw material usage rate.
 - d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.
3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size. ~~Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.~~
4. Specifications for air pollution control equipment installed or to be installed. ~~Specifications included in the permit under this subdivision are for informational purposes only~~

~~and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.~~

5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, any of the following:

- a. Pressure indicators and required pressure drop.
- b. Temperature indicators and required temperature.
- c. pH indicators and required pH.
- d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Stack test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

9 VAC 5-80-2060. Action on permit application.

A. Within 30 days after receipt of an application, the board ~~shall~~ *will* notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board ~~shall~~ *will* notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the board received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

B. Processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required. Processing steps may include, but not be limited to, the following:

1. Completion of the preliminary review and analysis in accordance with 9 VAC 5-80-2090 and the preliminary decision of the board.
2. Completion of the public participation requirements in accordance with 9 VAC 5-80-2070.

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3. Completion of the final review and analysis and the final decision of the board.

C. The board will normally take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments from it) when required, unless more information is needed. The board ~~shall~~ will notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9 VAC 5-80-2080.

D. The applicant may appeal the decision pursuant to Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170.

E. Within five days after notification to the applicant pursuant to subsection C of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9 VAC 5-80-2070 F 1.

9 VAC 5-80-2070. Public participation.

A. No later than 30 days after receiving the initial determination notification required under 9 VAC 5-80-2060 A, applicants shall notify the public about the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the name, location, and type of the source, and the time and place of the informational briefing.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board ~~shall~~ will attend and provide information and answer questions on the permit application review process.

D. Upon determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the board, all permit applications will be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public

hearing shall be held with notice in accordance with subsection F of this section.

F. For the public comment period and public hearing, the board ~~shall~~ will notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing.

1. Information on the permit application (exclusive of confidential information under 9 VAC 5-170-60), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

G. In order to facilitate the efficient issuance of permits under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of this part, upon request of the applicant the board ~~shall~~ will process the permit application under this article using public participation procedures meeting the requirements of this section and 9 VAC 5-80-270 or 9 VAC 5-80-670, as applicable.

H. If appropriate, the board may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the board provides a public briefing, the requirements of subsection F of this section concerning public notification shall be followed.

9 VAC 5-80-2090. Application review and analysis.

No permit shall be granted pursuant to this article unless compliance with the standards in 9 VAC 5-80-2050 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50).

2. Applications shall be subject to an air quality analysis to determine the impact of ~~qualifying~~ nonattainment pollutant emissions.

9 VAC 5-80-2091. Source obligation.

A. *Any owner who constructs or operates a source or modification not in accordance (i) with the application*

submitted pursuant to this article or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in 9 VAC 5-80-2180.

B. The following provisions apply to projects at existing emissions units at a major stationary source (other than projects at a ~~Clean Unit~~ or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner elects to use the method specified in subdivisions a [through c ~~and b~~] of the definition of "projected actual emissions" for calculating projected actual emissions:

1. Before beginning actual construction of the project, the owner shall document and maintain a record of the following information:

- a. A description of the project;
- b. Identification of the emissions units whose emissions of a regulated NSR pollutant could be affected by the project; and
- c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, [the amount of emissions excluded under subdivision c of the definition of "projected actual emissions" and an explanation for why such amount was excluded,] and any netting calculations, if applicable.

2. If the emissions unit is an existing electric utility steam generating unit, no less than 30 days before beginning actual construction, the owner shall provide a copy of the information set out in subdivision 1 of this subsection to the board. Nothing in this subdivision shall be construed to require the owner of such a unit to obtain any determination from the board before beginning actual construction.

3. The owner shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subdivision 1 b of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner shall submit a report to the board within 60 days after the end of each year during which records shall be generated under subdivision 3 of this subsection setting out the unit's annual emissions during the year that preceded submission of the report.

5. If the unit is an existing unit other than an electric utility steam generating unit, the owner shall submit a report to the

board if the annual emissions, in tons per year, from the project identified in subdivision 1 of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to subdivision 1 c of this subsection) by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subdivision 1 c of this subsection. Such report shall be submitted to the board within 60 days after the end of such year. The report shall contain the following:

- a. The name, address and telephone number of the major stationary source;
- b. The annual emissions as calculated pursuant to subdivision 3 of this subsection; and
- c. Any other information that the owner wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

C. The owner shall make the information required to be documented and maintained pursuant to subsection A of this section available for review upon a request for inspection by the board or the general public pursuant to the requirements contained in 9 VAC 5-80-270 or 9 VAC 5-80-670.

D. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the implementation plan and any other requirements under local, state or federal law.

E. For each project subject to subsection B of this section, the owner shall provide notice of the availability of the information set out in subdivision B 1 of this section to the board no less than 30 days before beginning actual construction. The notice shall include the location of the information and the name, address and telephone number of the contact from whom the information may be obtained. Should subsequent information become available to the board to indicate that a given project subject to subsection B of this section is a part of a major modification that resulted in a significant emissions increase, the board will proceed as if the owner is in violation of 9 VAC 5-80-1625 A and may institute appropriate enforcement action as provided in subsection A of this section. Nothing in this subsection shall be construed to require the owner of the source to obtain any determination from the board before beginning actual construction.

9 VAC 5-80-2110. Interstate pollution abatement.

A. The owner of each new or modified source, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels which may be affected by such source at least 60 days prior to the date of commencement of construction, ~~reconstruction~~ or modification.

B. Any state or political subdivision may petition the administrator for a finding that any new or modified source emits or would emit any air pollutant in amounts which will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the

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implementation plan for such state. Within 60 days after receipt of such petition and after a public hearing, the administrator will make such a finding or deny the petition.

C. Notwithstanding any permit granted pursuant to this article, no owner or other person shall commence construction, reconstruction or modification or begin operation of a source to which a finding has been made under the provisions of subsection B of this section.

9 VAC 5-80-2120. Offsets.

A. Owners shall comply with the offset requirements of this article by obtaining emission reductions from the same source or other sources in the same nonattainment area, except that for ozone precursor pollutants the board may allow the owner to obtain such emission reductions in another nonattainment area if (i) the other area has an equal or higher nonattainment classification than the area in which the source is located and (ii) emissions from such other area contribute to a violation of the ambient air quality standard in the nonattainment area in which the source is located. By the time a new or modified source begins operation, such emission reductions shall (i) be in effect, (ii) be state and federally enforceable and (iii) assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the nonattainment area.

B. The (i) ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds or (ii) the ratio of total emission reductions of nitrogen oxides to total increased emissions of nitrogen oxides in ozone nonattainment areas designated in 9 VAC 5-20-204 shall be at least the following:

- | | |
|---|--------------|
| 1. Nonattainment areas classified as marginal | 1.1 to one. |
| 2. Nonattainment areas classified as moderate | 1.15 to one. |
| 3. Nonattainment areas classified as serious | 1.2 to one. |
| 4. Nonattainment areas classified as severe | 1.3 to one. |
| 5. Nonattainment areas with any other classification or no classification | 1 to one. |

The ratio of total emissions reductions of the nonattainment pollutant to total increased emissions of the nonattainment pollutant in nonattainment areas (other than ozone nonattainment areas) designated in 9 VAC 5-20-204 shall be at least 1 to one.

C. Emission reductions otherwise required by these regulations shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by these regulations shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of subsection A of this section.

D. The board ~~shall~~ will allow an owner to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an

existing or modified major source that tests rocket engines or motors under the following conditions:

1. Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.
2. The source demonstrates to the satisfaction of the board that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.
3. The source has obtained a written finding from the U.S. Department of Defense, U.S. Department of Transportation, National Aeronautics and Space Administration or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.
4. The owner will comply with an alternative measure, imposed by the board, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the board may impose an emissions fee to be paid to the board which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that nonattainment area during the previous three years. The board ~~shall~~ will utilize the fees in a manner that maximizes the emissions reductions in that nonattainment area.

E. For sources subject to the provisions of this article, the baseline for determining credit for emissions reduction is the emissions limit under the applicable implementation plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area; or
2. The applicable implementation plan does not contain an emissions limitation for that source or source category.

F. Where the emissions limit under the applicable implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

G. For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable implementation plan for the type of fuel being burned at the time the application to construct is filed. If the owner of the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The board will ensure

that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

H. Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally and state enforceable. In addition, the shutdown or curtailment is creditable only if it occurred on or after January 1, 1991.

I. No emissions credit may be allowed for replacing one volatile organic compound with another of lesser reactivity.

J. Where this article does not adequately address a particular issue, the provisions of Appendix S to 40 CFR Part 51 shall be followed to the extent that they do not conflict with this article section.

K. Credit for an emissions reduction can be claimed to the extent that the board has not relied on it in issuing any permit under this chapter or has not relied on it in demonstrating attainment or reasonable further progress.

~~L. Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a Clean Unit or a project as a PCP cannot be used as offsets.~~

~~M. Decreases in actual emissions occurring at a Clean Unit cannot be used as offsets, except as provided in 9 VAC 5-80-2141 H and 9 VAC 5-80-2142 J. Decreases in actual emissions occurring at a PCP cannot be used as offsets, except as provided in 9 VAC 5-80-2143 F 4.~~

~~N. L. The total tonnage of increased emissions, in tons per year, resulting from a major modification that shall be offset in accordance with § 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.~~

9 VAC 5-80-2130. De minimis increases and stationary source modification alternatives for ozone nonattainment areas classified as serious or severe in 9 VAC 5-20-204.

A. ~~De minimis increases.~~ Increased emissions of volatile organic compounds or nitrogen oxides resulting from any physical change in, or change in the method of operation of, a major stationary source located in an ozone nonattainment area classified as serious or severe in 9 VAC 5-20-204 shall be considered de minimis for purposes of determining the applicability of the permit requirements under this article if the increase in net emissions of the same pollutant from such source is 25 tons or less when aggregated with all other net increases in emissions from the source over a period of five consecutive calendar years which includes the calendar year in which such increase occurred.

B. *The following shall apply to modifications of major stationary sources emitting less than 100 tons per year of volatile organic compounds or nitrogen oxides.*

1. Any physical change in, or change in the method of operation of, a major stationary source with a potential to emit of less than 100 tons per year of volatile organic

compounds or nitrogen oxides which results in an increase in emissions of the same pollutant from any discrete operation, unit, or other pollutant emitting activity at that source that is not de minimis under subsection A of this section shall be considered a major modification under this article. However, in applying emission standards under 9 VAC 5 Chapter 50 (9 VAC 5-50-40 ~~et seq.~~) to the source, the requirement to apply best available control technology shall be substituted for the requirement to comply with the lowest achievable emissions rate.

2. If the owner elects to offset the increase of volatile organic compounds or of nitrogen oxides by a greater reduction in emissions of the pollutant being increased from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, such increase shall not be considered a major modification under this article.

C. *The following shall apply to modifications of major stationary sources emitting 100 tons per year or more of volatile organic compounds or nitrogen oxides.*

1. Any physical change in, or change in the method of operation of, a major stationary source with a potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides which results in an increase in emissions of the same pollutant from any discrete operation, unit, or other pollutant emitting activity at that source that is not de minimis under subsection A of this section shall be considered a major modification under this article.

2. In applying emission standards under 9 VAC 5 Chapter 50 (9 VAC 5-50-40 ~~et seq.~~) to the source, the requirement to apply best available control technology shall be substituted for the requirement to comply with the lowest achievable emissions rate, if the owner elects to offset the increase by a greater reduction in emissions of the pollutant being increased from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to one.

9 VAC 5-80-2140. Exception.

The provisions of this article do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

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9. Hydrofluoric acid plants;
10. Sulfuric acid plants;
11. Nitric acid plants;
12. Petroleum refineries;
13. Lime plants;
14. Phosphate rock processing plants;
15. Coke oven batteries;
16. Sulfur recovery plants;
17. Carbon black plants (furnace process);
18. Primary lead smelters;
19. Fuel conversion plants;
20. Sintering plants;
21. Secondary metal production plants;
22. Chemical process plants;
23. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input;
24. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
25. Taconite ore processing plants;
26. Glass fiber processing plants;
27. Charcoal production plants;
28. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and
29. Any other stationary source category which, as of August 7, 1980, is being regulated under § 111 or § 112 of the federal Clean Air Act (42 USC § 7404 40 CFR Parts 60, 61 or 63.

9 VAC 5-80-2141. Clean Unit test for emissions units that are subject to LAER. (Reserved.)

~~A. An owner of a major stationary source may use the Clean Unit test according to the provisions of this section to determine whether emissions increases at a Clean Unit are part of a project that is a major modification. The provisions of this section apply to any emissions unit for which the board has issued a major NSR permit within the past five years.~~

~~B. The general provisions set forth in this subsection shall apply to Clean Units.~~

~~1. Any project for which the owner begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection D of this section) and before the expiration date (as determined in accordance with subsection E of this section) will be considered to have occurred while the emissions unit was a Clean Unit.~~

~~2. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in~~

~~conjunction with LAER and the project would not alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subdivision F 4 of this section, the emissions unit remains a Clean Unit.~~

~~3. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER or the project would alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subdivision F 4 of this section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit requalifies as a Clean Unit pursuant to subdivision C 3 of this section). If the owner begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.~~

~~4. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of 9 VAC 5-80-2000 1 1 through 4 and 6 as if the emissions unit is not a Clean Unit.~~

~~5. For certain emissions units with PSD permits that meet the requirements of subdivisions a and b of this subdivision, the BACT level of emissions reductions or work practice requirements or both shall satisfy the requirement for LAER in meeting the requirements for Clean Units under subsections C through H of this section. For these emissions units, all requirements for the LAER determination under subdivisions 2 and 3 of this subsection shall also apply to the BACT permit terms and conditions. In addition, the requirements of subdivision G 1 b of this section do not apply to emissions units that qualify for Clean Unit status under this subdivision.~~

~~a. The emissions unit shall have received a PSD permit within the last five years and such permit shall require the emissions unit to comply with BACT.~~

~~b. The emissions unit shall be located in an area that was redesignated as nonattainment for the relevant pollutants after issuance of the PSD permit and before the effective date of the Clean Unit test provisions in the area.~~

~~C. An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in subdivisions 1 and 2 of this subsection. After the original Clean Unit designation expires in accordance with subsection E of this section or is lost pursuant to subdivision B 3 of this section, such emissions unit may requalify as a Clean Unit under either subdivision 3 of this subsection, or under the Clean Unit provisions in 9 VAC 5-80-2142. To requalify as a Clean Unit under subdivision 3 of this subsection, the emissions unit shall obtain a new major NSR permit issued through the applicable nonattainment major NSR program and meet all the criteria in subdivision 3 of this subsection. Clean Unit designation applies individually for each pollutant emitted by the emissions unit.~~

~~1. The emissions unit shall have received a major NSR permit within the past five years. The owner shall maintain and be able to provide information that would demonstrate that this permitting requirement is met.~~

~~2. Air pollutant emissions from the emissions unit shall be reduced through the use of an air pollution control technology (which includes pollution prevention or work practices) that meets both the following requirements:~~

~~a. The control technology achieves the LAER level of emissions reductions as determined through issuance of a major NSR permit within the past five years. However, the emissions unit is not eligible for Clean Unit designation if the LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.~~

~~b. The owner made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.~~

~~3. In order to requalify for the Clean Unit designation, the emissions unit shall obtain a new major NSR permit that requires compliance with the current day LAER, and the emissions unit shall meet the requirements in subdivisions 1 and 2 of this subsection.~~

~~D. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner may begin to use the Clean Unit test to determine whether a project at the emissions unit is a major modification) is determined according to the following:~~

~~1. For an original Clean Unit designation and for emissions units that requalify as Clean Units by implementing a new control technology to meet current day LAER, the effective date is the date the emissions unit's air pollution control technology is placed into service, or three years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the effective date of this revision.~~

~~2. For emissions units that requalify for the Clean Unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.~~

~~E. An emissions unit's Clean Unit designation expires (i.e., the date on which the owner may no longer use the Clean Unit test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to the following:~~

~~1. For any emissions unit that automatically qualifies as a Clean Unit under subdivision C 1 and C 2 of this section, the Clean Unit designation expires five years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner fails to comply with the provisions for maintaining Clean Unit designation in subsection G of this section.~~

~~2. For any emissions unit that requalifies as a Clean Unit under subdivision C 3 of this section, the Clean Unit designation expires five years after the effective date; or, it expires any time the owner fails to comply with the provisions for maintaining the Clean Unit designation in subsection G of this section.~~

~~F. After the effective date of the Clean Unit designation, and in accordance with the provisions of the applicable federal operating permit program, but no later than when the federal operating permit is renewed, the federal operating permit for the source shall include the following terms and conditions:~~

~~1. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which the Clean Unit designation applies.~~

~~2. If the effective date is not known when the Clean Unit designation is initially recorded in the federal operating permit (e.g., because the air pollution control technology is not yet in service), the permit shall describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is determined, the owner shall notify the board of the exact date. This specific effective date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~3. If the expiration date is not known when the Clean Unit designation is initially recorded into the federal operating permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is determined, the owner shall notify the board of the exact date. The expiration date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~4. All emission limitations and work practice requirements adopted in conjunction with the LAER, and any physical or operational characteristics that formed the basis for the LAER determination (e.g., possibly the emissions unit's capacity or throughput).~~

~~5. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation (see subsection G of this section).~~

~~6. Terms reflecting the owner's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection G of this section.~~

~~G. To maintain the Clean Unit designation, the owner shall conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects Clean Unit designation only for that pollutant.~~

~~1. The Clean Unit shall comply with the emission limitations and work practice requirements adopted in conjunction with the LAER that is recorded in the major NSR permit, and subsequently reflected in the federal operating permit.~~

~~a. The owner shall not make a physical change in or change in the method of operation of the Clean Unit that~~

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~~causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination (e.g., possibly the emissions unit's capacity or throughput).~~

~~b. The Clean Unit shall not omit above a level that has been offset.~~

~~2. The Clean Unit shall comply with any terms and conditions in the federal operating permit related to the unit's Clean Unit designation.~~

~~3. The Clean Unit shall continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.~~

~~H. Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase (i.e., shall not be used in a "netting analysis"), or be used for generating offsets unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then, the owner may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~I. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it shall requalify under the requirements that are currently applicable in the area.~~

~~**9 VAC 5-80-2142. Clean unit provisions for emissions units that achieve an emissions limitation comparable to LAER. (Reserved.)**~~

~~A. An owner of a major stationary source has the option of using the Clean Unit Test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the provisions of this section. The provisions of this section apply to emissions units that do not qualify as Clean Units under 9 VAC 5-80-2141, but that are achieving a level of emissions control comparable to LAER, as determined by the board in accordance with this section.~~

~~B. The general provisions set forth in this subsection shall apply to a Clean Unit designated under this section.~~

~~1. Any project for which the owner begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection E~~

~~of this section) and before the expiration date (as determined in accordance with subsection F of this section) will be considered to have occurred while the emissions unit was a Clean Unit.~~

~~2. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection D of this section) to be comparable to LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subdivision H 4 of this section, the emissions unit remains a Clean Unit.~~

~~3. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection D of this section) to be comparable to LAER, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subdivision H 4 of this section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit requalifies as a Clean Unit pursuant to subdivision C 4 of this section). If the owner begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.~~

~~4. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of 9 VAC 5-80-2000 I 1 through 4 and 6 as if the emissions unit were never a Clean Unit.~~

~~C. An emissions unit qualifies as a Clean Unit when the unit meets the criteria in subdivisions 1 through 3 of this subsection. After the original Clean Unit designation expires in accordance with subsection F of this section or is lost pursuant to subdivision B 3 of this section, such emissions unit may requalify as a Clean Unit under either subdivision 4 of this subsection, or under the Clean Unit provisions in 9 VAC 5-80-2141. To requalify as a Clean Unit under subdivision 4 of this subsection, the emissions unit shall obtain a new permit issued pursuant to the requirements in subsections G and H of this section and meet all the criteria in subdivision 4 of this subsection. The board will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.~~

~~1. Air pollutant emissions from the emissions unit shall be reduced through the use of air pollution control technology (which includes pollution prevention or work practices) that meets both the following requirements:~~

~~a. The owner has demonstrated that the emissions unit's control technology is comparable to LAER according to the requirements of subsection D of this section. However, the emissions unit is not eligible for the Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the~~

same type (e.g., if the LAER determinations to which it is compared have resulted in a determination that no control measures are required).

b. The owner made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

2. The board will determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or have an adverse impact on an air quality related value (such as visibility) that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

3. An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed before [the effective date of this revision]. However, for such emissions units, the owner shall apply for the Clean Unit designation within two years after [the effective date of this revision]. For technologies installed after the plan requirements become effective, the owner shall apply for the Clean Unit designation at the time the control technology is installed.

4. In order to requalify as a Clean Unit, the emissions unit shall (i) obtain a new permit (pursuant to subsections G and H of this section) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current day LAER, and (ii) meet the requirements in subdivisions 1 a and 2 of this subsection.

D. The owner may demonstrate that the emissions unit's control technology is comparable to LAER for purposes of subdivision C 1 of this section according to either subdivisions 1 or 2 of this subsection. Subdivision 3 of this subsection specifies the time for making this comparison.

1. The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is at least as stringent as any one of the five best-performing similar sources for which a LAER determination has been made within the preceding five years, and for which information has been entered into the RACT/BACT/LAER Clearinghouse (RBLC). The board will also compare this presumption to any additional LAER determinations of which it is aware, and will consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to LAER is correct.

2. The owner may demonstrate that the emissions unit's control technology is substantially as effective as LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as LAER during the public participation process required under subsection G of this section. The board will consider such evidence on a case-by-case basis and determine

whether the emissions unit's air pollution control technology is substantially as effective as LAER.

3. The provisions governing the time for making the comparison under this subsection shall be as follows:

a. The owner of an emissions unit whose control technology is installed before the effective date of this revision may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current day LAER requirements. The expiration date of the Clean Unit designation will depend on which option the owner uses, as specified in subsection F of this section.

b. The owner of an emissions unit whose control technology is installed after [the effective date of this revision] may demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current day LAER requirements.

E. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner may begin to use the Clean Unit test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by subsection G of this section is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

F. If the owner demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, then the Clean Unit designation expires five years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires five years from the effective date of the Clean Unit designation, as determined according to subsection E of this section. In addition, for all emissions units, the Clean Unit designation expires any time the owner fails to comply with the provisions for maintaining the Clean Unit designation in subsection I of this section.

G. The board will designate an emissions unit a Clean Unit only by issuing a permit through an NSR program that includes requirements for public notice of the proposed Clean Unit designation and opportunity for public comment. Such permit shall also meet the requirements of subsection H of this section.

H. The permit required by subsection G of this section shall include the terms and conditions set forth in subdivisions 1 through 6 of this subsection. Such terms and conditions shall be incorporated into the source's federal operating permit in accordance with the provisions of the federal operating permit program, but no later than when the federal operating permit is renewed.

1. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this designation applies.

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~~2. If the effective date of the Clean Unit designation is not known when the board issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is known, then the owner shall notify the board of the exact date. This specific effective date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~3. If the expiration date of the Clean Unit designation is not known when the board issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is known, then the owner shall notify the board of the exact date. The expiration date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~4. All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to LAER, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER (e.g., possibly the emissions unit's capacity or throughput).~~

~~5. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation (see subsection I of this section).~~

~~6. Terms reflecting the owner's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection I of this section.~~

~~I. To maintain Clean Unit designation, the owner shall conform to all the restrictions listed in subdivisions 1 through 5 of this subsection. This subsection applies independently to each pollutant for which the board has designated the emissions unit a Clean Unit. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.~~

~~1. The Clean Unit shall comply with the emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to LAER.~~

~~2. The owner may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to LAER (e.g., possibly the emissions unit's capacity or throughput).~~

~~3. The Clean Unit may not emit above a level that has been offset.~~

~~4. The Clean Unit shall comply with any terms and conditions in the federal operating permit related to the unit's Clean Unit designation.~~

~~5. The Clean Unit shall continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.~~

~~J. Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase (i.e., shall not be used in a "netting analysis"), or be used for generating offsets unless such use occurs before the effective date of plan requirements adopted to implement this subsection or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~K. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost pursuant to 9 VAC 5-80-2141 B 3 and subdivision B 3 of this section, it shall requalify under the requirements that are currently applicable.~~

9 VAC 5-80-2143. Pollution control project (PCP) exclusion. (Reserved.)

~~A. Before an owner begins actual construction of a PCP, the owner shall either submit a notice to the board if the project is listed in subdivisions a through f of the definition of "pollution control project," or if the project is not listed in subdivisions a through f of the definition of "pollution control project," then the owner shall submit a permit application and obtain approval to use the PCP exclusion from the board consistent with the requirements in subsection E of this section. Regardless of whether the owner submits a notice or a permit application, the project shall meet the requirements in subsection B of this section, and the notice or permit application shall contain the information required in subsection C of this section.~~

~~B. Any project that relies on the PCP exclusion shall provide the following:~~

~~1. The environmental benefit from the emission reductions of pollutants regulated under the federal Clean Air Act shall outweigh the environmental detriment of emissions increases. A statement that a technology from subdivisions~~

~~a through f of the definition of "pollution control project" is being used shall be presumed to satisfy this requirement.~~

~~2. The emissions increases from the project shall not cause or contribute to a violation of any ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or have an adverse impact on an air quality related value (such as visibility) that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.~~

~~C. In the notice or permit application sent to the board, the owner shall include, at a minimum, the following information:~~

~~1. A description of the project.~~

~~2. The potential emissions increases and decreases of any pollutant regulated under the federal Clean Air Act and the projected emissions increases and decreases using the methodology in 9 VAC 5-80-2000-1, that will result from the project, and a copy of the environmentally beneficial analysis required by subdivision B 1 of this section.~~

~~3. A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in the federal operating permit program.~~

~~4. A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection B of this section, with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.~~

~~5. Demonstration that the PCP will not have an adverse air quality impact (e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise) as required by subdivision B 2 of this section. An air quality impact analysis is not required for any pollutant which will not experience a significant emissions increase as a result of the project.~~

~~D. For projects listed in subdivisions a through f of the definition of "pollution control project," the owner may begin actual construction of the project immediately after notice is sent to the board (unless otherwise prohibited under requirements of the applicable implementation plan). The owner shall respond to any requests by the board for additional information that the board determines is necessary to evaluate the suitability of the project for the PCP exclusion.~~

~~E. Before an owner begins actual construction of a PCP project that is not listed in subdivisions a through f of the definition of "pollution control project," the project shall be approved by the board and recorded in an NSR permit, state operating permit, or federal operating permit. The permit procedures must include the requirement that the board provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air~~

~~quality analysis, and provide at least a 30-day period for the public and the administrator to submit comments. The board will address all material comments received by the end of the comment period before taking final action on the permit.~~

~~F. Upon installation of the PCP, the owner shall comply with the following operational requirements:~~

~~1. The owner shall operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection B of this section, with information submitted in the notice or permit application required by subsection C of this section, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.~~

~~2. The owner shall maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the requirements of subdivision 1 of this subsection.~~

~~3. The owner shall comply with any provisions in the applicable permit related to use and approval of the PCP exclusion.~~

~~4. Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase, or be used for generating offsets, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (e.g., taking an operational restriction on the hours of operation). The owner may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

9 VAC 5-80-2144. Actuals plantwide applicability limits (PALs)

~~A. The board may approve the use of an actuals PAL for any existing major stationary source (except as provided in subdivision 1 of this subsection) if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.~~

~~1. No PAL shall be allowed for VOC or NO_x for any source located in an extreme ozone nonattainment area.~~

~~2. Any physical change in or change in the method of operation of a source that maintains its total sourcewide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:~~

~~a. Is not a major modification for the PAL pollutant;~~

~~b. Does not have to be approved through this article; and~~

~~c. Is not subject to the provisions in 9 VAC 5-80-2000 D (restrictions on relaxing enforceable emission limitations)~~

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that the major stationary source used to avoid applicability of the major NSR program).

3. Except as provided under subdivision 2 c of this subsection, a source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. As part of a permit application requesting a PAL, the owner of a major stationary source shall submit the following information to the board for approval:

1. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit.

2. Calculations of the baseline actual emissions, with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

3. The calculation procedures that the owner proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.

C. The general requirements set forth in this subsection shall apply to the establishment of PALs.

1. The board may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met:

a. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month rolling average). For each month during the first 11 months from the PAL effective date, the owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

b. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.

c. The PAL permit shall contain all the requirements of subsection F of this section.

d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant.

e. Each PAL shall regulate emissions of only one pollutant.

f. Each PAL shall have a PAL effective period of five years.

g. The owner shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections M through O of this section for each emissions unit under the PAL through the PAL effective period.

2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 9 VAC 5-80-2120 F through N unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

D. PALs for existing major stationary sources shall be established, renewed, or increased through the public participation procedures of 9 VAC 5-90-2070 prescribed in the applicable permit programs identified in the definition of PAL permit. ~~This includes the requirement that the board provide~~ In no case may the board issue a PAL permit unless the board provides the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The board will address all material comments before taking final action on the permit.

E. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant or under the federal Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. The same consecutive 24-month period shall be used for each different PAL pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances. Emissions associated with units that were permanently shutdown after this 24-month period shall be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period shall be added to the PAL level in an amount equal to the potential to emit of the units. The board will specify a reduced PAL level (in tons per year) in the PAL permit to become effective on the future compliance dates of any applicable federal or state regulatory requirements that the board is aware of prior to issuance of the PAL permit. For instance, if the source owner will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such units.

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable sourcewide emission limitation in tons per year.

2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

3. Specification in the PAL permit that if an owner applies to renew a PAL in accordance with subsection J of this section

before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the board, or until the board determines that the revised PAL permit will not be issued.

4. A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

5. A requirement that, once the PAL expires, the source is subject to the requirements of subsection I of this section.

6. The calculation procedures that the owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.

7. A requirement that the owner monitor all emissions units in accordance with the provisions under subsection M of this section.

8. A requirement to retain the records required under subsection N of this section on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subsection O of this section by the required deadlines.

10. Any other requirements that the board deems necessary to implement and enforce the PAL.

G. The PAL effective period shall be five years.

H. The requirements for reopening of a PAL permit set forth in this section shall apply to actuals PALs.

1. During the PAL effective period, the board will reopen the PAL permit to:

a. Correct typographical and calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

b. Reduce the PAL if the owner creates creditable emissions reductions for use as offsets under 9 VAC 5-80-2120 F through N; and

c. Revise the PAL to reflect an increase in the PAL as provided under subsection L of this section.

2. The board may reopen the PAL permit for any of the following reasons:

a. Reduce the PAL to reflect newly applicable federal requirements (e.g., NSPS) with compliance dates after the PAL effective date.

b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the board may impose on the major stationary source.

c. Reduce the PAL if the board determines that a reduction is necessary to avoid causing or contributing to a violation of an ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land

manager and for which information is available to the general public.

3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical and calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.

I. Any PAL which is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:

1. Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

a. Within the timeframe specified for PAL renewals in subsection J 2 of this section, the source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the board) by distributing the PAL allowable emissions for the source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection J 5 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The board will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the board determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The board may approve the use of monitoring systems (such as source testing or emission factors) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the board issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the source will be subject to the nonattainment major NSR requirements if such change meets the definition of "major modification."

5. The owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, or NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9 VAC 5-80-2000 D, but were eliminated by the PAL in accordance with the provisions in subdivision A 2 c of this section.

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J. The requirements for the renewal of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The board will follow the procedures specified in subsection D of this section in approving any request to renew a PAL, and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the board.

2. The owner shall submit a timely application to the board to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued, or until the board determines that the revised permit with the renewed PAL will not be issued, and a permit is issued pursuant to subsection I of this section.

3. The application to renew a PAL permit shall contain the following information:

- a. The information required in subsection B of this section.
- b. A proposed PAL level.
- c. The sum of the potential to emit of all emissions units under the PAL, with supporting documentation.
- d. Any other information the owner wishes the board to consider in determining the appropriate level for renewing the PAL.

K. The requirements for the adjustment of the PAL set forth in this subsection shall apply to actuals PALs. In determining whether and how to adjust the PAL, the board will consider the options outlined in subdivisions 1 and 2 of this subsection. However, in no case may any such adjustment fail to comply with subdivision 3 of this subsection.

1. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the board may renew the PAL at the same level without considering the factors set forth in subdivision 2 of this subsection; or

2. The board may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the board in its written rationale.

3. Notwithstanding subdivisions 1 and 2 of this subsection:

- a. If the potential to emit of the source is less than the PAL, the board will adjust the PAL to a level no greater than the potential to emit of the source; and

b. The board will not approve a renewed PAL level higher than the current PAL, unless the source has complied with the provisions for increasing a PAL under subsection L of this section.

4. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the board has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

L. The requirements for increasing a PAL during the PAL effective period set forth in this subsection shall apply to actuals PALs.

1. The board may increase a PAL emission limitation only if the owner of the major stationary source complies with the following provisions:

a. The owner shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the source's emissions to equal or exceed its PAL.

b. As part of this application, the owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding five years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.

c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 of this subsection, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the nonattainment major NSR program process (e.g., LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

3. The board will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance

with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.

M. The requirements for monitoring the PAL set forth in this subsection apply to actuals PALs.

1. The general requirements for monitoring a PAL set forth in this subdivision apply to actuals PALs.

a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subsection and must be approved by the board.

c. Notwithstanding subdivision 1 b of this subsection, the owner may also employ an alternative monitoring approach that meets subdivision 1 a of this subsection if approved by the board.

d. Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

2. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 3 through 9 of this subsection:

- a. Mass balance calculations for activities using coatings or solvents;
- b. CEMS;
- c. CPMS or PEMS; and
- d. Emission factors.

3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

- a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
- b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
- c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the

highest value of the range to calculate the PAL pollutant emissions unless the board determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

- a. CEMS shall comply with applicable performance specifications found in 40 CFR Part 60, appendix B; and
- b. CEMS shall sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

- a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and
- b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the board, while the emissions unit is operating.

6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

- a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
- b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
- c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the board determines that testing is not required.

7. The owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subdivisions 3 through 7 of this subsection, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the board will, at the time of permit issuance:

- a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or
- b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

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9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the board. Such testing shall occur at least once every five years after issuance of the PAL.

N. The requirements for recordkeeping in the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The PAL permit shall require the owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

2. The PAL permit shall require an owner to retain a copy of the following records for the duration of the PAL effective period plus five years:

- a. A copy of the PAL permit application and any applications for revisions to the PAL; and
- b. Each annual certification of compliance pursuant to the federal operating permit and the data relied on in certifying the compliance.

O. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the board in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the board within 30 days of the end of each reporting period. This report shall contain the following information:

- a. Identification of the owner and the permit number.
- b. Total annual emissions in tons per year based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision N 1 of this section.
- c. All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.
- d. A list of any emissions units modified or added to the source during the preceding six-month period.
- e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
- f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision M 7 of this section.
- g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

2. The owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 9 VAC 5-80-110 F 2 b shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 9 VAC 5-80-110 F 2 b. The reports shall contain the following information:

- a. Identification of the owner and the permit number;
- b. The PAL requirement that experienced the deviation or that was exceeded;
- c. Emissions resulting from the deviation or the exceedance; and
- d. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the board the results of any revalidation test or method within three months after completion of such test or method.

P. The board will not issue a PAL that does not comply with the requirements of this section after ~~the effective date of this revision~~ [~~February 22~~ September 1], 2006. The board may supersede any PAL that was established prior to ~~the effective date of this revision~~ [~~February 22~~ September 1], 2006, with a PAL that complies with the requirements of this section.

9 VAC 5-80-2180. Permit invalidation, suspension, revocation, and enforcement.

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction, ~~reconstruction~~ or modification is not commenced within ~~the latest of the following time frames:~~ 1. Eighteen 18 months from the date the permit is granted.

~~2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any government entity.~~

~~3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).~~

B. A permit granted pursuant to this article shall become invalid if a program of construction, ~~reconstruction~~ or modification is discontinued for a period of 18 months or more or if a program of construction, ~~reconstruction~~ or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase ~~must~~ shall commence construction within 18 months of the projected and approved commencement date.

C. The board may extend the periods prescribed in subsections A and B of this section upon satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted using the procedures for minor amendments in 9 VAC 5-80-2220.

D. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article, or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.

F. The board may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments thereto;
2. Fails to comply with the terms or conditions of the permit;
3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;
4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or
5. Fails to comply with the applicable provisions of this article.

G. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection F of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in Part V (9 VAC 5-170-120 et seq.) of 9 VAC 5 Chapter 170 and the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia).

J. The board shall will notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit or to render a permit invalid.

9 VAC 5-80-2200. Changes to permits.

A. The general requirements for making changes to permits issued under this article are as follows:

1. Except as provided in subdivision 3 of this subsection, changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9 VAC 5-80-2210 through 9 VAC 5-80-2240.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part shall be made as specified in Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part.

~~4. This section shall not be applicable to general permits. Under no circumstances may a permit issued under this article be changed in order to (i) incorporate the terms and conditions necessary to implement any provision of the new source review program for a project that qualifies as a modification under the new source review program or (ii) incorporate the terms and conditions necessary to implement any provision of the new source review program for a PAL permit.~~

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions changes can be found in 9 VAC 5-80-2210 through 9 VAC 5-80-2230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-2240.

9 VAC 5-80-2210. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity that does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-2170 have been fulfilled.

~~4. The combining of permits under the new source review program as provided in 9 VAC 5-80-2020 C.~~

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

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2. The board ~~shall~~ *will* incorporate the changes without providing notice to the public under 9 VAC 5-80-2070. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9 VAC 5-80-2220. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that *meet all of the following criteria*:

1. Do not violate any applicable federal requirement;
2. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements;
3. Do not require or change a case-by-case determination of an emission limitation or other standard;
4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include ~~:-a-~~ , but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program ~~or § 112 of the federal Clean Air Act; and~~

~~b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;~~

~~5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and~~

~~6-~~ 5. Are not required to be processed as a significant amendment under 9 VAC 5-80-2230 or as an administrative permit amendment under 9 VAC 5-80-2210.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that *meet any of the following criteria*:

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.
2. Require more frequent monitoring or reporting by the permittee ~~or to reduce the level of an emissions cap.~~
3. Designate any term or permit condition that meets the criteria in 9 VAC 5-80-2020 E 1 as state-only enforceable as provided in 9 VAC 5-80-2020 E 2 for any permit issued under this article or any regulation from which this article is derived.

~~C. Notwithstanding subsection A of this section,~~ Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the *underlying* statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable. *In order for the underlying statutory and regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated NSR pollutant.*

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.
2. A request that such procedures be used.

E. The public participation requirements of 9 VAC 5-80-2070 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.
2. Deny the permit amendment request.
3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.
2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.
3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

9 VAC 5-80-2230. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9 VAC 5-80-2220 or as administrative amendments under 9 VAC 5-80-2210.

2. Significant amendment procedures shall be used for those permit amendments that *meet any of the following criteria*:

a. Involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include ~~-(4)~~, *but are not limited to*, an emissions cap assumed to avoid classification as a modification under the new source review program ~~or § 112 of the federal Clean Air Act~~; and,

~~(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.~~

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at his discretion, include a suggested draft permit amendment.

C. The provisions of 9 VAC 5-80-2070 shall apply to requests made under this section.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required or if a public hearing is conducted under 9 VAC 5-80-2070.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9 VAC 5-80-2240. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The board determines that the permit must *shall* be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit

are not sufficient to meet all of the standards and requirements contained in this article.

~~4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.~~

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

VA.R. Doc. No. R03-181 and R04-189; Filed June 27, 2006, 3:48 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9 VAC 20-60. Virginia Hazardous Waste Management Regulations (amending 9 VAC 20-60-18).**

Statutory Authority: § 10.1-1402 and Article 4 (10.1-1426 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia; 42 USC § 6921 et seq.; and 40 CFR Parts 260-272.

Effective Date: August 23, 2006.

Agency Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327, or e-mail rgwickline@deq.virginia.gov.

Summary:

Hazardous Waste Management Regulations, 9 VAC 20-60, include requirements in the form of incorporated federal regulatory text at Title 40 of the Code of Federal Regulations. The federal regulatory text as it existed July 1, 2004, was specified as that incorporated. This amendment adopts a new date of July 1, 2006, thus making it the new date of reference of all incorporated federal regulatory text. The effective date of the incorporated text will be the effective date as published in the Federal Register notice or the effective date of this amendment, whichever is later.

9 VAC 20-60-18. Applicability of incorporated references based on the dates on which they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is adopted herein and

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incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the Federal Register prior to July 1, 2004 2006, with the effective date as published in the Federal Register notice or ~~September 8, 2004~~ August 23, 2006, whichever is later. *The final rules published in the Federal Register on June 20, 2006 (71 FR 35395), and June 21, 2006 (71 FR 35548), are not incorporated by reference as regulations of the board.*

VA.R. Doc. No. R06-289; Filed July 5, 2006, 11:47 a.m.

◆ ————— ◆

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 12 VAC 30-40. Eligibility Conditions and Requirements (amending 12 VAC 30-40-10, 12 VAC 30-40-290 and 12 VAC 30-40-300; adding 12 VAC 30-40-360).

12 VAC 30-110. Eligibility and Appeals (amending 12 VAC 30-110-710 and 12 VAC 30-110-960).

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

Effective Date: August 23, 2006.

Agency Contact: Cindy Olson, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4282, FAX (804) 786-1680, or e-mail cindy.olson@dmas.virginia.gov.

Summary:

The amendments bring Virginia into compliance with the Deficit Reduction Act of 2005 (the Act or the DRA) that mandates significant changes in Medicaid eligibility rules for receipt of Medicaid payment for long-term care services. States must comply with this new federal law in order to continue receiving federal financial participation for their Medicaid programs. The Act prohibits Medicaid payment of long-term care services when individuals transfer assets for less than fair market value within five years of their application for Medicaid. The disqualification period for payment of long-term care services will begin with the date the individual is both institutionalized and eligible for Medicaid. The Act makes individuals with more than \$500,000 in home equity ineligible for Medicaid long-term care benefits, unless the home is occupied by a spouse, or

a disabled or dependent child. The Act also counts as assets some previously exempt financial instruments such as annuities, promissory notes and mortgages, and considers a life estate purchased in another individual's home a countable asset unless the purchaser lives in the home for a period of 12 months. Further, the Act requires states to have a provision that allows individuals to claim an undue hardship when they have been denied eligibility for Medicaid payment of long-term care services due to an uncompensated transfer. The intent of the federal legislation that requires these regulatory changes is to ensure that individuals not gain Medicaid eligibility by inappropriately shielding substantial wealth.

12 VAC 30-40-10. General conditions of eligibility.

Each individual covered under the plan:

1. Is financially eligible (using the methods and standards described in Parts II and III of this chapter) to receive services.
2. Meets the applicable nonfinancial eligibility conditions.
 - a. For the categorically needy:
 - (i) Except as specified under items (ii) and (iii) below, for AFDC-related individuals, meets the nonfinancial eligibility conditions of the AFDC program.
 - (ii) For SSI-related individuals, meets the nonfinancial criteria of the SSI program or more restrictive SSI-related categorically needy criteria.
 - (iii) For financially eligible pregnant women, infants or children covered under § 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), and 1902(a)(10)(A)(ii)(IX) of the Act, meets the nonfinancial criteria of § 1902(l) of the Act.
 - (iv) For financially eligible aged and disabled individuals covered under § 1902(a)(10)(A)(ii)(X) of the Act, meets the nonfinancial criteria of § 1902(m) of the Act.
 - b. For the medically needy, meets the nonfinancial eligibility conditions of 42 CFR 435.
 - c. For financially eligible qualified Medicare beneficiaries covered under § 1902(a)(10)(E)(i) of the Act, meets the nonfinancial criteria of § 1905(p) of the Act.
 - d. For financially eligible qualified disabled and working individuals covered under § 1902(a)(10)(E)(ii) of the Act, meets the nonfinancial criteria of § 1905(s).
3. Is residing in the United States and:
 - a. Is a citizen; or
 - b. Is a qualified alien as defined under Public Law 104-193 who arrived in the United States prior to August 22, 1996;
 - c. Is a qualified alien as defined under Public Law 104-193 who arrived in the United States on or after August 22, 1996, and whose coverage is mandated by Public Law 104-193;

d. Is an alien who is not a qualified alien, or who is a qualified alien who arrived in the United States on or after August 22, 1996, whose coverage is not mandated by Public Law 104-193 (coverage must be restricted to certain emergency services).

4. Is a resident of the state, regardless of whether or not the individual maintains the residence permanently or maintains it a fixed address.

The state has open agreement(s).

5. Is not an inmate of a public institution. Public institutions do not include medical institutions, nursing facilities and intermediate care facilities for the mentally retarded, or publicly operated community residences that serve no more than 16 residents, or certain child care institutions.

6. Is required, as a condition of eligibility, to assign rights to medical support and to payments for medical care from any third party, to cooperate in obtaining such support and payments, and to cooperate in identifying and providing information to assist in pursuing any liable third party. The assignment of rights obtained from an applicant or recipient is effective only for services that are reimbursed by Medicaid. The requirements of 42 CFR 433.146 through 433.148 are met.

An applicant or recipient must also cooperate in establishing the paternity of any eligible child and in obtaining medical support and payments for himself or herself and any other person who is eligible for Medicaid and on whose behalf the individual can make an assignment; except that individuals described in § 1902(1)(1)(A) of the Social Security Act (pregnant women and women in the post-partum period) are exempt from these requirements involving paternity and obtaining support. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

An applicant or recipient must also cooperate in identifying any third party who may be liable to pay for care that is covered under the state plan and providing information to assist in pursuing these third parties. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

7. *a. Is required, as a condition of eligibility, to furnish his social security account number (or numbers, if he has more than one number) except for aliens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) of the Social Security Act (§ 1137(f)).*

b. Applicant or recipient is required, under § 1903(x) to furnish satisfactory documentary evidence of both identity and of U.S. citizenship upon signing the declaration of citizenship required by § 1137(d). Qualified aliens signing the declaration of satisfactory immigration status required by § 1137(d) must also present and have verified documents establishing the claimed immigration status under § 137(d). Exception: Nonqualified aliens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) as described in § 1137(f).

8. Is not required to apply for AFDC benefits under Title IV-A as a condition of applying for, or receiving Medicaid if the individual is a pregnant women, infant, or child that the state elects to cover under § 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Act.

9. Is not required, as an individual child or pregnant woman, to meet requirements under § 402(a)(43) of the Act to be in certain living arrangements. (Prior to terminating AFDC individuals who do not meet such requirements under a state's AFDC plan, the agency determines if they are otherwise eligible under the state's Medicaid plan.)

10. Is required to apply for enrollment in an employer-based cost-effective group health plan (as determined by the state agency), if such plan is available to the individual. Enrollment is a condition of eligibility except for the individual who is unable to enroll on his own behalf (failure of a parent to enroll a child does not affect a child's eligibility).

11. *(Reserved.)*

12. Is required, as a condition of eligibility for Medicaid payment of long-term care services, to disclose at the time of application for or renewal of Medicaid eligibility, a description of any interest the individual or his spouse has in an annuity (or similar financial instrument as may be specified by the Secretary of Health and Human Services). By virtue of the provision of medical assistance, the state shall become a remainder beneficiary for all annuities purchased on or after February 8, 2006.

13. Is ineligible for Medicaid payment of nursing facility or other long-term care services if the individual's equity interest in his home exceeds \$500,000. This dollar amount shall be increased beginning with 2011 from year to year based on the percentage increase in the Consumer Price Index for all Urban Consumers rounded to the nearest \$1,000.

This provision shall not apply if the individual's spouse, or the individual's child who is under age 21 or who is disabled, as defined in § 1614 of the Social Security Act, is lawfully residing in the individual's home.

12 VAC 30-40-290. More liberal methods of treating resources under § 1902(r)(2) of the Act: § 1902(f) states.

A. Resources to meet burial expenses. Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for individuals, disregarded from countable resources is an amount not in excess of \$3,500 for the individual and an amount not in excess of \$3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and

2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for

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the purpose of meeting the individual's or his spouse's burial expenses.

B. Cemetery plots. Cemetery plots are not counted as resources regardless of the number owned.

C. Life rights. Life rights to real property are not counted as a resource. *The purchase of a life right in another individual's home is subject to transfer of asset rules. See 12 VAC 30-40-300.*

D. Reasonable effort to sell.

1. For purposes of this section, "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

2. A reasonable effort to sell is considered to have been made:

a. As of the date the property becomes subject to a realtor's listing agreement if:

(1) It is listed at a price at current market value; and

(2) The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

b. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

c. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.

3. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

a. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

b. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in subdivision 2 c of this subsection for 12 months.

c. In the case of a recipient who has personally advertised his property for a year without success (the newspaper advertisements and "for sale" sign do not have to be continuous; these efforts must be done for at

least 90 days within a 12-month period), the recipient must then:

(1) Subject his property to a realtor's listing agreement at price or below current market value; or

(2) Meet the requirements of subdivision 2 b of this subsection which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

4. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.

5. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subdivision 2 of this subsection, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subdivision 3 of this subsection.

E. Automobiles. Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition (update monthly). In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

F. Life, retirement, and other related types of insurance policies. Life, retirement, and other related types of insurance policies with face values totaling \$1,500 or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person exceeds \$1,500, the cash surrender value of the policies is counted as a resource.

G. Resource exemption for Aid to Dependent Children categorically and medically needy (the Act §§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance may have or establish one interest-bearing savings or

investment account per assistance unit not to exceed \$5,000 if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, purposes related to self-sufficiency shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the medical assistance unit.

H. Disregard of resources. The Commonwealth of Virginia will disregard all resources for qualified children covered under §§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(ii)(VIII), and 1905(n) of the Social Security Act.

I. Household goods and personal effects. The Commonwealth of Virginia will disregard the value of household goods and personal effects. Household goods are items of personal property customarily found in the home and used in connection with the maintenance, use and occupancy of the premises as a home. Examples of household goods are furniture, appliances, televisions, carpets, cooking and eating utensils and dishes. Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to the individual. Examples of personal property include clothing, jewelry, personal care items, prosthetic devices and educational or recreational items such as books, musical instruments, or hobby materials.

J. Determining eligibility based on resources. When determining Medicaid eligibility, an individual shall be eligible in a month if his countable resources were at or below the resource standard on any day of such month.

12 VAC 30-40-300. Transfer of resources.

The agency provides for the denial of eligibility by reason of disposal of resources for less than fair market value. This section includes procedures applicable to all transfers of resources.

A. Except as noted below, the criteria for determining the period of ineligibility are the same as criteria specified in § 1613(c) of the Social Security Act (Act): Transfer of resources other than the home of an individual who is an inpatient in a medical institution.

1. The agency uses a procedure which provides for a total period of ineligibility greater than 24 months for individuals who have transferred resources for less than fair market value when the uncompensated value of disposed of resources exceeds \$12,000-00. This period bears a reasonable relationship to the uncompensated value of the transfer. The computation of the period and the reasonable relationship of this period to the uncompensated value is described as follows:

This transfer of resources rule includes the transfer of the former residence of an inpatient in a medical institution.

2. The agency has provisions for waiver of denial of eligibility in any instance where the State determines that a denial would work an undue hardship.

B. Other than those procedures specified elsewhere in this section, the procedures for implementing denial of eligibility by reason of disposal of resources for less than fair market value are as follows:

1. If the uncompensated value of the transfer is \$12,000 or less: the individual is ineligible for two years from the date of the transfer.

2. If the uncompensated value of the transfer is more than \$12,000: the individual is ineligible two years, plus an additional \geq two months for every \$1,000 or part thereof of uncompensated value over \$12,000, from the date of transfer.

C. Property Transfer. An applicant for or recipient of Medicaid is ineligible for Medicaid if he transferred or otherwise disposed of his legal equitable interest in real or personal property for less than fair market value. Transfer of property precludes eligibility for two years from the date of the transfer if the uncompensated value of the property was \$12,000 or less. If the uncompensated value was over \$12,000 an additional two months of ineligibility will be added for each \$1,000 of additional uncompensated value (see following Table). "Uncompensated value" means the current market value of the property, or equity in the property, at the time it was transferred, less the amount of compensation (money, goods, service, et cetera) received for the property.

Exceptions to this provision are:

1. When the transfer was not made with the intent of establishing or retaining eligibility for Medicaid or SSI. Any transfer shall be presumed to have been for the purposes of establishing or retaining eligibility for Medicaid or SSI unless the applicant/recipient furnishes convincing evidence to establish that the transfer was exclusively for some other purpose.

a. The applicant/recipient has the burden of establishing, by objective evidence of facts rather than statement of subjective intent, that the transfer was exclusively for another purpose.

b. Such evidence shall include evidence that adequate resources were available at the time of the transfer for the applicant/recipient's support and medical care including nursing home care, considering his or her age, state of health, and life expectancy.

c. The declaration of another purpose shall not be sufficient to overcome this presumption of intent.

d. The establishment of the fact that the applicant/recipient did not have specific knowledge of Medicaid or SSI eligibility policy is not sufficient to overcome the presumption of intent.

2. Retention of the property would have no effect on eligibility unless the property is a residence of an individual in a nursing home for a temporary period.

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3. When transfer of the property resulted in compensation (in money, goods, or services) to the applicant/recipient which approximated the equity value of the property.

4. When the receiver of the property has made payment on the cost of the applicant/recipient's medical care which approximates the equity value of the property.

5. When the property owner has been a victim of another person's actions, except those of a legal guardian, committee, or power-of-attorney, who obtained or disposed of the property without the applicant/recipient's full understanding of the action.

6. When prior to October 1, 1982, the Medicaid applicant transferred a prepaid burial account (plan) which was valued at less than \$1,500.00 for the purpose of retaining eligibility for SSI, and was found ineligible for Medicaid solely for that reason. The applicant, after reapplying, may be eligible regardless of the earlier transfer of a prepaid burial account if the applicant currently meets all other eligibility criteria.

7. When the property is transferred into an irrevocable trust designated solely for the burial of the transferor or his spouse. The amount transferred into the irrevocable burial trust, together with the face value of life insurance and any other irrevocable funeral arrangements, shall not exceed \$2,000 prior to July 1, 1988, and shall not exceed \$2,500 after July 1, 1988.

Uncompensated	Value of Property	Period of Ineligibility
0	\$12,000.00	24 months
12,000.01	\$13,000.00	26 months
13,000.01	\$14,000.00	28 months
14,000.01	\$15,000.00	30 months
15,000.01	\$16,000.00	32 months

For each additional \$1,000.00, add two months of ineligibility.

D. The preceding policy applies to eligibility determinations on and before June 30, 1988. The following policy applies to eligibility determinations on and after July 1, 1988.

1. The State plan provides for a period of ineligibility for nursing facility services, equivalent services in a medical institution, and home and community-based services in the case of an institutionalized individual (as defined in paragraph (3) of § 1917(c) who, disposed of resources for less than fair market value, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on that date) or, if the individual is not entitled on the date of institutionalization, the date the individual applies for assistance while an institutionalized individual.

a. ~~30~~ Thirty months; or

b. The total uncompensated value of the resources so transferred, divided by the average cost, to a private patient at the time of application, of nursing facility services in the State.

2. An individual shall not be ineligible for medical assistance by reason of paragraph 1- to the extent that:

a. The resources transferred were a home and title to the home was transferred to:

(1) The spouse of such individual;

(2) A child of such individual who is under age 21, or is blind or disabled as defined in § 1614 of the Social Security Act;

(3) A sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(4) A son or daughter of such individual (other than a child described in clause (2)) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual; and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

b. The resources were transferred to (or to another for sole benefit of) the community spouse as defined in § 1924(h)(2) of the Social Security Act, or to the individual's child who is under age 21, or is blind or disabled as defined in § 1614 of the Social Security Act.

c. A satisfactory showing is made to the State (in accordance with any regulations promulgated by the Secretary of United States Department of Health and Human Services) that:

(1) The individual intended to dispose of the resources either at fair market value, or for other valuable consideration. To show intent to receive adequate compensation, the individual must provide objective evidence that:

(a) For real property, the individual made an initial and continuing effort to sell the property according to the "reasonable effort to sell" provisions of the Virginia Medicaid State Plan;

(b) For real or personal property, the individual made a legally binding contract that provided for receipt of adequate compensation in a specified form (goods, services, money, etc.) in exchange for the transferred property;

(c) An irrevocable burial trust of \$2,500 or less was established on or after July 1, 1988 as compensation for the transferred money;

(d) An irrevocable burial trust over \$2500 was established on or after July 1, 1988, and the individual provides objective evidence to show that all funds in the trust are for identifiable funeral services; or

(2) The resources were transferred exclusively for a purpose other than to qualify for medical assistance;

the individual must provide objective evidence that the transfer was exclusively for another purpose and the reason for the transfer did not include possible or future Medicaid eligibility; or

(3) Consistent with 1917(c)(2)(D), an institutionalized spouse who (or whose spouse) transferred resources for less than fair market value shall not be found ineligible for nursing facility service, for a level of care in a medical institution equivalent to that of nursing facility services, or for home and community-based services where the state determines that denial of eligibility would work an undue hardship under the provision of § 1917(c)(2)(D) of the Social Security Act.

3. In this section, the term "institutionalized individual" means an individual who is an inpatient in a nursing facility, or who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in ~~section~~ § 1902 (a)(10)(A)(ii)(VI).

4. In this section, the individual's home is defined as the house and lot used as the principal residence and all contiguous property up to \$5,000.00.

E. Transfers and Trusts After August 10, 1993. The following policy applies to medical assistance provided for services furnished on or after October 1, 1993, with respect to assets disposed of after August 10, 1993, and ~~with respect before February 8, 2006.~~ *It also applies* to trusts established after August 10, 1993.

1. Definitions.

"Assets" means, with respect to an individual, all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action:

- a. By the individual or the individual's spouse;
- b. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
- c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"Income" has the meaning given such term in ~~section~~ § 1612 of the Social Security Act.

"Institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is described in ~~section~~ § 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

"Resources" has the meaning given such term in ~~section~~ § 1613 of the Social Security Act, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

2. Transfer of Assets Rule. An institutionalized individual who disposes of, or whose spouse disposes of, assets for less than fair market value on or after the look-back date specified in subdivision 2- b- shall be ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services and for home or community-based services furnished under a waiver granted under subsection (c) of § 1915 of the Social Security Act.

a. Period of Ineligibility. The ineligibility period shall begin on the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other period of ineligibility under this section. The ineligibility period shall be equal to but shall not exceed the number of months derived by dividing:

- (1) The total, cumulative uncompensated value of all assets transferred as defined in *subdivision E- 1- of this section* on or after the look-back date specified in *subdivision E- 2- b of this section* by
- (2) The average monthly cost to a private patient of nursing facility services in the Commonwealth at the time of application for medical assistance.

b. Look-Back Date. The look-back date is a date that is 36 months (or, 60 months in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to this section or Section 3-) before the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State Plan for Medical Assistance.

c. Exceptions. An individual shall not be ineligible for medical assistance by reason of this section to the extent that:

- (1) The assets transferred were a home and title to the home was transferred to:
 - (a) The spouse of the individual;
 - (b) A child of the individual who is under age 21, or is blind or disabled as defined in ~~section~~ § 1614 of the Social Security Act;
 - (c) A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of a least one year immediately before the date the individual becomes an institutionalized individual; or
 - (d) A son or daughter of the individual (other than a child described in clause (b)) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.

(2) The assets:

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(a) Were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse;

(b) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

(c) Were transferred to the individual's child who is under age 21 or who is disabled as defined in § 1614 of the Social Security Act, or to a trust (including a trust described in *subdivision 3- g- of this subsection*) established solely for the benefit of such child; or

(d) Were transferred to a trust (including a trust described in *subdivision 3- g- of this subsection*) established solely for the benefit of an individual under age 65 years of age who is disabled as defined in ~~section~~ § 1614(a)(3) of the Social Security Act.

(3) A satisfactory showing is made that:

(a) The individual intended to dispose of the assets either at fair market value, or for other valuable consideration; or

(b) The assets were transferred exclusively for a purpose other than to qualify for medical assistance; or

(c) All assets transferred for less than fair market value have been returned to the individual; or

(d) The Commonwealth determines that the denial of eligibility would work an undue hardship.

d. **Assets Held In Common With Another Person.** In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or other arrangement recognized under State law, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

e. **Transfers by Both Spouses.** In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance, the Commonwealth shall apportion the period of ineligibility (or any portion of the period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State Plan.

3. **For Trust(s) Created After August 10, 1993.** For purposes of determining an individual's eligibility for, or amount of, medical assistance benefits, subject to *subdivision 3- g- of this subsection*, these rules shall apply.

a. **Trust(s) Defined.** The term "trust" includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the United States Secretary of Health and Human Services specifies for purposes of administration of § 1917(c) or (d) of the Social Security Act.

b. **Creation of Trust(s) Defined.** For purposes of this subsection, an individual shall be considered to have established a trust(s) if assets of the individual were used to form all or part of the corpus of the trust(s) and if any of the following individuals established the trust(s) other than by will:

(1) The individual;

(2) The individual's spouse;

(3) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse;

(4) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

c. **Proportional Interest In Trust(s).** In the case of a trust(s) the corpus of which includes assets of an individual (as determined under *subdivision 3- b- of this subsection*) and assets of any other person or persons, the provision of this section shall apply to the portion of the trust(s) attributable to the assets of the individual.

d. **Trust(s) Affected.** Subject to *subdivision 3- g- of this subsection*, this section shall apply without regard to:

(1) The purposes for which a trust(s) is established;

(2) Whether the trustee(s) has or exercises any discretion under the trust(s);

(3) Any restrictions on when or whether distributions may be made from the trust(s); or

(4) Any restrictions on the use of distributions from the trust(s).

e. **Revocable Trust(s).** In the case of a revocable trust(s),

(1) The corpus of the trust(s) shall be considered resources available to the individual;

(2) Payments from the trust(s) to or for the benefit of the individual shall be considered income of the individual; and

(3) Any other payments from the trust(s) shall be considered assets disposed of by the individual for the purposes of *subdivision E- 2 of this section*.

f. **Irrevocable Trust(s).** In the case of irrevocable trust(s),

(1) If there are any circumstances under which payment from the trust(s) could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income:

(a) To or for the benefit of the individual, shall be considered income of the individual; and

(b) For any other purpose, shall be considered a transfer of assets by the individual subject to E- 2, of *this section*; and

(2) Any portion of the trust(s) from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust(s) (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of *subdivision E- 2- of this section*, and the value of the trust(s) shall be determined for purposes of such section by including the amount of any payments made from such portion of the trust(s) after such date.

g. Exceptions. This section shall not apply to any of the following trust(s):

(1) A trust(s) containing the assets of an individual under age 65 who is disabled (as defined in section 1614(a)(3) of the Social Security Act) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual or a court if the Commonwealth will receive all amounts remaining in the trust(s) upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under this State Plan.

(2) A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3) of the Social Security Act) that meets all of the following conditions:

(a) The trust(s) is established and managed by a non-profit association.

(b) A separate account is maintained for each beneficiary of the trust(s), but, for purposes of investment and management of funds, the trust(s) pools these accounts.

(c) Accounts in the trust(s) are established solely for the benefit of individuals who are disabled (as defined in section 1614(a)(3) of the Social Security Act) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(d) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust(s), the trust(s) pays to the Commonwealth from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under this State Plan.

F. Transfers made on or after February 8, 2006. The following policy applies to medical assistance provided for services furnished on or after February 8, 2006, with respect to assets disposed of on or after February 8, 2006.

1. Definitions.

"Assets" means, with respect to an individual, all income and resources of the individual and of the individual's spouse, including any income or resources that the individual or the individual's spouse is entitled to but does not receive because of action:

a. By the individual or the individual's spouse;

b. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

The term "assets" includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least one year after the date of the purchase. The term "assets" also includes funds used to purchase a promissory note, loan or mortgage unless such note, loan or mortgage:

a. Has a repayment term that is actuarially sound (determined in accordance with actuarial publications of the Social Security Administration);

b. Provides for payments to be made in equal amounts during the term of the loan with no deferral and no balloon payments made; and

c. Prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan or mortgage that does not satisfy the requirements of subdivisions a through c of this definition, the value of such note, loan or mortgage shall be the outstanding balance due as of the date of the individual's application for medical assistance.

"Income" has the meaning given such term in § 1612 of the Social Security Act.

"Institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is described in § 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

"Resources" has the meaning given such term in § 1613 of the Social Security Act, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

2. Transfer of Assets Rule. An institutionalized individual who disposes of, or whose spouse disposes of, assets for less than fair market value on or after the look-back date specified in subdivision 2 b of this subsection shall be ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services and for home or community-based services furnished under a waiver granted under subsection (c) of § 1915 of the Social Security Act.

a. Period of Ineligibility. The ineligibility period shall begin on the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the state plan and would otherwise be receiving Medicaid-covered institutional level care based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur in any other period of ineligibility

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under this section. The ineligibility period shall be equal to but shall not exceed the number of months, including any fractional portion of a month, derived by dividing:

(1) The total, cumulative uncompensated value of all assets transferred as defined in subdivision 1 of this subsection on or after the look-back date specified in subdivision 2 b of this subsection by:

(2) The average monthly cost to a private patient of nursing facility services in the Commonwealth at the time of application for medical assistance.

b. *Look-Back Date.* The look-back date is a date that is 60 months before the first date the individual is both an institutionalized individual and has applied for medical assistance under the State Plan for Medical Assistance.

c. *Exceptions.* An individual shall not be ineligible for medical assistance by reason of this section to the extent that:

(1) The assets transferred were a home and title to the home was transferred to:

(a) The spouse of the individual;

(b) A child of the individual who is under age 21, or is blind or disabled as defined in § 1614 of the Social Security Act;

(c) A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of a least one year immediately before the date the individual becomes an institutionalized individual; or

(d) A son or daughter of the individual (other than a child described in clause (b)) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who provided care to the individual that permitted the individual to reside at home rather than in an institution or facility.

(2) The assets:

(a) Were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse;

(b) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

(c) Were transferred to the individual's child who is under age 21 or who is disabled as defined in § 1614 of the Social Security Act, or to a trust (including a trust described in subdivision E 3 g of this section) established solely for the benefit of such child; or

(d) Were transferred to a trust (including a trust described in subdivision E 3 g of this section) established solely for the benefit of an individual under age 65 years of age who is disabled as defined in § 1614(a)(3) of the Social Security Act.

(3) A satisfactory showing is made that:

(a) The individual intended to dispose of the assets either at fair market value, or for other valuable consideration; or

(b) The assets were transferred exclusively for a purpose other than to qualify for medical assistance; or

(c) All assets transferred for less than fair market value have been returned to the individual; or

(d) The Commonwealth determines that the denial of eligibility would work an undue hardship.

d. *Assets Held In Common With Another Person.* In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or other arrangement recognized under state law, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

e. *Transfers by Both Spouses.* In the case of a transfer by the spouse of an individual that results in a period of ineligibility for medical assistance, the Commonwealth shall apportion the period of ineligibility (or any portion of the period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State Plan.

3. *Annuities:* The following shall govern annuities:

a. For purposes of this section, the purchase of an annuity by the institutionalized spouse or the community spouse will be treated as the disposal of an asset for less than fair market value unless:

(1) The state is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or

(2) The state is named as a remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any remainder for less than fair market value.

b. The purchase of annuity by or on behalf of an annuitant who has applied for medical assistance for long-term care services will be considered a transfer of assets for less than fair market value unless:

(1) The annuity is described in subsection (b), individual retirement annuities, or (q), deemed IRAs under qualified employer plans, of § 408 of the Internal Revenue Code of 1986; or

(2) Purchased with the proceeds from:

(a) An account or trust described in subsection (a), individual retirement account, (c), accounts established by employers and certain associations of employees, or (p), simple retirement accounts, of § 408 of such Code;

(b) A simplified employee pension (within the meaning of § 408(k) of such Code; or

(c) A Roth IRA described in § 408A of such Code; or

(3) The annuity is:

(a) Irrevocable and nonassignable;

(b) Is actuarially sound (as determined by Social Security Administration publications); and

(c) Provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.

12 VAC 30-40-360. Treatment of entrance fees of individuals residing in continuing care retirement communities.

When determining eligibility for medical assistance, an individual's entrance fee in a continuing care retirement community or life care community that collects an entrance fee on admission from such individuals shall be considered a resource available to the individual to the extent that:

1. The individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;

2. The individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

3. The entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

12 VAC 30-110-710. Undue hardship; transfer of resources.

A. Undue hardship exists when the department determines that the application of the transfer of assets provisions would deprive the individual of medical care such that his health or his life would be endangered or would deprive the individual of food, clothing, shelter or other necessities of life.

B. When determining the eligibility of an applicant, in cases where the state determines that denial of eligibility would work an undue hardship individual who has transferred resources without receiving adequate compensation, the individual must be notified:

1. That an undue hardship can be claimed, the process for seeking an exception from the transfer of assets provisions and the time frame making determinations of whether an undue hardship exists;

~~1. The individual must provide~~ a. That written documentation must be provided to substantiate the circumstances of the transfer and the claim of undue hardship.

~~2. The individual must provide~~ b. That written documentation must be provided to document that the

resources transferred without adequate compensation cannot be recovered.

~~3. The individual must provide~~ c. That written documentation must clearly substantiate the immediate adverse impact of the denial of Medicaid coverage of ~~nursing facility long-term care~~ services due to the uncompensated transfer ~~4. Undue hardship means denial of Medicaid eligibility and would result in the individual being removed from the institution and or unable to purchase~~ receive life sustaining medical care, food, clothing, shelter or other necessities of life.

2. That a denial of a claim for undue hardship may be appealed in accordance with the provisions of 12 VAC 30-110.

C. A hardship waiver may be requested by:

1. The applicant for, or recipient of, medical assistance services;

2. The applicant or recipient's spouse, legal guardian, power-of-attorney or person who has been authorized in writing by the applicant or recipient to act on his behalf; or

3. With the written consent of the individual or his personal representative, the nursing facility in which the institutionalized individual is residing.

12 VAC 30-110-960. Community spouse income allowance.

A. Unless the exceptions in subsections B and C of this section apply, a community spouse monthly income allowance shall be deducted from the monthly income of the institutionalized spouse. The community spouse monthly income allowance shall be the amount by which the greater of:

1. The community spouse monthly maintenance needs standard plus the excess shelter allowance, if any; or

2. An amount determined necessary by a department hearing officer because of exceptional circumstances resulting in extreme financial duress;

exceeds the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

B. A community spouse monthly income allowance shall not be deducted from the income of the institutionalized spouse when the institutionalized spouse does not actually make an income allowance available to the community spouse.

C. If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

D. Application of "Income First" Rule to Revision of Community Spouse Resource Allowance. All income of the institutionalized spouse that could be made available to a community spouse, in accordance with the calculation of the community spouse monthly income allowance, must be made available before an amount of resources adequate to provide the difference between the minimum monthly maintenance

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needs allowance and all income available to the community spouse is allocated to the community spouse.

VA.R. Doc. No. R06-288; Filed July 5, 2006, 11:31 a.m.

Titles of Regulations: **Smiles for Children.**

12 VAC 30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-190).

12 VAC 30-120. Waivered Services (amending 12 VAC 30-120-380).

12 VAC 30-141. Family Access to Medical Insurance Security Plan (amending 12 VAC 30-141-200 and 12 VAC 30-141-500).

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

Effective Date: August 23, 2006.

Agency Contact: Sandra Brown, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-1567, FAX (804) 786-1680, or e-mail sandra.brown@dmas.virginia.gov.

Summary:

The amendments create a new dental program for Medicaid and FAMIS enrollees, known as Smiles for Children. The first component carves dental services for children out of managed care in both Medicaid and FAMIS, making all dental services reimbursed on a fee-for-service basis. The second component reshapes the prior authorization regimen for dental services in order to bring the Medicaid and FAMIS dental prior authorization system more in line with commercial insurance.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12 VAC 30-50-190. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

~~B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; dental sealants; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.~~

~~C. All covered dental services not referenced above B. Certain dental services as described in the agency's Office Reference Manual (*Smiles for Children*, copyright 2005), prepared by DMAS' dental benefits administrator, require preauthorization or prepayment review by the state agency or its designee. The following services are also covered through preauthorization: medically necessary full banded orthodontics, for handicapping malocclusions, minor tooth guidance or repositioning appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges. The following service is not covered: routine bases under restorations and inhalation analgesia.~~

~~D. C. The state agency may place appropriate limits on a service based on medical necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray - two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once /five years); extractions, orthodontics, tooth guidance appliances, permanent crowns and bridges, endodontics, patient education and sealants (once).~~

~~E. D. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization or prepayment review by the state agency or its designee as described in the agency's Office Reference Manual located on the DMAS website at:~~

~~(http://www.dmas.virginia.gov/downloads/pdfs/dental-office_reference_manual_06-09-05.pdf).~~

DOCUMENTS INCORPORATED BY REFERENCE

Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R).

Length of Stay by Diagnosis and Operation, Southern Region, 1996, HCIA, Inc.

Guidelines for Perinatal Care, 4th Edition, August 1997, American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

Office Reference Manual (Smiles for Children), prepared by DMAS' Dental Benefits Administrator, copyright 2005 (www.dmas.virginia.gov/downloads/pdfs/dental-office_reference_manual_06-09-05.pdf).

12 VAC 30-120-380. Medallion II MCO responsibilities.

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the emergency departments.

2. Services that shall be provided outside the MCO network shall include those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include *dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12 VAC 30-50-190), school health services (as defined in 12 VAC 30-120-360) and community mental health services (rehabilitative, targeted case management and substance abuse services).*

3. The MCOs shall pay for emergency services and family planning services and supplies whether they are provided inside or outside the MCO network.

B. EPSDT services shall be covered by the MCO. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for clients, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding enrollee rights and shall comply with any applicable federal and state laws that pertain to enrollee rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to enrollees in accordance with 42 CFR 438.100.

E. The MCO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the state and the contractor. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the enrollee's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria

for authorization decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on enrollees except as set forth in 12 VAC 30-20-150 and 12 VAC 30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of an enrollee who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about the service it does not cover in accordance with 42 CFR 438.102.

12 VAC 30-141-200. Benefit packages.

A. The Commonwealth's Title XXI State Plan utilizes two benefit packages within FAMIS as set forth in the FAMIS State Plan, as may be amended from time to time. One package is a modified Medicaid look-alike component offered through a fee-for-service program and a primary care case management (PCCM) program; the other package is modeled after the state employee health plan and delivered by contracted ~~MCHIPs~~ *managed care entities. Services directly reimbursed by DMAS include dental and orthodontic services for children up to age 19, school health services, and community mental health rehabilitative services.*

B. The Medicaid look-alike plan is also used as a benchmark for the ESHI of FAMIS.

12 VAC 30-141-500. Benefits reimbursement.

A. Reimbursement for the services covered under FAMIS fee-for-service and PCCM and MCHIPs shall be as specified in this section.

B. Reimbursement for physician services, surgical services, clinic services, prescription drugs, laboratory and radiological services, outpatient mental health services, early intervention services, emergency services, home health services, immunizations, mammograms, medical transportation, organ transplants, skilled nursing services, well baby and well child care, vision services, durable medical equipment, disposable medical supplies, dental services, case management services, physical therapy/occupational therapy/speech-language therapy services, hospice services, school-based health services, and certain community-based mental health services shall be based on the Title XIX rates.

C. Reimbursement to MCHIPs shall be determined on the basis of the estimated cost of providing the MCHIP benefit package and services to an actuarially equivalent population. MCHIP rates will be determined annually and published 30 days prior to the effective date.

D. Exceptions.

1. Prior authorization is required after five visits in a fiscal year for physical therapy, occupational therapy and speech therapy provided by home health providers and outpatient rehabilitation facilities and for home health skilled nursing

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visits. Prior authorization is required after 26 visits for outpatient mental health visits in the first year of service and prior authorization is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging, including Magnetic Resonance Angiography (MRA), Computerized Axial Tomography (CAT) scans, including Computed Tomography Angiography (CTA), or Positron Emission Tomography (PET) scans performed for the purpose of diagnosing a disease process or physical injury. *Prior authorization for dental services will be based on the Title XIX prior authorization requirements for dental services.*

2. Reimbursement for inpatient hospital services will be based on the Title XIX rates in effect for each hospital. Reimbursement shall not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made shall be final and there shall be no retrospective cost settlements.

3. Reimbursement for outpatient hospital services shall be based on the Title XIX rates in effect for each hospital. Payments made will be final and there will be no retrospective cost settlements.

4. Reimbursement for inpatient mental health services other than by free standing psychiatric hospitals will be based on the Title XIX rates in effect for each hospital. Reimbursement will not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made will be final and there will be no retrospective cost settlements.

5. Reimbursement for outpatient rehabilitation services will be based on the Title XIX rates in effect for each rehabilitation agency. Payments made will be final and there will be no retrospective cost settlements.

6. Reimbursement for outpatient substance abuse treatment services will be based on rates determined by DMAS for children ages 6 through 18. Payments made will be final and there will be no retrospective cost settlements.

7. Reimbursement for prescription drugs will be based on the Title XIX rates in effect. Reimbursements for Title XXI do not receive drug rebates as under Title XIX.

8. Reimbursement for covered prescription drugs for noninstitutionalized FAMIS recipients receiving the fee-for-service or PCCM benefits will be subject to review and prior authorization when their current number of prescriptions exceeds nine unique prescriptions within 180 days, and as may be further defined by the agency's guidance documents for pharmacy utilization review and the prior authorization program. The prior authorization process shall be applied consistent with the process set forth in 12 VAC 30-50-210 A 7.

VA.R. Doc. Nos. R05-196 and R05-248; Filed July 5, 2006, 11:33 a.m.

Title of Regulation: 12 VAC 30-70. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Services (amending 12 VAC 30-70-291).

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

Effective Date: August 23, 2006.

Agency Contact: Carla Russell, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4586, FAX (804) 786-1680, or e-mail carla.russell@dmas.virginia.gov.

Summary:

This regulatory action combines two previous emergency regulatory changes mandated through the 2004 and 2005 Appropriation Acts for the Medicaid Indirect Medical Education (IME) payment methodology. The amendments implement a new supplemental IME payment for hospitals with Medicaid neonatal intensive care unit (NICU) utilization greater than 50% or with Medicaid NICU days in excess of 4,500.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12 VAC 30-70-291. Payment for indirect medical education costs.

A. Hospitals shall be eligible to receive payments for indirect medical education. These payments recognize the increased use of ancillary services associated with the educational process and the higher case-mix intensity of teaching hospitals. The payments for indirect medical education shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end.

B. Final payment for IME shall be determined as follows:

1. Type One hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows:

IME Percentage for Type One Hospitals = $[1.89 \times ((1 + r)^{0.405} - 1)] \times$ (IME Factor)

An IME factor shall be calculated for each Type One hospital and shall equal a factor that, when used in the calculation of the IME percentage, shall cause the resulting IME payments to equal what the IME payments would be with an IME factor of one, plus an amount equal to the difference between operating payments using the adjustment factor specified in subdivision B 1 of 12 VAC 30-70-331 and operating payments using an adjustment factor of one in place of the adjustment factor specified in subdivision B 1 of 12 VAC 30-70-331.

2. Type Two hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows:

IME Percentage for Type Two Hospitals = $[1.89 \times ((1 + r)^{0.405} - 1)] \times 0.5695$

In both equations, r is the ratio of full-time equivalent residents to staffed beds, excluding nursery beds. The IME payment shall be calculated each year using the most recent reliable data regarding the number of full-time equivalent residents and the number of staffed beds, excluding nursery beds.

C. An additional IME payment shall be made for inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers. This payment shall be equal to the hospital's hospital specific operating rate per case, as determined in 12 VAC 30-70-311, times the hospital's HMO paid discharges times the hospital's IME percentage, as determined in subsection B of this section.

D. An additional IME payment not to exceed \$1.5 million in total shall be apportioned among Type Two Hospitals with Medicaid NICU utilization in excess of 50% as reported to the Department of Medical Assistance Services as of March 1, 2004. These payments shall be apportioned based on each eligible hospital's percentage of Medicaid NICU patient days relative to the total of these days among eligible hospitals as reported by March 1, 2004.

E. An additional IME payment not to exceed \$500,000 in total shall be apportioned among Type Two Hospitals with Medicaid NICU days in excess of 4,500 as reported to the Department of Medical Assistance Services as of March 1, 2005, that do not otherwise receive an additional IME payment under subsection D of this section. These payments shall be apportioned based on each eligible hospital's percentage of Medicaid NICU patient days relative to the total of these days among eligible hospitals as reported by March 1, 2005.

VA.R. Doc. Nos. R05-194 and R05-250; Filed July 5, 2006, 11:35 a.m.

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Titles of Regulations: 12 VAC 30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12 VAC 30-70-425; repealing 12 VAC 30-70-426).

12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-20 and 12 VAC 30-80-30).

12 VAC 30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12 VAC 30-90-19).

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

Effective Date: August 23, 2006.

Agency Contact: William Lessard, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680, or e-mail william.lessard@dmas.virginia.gov.

Summary:

The regulations discontinue supplemental payments made to state hospitals for inpatient and outpatient services, state clinics and nonstate public hospitals for outpatient services; and modify the payments made to nonstate public hospitals for inpatient services, nonstate public clinics for outpatient services, and nonstate public nursing homes. The changes have been effective since July 2005 under the emergency regulations.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12 VAC 30-70-425. Supplemental payments to Certified public expenditures for nonstate government-owned hospitals for inpatient services.

A. ~~DMAS shall provide lump sum supplemental payments to participating nonstate government-owned hospitals for furnished inpatient services provided to Medicaid patients on or after December 16, 2001. The supplemental payments are made from a pool of funds, the amount of which is the difference between the Medicaid payments otherwise made to all nonstate government-owned hospitals for services to Medicaid patients and the maximum amount allowable under applicable federal regulations in accordance with 42 CFR 447.272. A participating hospital is one with respect to which a transfer agreement has been made and implemented. In addition to payments made elsewhere, effective July 1, 2005, DMAS shall draw down federal funds to cover unreimbursed Medicaid costs for inpatient services provided by nonstate government-owned hospitals as certified by the provider through cost reports.~~

B. A nonstate government-owned hospital is owned or operated by a unit of government other than a state. The payment amount for a participating hospital is the hospital's proportionate share of the established pool of funds determined by dividing the hospital's Medicaid days provided during the most recent fiscal year by the total Medicaid days provided by all participating nonstate government-owned hospitals for the same fiscal year.

C. A payment made to a hospital under this provision when combined with other payments made under the State Plan shall not exceed the limit specified in 42 CFR 447.271 or the limit specified in 42 USC § 1396r-4(g). Any amount not included in a payment because of the operation of the preceding sentence shall be distributed to other participating hospitals in the same manner and subject to the same limitations as set forth above.

D. For the period from December 16, 2001, through May 13, 2002, aggregate payments to nonstate government-owned hospitals shall not exceed 150% of a reasonable estimate of the amount that would be paid for the services furnished by these hospitals under Medicare payment principles. For the period beginning May 14, 2002, aggregate payments to these hospitals shall not exceed 100% of a reasonable estimate of the amount that would be paid for the services furnished by these hospitals under Medicare payment principles.

E. To determine the reasonable estimate of the amount that would be payable under Medicare payment principles, a hospital-specific per diem will be determined by dividing all inpatient hospital costs for acute, psychiatric and rehabilitation services by the total number of patient days. The hospital-specific per diem will be multiplied by the hospital's Medicaid bed days. The reasonable estimate will be the sum of the calculations for all hospitals. The calculation will use data from the last settled cost report for all nonstate government owned hospitals at the beginning of the state fiscal year for which calculations are made. However, for state fiscal year 2002, only data from the last settled cost report at

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~~the beginning of state fiscal year 2003 will be used. Charges and Medicaid payments will be trended forward using the Virginia-specific DRI hospital inflation factors. Medicare payments will be trended forward using CMS Medicare inflators. Additional adjustments will be made for any statutory changes in Medicare or Medicaid payments. The most recently available Medicaid DSH data will be used.~~

~~12 VAC 30-70-426. Supplemental payments to state government-owned hospitals for inpatient services. (Repealed.)~~

~~A. In addition to payments for inpatient hospital services provided for elsewhere in this State Plan, DMAS makes supplemental payments to state government-owned or operated hospitals for services provided to Medicaid patients on or after July 2, 2002. To qualify for a supplemental payment, the hospital must be part of a state academic health system or part of an academic health system that operates under a state authority.~~

~~B. The amount of the supplemental payment made to each qualifying state government-owned or operated hospital is determined by:~~

- ~~1. Calculating for each hospital the annual difference between the upper payment limit attributed to each qualifying hospital calculated according to subsection D of this section and the amount otherwise actually paid for the services by the Medicaid program;~~
- ~~2. Dividing the difference determined in subdivision 1 of this subsection for each qualifying hospital by the aggregate difference for all such qualifying hospitals; and~~
- ~~3. Multiplying the proportion determined in subdivision 2 of this subsection by the aggregate upper payment limit amount for all such hospitals as determined in accordance with 42 CFR 447.272 less all payments made to such hospitals other than under this section.~~

~~C. Payments under this section may be made in one or more installments at such time, within the fiscal year or thereafter, as is determined by DMAS.~~

~~D. To determine the aggregate upper payment limit amount as referred to in subdivision B 3 of this section, the following methodology will be used. For cost-reimbursed hospitals, the upper payment limit is costs. By definition, cost-reimbursed hospitals have no net impact on the upper payment limit and will be excluded from the calculation. For Medicaid DRG-reimbursed hospitals, a ratio will be calculated for each hospital by dividing its Medicare payments by Medicare charges. This Medicare payment to charge ratio will be multiplied by Medicaid charges for each DRG-reimbursed hospital. The upper payment limit will be the sum of the product of that multiplication for all DRG-reimbursed hospitals. The calculation will use data from the last settled cost report for all state government-owned hospitals at the beginning of the state fiscal year for which calculations are made. Charges will be trended forward using hospital-specific data if available. If not available, charges will be trended forward using the Virginia-specific DRI hospital inflation factors. Additional adjustments will be made for any program changes in~~

~~Medicare or Medicaid payments. The most recently available data on Medicaid DSH payments will be used.~~

12 VAC 30-80-20. Services that are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 2 d. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;
4. Schedules that reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Depreciation schedule or summary;
6. Home office cost report, if applicable; and
7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals.
2. Outpatient hospital services excluding laboratory.
 - a. Definitions. The following words and terms when used in this regulation shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with

the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments that DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 2 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 2 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

c. Limitation to 80% of allowable cost. Effective for services on and after July 1, 2003, reimbursement of Type Two hospitals for outpatient services shall be at 80% of allowable cost, with cost to be determined as provided in subsections A, B, and C of this section. For hospitals with fiscal years that do not begin on July 1, 2003, outpatient costs, both operating and capital, for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date, based on the number of calendar months in the cost reporting period, falling before and after that date. Operating costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Capital costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Operating and capital costs of Type One hospitals shall continue to be reimbursed at 94.2% and 90% of cost respectively.

d. Outpatient reimbursement methodology prior to July 1, 2003. DMAS shall continue to reimburse for outpatient hospital services, with the exception of direct graduate medical education for interns and residents, at 100% of reasonable costs less a 10% reduction for allowable capital costs and a 5.8% reduction for allowable operating costs. This methodology shall continue to be in effect after July 1, 2003, for Type One hospitals.

e. Payment for direct medical education costs of nursing schools, paramedical programs and graduate medical education for interns and residents.

(1) Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

(2) Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis. See 12 VAC 30-70-281 for prospective payment methodology for graduate medical education for interns and residents.

3. Rehabilitation agencies operated by community services boards. For reimbursement methodology applicable to other rehabilitation agencies, see 12 VAC 30-80-200. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the NF or any other available source, and provided further, that this amendment

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shall in no way diminish any obligation of the NF to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

4. Comprehensive outpatient rehabilitation facilities.
5. Rehabilitation hospital outpatient services.
6. Supplemental payments to nonstate government-owned hospitals for outpatient services.

a. ~~The department provides lump sum supplemental payments to participating nonstate government-owned hospitals for furnished outpatient services provided to Medicaid patients on or after December 16, 2001. The supplemental payments are made from a pool of funds, the amount of which is the difference between the Medicaid payments otherwise made to all nonstate government-owned hospitals for outpatient services to Medicaid patients and the maximum amount allowable under applicable federal regulations at 42 CFR 447.321. A participating hospital is one with respect to which a transfer agreement has been made and implemented.~~

b. ~~A nonstate government owned hospital is owned or operated by a unit of government other than a state. The payment amount for a participating hospital is the hospital's proportionate share of the established pool of funds determined by dividing the hospital's payments for outpatient services provided to Medicaid patients during the most recent fiscal year by the total payments for outpatient services to Medicaid patients provided by all participating nonstate government-owned hospitals for the same fiscal year.~~

c. ~~A payment made to a hospital under this provision when combined with other payments made under the State Plan shall not exceed the limit specified in 42 USC § 1396r-4(g). Any amount not included in a payment because of the operation of the preceding sentence shall be distributed to other participating hospitals in the same manner and subject to the same limitations as set forth above.~~

d. ~~For the period from December 16, 2001, through May 13, 2002, aggregate payments to nonstate government-owned hospitals shall not exceed 150% of a reasonable estimate of the amount that would be paid for the services furnished by these hospitals under Medicare payment principles. For the period beginning May 14, 2002, aggregate payments to these hospitals shall not exceed 100% of a reasonable estimate of the amount that would be paid for the services furnished by these hospitals under Medicare payment principles.~~

e. ~~To determine the reasonable estimate of the amount that would be paid under Medicare payment principles, each hospital's outpatient cost to charge ratio will be calculated and applied to its Medicaid outpatient charges. The reasonable estimate will be the sum of the calculations for all hospitals. The calculation will use data from the last settled cost report for all nonstate government-owned hospitals at the beginning of the state fiscal year for which calculations are made. However, for state fiscal year 2002, only data from the last settled cost~~

~~report at the beginning of state fiscal year 2003 will be used. Charges and Medicaid payments will be trended forward using the Virginia-specific DRI hospital inflation factors. Additional adjustments will be made for any statutory changes in Medicare or Medicaid payments. The most recently available data on Medicaid DSH payments will be used.~~

7. Supplemental payments to state government-owned hospitals for outpatient services.

a. ~~In addition to payments for services set forth elsewhere in this State Plan, DMAS provides supplemental payments to qualifying state government-owned or operated hospitals for outpatient services provided to Medicaid patients on or after July 2, 2002. To qualify for a supplemental payment, the hospital must be part of a state academic health system or part of an academic health system that operates under a state authority.~~

b. ~~The amount of the supplemental payment made to each qualifying hospital is determined by:~~

(1) ~~Calculating for each hospital the annual difference between the upper payment limit attributed to each qualifying hospital calculated according to this subdivision 7d and the amount otherwise actually paid for the services by the Medicaid program;~~

(2) ~~Dividing the difference determined in subdivision 7 b (1) for each qualifying hospital by the aggregate difference for all such qualifying hospitals; and~~

(3) ~~Multiplying the proportion determined in subdivision 7 b (2) by the aggregate upper payment limit amount for all state owned or operated hospitals as determined in accordance with 42 CFR 447.321 less all payments made to such hospitals other than under this section.~~

(4) ~~A payment made to a hospital under this provision when combined with other payments made under the State Plan shall not exceed the limit specified at 42 USC § 1396r-4(g). Any amount not included in a payment because of the operation of the preceding sentence shall be distributed to other qualifying hospitals in the same manner and subject to the same limitations as set forth above.~~

c. ~~Payments for furnished services under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.~~

d. ~~To determine the aggregate upper payment limit amount referred to in subdivision 7 b (3), the following methodology will be used. A ratio will be calculated for each hospital by dividing its Medicare payments by Medicare charges. This Medicare payment to charge ratio will be multiplied by the Medicaid charges for each hospital. The upper payment limit will be the sum of the product of that multiplication for all hospitals. The calculation will use data from the most recently settled cost report for all state government-owned hospitals at the beginning of the state fiscal year for which calculations are made. Charges will be trended forward using hospital-specific data if available. If not available, charges will be trended forward using the Virginia-specific~~

~~DRI hospital inflation factors. Additional adjustments will be made for any program changes in Medicare or Medicaid payments. The most recently available data on Medicaid DSH payments will be used.~~

12 VAC 30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12 VAC 30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (12 VAC 30-80-160 has obstetric/pediatric fees). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office. The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments that DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this

subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors, licensed clinical nurse specialists-psychiatric or licensed marriage and family therapists shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

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a. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

b. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

c. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12 VAC 30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be

limited to, either respiratory equipment or apnea monitors.

7. Local health services, including services paid to local school districts.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12 VAC 30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

~~16. Supplemental payments to state government-owned or operated clinics.~~

~~a. In addition to payments for clinic services specified elsewhere in this state plan, DMAS provides supplemental payments for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Supplemental payments will be made to Children's Specialty Services, a state government-owned and operated clinic.~~

~~b. The amount of the supplemental payment made to Children's Specialty Services is determined by calculating for all state government-owned or operated clinics the annual difference between the aggregate upper payment limit specified in 42 CFR 447.321 and determined according to the method described in subdivision 16 d and the amount otherwise actually paid for the services by the Medicaid program.~~

~~c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.~~

~~d. To determine the aggregate upper payment limit, Medicaid payments to state government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12 VAC 30-80-190-B) in regard to the state agency fee schedule for Resource Based Relative Value Scale (RBRVS). Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments.~~

~~Additional adjustments will be made for any program changes in Medicare or Medicaid payments.~~

~~47-~~ 16. Supplemental payments for services provided by Type I physicians.

~~48-~~ 17. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. *Effective July 1, 2005, a qualifying clinic is a clinic with estimated Medicaid payments in 2003 (including primary payments and copayments) of more than \$100,000 other than under this section and that serve areas covered by managed care prior to January 1, 1998 operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.*

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision [48 17] d and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision [48 17] b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision (2) of this subdivision [48 17] b by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision [48 17] b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12 VAC 30-80-190 B) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

12 VAC 30-90-19. Additional reimbursement Certified public [expenditures expenditures] for locally-owned nursing facilities.

~~A. Subject to legislative authorization as required and the availability of local, state, and federal funds, and based upon a transfer agreement and the subsequent transfer of funds, DMAS makes additional payments to local government nursing facilities. A local government nursing facility is defined as a provider owned or operated by a county, city, or other local government agency, instrumentality, authority or commission. In addition to payments made elsewhere, effective July 1, 2005, DMAS shall draw down federal funds to cover unreimbursed Medicaid costs for inpatient services provided by nonstate government-owned nursing homes as certified by the provider through cost reports. A local government nursing facility is defined as a provider owned or operated by a county, city, or other local government agency, instrumentality, authority or commission.~~

~~B. DMAS uses the following methodology to calculate the additional Medicaid payments to local government nursing facilities:~~

~~1. For each state fiscal year, DMAS calculates the maximum additional payments that it can make to the local government nursing facilities in conformance with 42 CFR 447.272 (a).~~

~~2. DMAS determines a total additional payment amount to be made in a manner not to exceed the maximum additional payment amount calculated in subdivision 1 of this subsection.~~

~~3. Using the latest fiscal period for which the local government nursing facilities have completed cost reports on file with DMAS, the department determines the total Medicaid days reported by each local government nursing facility for that fiscal period.~~

~~4. DMAS divides the total Medicaid days for each local government nursing facility by the total Medicaid days for all local government nursing facilities to determine the supplementation factor for each.~~

~~5. For each local government nursing facility, the department multiplies the local government nursing facility's supplementation factor determined in subdivision 4 of this subsection by the total additional payment amount identified in subdivision 2 of this subsection to determine the additional payment to be made to each local government nursing facility.~~

VA.R. Doc. No. R05-249; Filed July 5, 2006, 11:36 a.m.

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TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

REGISTRAR'S NOTICE: The following regulations are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 16 VAC 25-90-1910. Federal Identical General Industry Standards (29 CFR Part 1910) (amending 16 VAC 25-90-1910.95, 16 VAC 25-90-1910.134, 16 VAC 25-90-1910.178, 16 VAC 25-90-1910.266, 16 VAC 25-90-1910.1000, 16 VAC 25-90-1910.1001, 16 VAC 25-90-1910.1017, 16 VAC 25-90-1910.1018, 16 VAC 25-90-1910.1020, 16 VAC 25-90-1910.1025, 16 VAC 25-90-1910.1027, 16 VAC 25-90-1910.1028, 16 VAC 25-90-1910.1029, 16 VAC 25-90-1910.1030, 16 VAC 25-90-1910.1043, 16 VAC 25-90-1910.1045, 16 VAC 25-90-1910.1047, 16 VAC 25-90-1910.1048, 16 VAC 25-90-1910.1050, 16 VAC 25-90-1910.1051, 16 VAC 25-90-1910.1052, and 16 VAC 25-90-1910.1450; repealing 16 VAC 25-90-1910.441).

16 VAC 25-100-1915. Federal Industry Shipyard Employment Standards (29 CFR Part 1915) (amending 16 VAC 25-100-1915.1001).

16 VAC 25-175-1926. Federal Identical Construction Industry Standards (29 CFR Part 1926) (amending 16 VAC 25-175-1926.60, 16 VAC 25-175-1926.62, 16 VAC 25-175-1926.754, 16 VAC 25-175-1926.1101, and 16 VAC 25-175-1926.1127; repealing 16 VAC 25-175-1926.1092).

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

Effective Date: September 1, 2006.

Agency Contact: John J. Crisanti, Policy and Planning Manager, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418 or e-mail john.crisanti.@doli.virginia.gov.

Summary:

As part of the ongoing review of its regulations, federal OSHA identified safety and health rules that needed to be corrected or needed technical amendments. The revisions do not affect the substantive requirements or coverage of the standards involved, modify or revoke existing rights and obligations, or establish new rights and obligations. The revisions include updating references and removing obsolete effective dates and startup dates from existing OSHA standards.

VOSH, however, is not adopting the changes in items 1, 33 and 34 of the Federal Register pages, 71 FR 16672 and 16674. The changes covered under items 1, 33 and 34

update references from what was 29 CFR 1910.20 which, in 1988, federal OSHA substantively revised and renumbered as the current 29 CFR 1910.1020.

At that time in 1988, the board chose to continue the enforcement of the old federal standard § 1910.20 and did not adopt the revisions and section renumbering to 29 CFR 1910.1020. VOSH is also not requesting the changes to Part 1913 as it too changes § 1910.20 references to the current federal 29 CFR 1910.1020, which as stated previously, is not in effect in Virginia.

Effective Dates and Startup Dates. In the safety standards for general industry (Part 1910), paragraph (a)(2) of § 1910.178(a)(2) (Powered Industrial Trucks) refers to effective dates specified in paragraph (b) of former § 1910.182 (Effective dates). OSHA removed § 1910.182 during an earlier rulemaking, which made this reference obsolete (61 FR 9227). Therefore, OSHA has now removed the reference to § 1910.182(b) from § 1910.178(a)(2).

Several additional safety standards for general industry had provisions that contained references to expired effective dates. Therefore, federal OSHA removed the entry "j. Effective date" in paragraph (a), as well as paragraph (j), from § 1910.266 (Logging operations); and the single-sentence standard, § 1910.441, that specifies the effective date for the general-industry diving standards in subpart T (Commercial Diving Operations).

Federal OSHA also removed a number of provisions among its substance-specific standards for general industry (Part 1910); for Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records" [§ 1913.10 (n)]; for shipyard employment [§ 1915.1001(q)]; and for construction (Part 1926) because the effective and/or startup dates they contain are now fully effective and are no longer relevant for pending enforcement cases.

Federal OSHA also removed a number of provisions in Parts 1910, 1915 and 1926 that refer to the effective date of a standard as a number of days after the date of publication in the Federal Register and not to a specific month, day and year.

References to Former 1910.20 (Access to Employee Exposure and Medical Records). In an earlier rulemaking (61 FR 9227), federal OSHA revised the designation of former § 1910.20 to § 1910.1020. However, this previous rulemaking did not revise references to § 1910.20 contained in various (usually recordkeeping) provisions of a number of its standards and regulations. Additionally, OSHA has now removed the reference to § 1910.20 in numerous paragraphs in Parts 1910, 1913 and 1915 and replaced it with a reference to the new designation, § 1910.1020.

A number of paragraphs in Part 1926 (construction) also refer incorrectly to § 1910.20. Therefore, OSHA has revised affected paragraphs to refer instead to § 1926.33, the construction standard that regulates access to employee exposure and medical records, instead of § 1910.20.

Removal or Correction of Other Outdated Provisions and References. OSHA has removed or corrected other

outdated provisions and references in the following standards:

1. Access to Employee Exposure and Medical Records (§ 1910.1020);
2. Cadmium (§§ 1910.1027 and 1926.1127);
3. Benzene (§ 1910.1028);
4. Formaldehyde (§ 1910.1048);
5. Methylenedianiline (§§ 1910.1050 and 1926.60);
6. 1,3-Butadiene (§ 1910.1051);
7. Lead (§ 1926.62); and
8. Structural Steel Assembly (§ 1926.754).

Assistant Secretary Commissioner of Labor and Industry
 Agency Department
 April 3, 2006 September 1, 2006
 VA.R. Doc. No. R06-273; Filed June 22, 2006, 3:17 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Title of Regulation: 18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-10, 18 VAC 60-20-20, 18 VAC 60-20-105, 18 VAC 60-20-106, 18 VAC 60-20-210, and 18 VAC 60-20-230; adding 18 VAC 60-20-71).

Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: August 23, 2006.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, or e-mail sandra.reen@dhp.virginia.gov.

Summary:

The amendments (i) establish requirements for licensure by credentials for dentists consistent with new provisions in the Dental Practice Act; (ii) extend the voluntary practice license to include dentists and hygienists who held an unrestricted license in Virginia at the time it expired or became inactive and eliminate the supervision requirement for dentists out of practice less than five years; and (iii) clarify certain terms and rules for consistency.

The regulation will replace an emergency regulation adopted by the Board of Dentistry in compliance with amendments to Chapter 27 of Title 54.1 and the third enactment clause of HB 2368 and SB 1127 enacted by the 2005 General Assembly.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18 VAC 60-20-10. Definitions.

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

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued

Note on Incorporation by Reference

Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910, General Industry Standards; 29 CFR Part 1915, Shipyard Employment Standards; 29 CFR Part 1926, Construction Industry Standards, are declared documents generally available to the public and appropriate for incorporation by reference. For this reason the documents will not be printed in the Virginia Register of Regulations. A copy of the documents are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

On June 19, 2006, the Safety and Health Codes Board adopted federal OSHA's corrections and technical amendments to various sections of 29 CFR Parts 1910, 1913, 1915 and 1926, which were published in the Federal Register on April 3, 2006 (71 FR 16672). The amendments correct the Virginia Administrative Code at 16 VAC 25-90-1910.95, 16 VAC 25-90-1910.134, 16 VAC 25-90-1910.178, 16 VAC 25-90-1910.266, 16 VAC 25-90-1910.441, 16 VAC 25-90-1910.1000, 16 VAC 25-90-1910.1001, 16 VAC 25-90-1910.1017, 16 VAC 25-90-1910.1018, 16 VAC 25-90-1910.1020, 16 VAC 25-90-1910.1025, 16 VAC 25-90-1910.1027, 16 VAC 25-90-1910.1028, 16 VAC 25-90-1910.1029, 16 VAC 25-90-1910.1030, 16 VAC 25-90-1910.1043, 16 VAC 25-90-1910.1045, 16 VAC 25-90-1910.1047, 16 VAC 25-90-1910.1048, 16 VAC 25-90-1910.1050, 16 VAC 25-90-1910.1051, 16 VAC 25-90-1910.1052, and 16 VAC 25-90-1910.1450 to conform to 29 CFR Part 1910; 16 VAC 25-100-1915, 16 VAC 25-100-1915.1001 to conform to 29 CFR Part 1915; and 16 VAC 25-175-1926.60, 16 VAC 25-175-1926.62, 16 VAC 25-175-1926.754, 16 VAC 25-175-1926.1092, 16 VAC 25-175-1926.1101, and 16 VAC 25-175-1926.1127 to conform to 29 CFR Part 1926.

When the regulations, as set forth in the corrections and technical amendments to the final rules of various provisions in Parts 1910, 1915 and 1926, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard

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or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness.

~~"Approved schools" means those dental or dental hygiene programs currently accredited by the Commission on Dental Accreditation of the American Dental Association.~~

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof.

"Deep sedation/general anesthesia" means an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method or a combination thereof.

"Dental assistant" means any unlicensed person under the supervision of a dentist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

"Direction" means the dentist ~~evaluates~~ *examines* the patient and is present for observation, advice, and control over the performance of dental services.

"Enteral" is any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General supervision" means that the dentist has ~~evaluated~~ *examined* the patient and issued a written order for the specific, authorized services to be provided by a dental hygienist when the dentist is not present in the facility while the services are being provided.

"Inhalation" is a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or the maxillofacial or adjacent and associated structures generally produced by a topically applied or injected agent without depressing the level of consciousness.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular,

intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Radiographs" means intraoral and extraoral x-rays of hard and soft tissues to be used for purposes of diagnosis.

18 VAC 60-20-20. License renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license, ~~or a full-time faculty license, or a restricted volunteer license to practice dentistry or dental hygiene~~ shall, on or before March 31, renew his license. Every person holding a teacher's license, temporary resident's license, ~~a restricted volunteer license to practice dentistry or dental hygiene~~, or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, ~~renew~~ *request renewal* of his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be \$150, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be \$50.
2. The fee for renewal of an inactive license shall be \$75 for dentists and \$25 for dental hygienists.
3. The fee for renewal of a restricted volunteer license shall be \$15.
4. The application fee for temporary resident's license shall be \$55. The annual renewal fee shall be \$35 a year. An additional fee for late renewal of licensure shall be \$15.

B. Late fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee of \$50 for dentists and \$20 for dental hygienists. The board shall renew a license if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice of dentistry/dental hygiene shall be illegal.

1. Any person whose license has expired for more than one year and who wishes to reinstate such license shall submit to the board a reinstatement application, the renewal fee and the reinstatement fee of \$225 for dentists and \$135 for dental hygienists.
2. *With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia*, practicing in Virginia with an expired license may subject the licensee to disciplinary action ~~and additional fines~~ by the board.
3. The executive director may reinstate such expired license provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18 VAC 60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid renewal fee, the reinstatement fee and any fines or assessments. Evidence of continuing competence shall include hours of continuing education as required by subsection H of 18 VAC 60-20-50 and may also include

evidence of active practice in another state or in federal service or current specialty board certification.

D. Reinstatement of a license previously revoked or indefinitely suspended. Any person whose license has been revoked shall submit to the board for its approval a reinstatement application and fee of \$750 for dentists and \$500 for dental hygienists. Any person whose license has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of \$350 for dentists and \$250 for dental hygienists.

18 VAC 60-20-71. Licensure by credentials for dentists.

In accordance with § 54.1-2709 of the Code of Virginia, an applicant for licensure by credentials shall:

1. *Be of good moral character and not have committed any act that would constitute a violation of § 54.1-2706 of the Code of Virginia;*
2. *Be a graduate of a dental program, school or college, or dental department of a university or college currently accredited by the Commission on Dental Accreditation of the American Dental Association;*
3. *Have passed Part I and Part II of the examination given by the Joint Commission on National Dental Examinations;*
4. *Have successfully completed a clinical examination that involved live patients;*
5. *Have not failed a clinical examination required by the board in the five years immediately preceding his application;*
6. *Hold a current, unrestricted license to practice dentistry in another jurisdiction in the United States and be certified to be in good standing by each jurisdiction in which he currently holds or has held a license; and*
7. *Have been in continuous clinical practice for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in the dental corps of the United States Armed Forces, volunteer practice in a public health clinic, or practice in an intern or residency program may be accepted by the board to satisfy this requirement. One year of clinical practice shall consist of a minimum of 600 hours of practice in a calendar year as attested by the applicant.*

18 VAC 60-20-105. Inactive license.

A. Any dentist or dental hygienist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. *With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry or dental hygiene in Virginia.*

B. An inactive license may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed continuing education hours equal to the requirement for the number of years in

which the license has been inactive, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months immediately preceding the application for activation. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2706 of the Code of Virginia.

18 VAC 60-20-106. Registration for Voluntary practice by out-of-state licensees.

A. *Restricted volunteer license.*

1. *In accordance with § 54.1-2712.1 or 54.1-2726.1 of the Code of Virginia, the board may issue a restricted volunteer license to a dentist or a dental hygienist who:*

- a. *Held an unrestricted license in Virginia or another state as a licensee in good standing at the time the license expired or became inactive;*
- b. *Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;*
- c. *Has fulfilled the board's requirement related to knowledge of the laws and regulations governing the practice of dentistry in Virginia;*
- d. *Has not failed a clinical examination within the past five years; and*
- e. *Has had at least five years of clinical practice.*

2. *A person holding a restricted volunteer license under this section shall:*

- a. *Only practice in public health or community free clinics that provide dental services to underserved populations;*
- b. *Only treat patients who have been screened by the approved clinic and are eligible for treatment;*
- c. *Attest on a form provided by the board that he will not receive remuneration directly or indirectly for providing dental services; and*
- d. *Not be required to complete continuing education in order to renew such a license.*

3. *The restricted volunteer license shall specify whether supervision is required, and if not, the date by which it will be required. If a dentist with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past five years, he shall only practice dentistry and perform dental procedures if a dentist with an unrestricted Virginia license, volunteering at the clinic, reviews the quality of care rendered by the dentist with the restricted volunteer license at least every 30 days. If supervision is required, the supervising dentist shall directly observe patient care being provided by the restricted volunteer dentist and review all patient charts at least quarterly. Such supervision shall be noted in patient charts and maintained in accordance with 18 VAC 60-20-15.*

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4. A dental hygienist with a restricted volunteer license shall be sponsored by and practice only under the direction of a dentist who holds an unrestricted license in Virginia.

5. A restricted voluntary license granted pursuant to this section shall expire on June 30 of the second year after its issuance, or shall terminate when the supervising dentist withdraws his sponsorship.

6. A dentist or dental hygienist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter and the disciplinary regulations that apply to all licensees practicing in Virginia.

B. Registration for voluntary practice by out-of-state licensees.

Any dentist or dental hygienist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of \$10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 5 of § 54.1-2701 of the Code of Virginia.

18 VAC 60-20-210. Requirements for direction and general supervision.

A. In all instances, a licensed dentist assumes ultimate responsibility for determining, on the basis of his diagnosis, the specific treatment the patient will receive and which aspects of treatment will be delegated to qualified personnel in accordance with this chapter and the Code of Virginia.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18 VAC 60-20-200. Persons acting within the scope of a license issued to them by the board under § 54.1-2725 of the Code of Virginia to teach dental hygiene and those persons licensed pursuant to § 54.1-2722 of the Code of Virginia providing oral health education and preliminary dental screenings in any setting are exempt from this section.

C. Duties delegated to a dental hygienist under direction shall only be performed when the dentist is present in the facility and ~~available to evaluate~~ examines the patient during the time services are being provided.

D. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specific time period, not to exceed seven months from the date the dentist last examined the patient. Upon expiration of the order, the dentist shall have ~~evaluated~~ examined the patient before writing a new order for treatment.

2. The dental hygienist shall consent in writing to providing services under general supervision.

3. The patient or a responsible adult shall be informed prior to the appointment that no dentist will be present, that no anesthesia can be administered, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

E. General supervision shall not preclude the use of direction when, in the professional judgment of the dentist, such direction is necessary to meet the individual needs of the patient.

18 VAC 60-20-230. Delegation to dental assistants.

A. Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to a dental assistant under the direction or under general supervision required in 18 VAC 60-20-210, with the exception of those listed as nondelegable in 18 VAC 60-20-190 and those which may only be delegated to dental hygienists as listed in 18 VAC 60-20-220.

B. Duties delegated to a dental assistant under general supervision shall be under the direction of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant and being available for consultation on patient care.

NOTICE: The forms used in administering 18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

~~Outline and Explanation of Documentation Required for Dental Licensure by Exam, Teacher's License, Restricted License, Full-Time Faculty License, and Temporary Permit Application Requirements for Dentists (rev. 42/02 8/05).~~

Application for [~~Licensure License~~] to Practice Dentistry (rev. 42/02 8/05).

[*Application Requirements for the Following: Restricted Dental Volunteer License and Restricted Dental Hygiene Volunteer License (eff. 8/05).*]

Application for Restricted Volunteer [~~Licensure License~~] to Practice Dentistry [~~and or~~] Dental Hygiene ([~~eff. 7/98~~ rev. 12/05]).

Requirements and Instructions for a Temporary Resident's License to Persons Enrolled in Advanced Dental Education Programs (eff. 7/04).

Application for Temporary Resident's License (eff. 7/04).

[~~Form A, Certification of Dental School for Temporary Resident's License (eff. 7/04).~~

~~Form B, Certification from Dean of Dental School or Director of Accredited Graduate Program, Temporary Resident's License (eff. 7/04).~~

~~Form C, Certification of Dental Licensure, Temporary Resident's License (eff. 7/04).~~

~~Form D, Chronology, Temporary Resident's License (eff. 7/04).~~]

Form A, Certification of Dental/Dental Hygiene School (rev. 12/02 [~~8/05~~ 12/05]).

Form AA, Sponsor Certification for Dental/Dental Hygiene Volunteer License ([~~eff. 7/98~~ rev. 12/05]).

Form B, Chronology (rev. 12/02 [~~8/05~~ 12/05]).

Form C, Certification of Dental/Dental Hygiene Boards (rev. 12/02 [~~8/05~~ 12/05]).

Outline and Explanation of Documentation Required for Dental Hygiene Licensure by Exam, Teacher's License, Dental Hygiene by Endorsement, and Dental Hygiene Temporary Permit (rev. 12/02).

Application for Licensure to Practice Dental Hygiene (rev. 12/02).

Instructions for Reinstatement (rev. 12/02).

Reinstatement Application for Dental/Dental Hygiene Licensure (rev. 12/02).

Radiology Information for Dental Assistants (rev. 7/97).

Renewal Notice and Application, 0401 Dentist (rev. 12/02).

Renewal Notice and Application, 0402 Dental Hygienist (rev. 12/02).

Renewal Notice and Application, 0404 Dental Teacher (rev. 12/02).

Renewal Notice and Application, 0406 Dental Hygiene Teacher (rev. 12/02).

Renewal Notice and Application, 0411 Full-time Faculty (rev. 12/02).

Renewal Notice and Application, 0438 Cosmetic Procedure Certification (rev. 12/02).

Renewal Notice and Application, 0439 Oral and Maxillofacial (rev. 12/02).

Application for Certification to Perform Cosmetic Procedures (rev. 12/02).

Rhinoplasty/similar Procedures (rev. 7/02).

Bletharoplasty/similar Procedures (rev. 7/02).

Rhytidectomy/similar Procedures (rev. 7/02).

Submental liposuction/similar Procedures (rev. 7/02).

Browlift/either open or endoscopic technique/similar Procedures (rev. 7/02).

Otoplasty/similar Procedures (7/02).

Laser Resurfacing or Dermabrasion/similar Procedures (rev. 7/02).

Platysmal muscle plication/similar Procedures (rev. 7/02).

Application Review Worksheet (rev. 7/02).

Practitioner Questionnaire (rev. 12/02).

Oral and Maxillofacial Surgeon Registration of Practice (rev. 12/02).

[*Licensure Procedures for Application for Registration for Volunteer Practice (eff. 5/06).*]

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).

VA.R. Doc. No. R05-290; Filed July 5, 2006, 10 a.m.

DEPARTMENT OF HEALTH PROFESSIONS

Title of Regulation: 18 VAC 76-20. Regulations Governing the Prescription Monitoring Program (amending 18 VAC 76-20-10, 18 VAC 76-20-20, 18 VAC 76-20-30, 18 VAC 76-20-50, and 18 VAC 76-20-60; adding 18 VAC 76-20-70).

Statutory Authority: §§ 54.1-2505 and 54.1-2520 of the Code of Virginia.

Effective Date: August 23, 2006.

Agency Contact: Ralph Orr, Program Manager, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9921, FAX (804) 662-9943, or e-mail ralph.orr@dhp.virginia.gov.

Summary:

The amendments conform the rules of the Prescription Monitoring Program for reporting and disclosure to the changes made during the 2005 Session of the General Assembly in Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 of the Code of Virginia. The law now provides for an expansion of the Prescription Monitoring Program to include reporting of dispensed Schedules III and IV drugs and disclosure of information to dispensers (pharmacies) as well as other additional entities such as the Health Practitioner Intervention Program, the Medical Examiner and the Department of Medical Assistance Services. The amendments (i) eliminate provisions that may stand as a barrier to the adoption of electronic requests and disclosures; (ii) provide criteria for requests from prescribers who are not licensed in Virginia; and (iii) establish requirements for notification by a dispenser to his patients

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about requests for disclosure of prescription information in the program.

18 VAC 76-20-10. Definitions.

The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2519 of the Code of Virginia unless the context clearly indicates otherwise:

"Department"

"Director"

"Dispense"

"Dispenser"

"Prescriber"

"Recipient"

In addition, the following term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Program" means the Prescription Monitoring Program.

18 VAC 76-20-20. General provisions.

In accordance with Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 of the Code of Virginia and this chapter, the Director of the Department of Health Professions shall establish and administer a program for monitoring the dispensing of ~~Schedule II~~ *Schedules II, III and IV* controlled substances.

18 VAC 76-20-30. Criteria for granting waivers of the reporting requirements.

A. The director may grant a waiver of all or some of the reporting requirements established in § 54.1-2521 of the Code of Virginia to an individual or entity who files a request in writing on a form provided by the department and who meets the criteria for such a waiver.

B. Criteria for a waiver of the reporting requirements shall include a history of compliance with laws and regulations by the ~~pharmacy, the pharmacist in charge, and other pharmacists~~ *dispensers* regularly practicing at that location and may include, but not be limited to:

1. A substantial hardship created by a natural disaster or other emergency beyond the control of the ~~pharmacist or pharmacy dispenser~~;

2. Dispensing in a controlled research project approved by a regionally accredited institution of higher education or under the supervision of a governmental agency.

C. Consistent with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), a waiver may be granted by a subordinate designated by the director on a case-by-case basis, subject to terms and conditions stated in an order with a specified time period and subject to being vacated. An appeal of the initial decision may be filed with the director who shall appoint an informal fact-finding conference, which shall thereafter make a recommendation to the director. The decision of the director shall be final.

18 VAC 76-20-50. Criteria for mandatory disclosure of information by the director.

A. In order to request disclosure of information contained in the program, an individual shall be registered with the director as an authorized agent entitled to receive reports under § 54.1-2523 B of the Code of Virginia.

1. Such request for registration shall contain an attestation from the applicant's employer of the eligibility and identity of such person.

2. Registration as an agent authorized to receive reports shall expire on June 30 of each even-numbered year or at any such time as the agent leaves or alters his current employment or otherwise becomes ineligible to receive information from the program.

B. An authorized agent shall ~~only request in writing, on a form provided by the department~~, disclosure of information related to a specific investigation, ~~or in the case of a request from the Health Practitioners' Intervention Program (HPIP), disclosure of information related to a specific applicant for or participant in HPIP. The request~~ *Requests shall be made in a format designated by the department* and shall contain a case identifier number, a specified time period to be covered in the report, and the specific recipient, prescriber or dispenser for which the report is to be made, ~~and an identifier number for the subject of the disclosure.~~

C. The request from an authorized agent shall ~~be signed with~~ *include* an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.

18 VAC 76-20-60. Criteria for discretionary disclosure of information by the director.

A. In accordance with § 54.1-2523 C of the Code of Virginia, the director may disclose information in the program to certain persons provided the request is made in ~~writing on a form provided a format designated~~ *by the department*.

B. The director may disclose information to:

1. The recipient of the dispensed drugs, provided the request is accompanied by a copy of a valid photo identification issued by a government agency of any jurisdiction in the United States verifying that the recipient is over the age of 18 and includes a notarized signature of the requesting party. The report shall be mailed to the address on the license or delivered to the recipient at the department.

2. The prescriber for the purpose of establishing a treatment history ~~for a patient or prospective patient~~, provided the request is accompanied by the prescriber's ~~license number issued by the department, the signature of the prescriber, registration number with the United States Drug Enforcement Administration (DEA) and attestation of having obtained written consent for such disclosure~~ from the recipient. Such written consent ~~shall be separate and distinct from any other consent documents required by the practitioner and~~ shall be maintained as part of the patient record.

3. Another regulatory authority conducting an investigation or disciplinary proceeding or making a decision on the granting of a license or certificate, provided the request is related to an allegation of a possible controlled substance violation and that it is accompanied by the signature of the chief executive officer who is authorized to certify orders or to grant or deny licenses.

4. Governmental entities charged with the investigation and prosecution of a dispenser, prescriber or recipient participating in the Virginia Medicaid program, provided the request is accompanied by the signature of the official within the Office of the Attorney General responsible for the investigation.

5. A dispenser for the purpose of establishing a prescription history for a specific person to assist in determining the validity of a prescription, provided the request is accompanied by the dispenser's license number issued by the relevant licensing authority in Virginia and an attestation that the dispenser is in compliance with patient notice requirements of 18 VAC 76-20-70. If the dispensing occurs in a pharmacy located outside Virginia, the request shall include the registration number issued by the Virginia Board of Pharmacy for a nonresident pharmacy.

C. In each case, the request must be complete and provide sufficient information to ensure the correct identity of the prescriber, recipient and/or dispenser. ~~Such request shall be submitted in writing by mail, private delivery service, in person at the department offices or by facsimile.~~

D. Except as provided in subdivision B 1 of this section, the request form shall ~~be signed with~~ include an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.

E. In order to request disclosure of information contained in the program, a designated employee of the Department of Medical Assistance Services or of the Office of the Chief Medical Examiner shall register with the director as an authorized agent entitled to receive reports under § 54.1-2523 C of the Code of Virginia.

1. Such request for registration shall include an attestation from the applicant's employer of the eligibility and identity of such person.

2. Registration as an agent authorized to receive reports shall expire on June 30 of each even-numbered year or at any such time as the agent leaves or alters his current employment or otherwise becomes ineligible to receive information from the program.

18 VAC 76-20-70. Notice of requests for information.

Any dispenser who intends to request information from the program for a recipient or prospective recipient of a Schedule II, III, or IV controlled substance shall post a sign that can be easily viewed by the public at the place where the prescription is accepted for dispensing and that discloses to the public that the pharmacist may access information contained in the program files on all Schedule II, III or IV prescriptions dispensed to a patient. In lieu of posting a sign, the dispenser

may provide such notice in written material provided to the recipient, or may obtain written consent from the recipient.

NOTICE: The forms used in administering 18 VAC 76-20, Regulations Governing the Prescription Monitoring Program, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Request for [a] Waiver [of or an Exemption from] Reporting [Requirements for Prescription Monitoring Program (eff. 4/1/03) (rev. 3/06)].

Request to Register as an Authorized Agent to Receive Information from the Virginia Prescription Monitoring Program (eff. 3/03 rev. 8/05).

Request for Disclosure of Information from Prescription Monitoring Program (eff. 3/04 rev. 8/05).

Patient Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. 12/03).

Prescriber Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. 9/04 rev. 7/05).

Regulatory Authority Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. 12/03).

Investigation under Virginia Medicaid Program; Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. 12/03).

VA.R. Doc. No. R05-261; Filed June 30, 2006, 8:41 a.m.

BOARD OF PHYSICAL THERAPY

Title of Regulation: 18 VAC 112-20. Regulations Governing the Practice of Physical Therapy (amending 18 VAC 112-20-50 and 18 VAC 112-20-65).

Statutory Authority: § 54.1-2400 and Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: August 23, 2006.

Agency Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, or e-mail elizabeth.young@dhp.virginia.gov.

Summary:

The amendments establish criteria for acceptance of organizations other than the Foreign Credentialing Commission on Physical Therapy (FCCPT) for credentialing applicants for physical therapy licensure who are graduates of schools that are not approved or accredited and will allow an applicant for licensure by endorsement to substitute evidence of active, clinical practice with an unrestricted license in another U.S. jurisdiction for the past five years in

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lieu of documentation of having met the educational and examination requirements of these regulations.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18 VAC 112-20-50. Education requirements: graduates of schools not approved by an accrediting agency approved by the board.

A. An applicant for initial licensure as a physical therapist who is a graduate of a school not approved by an accrediting agency approved by the board shall submit the required application and fee and provide documentation of the physical therapist's certification by a report from the FCCPT or of the physical therapist eligibility for licensure as verified by a report from any other credentialing agency approved by the board that substantiates that the physical therapist has been evaluated in accordance with requirements of subsection B of this section.

B. The board shall only approve a credentialing agency that:

1. Utilizes the Coursework Evaluation Tool for Foreign Educated Physical Therapists of the Federation of State Boards of Physical Therapy and utilizes original source documents to establish substantial equivalency to an approved physical therapy program;
2. Conducts a review of any license or registration held by the physical therapist in any country or jurisdiction to ensure that the license or registration is current and unrestricted or was unrestricted at the time it expired or was lapsed; and
3. Verifies English language proficiency by passage of the TOEFL and TSE examination or by review of other evidence of English proficiency.

B. C. An applicant for licensure as a physical therapist assistant who is a graduate of a school not approved by the board shall submit with the required application and fee the following:

1. Proof of proficiency in the English language by passing TOEFL and TSE by a score determined by the board or an equivalent examination approved by the board. TOEFL and TSE may be waived upon evidence of English proficiency.
2. A copy of the original certificate or diploma that has been certified as a true copy of the original by a notary public, verifying his graduation from a physical therapy curriculum.

If the certificate or diploma is not in the English language, submit either:

- a. An English translation of such certificate or diploma by a qualified translator other than the applicant; or
 - b. An official certification in English from the school attesting to the applicant's attendance and graduation date.
3. Verification of the equivalency of the applicant's education to the educational requirements of an approved program for physical therapist assistants from a scholastic credentials service approved by the board.

G. D. An applicant for initial licensure as a physical therapist or a physical therapist assistant who is not a graduate of an approved program shall also submit verification of having successfully completed a full-time 1,000-hour traineeship as a "foreign educated trainee" under the direct supervision of a licensed physical therapist. The traineeship shall be in a facility that serves as an education facility for students enrolled in an accredited program educating physical therapists in Virginia and is approved by the board.

1. It shall be the responsibility of the foreign educated trainee to make the necessary arrangements for his training with the director of physical therapy or the director's designee at the facility selected by the trainee.
2. The physical therapist supervising the foreign educated trainee shall submit a completed physical therapy or physical therapist assistant clinical performance instrument approved by the board.
3. If the traineeship is not successfully completed, the president of the board or his designee shall determine if a new traineeship shall commence. If it is determined by the board that a new traineeship shall not commence, then the application for licensure shall be denied.
4. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.
5. The traineeship requirements of this part may be waived if the applicant for a license can verify, in writing, the successful completion of one year of clinical physical therapy practice as a licensed physical therapist or physical therapist assistant in the United States, its territories, the District of Columbia, or Canada, equivalent to the requirements of this chapter.

18 VAC 112-20-65. Requirements for licensure by endorsement.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18 VAC 112-20-40 or 18 VAC 112-20-50. *In lieu of meeting such requirements, an applicant may provide evidence of clinical practice during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another U.S. jurisdiction;*
2. The required application, fees, and credentials to the board; and
3. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state and

active, *clinical* practice with a current, unrestricted license for at least ~~seven~~ five years prior to applying for licensure in Virginia.

For the purpose of this subsection, active, clinical practice shall mean at least 2,500 hours of patient care over a five-year period.

C. A physical therapist or physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least 160 hours within the two years immediately preceding his application for licensure shall first successfully complete a 480-hour traineeship as specified by subsection B of 18 VAC 112-20-140.

VA.R. Doc. No. R05-46; Filed July 5, 2006, 9:59 a.m.



EMERGENCY REGULATIONS

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF FORENSIC SCIENCE

Title of Regulation: 6 VAC 40-50. Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material (adding 6 VAC 40-50-10 through 6 VAC 40-50-80).

Statutory Authority: § 19.2-188.1 of the Code of Virginia.

Effective Dates: July 1, 2006, through June 30, 2007.

Agency Contact: Katya Herndon, Department of Counsel, 700 North Fifth Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or e-mail katya.herndon@dfs.virginia.gov.

Preamble:

Chapter 447 of the 2006 Acts of Assembly amended § 19.2-188.1 of the Code of Virginia to require the Department of Forensic Science to approve marijuana field tests for use by law-enforcement officers to enable them to testify in any trial for a violation of § 18.2-250.1 to the results of the field tests regarding whether any plant material, the identity of which is at issue, is marijuana. The act expressly states that "The Board of Forensic Science shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment in accordance with § 2.2-4011 A of the Code of Virginia." As a result, these regulations are necessitated by an emergency situation pursuant to § 2.2-4011 A of the Code of Virginia, which provides that an emergency exists when Virginia statutory law requires that a regulation be effective within 280 days or less from a law's enactment, and the regulation is not exempt under § 2.2-4004 A 4. This regulation is not otherwise exempt under the provisions of § 2.2-4004 A 4 a. Accordingly, pursuant to the amendments to § 19.2-188.1, the Department of Forensic Science is submitting these emergency regulations, to be effective July 1, 2006.

These new regulations establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the department.

CHAPTER 50.

REGULATIONS FOR THE APPROVAL OF MARIJUANA FIELD TESTS FOR DETECTION OF MARIJUANA PLANT MATERIAL.

PART I. DEFINITIONS.

6 VAC 40-50-10. Definitions.

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

"Agency" means any federal, state or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the Department of Forensic Science or his designee.

"Department" means the Department of Forensic Science.

"List of approved marijuana field tests" means a list of Duquenois-Levine field tests approved by the department for use by law-enforcement agencies in the Commonwealth and periodically published by the department in the Virginia Register of Regulations in accordance with § 19.2-188.1 B of the Code of Virginia.

"Manufacturer" means any entity that makes or assembles marijuana field tests or marijuana field test kits to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting marijuana plant material.

"Manufacturer's instructions and claims" means those testing procedures, requirements, instructions, precautions and proposed conclusions that are published by the manufacturer and supplied with the marijuana field tests or marijuana field test kits.

"Marijuana" means marijuana, as defined in § 18.2-247 of the Code of Virginia.

"Marijuana field test" means any Duquenois-Levine test unit used outside of a chemical laboratory environment to detect the presence of marijuana plant material.

"Marijuana field test kit" means a combination of individual marijuana field test units.

PART II.

PROCESS FOR APPROVAL OF FIELD TESTS.

6 VAC 40-50-20. Authority for approval.

Section 19.2-188.1 B of the Code of Virginia provides that the Department of Forensic Science shall approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of § 18.2-250.1 regarding whether or not any plant material, the identify of which is at issue, is marijuana.

6 VAC 40-50-30. Request for approval.

A. Any manufacturer who wishes to have marijuana field tests or marijuana field test kits approved pursuant to this chapter shall submit a written request for approval to the department director at the following address:

Director
Department of Forensic Science
700 North Fifth Street
Richmond, VA 23219.

B. Materials sufficient for at least 10 marijuana field tests shall be supplied by each manufacturer. The materials shall include all instructions, precautions, color charts, flow charts and the like that are provided with the marijuana field test or marijuana field test kit and that describe the use and interpretation of the tests.

C. The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents used in the marijuana field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. Material Safety Data Sheets for each chemical or reagent shall be sufficient for this purpose.

D. This approval may require up to 120 days from the receipt of the written request and all needed materials from the manufacturer.

E. The department will use marijuana plant material to assess those marijuana field tests submitted for approval. In order to be approved, the marijuana field test must correctly and consistently react in a clearly observable fashion to the naked eye, and perform in accordance with manufacturer's instructions and claims.

6 VAC 40-50-40. Notice of approval.

The department will notify each manufacturer in writing of the approval or disapproval of each test for which approval was requested. Should any test not be approved, the manufacturer may resubmit their request for approval of that marijuana field test according to the previously outlined procedures at any time.

6 VAC 40-50-50. Maintenance of approved status.

The department may require that this approval be done as often as annually for routine purposes. If any modifications are made to an approved marijuana field test by the manufacturer, the department shall be notified in writing of the changes. If unreported modifications are discovered by the department, the department may require that all testing and approval be repeated for the particular manufacturer's approved marijuana field tests. The department shall notify the manufacturer in writing of this requirement. Any modified marijuana field test must be approved before it can be used in accordance with § 19.2-188.1 B of the Code of Virginia. These changes shall include, but are not limited to any chemical, procedural or instructional modifications made to the marijuana field test.

6 VAC 40-50-60. Publication.

Upon completion of such testing and in concurrence with the approval authority, the department will periodically publish a list of approved marijuana field tests in the General Notices section of the Virginia Register of Regulations. The department will also periodically publish the list on its website. The department may, in addition, provide copies of its approved list to any law-enforcement agency. The department may share any information or data developed from this testing with these agencies.

6 VAC 40-50-70. Liability.

A. The department assumes no liability as to the safety of these marijuana field tests or marijuana field test kits, any chemicals contained therein or the procedures and instructions by which they are used.

B. The department further assumes no responsibility for any misuse or incorrect interpretation of results.

PART III.
FEES.

6 VAC 40-50-80. Fees.

Manufacturers will be charged a fee of \$50 for each marijuana field test for which individual approval is requested. The department will evaluate the manufacturers' request and notify them in writing of the amount due before testing begins. Manufacturers who wish to withdraw a request for approval shall immediately notify the department in writing. The department's assessment of the amount of payment required will be based upon a detailed evaluation of the manufacturer's request and that amount will be final. Approval will not be granted before full payment is made to the Treasurer of Virginia.

/s/ Timothy M. Kaine
Governor
June 28, 2006

VA.R. Doc. No. R06-285; Filed June 29, 2006, 2:57 p.m.

GUIDANCE DOCUMENTS

Sections 2.2-4008 and 2.2-4103 of the Code of Virginia require annual publication in the *Virginia Register* of guidance document lists from state agencies covered by the Administrative Process Act and the Virginia Register Act. A guidance document is defined as "...any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations..." Agencies are required to maintain a complete, current list of all guidance documents and make the full text of such documents available to the public.

Generally, the format for the guidance document list is: document number (if any), title of document, date issued or last revised, and citation of Virginia Administrative Code regulatory authority or Code of Virginia statutory authority. Questions concerning documents or requests for copies of documents should be directed to the contact person listed by the agency.

VIRGINIA COUNCIL ON INDIANS

Copies of the following document may be obtained free of charge by contacting Deanna Beacham, Program Specialist, Virginia Council on Indians, P.O. Box 1475, Richmond, VA 23218-1475, telephone (804) 225-2084, or e-mail vci@governor.virginia.gov. The document may also be accessed or downloaded from the Virginia Council on Indians' website at <http://indians.vipnet.org/staterecognition.cfm>.

Questions regarding the interpretation or implementation of this document may be addressed to the Virginia Council on Indians by contacting Chair Karenne Wood, Virginia Council on Indians, P.O. Box 1475, Richmond, VA 23218-1475, telephone (804) 225-2084, or e-mail vci@governor.virginia.gov.

Tribal Recognition Criteria
(<http://indians.vipnet.org/staterecognition.cfm>), ratified May 2006, § 2.2-2629 of the Code of Virginia.

GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

Bureau of Insurance

June 28, 2006

Administrative Letter 2006-11

To: All Entities with Authority to License and Appoint Agents in the Commonwealth of Virginia and Other Interested Parties

Re: Procedural Change: Displaying National Producer Numbers (NPN) in Lieu of Social Security/DMV-Assigned Numbers on Bureau of Insurance Correspondence

Please distribute to the appropriate personnel within your company and notify your appointed producers of this change.

The Bureau of Insurance (Bureau) has implemented use of the National Producer Number (NPN). The NPN is the number assigned by the National Insurance Producer Registry (NIPR). It may be used instead of the producer's Social Security/DMV assigned number to access information or obtain documents from the Bureau, thereby alleviating concerns of identity theft.

The producer's NPN is printed on new licenses issued, duplicate licenses, and letters of certification processed online from the Bureau's website at:

<http://www.scc.virginia.gov/division/boi/webpages/boiproducer.htm>.

The Bureau will continue to require applicants to provide their Social Security Number when applying for an insurance agent license.

Should you have any question please direct them to: Preston Winn, Supervisor, Agent Licensing Division, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9631, FAX (804) 371-9290.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Public Notice – Amendment of Water Quality Management Planning Regulation

Notice of action: The State Water Control Board (board) is considering the amendment of the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation (9 VAC 25-720) is to adopt one modification of a total maximum daily load (TMDL) waste load allocation.

Public comment period: July 25, 2006, to August 25, 2006.

Description of proposed action: DEQ staff will propose an amendment of the state's Water Quality Management

Planning regulation for the New River Basin (9 VAC 25-720-130 A). Statutory authority for promulgating this amendment can be found in § 62.1-44.15(10) of the Code of Virginia. The TMDL modification pertained only to the wasteload allocation and did not affect the load allocation. Public notice for the TMDL modification was provided concurrent with the public notice for permit modification. EPA has approved the TMDL modification presented under this public notice. The approval can be obtained at <http://www.deq.state.va.us/tmdl/> or by contacting the person listed below. Staff intends to recommend (i) that the board approve the TMDL modification and (ii) that the board adopt the modified TMDL waste load allocation as part of the state's Water Quality Management Planning Regulation in accordance with § 2.2-4006 A 4 c and § 2.2-4006 B of the Code of Virginia.

Affected Waterbodies and Localities in the New River Basin (9 VAC 25-720-130 A):

"Fecal Bacteria and General Standard Total Maximum Daily Load Development for Bluestone River" - modification of the Bluestone River benthic TMDL, located in Tazewell County, proposes an increased sediment loading of 108 tons/year in the waste load allocation for the Bluefield Westside Wastewater Treatment Plant discharge and a corresponding increase in the total maximum daily load.

How to comment: The DEQ accepts written comments by e-mail, fax and postal mail. All written comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens that submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL reports and the proposed regulatory amendments are available on the DEQ website at <http://www.deq.virginia.gov/tmdl/> and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests and additional information: Jutta Schneider, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23219, telephone (804) 698-4099, FAX (804) 698-4116, or e-mail jschneider@deq.virginia.gov.

Restore Water Quality in the James River and Tributaries in Richmond City, Chesterfield, Henrico, and Powhatan Counties

Announcement of an effort to restore water quality in the James River and tributaries in Richmond City, Chesterfield, Henrico, and Powhatan counties, Virginia.

Public meeting: Virginia Commonwealth University Student Commons, 907 Floyd Avenue, Forum Room, Richmond, Virginia, on August 2, 2006, from 7 to 9 p.m. In case of

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inclement weather, check the DEQ website for a rescheduled date.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the start of a study to restore water quality, a public comment opportunity, and public meeting.

Meeting description: First public meeting on a study to restore water quality.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the waters of the James River and its tributaries in the following jurisdictions:

Stream	County/City	Length (mi.)	Impairment
Bernards Creek	Chesterfield, Powhatan	6.97	Bacteria
Powwhite Creek	Chesterfield, Richmond City	8.12	Bacteria
Reedy Creek	Richmond City	3.68	Bacteria
James River	Richmond City, Henrico, Chesterfield	10.06	Bacteria
James River	Richmond City	6.34	Bacteria
Gillies Creek	Richmond City, Henrico	5.79	Bacteria
Almond Creek	Henrico	2.26	Bacteria
Goode Creek	Richmond City	1.23	Bacteria
Falling Creek	Chesterfield	3.81	Bacteria
No Name Creek	Chesterfield	1.83	Bacteria
James River	Chesterfield, Henrico, Richmond City	10.84 Sq.Miles	Bacteria

These streams are impaired for failure to meet the Primary Contact (Recreational) designated use because of bacterial standard violations.

The study reports the sources of bacterial contamination and recommends total maximum daily loads, or TMDLs, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes a public comment period, including public meetings. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by e-mail, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, August 2, 2006, to September 1, 2006. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Chris French, TMDL Coordinator, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or e-mail rcfrench@deq.virginia.gov.

Water Quality Improvement Study - James River Watershed

Purpose of notice: To seek public comment and announce a public meeting on a water quality improvement study by the Department of Environmental Quality for the James River watershed in Buckingham and Albemarle counties in Virginia.

Public comment period: August 10, 2006, to September 11, 2006.

Public meeting: Buckingham Agricultural Center Auditorium, located on Highway 60 at Buckingham Courthouse, Virginia, on August 10, 2006, from 7 to 9 p.m.

Meeting description: This is the first public meeting on a study to restore water quality in various streams within the James River watershed.

Description of study: Virginia agencies are working to identify sources of bacteria contamination in stream segments from the James River watershed in Central Virginia. This contamination exceeds water quality standards, which prohibits swimming. The contamination impairs or decreases the quality of the water.

The following is a list of the "impaired" waters, the length of the impaired segment, their location, and the reason for the impairment:

Slate River (20.4 miles), Buckingham County, fecal coliform bacteria; North River (8.44 miles), Buckingham County, fecal coliform bacteria; Troublesome Creek (0.95 miles), Buckingham County, fecal coliform bacteria; Austin Creek (6.14 miles), Buckingham County, fecal coliform bacteria; Frisby Branch (3.93 miles), Buckingham County, fecal coliform bacteria; Rock Island Creek (8.84 miles), Buckingham County, fecal coliform bacteria; Totier Creek (11.29 miles), Albemarle County, fecal coliform bacteria; Ballinger Creek (9.82 miles), Albemarle County, fecal coliform bacteria.

During the study, DEQ will develop a total maximum daily load, or a TMDL, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels to have to be reduced to the TMDL amount.

Contact for additional information: You may contact either Kelly Wills, Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-6242, FAX (434) 582-5125, or e-mail kjwills@deq.virginia.gov or Robert Brent, Department of Environmental Quality, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or e-mail rbrent@deq.virginia.gov.

Total Maximum Daily Load (TMDL - Upper Rappahannock River Basin)

Announcement of a total maximum daily load (TMDL) study to restore water quality in streams located in the Upper

Rappahannock River Basin that are contaminated with bacteria.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation announce the first series of Technical Advisory Committee Meetings to introduce the Upper Rappahannock River Basin TMDL study.

TECHNICAL ADVISORY COMMITTEE MEETINGS:

Rappahannock Watershed Technical Advisory Committee,
Thursday, July 27, 2006

10 a.m. - Noon, Culpeper Train Depot, 109 S. Commerce Street, Culpeper, VA 22701

Rapidan Watershed Technical Advisory Committee,
Thursday, July 27, 2006

2 - 4 p.m., Culpeper Train Depot, 109 S. Commerce Street, Culpeper, VA 22701

Meeting description: This series of technical advisory committee meetings are the first round of meetings to introduce this project to the public. The TMDL study addresses elevated levels of bacteria in 16 stream segments in the Upper Rappahannock River Basin.

Description of study: Virginia agencies are working to identify sources of bacteria contamination in stream segments in the Upper Rappahannock River Basin. The impaired stream segments are located in Culpeper, Fauquier, Greene, Madison, Orange, Rappahannock, and Spotsylvania counties, and their location is set forth in the table below. Since the watershed is so large, two technical advisory committees were formed: one for the upper part of the Rappahannock watershed and one for the Rapidan watershed:

Rappahannock Watershed Technical Advisory Committee					
Stream Name	Locality	Impairment	Length (miles)	Upstream Limit	Downstream Limit
Hughes River	Culpeper, Rappahannock	Bacteria	3.68	Kilbys Run	Hazel River
Hazel River	Culpeper	Bacteria	16.67	Rt. 707 Bridge	Unnamed Tributary
Hazel River	Culpeper	Bacteria	3.32	Indian Run	Muddy Run
Rush River	Rappahannock	Bacteria	4.55	Unnamed Tributary	Big Branch
Rappahannock River	Fauquier, Rappahannock	Bacteria	2.17	Jordan River	UT
Marsh Run	Fauquier	Bacteria	8.35	Craig Run	Rappahannock River
Browns Run	Fauquier	Bacteria	2.39	Unnamed Tributary	Marsh Run
Craig Run	Fauquier	Bacteria	3.61	Headwaters of Craig Run	Marsh Run
Rappahannock River	Culpeper, Fauquier	Bacteria	2.02	Ruffans Run	Tinpot Run
Rappahannock River	Culpeper, Fauquier	Bacteria	2.85	Unnamed Tributary	Marsh Run
Blue Run	Orange	Bacteria	11.61	Headwaters of Blue Run	Rapidan River
Rapidan River	Culpeper, Madison, Orange	Bacteria	7.5	Poplar Run	Robinson River
Marsh Run	Greene, Madison, Orange	Bacteria	5.19	Headwaters of Marsh Run	Rapidan River
Unnamed Tributary to Rapidan River	Madison, Orange	Bacteria	2.57	Headwaters of Unnamed Tributary	Rapidan River
Cedar Run	Culpeper, Orange	Bacteria	5.4	Buck Run	Rapidan River
Rapidan River	Culpeper, Spotsylvania	Bacteria	2.47	Wilderness Run	Middle Run

During the study, DEQ will develop a total maximum daily load, or a TMDL, for each of the impaired stream segments. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels have to be reduced to the TMDL allocated amount.

Contact for additional information: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, e-mail mkconaway@deq.virginia.gov.

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DEPARTMENT OF FORENSIC SCIENCE

List of Approved Field Tests for Detection of Marijuana Plant Material

In accordance with 6 VAC 40-50, the Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material, and under the authority of §§ 9.1-1110 and 19.2-188.1 of the Code of Virginia, the following marijuana field tests for detection of marijuana plant material are approved as accurate and reliable:

ARMOR HOLDINGS, INCORPORATED
13386 INTERNATIONAL PARKWAY
JACKSONVILLE, FLORIDA 32218-2383

NIK

Drug or Drug Type:
Marijuana

Manufacturer's Field Test:
Test E 6075 – Duquenois – Levine Reagent

ODV NarcoPouch

Drug or Drug Type:
Marijuana

Manufacturer's Field Test:
908 – Duquenois – Levine Reagent

SIRCHIE FINGERPRINT LABORATORIES
100 HUNTER PLACE
YOUNGSVILLE, NORTH CAROLINA 27596

NARK II

Drug or Drug Type:
Marijuana

Manufacturer's Field Test:
05 – Duquenois – Levine Reagent

MILLENNIUM SECURITY GROUP
8300 GREENSBORO DRIVE
MCLEAN, VA 22102

IDenta

Drug or Drug Type:
Marijuana

Manufacturer's Field Test:
Marijuana/Hashish (Duquenois-Levine Reagent)

Updated List of Approved Field Tests for Detection of Drugs

In accordance with 6 VAC 40-30, the Regulations for the Approval of Field Tests for Detection of Drugs, and under the authority of §§ 9.1-1110 and 19.2-188.1 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:

Manufacturer's Field Test:

Heroin

902 – Marquis Reagent

Amphetamine

902 – Marquis Reagent

Methamphetamine

902 – Marquis Reagent

3,4-Methylenedioxymethamphetamine (MDMA)

902 – Marquis Reagent

Cocaine Hydrochloride

904B – Cocaine HCl and Base Reagent

Cocaine Base

904B – Cocaine HCl and Base Reagent

Barbiturates

905 – Dille-Koppanyi Reagent

Lysergic Acid Diethylamide (LSD)

907 – Ehrlich's (Modified) Reagent

Marijuana

908 – Duquenois – Levine Reagent

Hashish Oil

908 – Duquenois – Levine Reagent

Marijuana

909 – K N Reagent

Hashish Oil

909 – K N Reagent

Phencyclidine (PCP)

914 – PCP Methaqualone Reagent

Heroin

922 – Opiates Reagent

Methamphetamine

923 – Methamphetamine/Ecstasy Reagent

3,4-Methylenedioxymethamphetamine (MDMA)
 Heroin
 Diazepam
 Ketamine
 Ephedrine
 gamma – Hydroxybutyrate (GHB)

ODV NarcoTest

Drug or Drug Type:

Heroin
 Amphetamine
 Methamphetamine
 3,4-Methylenedioxymethamphetamine (MDMA)
 Barbiturates
 Lysergic Acid Diethylamide (LSD)
 Marijuana
 Hashish Oil
 Marijuana
 Hashish Oil
 Cocaine Hydrochloride
 Cocaine Base
 Phencyclidine (PCP)
 Heroin
 Methamphetamine
 3,4-Methylenedioxymethamphetamine (MDMA)
 Heroin
 Diazepam
 Ketamine
 Ephedrine
 gamma – Hydroxybutyrate (GHB)

SIRCHIE FINGERPRINT LABORATORIES
 100 HUNTER PLACE
 YOUNGSVILLE, NORTH CAROLINA 27596

NARK

Drug or Drug Type:

Narcotic Alkaloids
 Heroin
 Morphine
 Amphetamine
 Methamphetamine
 Opium Alkaloids
 Heroin
 Morphine
 Amphetamine
 Methamphetamine
 3,4-Methylenedioxymethamphetamine (MDMA)
 Meperidine (Demerol) (Pethidine)
 Heroin
 Morphine
 Cocaine Hydrochloride
 Cocaine Base
 Procaine

23 – Methamphetamine/Ecstasy Reagent
 924 – Mecke's (Modified) Reagent
 925 – Valium/Ketamine Reagent
 925 – Valium/Ketamine Reagent
 927 – Ephedrine Reagent
 928 – GHB Reagent

Manufacturer's Field Test:

7602 – Marquis Reagent
 7602 – Marquis Reagent
 7602 – Marquis Reagent
 7602 – Marquis Reagent
 7605 – Dille-Koppanyi Reagent
 7607 – Ehrlich's (Modified) Reagent
 7608 – Duquenois Reagent
 7608 – Duquenois Reagent
 7609 – K N Reagent
 7609 – K N Reagent
 7613 – Scott (Modified) Reagent
 7613 – Scott (Modified) Reagent
 7614 – PCP Methaqualone Reagent
 7622 – Opiates Reagent
 7623– Methamphetamine/Ecstasy Reagent
 7623– Methamphetamine/Ecstasy Reagent
 7624 – Mecke's Reagent
 7625 – Valium/Ketamine Reagent
 7625 – Valium/Ketamine Reagent
 7627 – Chen's Reagent - Ephedrine
 7628 – GHB Reagent

Manufacturer's Field Test:

1 – Mayer's Reagent
 1 – Mayer's Reagent
 1 – Mayer's Reagent
 1 – Mayer's Reagent
 1 – Mayer's Reagent
 2 – Marquis Reagent
 2 – Marquis Reagent
 2 – Marquis Reagent
 2 – Marquis Reagent
 2 – Marquis Reagent
 2 – Marquis Reagent
 2 – Marquis Reagent
 2 – Marquis Reagent
 2 – Marquis Reagent
 2 – Marquis Reagent
 3 – Nitric Acid
 3 – Nitric Acid
 4 – Cobalt Thiocyanate Reagent
 4 – Cobalt Thiocyanate Reagent
 4 – Cobalt Thiocyanate Reagent

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Tetracaine
Barbiturates
Heroin
Morphine
Amphetamine
Methamphetamine
Lysergic Acid Diethylamide (LSD)
Marijuana
Hashish
Hashish Oil
Tetrahydrocannabinol (THC)
Marijuana
Hashish
Hashish Oil
Tetrahydrocannabinol (THC)
Cocaine Base

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

4 – Cobalt Thiocyanate Reagent
5 – Dille-Koppanyi Reagent
6 – Mandelin Reagent
6 – Mandelin Reagent
6 – Mandelin Reagent
6 – Mandelin Reagent
7 – Ehrlich's Reagent
8 – Duquenois Reagent
8 – Duquenois Reagent
8 – Duquenois Reagent
8 – Duquenois Reagent
9 – NDB (Fast Blue B Salt) Reagent
9 – NDB (Fast Blue B Salt) Reagent
9 – NDB (Fast Blue B Salt) Reagent
9 – NDB (Fast Blue B Salt) Reagent
13 – Cobalt Thiocyanate/Crack Test

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

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)
Ephedrine
Pseudoephedrine
Diazepam
Methamphetamine
3,4-Methylenedioxymethamphetamine (MDMA)
Methadone

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
6500 or 6501 – Cocaine ID Swab
6500 or 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
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:

Heroin
Amphetamine
Methamphetamine
Marijuana
Hashish Oil
Methamphetamine
Heroin
Marijuana
Hashish Oil
Cocaine Hydrochloride
Cocaine Base

Manufacturer's Field Test:

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:

Marijuana
Hashish Oil
Heroin
Cocaine Hydrochloride

Manufacturer's Field Test:

Marijuana/Hashish (Duquenois-Levine Reagent)
Marijuana/Hashish (Duquenois-Levine Reagent)
Heroin Step 1 and Step 2
Cocaine/Crack Step 1 and Step 2

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Cocaine Base
3,4-Methylenedioxyamphetamine (MDMA)
Methamphetamine

COZART PLC
92 MILTON PARK
ABINGDON, OXFORDSHIRE ENGLAND OX14 4RY

Drug or Drug Type:

Cocaine

Cocaine/Crack Step 1 and Step 2
MDMA Step 1 and Step 2
Methamphetamine ("Crystal") Step 1 and Step 2

Manufacturer's Field Test:

Cocaine Solid Field Test

VIRGINIA STATE BOARD OF HEALTH AND VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Proposed Notice of Request for Certificate of Public Need Applications for Development of Additional Nursing Home Beds

Legal Notice of Request for Certificate of Public Need Applications.

Pursuant to the authority vested in the State Board of Health and the Department of Medical Assistance Services by § 32.1-102.3:2 of the Code of Virginia, notice is hereby given of the issuance of a proposed Request for Applications (RFA). This proposed RFA is a request for certificate of public need (COPN) applications for projects that will result in an increase in the number of beds in which nursing home services are provided in the Commonwealth of Virginia. The RFA process is outlined in 12 VAC 5-220-335 of the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

Eligible Planning District and Total Nursing Home Beds Available for Authorization.

In the review cycle established by this RFA, the Commissioner of Health will consider applications for COPNs that propose an increase in nursing home beds in the planning district (PD) identified below and that propose an increase in beds no greater than the number of available beds shown below for the identified planning district. COPN applications that propose an increase in nursing home beds in any other planning district, not identified below, or propose an increase in beds greater than the number of available beds shown below for the indicated planning district will not be accepted for review.

Planning District 12, also known as West Piedmont Planning District, consisting of the cities of Danville and Martinsville and the counties of Franklin, Henry, Patrick, and Pittsylvania.

Total nursing home beds available for authorization: 60.

Basis of the Request for Applications.

House Bill 2639 (Chapter 838 of the 2005 Acts of Assembly), approved March 26, 2005, directs the Commissioner of Health to reissue an RFA for 60 new nursing home beds in Planning District 12, because a previously issued COPN for 60 nursing home beds in PD

12 was not implemented by the applicant that received it, and the COPN has now expired.

The commissioner may issue a COPN for an increase of such 60 new nursing home beds to establish a new nursing home facility, notwithstanding those provisions of the State Medical Facilities Plan that discourage establishment of new freestanding nursing home facilities with fewer than 120 beds.

Pursuant to the language of HB 2639, the commissioner will give preference in issuing any COPN for these 60 beds to an application that proposes to establish a new nursing facility located within Chatham, the county seat of Pittsylvania County, or within three miles of the boundary of Chatham.

Evaluation of Need for Additional Nursing Home Beds.

The "Nursing Home Services" component of the Virginia State Medical Facilities Plan (SMFP) (12 VAC 5-360) contains a nursing home bed-need forecasting method (12 VAC 5-360-40 C). This method has been employed by the Virginia Department of Health to compute a forecast of needed nursing home beds in 2008 in each of Virginia's 22 planning districts.¹

Consistent with the Virginia State Medical Facilities Plan (12 VAC 5-360-40 A), no planning district is considered to have a need for additional nursing home beds unless the estimated average annual occupancy of all existing nonfederal, Medicaid-certified nursing home beds in the planning district was at least 95% for the most recent three years for which bed utilization has been reported to the Virginia Department of Health (through nursing home filings with Virginia Health Information, Inc.).²

For purposes of this document, reporting years 2001 through 2003 are considered to be the most recent three years. The estimated average annual occupancy rates of some planning districts were adjusted in some years to take into account certain regulatory sanctions (i.e., denial of payment for new admissions) that could have affected the ability of some nursing homes to admit Medicare and/or Medicaid patients for varying periods of time during 2001 through 2003.

¹ For conduct of the certificate of public need program, the Virginia Department of Health continues to recognize the former Planning District 20, Southeastern Virginia, and the former Planning District 21, Peninsula, rather than the new combined Planning District 23, Hampton Roads.

² The inventory and utilization of the Virginia Veterans Care Center are excluded, by regulation, from consideration in the determination of nursing home bed need.

Also, no planning district will be considered to have a need for additional nursing home beds if there are uncompleted nursing home beds authorized for the planning district that will be Medicaid-certified beds.

When the SMFP's prescribed methodology was applied to current nursing home occupancy data and to current population projections, and when approved but uncompleted projects for additional nursing home beds were considered, no planning district was found to qualify, under the rules of the SMFP, for an RFA for additional nursing home beds for the 2008 planning target year. The

RFA proposed herein for PD 12 is a result of the above-cited provisions of HB 2639 and is not a result of application of the SMFP's nursing home bed-need methodology.

The following table shows the results for each planning district of applying the SMFP's nursing home bed-need methodology for the 2008 planning target year. Later this year, a comparable analysis will be performed for the 2009 planning target year, which may result in the issuance of an RFA for the 2009 planning target year.

Nursing Home Bed Need Forecast and Whether a Planning District Qualifies for Additional Nursing Home Beds in 2008

Plan. District	Bed Need Forecast For 2008	Existing and Authorized Beds	Projected Net Bed Need in 2008	Estimated Avg. Occupancy Medicaid Beds 2001-2003	Authorized But Uncompleted Medicaid Beds	Plan. District Qualifies for Additional NH Beds
1	615	641	(26)	90.0%	yes	no--no need
2	518	547	(29)	84.5%	no	no--no need
3	1,382	1,422	(40)	93.0%	no	no--no need
4	737	788	(51)	84.6%	no	no--no need
5	2,227	2,319	(92)	92.4%	yes	no--no need
6	1,626	1,528	98	93.1%	no	no--low occu.
7	931	972	(41)	88.5%	no	no--no need
8	5,274	4,406	868	91.0%	yes	no--low occu.
9	869	746	123	94.6%	yes	no--unbuilt beds
10	987	1,027	(40)	94.3%	no	no--no need
11	1,633	1,550	83	93.9%	yes	no--low occu.
12	1,927	1,869	58	92.8%	yes	no--low occu.
13	811	851	(40)	91.0%	yes	no--no need
14	650	635	15	94.3%	no	no--need = 0
15	3,971	3,966	5	90.3%	no	no--need = 0
16	931	731	200	93.2%	no	no--low occu.
17	407	462	(55)	83.0%	no	no--no need
18	587	575	12	91.6%	no	no--need = 0
19	1,117	1,075	42	96.4%	yes	no--unbuilt beds
20	4,598	4,488	110	91.1%	yes	no--low occu.
21	2,169	1,902	267	91.9%	yes	no--low occu.
22	506	389	117	91.3%	no	no--low occu.

Sources: Virginia State Medical Facilities Plan (12 VAC 5-360).
 Virginia Employment Commission (population projections, 2003 series).
 2002 Virginia Nursing Home Patient Survey, Virginia Association of Regional Health Planning Agencies (for age-specific nursing home use rates).
 Center for Quality Health Care Services and Consumer Protection, VDH (for bed inventory).

Basis for Review.

The Commissioner, in his review of COPN applications submitted pursuant to this RFA, will consider each of the 20 factors enumerated in § 32.1-102.3 B of the Code of Virginia, as applicable. He will also consider applicable standards of the State Medical Facilities Plan (12 VAC 5-230 through 12 VAC 5-360).

Projection of Potential Fiscal Impact.

The Department of Medical Assistance Services projects total additional expenditures for medical services provided to Medicaid recipients of approximately \$1.9 million for the fiscal

year ending June 30, 2008, if all the beds included in this RFA are authorized and available for occupancy by June 30, 2007. This projection is based on the following principal assumptions:

Average proportion of beds filled during FY 2008	91%
Assumed Medicaid proportion of bed-days of service	64%
Average estimated payment rate per day (direct, indirect, and capital costs)	\$149
Estimated patient-pay portion	\$23.90

General Notices/Errata

Schedule for Review.

COPN applications filed in response to this RFA shall be filed in accordance with the provisions of 12 VAC 5-220-355. The review schedule shown below will apply. Letters of intent and applications must be received by the Virginia Department of Health's Division of COPN and by the Health Planning Agency of Southwest Virginia by the dates shown below in order to qualify for consideration in the specified review cycle.

Letter of intent must be received by January 2, 2007.

Application must be received by January 29, 2007.

Review cycle will begin on March 10, 2007.

Application Fees.

The Virginia Department of Health shall collect fees for COPN applications filed in response to this RFA. No application may be deemed to be complete for review until the required application fee is paid. The fee is one percent of the proposed capital expenditure for the project, but not less than \$1,000 or more than \$20,000.

DEPARTMENT OF HEALTH PROFESSIONS

Notice of Periodic Review of Regulations

The Department of Health Professions and the following boards within the department are conducting reviews of all regulations providing for public participation in the promulgation of regulations:

Board of Audiology and Speech-Language Pathology
Board of Dentistry
Board of Funeral Directors and Embalmers
Board of Health Professions
Board of Counseling
Board of Medicine
Board of Nursing
Board of Long-Term Care Administrators
Board of Optometry
Board of Pharmacy
Board of Physical Therapy
Board of Psychology
Board of Social Work
Board of Veterinary Medicine

Goals of Public Participation Guidelines Regulations:

1. Ensure that persons and organizations are noticed when the board is considering regulatory action.
2. Ensure that the public has the opportunity to comment on the promulgation of any regulation.

Regulations may be viewed online at www.townhall.virginia.gov or www.dhp.virginia.gov or copies will be sent upon request.

Comment begins July 24, 2006, and ends on August 23, 2006. If any member of the public would like to comment on these regulations, please send comments by the close of the comment period to Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West

Broad Street, Richmond, VA 23230-1712, e-mail elaine.yeatts@dhp.virginia.gov or FAX (804) 662-9114.

HOUSE OF DELEGATES

Notice of Public Comment

Public-Private Education Facilities and Infrastructure Act

The work group established to revise the model guidelines for the implementation of the Public-Private Education Facilities and Infrastructure Act of 2002 (the PPEA) invites the public to comment on its initial draft of suggested revisions.

The PPEA grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entities determine there is a need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The respective governing body of the public entity must first adopt guidelines that it will follow to receive and evaluate any proposal submitted to the public entity under the provisions of the PPEA. The legislation establishing the PPEA provided for the Chairs of the Senate and House Committees on General Laws to facilitate the development of model guidelines for implementation of the PPEA. The model guidelines were completed on September 30, 2002, and substantially revised in 2005.

Senate Bill 76, passed during the 2006 Regular Session of the General Assembly, directed the Chairs of the House and Senate Committees on General Laws to facilitate the revision of model guidelines to include amendments made to the PPEA. The work group established to review the model guidelines and suggest revisions has completed an initial draft and now invites the public to provide comment on the draft.

A copy of the draft and other documents related to the suggested revisions may be obtained from the following website: <http://dls.state.va.us/ppea.htm>. A copy may also be obtained by contacting Amigo Wade (awade@leg.state.va.us) or Maria Everett (meverett@leg.state.va.us) at the Division of Legislative Services, General Assembly Building, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 371-0169.

Written comments may be submitted to the attention of Amigo Wade and must be received by 4:30 p.m. on August 1, 2006.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on June 30, 2006. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Thirty-Four (06)

Virginia's Instant Game Lottery 731; "\$1,000,000 Cash Spectacular" (effective 6/26/06).

OFFICE OF THE SECRETARY OF NATURAL RESOURCES

Notice of Public Comment

Revisions to Water Quality Improvement Fund Grant Guidelines

Background and purpose: The purpose of the Virginia Water Quality Improvement Act (the Act) is to restore and improve the quality of state waters and protect them from impairment and destruction for the benefit of current and future citizens of the Commonwealth. Because this is a shared responsibility between state and local governments and individuals, the Act also created the Water Quality Improvement Fund (WQIF). A primary objective of the WQIF Point Source Grant Program administered by the Dept. of Environmental Quality (DEQ) is to cost-share installation of nutrient reduction technology at eligible publicly owned wastewater plants discharging in the Chesapeake Bay watershed. This will reduce excess nitrogen and phosphorus loads flowing into the Bay and aid in meeting new point source nutrient discharge control regulations, adopted in 2005.

Section 10.1-2129 B of the Act directs the Secretary of Natural Resources to develop written guidelines that (i) specify eligibility requirements; (ii) govern the application for and distribution and conditions of WQIF grants; and (iii) list criteria for prioritizing funding requests. These guidelines were last issued in September 2005 and must now be revised due to substantive amendments to the Act made by the 2006 Session of the General Assembly, along with appropriations language in the recently approved state biennial budget, both of which became effective on July 1, 2006. The amendments to the Act only affect the Point Source Grant Program; therefore, no changes are proposed to the Nonpoint Source Grant Program guidelines.

The process for development of guidelines includes (a) use of an advisory committee composed of interested parties; (b) a 60-day public comment period on draft guidelines; (c) written responses to all comments received; and (d) notice of the availability of draft guidelines and final guidelines to all who request such notice. An advisory group has been assembled and met on June 16, 2006, to assist the Secretary in drafting revised WQIF grant guidelines. This notice announces the availability of the draft revised WQIF guidelines for public review and comment.

The focus of these revisions is on point source projects located within the Chesapeake Bay watershed involving the installation of nutrient reduction technology. An additional goal of the WQIF is to improve water quality in river basins outside the Chesapeake Bay watershed. The General Assembly has appropriated funds in the FY07-08 biennial budget for point source grants to local governments located outside the Bay

watershed. As directed in the budget bill, DEQ will work with the Dept. of Housing and Community Development to draft appropriate criteria and guidelines for the use of this funding, and will include these criteria in future revisions of the WQIF Grant Guidelines.

Public participation and contact information: Anyone wishing to submit written comments for the public comment file may do so by mail, fax, or e-mail to Department Environmental Quality, Chesapeake Bay Program, P.O. Box 10009, Richmond, VA 23240-0009, Attn: John Kennedy, FAX (804) 698-4116, or e-mail jmkennedy@deq.virginia.gov.

Written comments must include the name and address of the commenter (including e-mail). In order to be considered comments must be received no later than 5 p.m. on Monday, September 25, 2006.

Other Information: Copies of the proposed revisions to the WQIF grant guidelines are available to the public upon request from the contact person above or via these Internet websites, Office of the Secretary of Natural Resources: www.naturalresources.virginia.gov, Department of Environmental Quality: www.deq.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order - Aqua Utilities, Inc., and Land 'Or Utility Company, Inc.

Purpose of notice: To invite citizens to comment on a proposed amended consent order for a facility in Caroline County, Virginia.

Public comment period: July 24, 2006, to August 23, 2006.

Consent order description: The State Water Control Board proposes to issue an amended consent order to the Aqua Utilities, Inc., and Land 'Or Utility Company, Inc., to address alleged violations of the Virginia Pollutant Discharge Elimination System Permit No. VA0060887. The location of the facility where the alleged violations occurred is at 198 Kent Drive, Ruther Glen, Virginia. The amended consent order describes a settlement to resolve consent order violations for not completing construction of an upgraded sewage treatment plant on time, permit effluent limit violations, and late submittal of reports.

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 amended 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: Carl Ciccarelli, Department of Environmental Quality, Northern Virginia Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3862, FAX (703) 583-3871, or e-mail cjccicarelli@deq.virginia.gov.

General Notices/Errata

Proposed Consent Special Order - Bayshore Concrete Products Corporation

Purpose of notice: To seek public comment on proposed consent orders from the Department of Environmental Quality for facilities in Cape Charles and Norfolk, Virginia.

Public comment period: July 24, 2006, to August 24, 2006.

Consent order description:

1. The State Water Control Board proposes to issue a consent order to Bayshore Concrete Products Corporation to address alleged violations of the Ground Water Withdrawal Regulations. The location of the facility where the alleged violations occurred is 1134 Bayshore Road, Cape Charles. The consent order describes a settlement to resolve failure to submit a timely application; failure to provide timely well completion reports prior to withdrawal, failure to submit geologist and geophysical logs and determination of aquifer of withdrawal prior to installation of well pumps, and unpermitted withdrawal of groundwater within a groundwater management area. The consent order incorporates a schedule of compliance actions and requires the facility to pay a civil charge.

2. The State Water Control Board proposes to issue a consent order to Norfolk Shiprepair and Drydock Company, Inc., to address alleged violations of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation and VPDES Permit No. VA0004405. The location of the facility where the alleged violation occurred is the foot of Claiborne Avenue, Norfolk, VA 23504. The consent order describes a settlement to resolve best management practice (BMP) and operational deficiencies at the facility that led to a discharge of paint solids and abrasive blast material to the Elizabeth River. The consent order requires Norfolk Ship Repair and Drydock Company, Inc., to pay a civil charge.

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: Caroline Huertas, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2107, FAX (757) 518-2003 or e-mail cmhuertas@deq.virginia.gov.

Proposed Consent Special Order - Children's Home of Virginia Baptists, Inc.

Purpose of notice: To seek public comment on a proposed consent order amendment from the Department of Environmental Quality for a facility in Chesterfield County, Virginia.

Public comment period: July 24, 2006, to August 23, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to the Children's Home of Virginia Baptists, Inc., to address violations of its VPDES Permit No. VA0027561. The location of the facility is at 6900 Hickory Road, Chesterfield County, Virginia. The consent order describes a settlement to resolve wastewater permit violations that occurred at the facility. The order requires submittal of a corrective action plan.

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: Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5093, FAX (804) 527-5106, or e-mail felupini@deq.virginia.gov.

Proposed Consent Special Order - Greenlawn Memory Gardens, Inc.

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a project in Hanover County, Virginia.

Public comment period: July 24, 2006, through August 25, 2006.

Consent order description: The Virginia State Water Control Board proposes to issue a consent order to Greenlawn Memory Gardens, Inc., to address alleged violations of the Virginia State Water Control Law and the Virginia Water Protection Permit Regulations. The alleged violations occurred at Roselawn Cemetery, located on the west side of US Route 33, approximately one mile northwest of the Chickahominy River Bridge. The consent order describes a settlement to resolve unauthorized impacts to forested wetlands. The consent order requires payment of a civil charge and restoration of the wetland impacts.

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: Allison C. Dunaway, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5015, FAX (804) 527-5106, or e-mail acdunaway@deq.virginia.gov.

Proposed Consent Special Order - The Hanover Group, L.L.C.

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a development project in Hanover County, Virginia.

Public comment period: July 24, 2006, to August 23, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to The Hanover Group, LLC, to address alleged violations of VWPP regulations. The location of the development project where the violation occurred is Bluffs at Bell Creek off Pole Green Road in Hanover County, VA. The consent order describes a settlement to both restore a preserved wetland area, purchase wetland mitigation credits at a wetlands bank for unauthorized impacts that occurred at the project, and the payment of a civil charge.

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: Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5079, FAX (804) 527-5106, or e-mail ecakers@deq.virginia.gov.

Proposed Consent Special Order - James River Commons, LLC

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a project in the City of Richmond, Virginia.

Public comment period: July 24, 2006, through August 31, 2006.

Consent order description: The Virginia State Water Control Board proposes to issue a consent order to James River Commons, LLC, to address alleged violations of the Virginia State Water Control Law and the Virginia Water Protection Permit Regulations. The alleged violations occurred as a result of construction on property in the southwest quadrant of the intersection of Huguenot Road (Rt. 147) and Chippenham Parkway (Rt. 150). The consent order proposes payment of a civil charge and restoration of the wetland and stream impacts.

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: Allison C. Dunaway, Department of

Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5015, FAX (804) 527-5106, or e-mail acdunaway@deq.virginia.gov.

Proposed Consent Special Order - Kerrs Creek, LLC

Purpose of notice: To invite citizens to comment on a proposed consent order for a facility in Rockbridge County, Virginia.

Public comment period: July 24, 2006, to August 26, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to Kerrs Creek, LLC, to address alleged violations of regulations. The location of the facility where the alleged violations occurred is in Rockbridge County, Virginia. The consent order describes a settlement to resolve these violations.

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: Steven W. Hetrick, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801-9519, telephone (540) 574-7833, FAX (540) 574-7844, or e-mail swhetrick@deq.virginia.gov.

Proposed Consent Special Order - Lee's Mobil, Inc.

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Ashland, Virginia.

Public comment period: July 24, 2006, to August 23, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to Lee's Mobil, Inc., to address violations of its VPDES Permit No. VAG404066. The location of the facility where the violation occurred is 10292 East Patrick Henry Road, Ashland, Virginia. The consent order describes a settlement to resolve wastewater permit discharge violations that occurred at the facility. The order requires wastewater treatment system modifications and payment of a civil charge.

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: Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5093, FAX (804) 527-5106, or e-mail felupini@deq.virginia.gov.

General Notices/Errata

Proposed Consent Special Order - Omega Protein, Inc.

583-3938, FAX (703) 583-3841, or e-mail jlsheedy@deq.virginia.gov.

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Reedville, Virginia.

Public comment period: July 24, 2006, to August 23, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to Omega Protein, Inc., to address violations of its VPDES Permit No. VA0003867. The location of the facility where the violation occurred is the end of Virginia State Highway 659, Reedville, VA. The consent order describes a settlement to resolve wastewater permit discharge violations that occurred at the facility. The order requires wastewater treatment system modifications and payment of a civil charge.

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: Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5093, FAX (804) 527-5106, or e-mail felupini@deq.virginia.gov.

Proposed Consent Special Order - Pilot Travel Centers, LLC

Purpose of notice: To invite citizens to comment on a proposed consent order for a facility in Caroline County, Virginia.

Public comment period: July 24, 2006, to August 23, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to Pilot Travel Centers, LLC, to address alleged violations at the Pilot Oil Center #291 governed by permit number VA0085871. The location of the facility where the alleged violation occurred is 23845 Rogers Clark Boulevard, Ruther Glen, VA 22546. The consent order describes a settlement to resolve exceedences and misreporting of Total Petroleum Hydrocarbons, an outdated Storm Water Pollution Prevention Plan, and inadequate certification of laboratory equipment.

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: Jennifer Sheedy, Department of Environmental Quality, Northern Virginia Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703)

Proposed Consent Special Order - Powhatan County

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for the Fighting Creek Wastewater Treatment Plant (WWTP), owned by Powhatan County, Virginia.

Public comment period: July 24, 2006, to August 23, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to Powhatan County to address alleged violations of VPDES regulations. The location of the facility where the violations occurred is at 3900 Old Plantation Road, Powhatan County, VA. The consent order describes a settlement to bring the facility into compliance with the VPDES regulations and the payment of a civil charge.

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: Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5079, FAX (804) 527-5106, or e-mail ecakers@deq.virginia.gov.

Proposed Consent Special Order - Rowe Concrete, LLC

Purpose of notice: To invite citizens to comment on a proposed amended consent order for a facility in Spotsylvania County, Virginia.

Public comment period: July 24, 2006, to August 23, 2006.

Consent order description: The State Water Control Board proposes to issue an amended consent order to Rowe Concrete, LLC, to address violations of the Virginia General Permit for Ready-Mixed Concrete Plants Registration No. VAG110187. The location of the facility where the violations occurred is at 8526 Indian Hills Court. The amended consent order describes a settlement to resolve pH permit effluent limit violations and mismanagement of the treatment system.

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 amended 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: Carl Ciccarelli, Department of Environmental Quality, Northern Virginia Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703)

583-3862, FAX (703) 583-3871, or e-mail cjccicarelli@deq.virginia.gov.

Proposed Consent Special Order - St. Paul's College

Purpose of notice: To seek public comment on a proposed consent order amendment from the Department of Environmental Quality for a facility in Lawrenceville, Virginia.

Public comment period: July 24, 2006, to August 23, 2006.

Consent order description: The State Water Control Board proposes to amend a consent order issued to the St. Paul's College on 3/24/04, to extend the final compliance date from 10/1/06 to 10/1/07. The location of the facility is 115 College Drive, Lawrenceville, Virginia.

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: Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5093, FAX (804) 527-5106, or e-mail felupini@deq.virginia.gov.

Proposed Consent Special Order - TA Operating Corporation d/b/a Richmond Travel Center

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Hanover County, Virginia.

Public comment period: July 24, 2006, to August 23, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to TA Operating Corporation d/b/a Richmond Travel Center, to address alleged violations of the VPDES Permit No. VA0061972 and underground/aboveground storage tank regulations. The location of the facility where the alleged violation occurred is the intersection of I-95 and Lewistown Road. The consent order describes a settlement to resolve certain violations of environmental law and regulations at its wastewater treatment and stormwater system. The order requires corrective action and payment of a civil charge.

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: Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-a Cox

Road, Glen Allen, VA 23060, telephone (804) 527-5093, FAX (804) 527-5106, or e-mail felupini@deq.virginia.gov.

Proposed Consent Special Order - Three Flags/Culpeper LLC

Purpose of notice: To invite citizens to comment on a proposed consent order for a facility in Culpeper County, Virginia.

Public comment period: July 24, 2006, to August 23, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to Three Flags/Culpeper LLC to address violations of the Virginia Water Protection (VWP) General Permit Authorization No. WP4-03-2063. The location of the facility where the violations occurred is Three Flags – Phase I development located north of Lee Highway (U.S. Route 29) and east of State Route 229 in Culpeper County. The consent order describes a settlement to resolve permit violations for unauthorized impacts and documentation violations.

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: Carl Ciccicarelli, Department of Environmental Quality, Northern Virginia Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3862, FAX (703) 583-3841, or e-mail cjccicarelli@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

General Notices/Errata

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

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half of an Acre.**

Publication: 22:21 VA.R. 2809-2824 June 26, 2006

Correction to Final Regulation:

Page 2821, in 9 VAC 25-660-90 Part II C 3 b, lines 2 and 5, delete the parentheses

Title of Regulation: **9 VAC 25-680. Virginia Water Protection General Permit for Linear Transportation Projects.**

Publication: 22:21 VA.R. 2845-2866 June 26, 2006

Correction to Final Regulation:

Page 2852, in 9 VAC 25-680-70 B, line 8, within the first set of brackets, insert "to" after the stricken "or"

Page 2853, in 9 VAC 25-680-90 4 a, line 1, unstrike "all" and do not add "the" thus eliminating the bracketed change on line 1

Title of Regulation: **9 VAC 25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities.**

Publication: 22:21 VA.R. 2866-2889 June 26, 2006

Correction to Final Regulation:

Page 2874, in 9 VAC 25-690-70 B, line 8, within the first set of brackets, insert "to" after the stricken "or"

CALENDAR OF EVENTS

Symbol Key

- † Indicates entries since last publication of the *Virginia Register*
♿ Location accessible to persons with disabilities
☎ Teletype (TTY)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD OF ACCOUNTANCY

August 2, 2006 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Room 4 West, 4th Floor, Richmond,
Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to discuss general business matters and conduct regulatory review. A public comment period will be held at the beginning of the meeting. All meetings are 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 before the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark D'Amato, Agency Regulatory Coordinator, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230-4923, telephone (804) 367-0502, FAX (804) 367-2174, (804) 367-9753/TTY☎, e-mail mark.damato@boa.virginia.gov.

* * * * *

September 8, 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 Accountancy intends to amend regulations entitled **18 VAC 5-21, Board of Accountancy Regulations**. The purpose of the proposed action is to decrease the administration fee charged to Virginia candidates who take the computer-based CPA examination, or "CBT," for the first time from \$160 to \$120, and to repeal entirely the fee charged to Virginia candidates who retake the CBT. The net effect of this is to provide direct savings to Virginia candidates.

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

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 or e-mail boa@boa.virginia.gov.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

August 24, 2006 - 2 p.m. -- Open Meeting
Holiday Inn of Harrisonburg, 1400 East Market Street,
Harrisonburg, Virginia.♿

A meeting to discuss issues related to Virginia agriculture and consumer services. The board's summer meeting will be a two-day event, August 24 (board meeting) and August 25 (board tour). The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy Seward at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Roy E. Seward, Board Secretary, Department of Agriculture and Consumer Services, Oliver Hill Bldg., 102 Governor St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3538, FAX (804) 371-2945, e-mail roy.seward@vdacs.virginia.gov.

* * * * *

August 29, 2006 - 9 a.m. -- Public Hearing
Department of Agriculture and Consumer Services, 102 Governor Street, Room 220, Board Room, Richmond, Virginia.

September 11, 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 Agriculture and Consumer Services intends to repeal regulations entitled **2 VAC 5-580, Rules and Regulations Pertaining to the Sanitary and Operating Requirements in Retail Food**

Calendar of Events

Stores, and adopt regulations entitled **2 VAC 5-585, Retail Food Establishment Regulations**. The purpose of the proposed action is to adopt the Retail Food Establishment Regulations that by law will replace the existing Rules and Regulations Pertaining to Sanitary and Operating Requirements in Retail Food Stores upon the effective date of the new regulations.


Statutory Authority: § 3.1-398 of the Code of Virginia.

Contact: Richard D. Saunders, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, 102 Governor St., Suite 349, Richmond, VA 23219, telephone (804) 786-8899, FAX (804) 371-7792 or e-mail doug.saunders@vdacs.virginia.gov.


DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

† **August 11, 2006 - 9 a.m.** -- Open Meeting
Virginia Farm Bureau Federation, 12580 West Creek Parkway, Richmond, Virginia. 

A meeting of the Beekeeping Study Workgroup to hear presentations resulting from a survey of beekeepers and farmers to identify issues of concern affecting the beekeeping industry. The workgroup is assisting the Department of Agriculture and Consumer Services in the completion of a study of the plight of Virginia's beekeepers pursuant to Senate Joint Resolution No. 38 of the 2006 session of the Virginia General Assembly. Recommendations for remedies to problems identified by the study will be provided to the Commissioner of the Department of Agriculture and Consumer Services. The workgroup will entertain public comment at the conclusion of the morning session for a period not to exceed 30 minutes. Any person desiring to attend the meeting, and requiring special accommodation in order to participate in the meeting should contact Keith R. Tignor at least five days before the meeting date so that suitable arrangements can be made.

Contact: Keith R. Tignor, State Apiarist, Department of Agriculture and Consumer Services, Oliver Hill Bldg., 102 Governor St., Lower Level, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793, toll-free (800) 552-9963, (800) 828-1120/TTY , e-mail keith.tignor@vdacs.virginia.gov.

Virginia Cotton Board


August 3, 2006 - 9:30 a.m. -- Open Meeting
Tidewater Agriculture Research and Extension Center, 6321 Holland Road, Suffolk, Virginia. 

The board will begin their meeting with a tour and briefing of the cotton test plots funded by the Virginia Cotton Board. Following the tour, the board will vote on the per bale assessment rate, review the financial reports, and discuss any other business to be brought before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to

participate at the meeting should contact Gail Moody Milteer at least five days before the meeting date so that suitable arrangements can be made.

Contact: Gail Moody Milteer, Program Director, Department of Agriculture and Consumer Services, 1100 Armory Dr., Suite 120, Franklin, VA 23851, telephone (757) 569-1100, FAX (757) 562-6104.


Virginia Horse Industry Board

September 22, 2006 - 10 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, 2nd Floor Meeting Room, Charlottesville, Virginia. 

A meeting to (i) review the financial status of the board with regard to the fiscal year that just closed, (ii) discuss marketing projects for the new fiscal year, and (iii) hear from several guest speakers. 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, Oliver Hill Bldg., 102 Governor St., Room 318, 3rd Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 371-7786, e-mail andrea.heid@vdacs.virginia.gov.


Virginia Pork Industry Board

July 28, 2006 - 3 p.m. -- Open Meeting
Operations Tower at Norfolk International Terminal, 7737 Hampton Boulevard, Norfolk, Virginia. 

A meeting to (i) review and approve the minutes of the last meeting; (ii) review the board's financial statement; (iii) elect Pork Industry Board delegates and elect new officers; (iv) approve projects; and (v) formulate the annual budget. 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 John H. Parker at least five days before the meeting date so that suitable arrangements can be made.

Contact: John H. Parker, Executive Director, Virginia Pork Industry Board, 102 Governor St., 3rd Floor, Room 316, Richmond, VA 23219, telephone (804) 786-7092, FAX (804) 371-7786, e-mail john.parker@vdacs.virginia.gov.

Virginia Soybean Board

† **August 16, 2006 - 3 p.m.** -- Open Meeting
1961 Princess Anne Lane, Virginia Beach, Virginia. 

A meeting to (i) discuss checkoff revenues and the financial status of the board following the end of the fiscal year ending June 30, 2006; (ii) approve the minutes of the March 9, 2006, meeting; and (iii) receive reports from the chairman, United Soybean Board representatives, and from other committees. The board will entertain public comment

at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact 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, Room 319, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail phil.hickman@vdacs.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD

August 1, 2006 - 7 p.m. -- Public Hearing
Nottoway County Community Center, 3951 Military Road, Pickett Park, Blackstone, Virginia. ♿

A public hearing to receive comments on a permit application from ArborTech Forest Products, Inc to modify their dimensional lumber manufacturing plant. The proposed amendment to the permit would allow the two wood-fired boilers to burn additional fuel. The proposed facility is classified as major source of air pollution. The maximum annual emissions of air pollutants from the facility under the proposed permit are expected to be: 109.12 tons/yr of particulate matter (PM, PM-10), 55.18 tons/yr of NO_x, 125.71 tons/yr of CO, 156.19 tons/yr of VOCs, and 4.53 tons/yr of SO₂. The applicant proposes to burn 61,022 tons/yr of wood residue excluding bark or any wood that contains chemical treatments or has affixed thereto paint and/or finishing materials or paper or plastic laminates for fuel. The applicant will use multicyclones to control particulate matter emissions from the two wood-fired boilers. No add-on controls will be used for the control of oxides of nitrogen (NO_x) from the wood-fired boilers. The estimated effect on air quality near the facility from the proposed project is no exceedance of current Ambient Air Quality Standards. The DEQ is requesting concurrent processing of the draft and proposed Title V permit reviews and significant permit amendment. The public comment period began June 22, 2006, and ends on August 16, 2006.

Contact: Dave Skelly, Department of Environmental Quality, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-6235, FAX (434) 582-5125, e-mail djskelly@deq.virginia.gov.

August 24, 2006 - 10 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, 1st Floor Conference Room, Richmond, Virginia.

September 8, 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 5-140, Regulation for Emissions Trading (Rev. E05)**. The purpose of the proposed action is to establish requirements to reduce SO₂ and NO_x emissions in order to eliminate their significant contribution to nonattainment or interference with

maintenance of the national ambient air quality standards in downwind states and to protect Virginia's air quality and its natural resources.

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia.

Contact: Mary E. Major, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510 or e-mail memajor@deq.virginia.gov.

ALCOHOLIC BEVERAGE CONTROL BOARD

August 7, 2006 - 9 a.m. -- Open Meeting
August 21, 2006 - 9 a.m. -- Open Meeting
September 5, 2006 - 9 a.m. -- Open Meeting
September 18, 2006 - 9 a.m. -- Open Meeting
October 2, 2006 - 9 a.m. -- Open Meeting
† October 16, 2006 - 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.

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

July 26, 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 least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.


August 2, 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

Calendar of Events


in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: 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.

August 3, 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 least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

August 9, 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 least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.


Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

August 10, 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 least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad

St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

September 7, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the full board to conduct board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: 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


August 4, 2006 - 10 a.m. -- Open Meeting

September 1, 2006 - 10 a.m. -- Open Meeting

October 6, 2006 - 10 a.m. -- Open Meeting


Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies. Art and Architectural Review Board submittal forms and submittal instructions can be downloaded by visiting the DGS Forms Center at www.dgs.virginia.gov. 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) 225-0359, (804) 786-6152/TTY , or e-mail rford@comarchs.com.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

August 16, 2006 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A general business meeting including consideration of regulatory issues as may be presented on the agenda. A portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail alhi@dpor.virginia.gov.

ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY

July 27, 2006 - 9 a.m. -- Open Meeting
1602 Rolling Hills Drive, Suite 107, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A quarterly business meeting.

Contact: Sandra Prince, Program Manager, Assistive Technology Loan Fund Authority, 1602 Rolling Hills Dr., Suite 107, Richmond, VA, 23229, telephone (804) 662-7021, FAX (804) 662-9533, toll-free (866) 835-5976, e-mail sandra.prince@atlfa.org.

AUCTIONEERS BOARD

October 5, 2006 - 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: 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.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **August 17, 2006 - 9:30 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. ♿

A meeting to discuss matters as it relates to the practice of audiology and speech-language pathology.

Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

August 7, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A general business meeting to include consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail barbercosmo@dpor.virginia.gov.

BOARD FOR BRANCH PILOTS

July 27, 2006 - 8:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk,
Virginia. ♿

A meeting of the Examination Administrators 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 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.

July 28, 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. 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 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.

Calendar of Events

CEMETERY BOARD

† **October 17, 2006 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎

A meeting to discuss board business.

Contact: Christine Martine, Executive Director, Cemetery Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail cemetery@dpor.virginia.gov.

CHARITABLE GAMING BOARD

September 12, 2006 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street,
Richmond, Virginia. ☎

A regular board meeting.

Contact: Clyde E. Cristman, Director, Department of Charitable Gaming, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-1681, FAX (804) 786-1079, e-mail clyde.cristman@dcg.virginia.gov.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

August 15, 2006 - 10 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 17th Floor
Conference Room, Richmond, Virginia.

A regular meeting of the Northern Area Review Committee to review 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.

August 15, 2006 - 2 p.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 17th Floor
Conference Room, Richmond, Virginia.

A regular meeting of the Southern Area Review Committee to review 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.

NOTE: CHANGE IN MEETING DATE

September 26, 2006 - 10 a.m. -- Open Meeting
Location to be announced.

A regular meeting to review local programs.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

STATE CHILD FATALITY REVIEW TEAM

September 12, 2006 - 10 a.m. -- Open Meeting
Office of the Chief Medical Examiner, 400 East Jackson
Street, Richmond, Virginia. ☎

The business portion of the State Child Fatality Review Team meeting, from 10 a.m. to 10:30 a.m., is open to the public. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

Contact: Rae Hunter-Havens, Coordinator, State Child Fatality Review, 400 East Jackson St., Richmond, VA 23219, telephone (804) 786-1047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail rae.hunter-havens@vdh.virginia.gov.

COMPENSATION BOARD

July 26, 2006 - 11 a.m. -- Open Meeting
August 16, 2006 - 11 a.m. -- Open Meeting
102 Governor Street, Lower Level, Room LL22, Richmond,
Virginia. ☎

A monthly board meeting.

Contact: Cindy P. Waddell, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 225-3308, FAX (804) 371-0235, e-mail cindy.waddell@scb.virginia.gov.

BOARD OF CONSERVATION AND RECREATION

† **July 26, 2006 - 10 a.m.** -- Open Meeting
Chippokes Plantation Farm State Park, Surry, Virginia.

A regular meeting and joint session with the Chippokes Plantation Farm Foundation Board of Trustees.

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

July 25, 2006 - 9 a.m. -- CANCELED
The Science Museum of Virginia, 2500 West Broad Street,
Richmond, Virginia.

A meeting of the Technical Advisory Committee to assist the department in considering revisions to the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations is canceled.

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.

July 26, 2006 - 10 a.m. -- Open Meeting
Chippokes Mansion, Chippokes Plantation State Park (695),
Chippokes Park Road, Board Room, Surry, Virginia.

A regular business meeting of the Chippokes Plantation
Farm Foundation Board of Trustees.

Contact: Katherine R. Wright, Executive Director,
Department of Conservation and Recreation, 101 N. 14th St.,
11th Floor, Richmond, VA 23219, telephone (804) 786-7950,
FAX (804) 371-8500, e-mail
katherine.wright@dcr.virginia.gov.

† **July 27, 2006 - 9 a.m.** -- Open Meeting
Virginia Commonwealth University, University Student
Commons, 907 Floyd Avenue, Richmond, Virginia.

A technical advisory committee meeting to assist the
department in considering revisions to the Virginia Soil and
Water Conservation Board's Impounding Structure (Dam
Safety) Regulations.

Contact: David C. Dowling, Policy, Planning, and Budget
Director, Department of Conservation and Recreation, 203
Governor Street, Suite 302, Richmond, VA 23219, telephone
(804) 786-2291, FAX (804) 786-6141, e-mail
david.dowling@dcr.virginia.gov.

August 9, 2006 - 10 a.m. -- Open Meeting
Location to be announced.

A regular business meeting of the Virginia Land
Conservation Foundation Board of Trustees for discussion
of new grant round.

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.

August 10, 2006 - Noon -- Open Meeting

September 14, 2006 - Noon -- Open Meeting

† **October 12, 2006 - Noon** -- Open Meeting
Richmond City Hall, 900 East Broad Street, 5th Floor,
Planning Commission Conference Room, Richmond, Virginia.

A regular meeting of the Falls of the James Scenic River
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.

† **August 31, 2006 - 10 a.m.** -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Board
Room, Charlottesville, Virginia.

A meeting of the Virginia Outdoors Plan Technical Advisory
Committee (VOPTAC) to provide information and comments
on development of the 2007 Virginia Outdoors Plan.

Contact: John R. Davy, Division Director, Planning and
Recreation Resources, Department of Conservation and
Recreation, 203 Governor St., Suite 326 Richmond, VA

23219, telephone (804) 786-1119, FAX (804) 371-7899, e-
mail john.davy@dcr.virginia.gov.

Virginia Soil and Water Conservation Board

September 21, 2006 - 9:30 a.m. -- Open Meeting
Location to be announced.

A regular board 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.

BOARD FOR CONTRACTORS


July 25, 2006 - 9 a.m. -- Open Meeting

August 22, 2006 - 9 a.m. -- Open Meeting

September 26, 2006 - 9 a.m. -- Open Meeting


† **October 24, 2006 - 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.

† **July 27, 2006 - 9 a.m.** -- Open Meeting


† **August 8, 2006 - 9 a.m.** -- Open Meeting

September 15, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

An informal fact-finding conference.

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.

NOTE: CHANGE IN MEETING TIME

August 22, 2006 - 1 p.m. -- Open Meeting
Department of Professional and Occupational Regulations,
3600 West Broad Street, Conference Room 4 West,
Richmond, Virginia. 

A quarterly meeting of the Board for Contractors Committee
to follow the regular board meeting.

Contact: Kevin Hoeft, Regulatory Boards Administrator,
Department of Professional and Occupational Regulation,

Calendar of Events

3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.virginia.gov.

BOARD OF CORRECTIONS

September 8, 2006 - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Corrections intends to amend regulations entitled **6 VAC 15-20, Regulations Governing Certification and Inspection**. The purpose of the proposed action is to amend existing certification and inspection standards to update definitions and terminology; redirect authority to set and adjust audit schedules, determine compliance decisions and grant extension; standardize submission of variance requests for local and state correctional facilities; and reduce the time limit for a completed audit to be forwarded to the board.

Statutory Authority: § 53.1-5 of the Code of Virginia.

Contact: Donna Lawrence, Manager, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3499, FAX (804) 674-3587 or e-mail donna.lawrence@vadoc.virginia.gov.

September 19, 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.

September 19, 2006 - 1 p.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor, Board Room, 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.

September 20, 2006 - 9:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor, Room 3054, 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.

September 20, 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 presentation to and action 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.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

September 13, 2006 - 1 p.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 📍

September 11, 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 Criminal Justice Services intends to amend regulations entitled **6 VAC 20-30. Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Institutional Services**. The purpose of the proposed action is to amend the rules, last updated in 1992, to make the standards more compatible with the most efficient way to conduct training. The purpose of the changes is to facilitate training while maintaining the quality of training. The goal is to make training and reporting requirements easier for certified academies to accomplish.

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

Contact: John Byrd, Assistant Section Chief, Department of Criminal Justice Services, 202 N. 9th St., Richmond, VA 23219, telephone (804) 786-6375, FAX (804) 786-0410 or e-mail john.byrd@dcs.virginia.gov.

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September 13, 2006 - 1 p.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 📍


September 11, 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 Criminal Justice Services intends to amend regulations entitled **6 VAC 20-50. Rules Relating to Compulsory Minimum Training Standards Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers**. The purpose of the proposed action is to amend the regulations to ensure that training and certification of jailors, courtroom and courthouse security officers and process service officers is based on timely data provided by the 2001-2002 job task analysis.


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

Contact: Judith Kirkendall, Job Task Analysis Administrator, Department of Criminal Justice Services, 202 North 9th Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, or e-mail judith.kirkendall@dcjs.virginia.gov.


DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

† **August 2, 2006 - 10 a.m.** -- Open Meeting
1221 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A multisite electronic meeting. The Richmond site will be at the Virginia Department of Transportation (VDOT), Central Office. The remote site will be at the VDOT Bristol District Office at 870 Bonham Road, Bristol, VA 24203. The tentative agenda includes (i) the Technology Assistance Program (TAP) presentation/demo; (ii) a presentation from Hearing Loss Association of America; (iii) an update on agency's strategic plan and needs assessment; (iv) a relay contract update; (v) continued planning for townhall meetings; and (vi) a status report on revision of interpreter program regulations.

Contact: Leslie Hutcheson Prince, Policy and Planning Manager, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23235, telephone (804) 662-9703, FAX (804) 662-9718, toll-free (800) 552-7917, (804) 662-9703/TTY , e-mail leslie.prince@vddhh.virginia.gov.

BOARD OF DENTISTRY

† **August 5, 2006 - 9 a.m.** -- Open Meeting
Hilton Springfield, 6550 Loisdale Road, Springfield, Virginia. 

A meeting to continue the formal hearing that was held on June 16, 2006. There will not be a public comment period.

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) 662-7246, (804) 662-7197/TTY , e-mail sandra.reen@dhp.virginia.gov.


August 18, 2006 - 9 a.m. -- Open Meeting


September 8, 2006 - 9 a.m. -- Open Meeting

September 29, 2006 - 9 a.m. -- Open Meeting


† **October 13, 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, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail cheri.emma-leigh@dhp.virginia.gov.


September 14, 2006 - 9 a.m. -- Open Meeting
Roanoke Hotel and Convention Center, Roanoke, 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.

September 15, 2006 - 9 a.m. -- Open Meeting
Roanoke Hotel and Convention Center, Roanoke, Virginia. 


A meeting to discuss board business. There will be a 15-minute public comment period at the beginning of the meeting.

Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail sandra.reen@dhp.virginia.gov.


DESIGN BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

August 17, 2006 - 11 a.m. -- Open Meeting

September 21, 2006 - 11 a.m. -- Open Meeting

† **October 19, 2006 - 11 a.m.** -- Open Meeting
Department of General Services, 202 North Ninth Street, Room 412, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A monthly meeting to review requests submitted by localities to use the design build or construction management type contracts. Contact the Division of Engineering and Buildings to confirm this meeting. Board rules and regulations can be obtained on-line at www.dgs.virginia.gov under DGS Forms, Form #DGS-30-904.

Contact: Rhonda M. Bishton, Administrative Assistant, Division of Engineering and Buildings, Department of General Services, 202 N. Ninth St., Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY , e-mail rhonda.bishton@dgs.virginia.gov.

BOARD OF EDUCATION

July 26, 2006 - 9 a.m. -- Open Meeting

September 27, 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.

Calendar of Events


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.

August 25, 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 20-520, Regulations Governing Reduction of State Aid When Length of School Term Below 180 School Days**. The 2004 Virginia General Assembly passed three bills that amended § 22.1-98 of the Code of Virginia and made the changes effective from passage of the bills. The bills were HB 1256 (Van Landingham), SB 452 (Whipple), and HB 575 (Hamilton). HB 1256 and SB 452 clarify the schedule of makeup days and circumstances in which approval may be granted so that state basic aid funding will not be reduced because of school closings due to severe weather conditions or other emergency situations. HB 575 permits the Board of Education to waive the requirement that school divisions compensate for school closings resulting from a declared state of emergency. HB 575 and SB 452 have emergency enactment clauses and are effective upon passage. HB 1256 and SB 452 require the Board of Education to promulgate regulations to implement the provisions to be effective within 280 days of enactment. Therefore, the amendments are required by changes to the Code of Virginia.

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

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail margaret.roberts@doe.virginia.gov.

September 27, 2006 - 11 a.m. -- Public Hearing
James Monroe Building, 101 North 14th Street, 22nd Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


September 11, 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 adopt regulations entitled **8 VAC 20-700, Regulations for Conducting Division-Level Academic Reviews**. The purpose of the proposed action is to require division-level academic review in school divisions where findings of school-level academic reviews show that the failure of the schools to reach full accreditation is related to the local school board's failure to meet its responsibilities under the Standards of Quality. The Board of Education promulgated emergency regulations as a result of this requirement that

expired February 15, 2006. The proposed regulations, which will replace the emergency regulations, do not deviate substantially from the provisions of the emergency regulations.

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

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail margaret.roberts@doe.virginia.gov.

September 27, 2006 - 11 a.m. -- Public Hearing
James Monroe Building, 101 North 14th Street, 22nd Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


September 11, 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 adopt regulations entitled **8 VAC 20-710, Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions**. The purpose of the proposed action is to comply with an amendment to § 22.1-25 of the Code of Virginia by the 2004 General Assembly. The amendment directs the Board of Education to promulgate regulations providing for a process by which school divisions may submit proposals for consolidation. Section 22.1-25 of the Code of Virginia stipulates the information and data to be submitted by school divisions in their proposals for consolidation, the criteria that must be considered by the Board of Education in reviewing the proposals and a process for public participation in the process. The proposed regulations also include a section detailing the statutory authority, a definitions section, and additional administration and consolidation process requirements.

Statutory Authority: § 22.1-25 of the Code of Virginia.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail margaret.roberts@doe.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **July 25, 2006 - 1:30 p.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the advisory committee assisting in the development of a bacteria TMDL for the James River and tributaries in the City of Richmond and Chesterfield, Henrico and Powhatan counties. The public notice appears in the Virginia Register on July 10, 2006. A public meeting on the development of the TMDL will be scheduled within two weeks of the advisory committee meeting and will be announced in the near future.

Contact: Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, e-mail rcfrench@deq.virginia.gov.

† **July 26, 2006 - 2 p.m.** -- Open Meeting
Hopewell City Council Chambers, Hopewell Municipal Building, 300 North Main Street, Hopewell, Virginia. ♿

A meeting of the advisory committee assisting in the development of a bacterial TMDL for the James River and tributaries in the City of Hopewell and Chesterfield, Charles City and Prince George counties. The public notice appeared in the Virginia Register on July 10, 2006.

Contact: Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, e-mail rcfrench@deq.virginia.gov.

† **July 26, 2006 - 7 p.m.** -- Open Meeting
Hopewell City Council Chambers, Hopewell Municipal Building, 300 North Main Street, Hopewell, Virginia. ♿

A meeting on the development of a bacterial TMDL for the James River and tributaries in the City of Hopewell and Chesterfield, Charles City and Prince George counties. The public notice appeared in the Virginia Register on July 10, 2006.

Contact: Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, e-mail rcfrench@deq.virginia.gov.

† **July 27, 2006 - 10 a.m.** -- Open Meeting
Culpeper Train Depot, 109 South Commerce Street, Culpeper, Virginia. ♿

A meeting of the Rappahannock Watershed Technical Advisory Committee assisting in the TMDL study to address bacteria contamination in the Upper Rappahannock River Basin. The impaired streams are located in Culpeper, Fauquier, Greene, Madison, Orange, Rappahannock and Spotsylvania counties. The public notice appears in the Virginia Register on July 24, 2006.

Contact: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, e-mail mkconaway@deq.virginia.gov.

† **July 27, 2006 - 2 p.m.** -- Open Meeting
Culpeper Train Depot, 109 South Commerce Street, Culpeper, Virginia. ♿

A meeting of the Rapidan Watershed Technical Advisory Committee assisting in the TMDL study to address bacteria contamination in the Upper Rappahannock River Basin. The impaired streams are located in Culpeper, Fauquier, Greene, Madison, Orange, Rappahannock and Spotsylvania counties. The public notice appears in the Virginia Register on July 24, 2006.

Contact: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, e-mail mkconaway@deq.virginia.gov.

† **August 2, 2006 - 7 p.m.** -- Open Meeting
Virginia Commonwealth University, 907 Floyd Avenue, Student Commons, Forum Room, Richmond, Virginia. ♿

A public meeting to receive comments on the development of bacterial TMDLs for the James River and tributaries in the City of Richmond and the counties of Chesterfield, Henrico and Powhatan. The public notice appears in the Virginia Register of Regulations on July 24, 2006. The public comment period begins on August 2, 2006, and ends on September 1, 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.

† **August 10, 2006 - 7 p.m.** -- Open Meeting
Buckingham Agricultural Center, Highway 60, Buckingham Courthouse, Auditorium, Buckingham, Virginia. ♿

The first public meeting on the development of a bacteria TMDL for impaired stream segments in Buckingham and Albemarle counties. The public notice appears in the Virginia Register of Regulations on July 24, 2006. The public comment period begins on August 10, 2006, and ends on September 11, 2006.

Contact: Kelly Wills, Department of Environmental Quality, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-6242, FAX (434) 582-5125, e-mail kjwills@deq.virginia.gov.

† **August 16, 2006 - 7 p.m.** -- Open Meeting
Louisa County Middle School, 1009 Davis Highway, Mineral, Virginia. ♿

A public hearing on the department's review of a federally licensed activity to determine whether it is consistent with the Virginia Coastal Resources Management Program, as approved under the federal Coastal Zone Management Act. The federal activity is the submittal by Dominion Virginia Power Company of an early site permit application for future construction of two new reactor units. An open house information session will begin at 6 p.m. The public comment period has been extended to September 8, 2006. A general notice has been posted to the townhall relative to the meeting.

Contact: Ellie Irons, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4325, FAX (804) 698-4319, e-mail elirons@deq.virginia.gov.


September 19, 2006 - 9 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Ground Water Protection Steering Committee.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, e-mail mamassie@deq.virginia.gov.

Calendar of Events


FORENSIC SCIENCE BOARD

† **August 9, 2006 - 10 a.m.** -- Open Meeting
Department of Forensic Science, 700 North Fifth Street,
Central Laboratory, Classroom 1, Richmond, Virginia. 

A regular meeting.

Contact: Meghan E. Kish, Board Secretary, Department of
Forensic Science, 700 N. 5th St., Richmond, VA 23219,
telephone (804) 786-1006, e-mail
meghan.kish@dfs.virginia.gov.


DEPARTMENT OF FORENSIC SCIENCE

† **August 8, 2006 - 9 a.m.** -- Open Meeting
Department of Forensic Science, 700 North Fifth Street,
Central Laboratory, Classroom 1, Richmond, Virginia. 


A regular meeting of the Scientific Advisory Committee.

Contact: Meghan E. Kish, Board Secretary, Department of
Forensic Science, 700 N. 5th St., Richmond, VA 23219,
telephone (804) 786-1006, e-mail
meghan.kish@dfs.virginia.gov.


BOARD FOR GEOLOGY

† **October 18, 2006 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: David E. Dick, Regulatory Programs Coordinator,
Department of Professional and Occupational Regulation,
3600 W. Broad St., Richmond, VA 23230, telephone (804)
367-8507, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail
geology@dpor.virginia.gov.

GOVERNOR'S EMS ADVISORY BOARD

August 3, 2006 - 3 p.m. -- Open Meeting
The Place at Innsbrook, Glen Allen, Virginia. 

A meeting of the Regulation and Policy Committee to discuss and review the proposed draft regulation packet for the November EMS Advisory Board meeting.

Contact: Michael D. Berg, Manager, Regulation and
Compliance, Department of Health, 109 Governor St., Suite
UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX
(804) 864-7580, toll-free (800) 523-6019, e-mail
michael.berg@vdh.virginia.gov.


GOVERNOR'S ADVISORY BOARD ON CHILD ABUSE AND NEGLECT


August 4, 2006 - 10 a.m. -- Open Meeting
Richmond Police Training Academy, 1202 West Graham
Road, Richmond, Virginia. 

A quarterly meeting to address issues pertaining to the prevention and treatment of child abuse and neglect.

Contact: Rita L. Katzman, CPS Program Manager,
Department of Social Services, 7 N. 8th St., Richmond, VA
23219, telephone (804) 726-7554, FAX (804) 726-7895,
e-mail rita.katzman@dss.virginia.gov.

DEPARTMENT OF HEALTH

† **August 2, 2006 - 1 p.m.** -- Open Meeting
† **August 23, 2006 - 1 p.m.** -- Open Meeting
Virginia Hospital and Healthcare Association, 4200 Innslake
Drive, Glen Allen, Virginia. 

† **September 13, 2006 - 1 p.m.** -- Open Meeting
Medical Society of Virginia, 2924 Emerywood Parkway, Suite
300, Richmond, Virginia. 

A meeting of the SMFP Advisory Committee to address issues concerning the proposed State Medical Facilities Plan.

Contact: Carrie Eddy, Senior Policy Analyst, Department of
Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230,
telephone (804) 367-2157, FAX (804) 367-2149, e-mail
carrie.eddy@vdh.virginia.gov.

August 11, 2006 - 9 a.m. -- Open Meeting
September 9, 2006 - 9 a.m. -- Open Meeting
September 14, 2006 - 9 a.m. -- Open Meeting
109 Governor Street, 5th Floor Conference Room, Richmond,
Virginia. Will also be scheduled in remote locations via video
conference.

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: Dwayne Roadcap, Program Manager, Department
of Health, 109 Governor St., Richmond, VA 23219, telephone
(804) 864-7462, FAX (804) 864-7476, e-mail
dwayne.roadcap@vdh.virginia.gov.

August 11, 2006 - 10 a.m. -- Open Meeting
September 22, 2006 - 10 a.m. -- Open Meeting
Department of Health, 109 Governor Street, 5th Floor
Conference Room, Richmond, Virginia.

A meeting of the Sewage Handling and Disposal Regulations Advisory Committee to make recommendations to the commissioner regarding sewage handling and disposal policies, procedures and programs of the department.


Contact: Donald Alexander, Division Director, DOSWS,
Department of Health, 109 Governor St., 5th Floor, Richmond,

VA 23219, telephone (804) 864-7452, FAX (804) 864-7476, e-mail donald.alexander@vdh.virginia.gov.

September 8, 2006 - 10 a.m. -- Open Meeting
Children's Hospital, 2924 Brook Road, Richmond, Virginia. 


A meeting of the Virginia Early Hearing Detection and Intervention Program Advisory Committee to assist the 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, e-mail pat.dewey@vdh.virginia.gov.

September 27, 2006 - 1:30 p.m. -- Open Meeting
Madison Building, 109 Governor Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Newborn Screen 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., Richmond, VA 23219, telephone (804) 864-7691, FAX (804) 864-7721, e-mail nancy.ford@vdh.virginia.gov.

October 3, 2006 - 10 a.m. -- Open Meeting
Division of Consolidated Laboratory Services, 600 North 5th Street, Training Room T-23, Richmond, Virginia. 

A meeting of the Genetics Advisory Committee to advise the Department of Health on coordinating access to clinical genetics services across the Commonwealth and assuring the provision of genetic awareness and quality services and education for consumers and providers taking into consideration issues of confidentiality, privacy and consent.

Contact: Nancy Ford, Director, Pediatric Screening and Genetic Services, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7691, e-mail nancy.ford@vdh.virginia.gov.


Sewage Handling and Disposal Appeal Review Board

August 9, 2006 - 10 a.m. -- Open meeting
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. 


A meeting to hear the appeals of health department denials of septic tank permits.

Contact: Susan C. Sherertz, Secretary to the Board, Department of Health, 109 Governor St., Richmond, VA, telephone (804) 864-7464, FAX (804) 864-7475, e-mail susan.sherertz@vdh.virginia.gov.

BOARD FOR HEARING AID SPECIALISTS

† **August 18, 2006 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 


An informal fact-finding conference.

Contact: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail hearingaidspec@dpor.virginia.gov.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

August 1, 2006 - 11 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. 

The annual meeting of the Board of Commissioners to (i) elect a chairman and vice chairman; (ii) review and, if appropriate, approve the minutes from the prior meeting; (iii) consider for approval and ratification mortgage loan commitments under its various programs; (iv) review the authority's operations for the prior months; and (v) consider such other matters and take such other actions as the board may deem appropriate. Various committees of the Board of Commissioners, including the Programs Committee, the Audit Committee, the Operations Committee, the Executive Committee, and the Committee of the Whole, may also meet during the day preceding the meeting and before and after the meeting and may consider matters within their purview. The committees and the board may also meet during meals on the night before the meeting and on the day of the meeting. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. The annual meeting of the shareholders and Board of Directors of Housing for Virginia, Inc., a corporation wholly owned by the authority, will be held following the meeting of the authority's Board of Commissioners.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY 

VIRGINIA COUNCIL ON HUMAN RESOURCES


September 21, 2006 - 9:30 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, PDS 4, Richmond, Virginia.

A quarterly meeting.

Contact: Charles Reed, Associate Director, Department of Human Resource Management, James Monroe Bldg., 101 N. 14th St., 13th Floor, Richmond, VA 23219, telephone (804) 786-3124, FAX (804) 371-2505, e-mail charles.reed@dhrm.virginia.gov.

Calendar of Events


VIRGINIA COUNCIL ON INDIANS

† **August 15, 2006 - 6 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Room 7
West, Richmond, Virginia. 

A business meeting.

Contact: Deanna Beacham, Council on Indians, P.O. Box
1475, Richmond, VA 23218, telephone (804) 225-2084, e-mail
vci@governor.virginia.gov.


VIRGINIA INFORMATION TECHNOLOGIES AGENCY

† **July 26, 2006 - 9 a.m.** -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond,
Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Mobile Workforce Workgroup.

Contact: Mike Hammel, Enterprise Architect, Virginia
Information Technologies Agency, 110 S. 7th St., Richmond,
VA 23219, telephone (804) 225-4016, e-mail
mike.hammel@vita.virginia.gov.


Wireless E-911 Services Board

September 13, 2006 - 10 a.m. -- Open Meeting
Richmond Plaza Building, 110 South 7th Street, 4th Floor
Auditorium, Richmond, Virginia. 

A regular board meeting.

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.


INNOVATIVE TECHNOLOGY AUTHORITY

July 26, 2006 - 1 p.m. -- Open Meeting
Center for Innovative Technology, 2214 Rock Hill Road, 7th
Floor, Fairfax Room, Herndon, Virginia. 

A meeting to elect officers.

Contact: Sharon Kozar, Executive Assistant, Innovative
Technology Authority, 2214 Rock Hill Rd., Herndon, VA
20170, telephone (703) 689-3000, e-mail skozar@cit.org.

JAMESTOWN-YORKTOWN FOUNDATION

September 6, 2006 - 2 p.m. -- Open Meeting
† **October 19, 2006 - Noon** -- Open Meeting
Richmond, Virginia. (call for specific location)  (Interpreter
for the deaf provided upon request)

A regular meeting of the Executive Committee of the
Jamestown 2007 Steering Committee.

Contact: Judith Leonard, Administrative Office Manager,
Jamestown-Yorktown Foundation, 410 West Francis Street,
Williamsburg, VA 23185, telephone (757) 253-4253, FAX
(757) 253-4950, e-mail judith.leonard@jyf.virginia.gov.

STATE BOARD OF JUVENILE JUSTICE


September 13, 2006 - 9 a.m. -- Open Meeting
Virginia Wilderness Institute, Grundy, Virginia.

Meeting details will be provided closer to the meeting date.

Contact: Regulatory Coordinator, Department of Juvenile
Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond,
VA 23219, telephone (804) 371-0743, FAX (804) 371-0773.

DEPARTMENT OF LABOR AND INDUSTRY


Virginia Apprenticeship Council

September 21, 2006 - 10 a.m. -- Open Meeting
Confederate Hills Recreation Building, 302 Lee Avenue,
Highland Springs, Virginia. 


A regular business meeting.

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.


LIBRARY BOARD

September 18, 2006 - 10:30 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond,
Virginia. 

A meeting to discuss matters pertaining to the Library of
Virginia and the Library Board.

Contact: Jean H. Taylor, Executive Secretary Senior, The
Library of Virginia, 800 E. Broad St., Richmond, VA 23219-
8000, telephone (804) 692-3525, FAX (804) 692-3594, (804)
692-3976/TTY , e-mail jtaylor@lva.lib.va.us.

BOARD OF LONG-TERM CARE ADMINISTRATORS

† **September 12, 2006 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 1, Richmond, Virginia. 

September 22, 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 Long-Term Care
Administrators intends to amend regulations entitled **18
VAC 95-30, Regulations Governing the Practice of
Assisted Living Facility Administrators**. The purpose of
the proposed action is to set the fees and requirements for
licensure as assisted living facility administrators.

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

Public comments may be submitted until September 22, 2006,
to 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.

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.

October 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 at 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

† **July 25, 2006 - 3 p.m.** -- Open Meeting
The Martin Agency, The Bridge Room, One Shockoe Plaza, Richmond, Virginia. ♿

A meeting of the Executive Committee to approve the university's internal operating budget for 2006-07.

Contact: Jeanne Hayden, Administrative Staff Assistant, Longwood University, Office of the President, 201 High St., Farmville, VA 23909, telephone (434) 395-2004.

VIRGINIA MANUFACTURED HOUSING BOARD

July 27, 2006 - 1 p.m. -- Open Meeting
Kingsmill, 1010 Kingsmill Road, Williamsburg, Virginia. ♿

A regular meeting to carry out duties under the Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis McIver, State Building Code Administrator, Virginia Manufactured Housing Board, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7161, FAX (804) 371-7092, (804) 371-7089/TTY ☎, e-mail curtis.mciver@dhcd.virginia.gov.

MARINE RESOURCES COMMISSION

July 25, 2006 - 9:30 a.m. -- Open Meeting
August 22, 2006 - 9:30 a.m. -- Open Meeting
September 26, 2006 - 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 Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2215, FAX

(757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY ☎, e-mail jane.mccroskey@mrc.virginia.gov.

BOARD OF MEDICAL ASSISTANCE SERVICES

September 12, 2006 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia. ♿

A quarterly meeting.

Contact: Nancy Malczewski, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8096, FAX (804) 371-4981, (800) 343-0634/TTY ☎, e-mail nancy.malczewski@dmas.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

July 28, 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 amend regulations entitled **12 VAC 30-141, Family Access to Medical Insurance Security**. The purpose of the proposed action is to provide FAMIS medical coverage for a larger class of pregnant women.

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

Contact: Linda Nablo, Maternal and Child Health Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4212, FAX (804) 786-1680 or e-mail linda.nablo@dmas.virginia.gov.

August 16, 2006 - 1 p.m. -- Open Meeting
† **October 18, 2006 - 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 Medicaid transportation issues with the committee and the community.

Contact: Bob Knox, Transportation Supervisor, 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.

August 17, 2006 - 2 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia. ♿

A meeting of the Drug Utilization Review Board to discuss Medicaid pharmacy issues related to this committee.

Contact: Rachel Cain, Pharmacist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2873, FAX (804) 786-5799, (800) 343-0634/TTY ☎, e-mail rachel.cain@dmas.virginia.gov.

Calendar of Events

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† **September 22, 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 amend regulations entitled **12 VAC 30-50, Amount, Duration and Scope of Medical and Remedial Care Services**, and **12 VAC 30-120, Waivered Services**. The purpose of the proposed action is to (i) provide clarity and guidance to providers and other stakeholders; (ii) conform to the IFDDS waiver renewal application as approved by CMS in February of 2004; (iii) comply with Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and Department of Social Services (DSS) provider licensing standards; (iv) follow recommendations made by the office of the Attorney General; and (v) support individual choice.

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.

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† **September 22, 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 amend regulations entitled **12 VAC 30-90, Methods and Standards for Establishing Payment Rates for Long-Term Care**. The purpose of the proposed action is to place a ceiling on specialized care ancillary service reimbursement to nursing facilities providing services to Medicaid.

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

Contact: Diane Hankins, Provider Reimbursement, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-5379, FAX (804) 786-1680 or e-mail diane.hankins@dmas.virginia.gov.

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† **September 22, 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 amend regulations entitled **12 VAC 30-120, Waivered Services**. The purpose of the proposed action is to develop new regulations containing the policy and procedures for the Day Support Waiver in consultation with members of the General Assembly and in collaboration with DMHMRSAS and the MR Waiver Advisory Committee. This waiver covers only those individuals who have a


diagnosis of mental retardation. Day support services include 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.

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


July 27, 2006 - 9:15 a.m. -- Open Meeting
Holiday Inn, 3315 Ordway Drive, Roanoke, Virginia. 


† **July 28, 2006 - 9:15 a.m.** -- Open Meeting
Inn at Virginia Tech and Skelton Conference Center, 901 Prices Fork Road, Blacksburg, Virginia. 

August 9, 2006 - 8:45 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.


† **August 15, 2006 - 9 a.m.** -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia. 

A special conference committee will convene informal conferences to inquire into allegations that certain practitioners of medicine or 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 sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Renee S. Dixson, Discipline Case Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-7009, FAX (804) 662-9517, (804) 662-7197/TTY , e-mail renee.dixson@dhp.virginia.gov.

August 11, 2006 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A meeting of the Executive Committee to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail william.harp@dhp.virginia.gov.

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† **August 11, 2006 - 8:15 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 2, Richmond, Virginia. 📍

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled **18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic**. The purpose of the proposed action is to clarify the requirements for reporting malpractice claims on the physician profile.

Statutory Authority: §§ 54.1-2400 and 54.1-2910.1 of the Code of Virginia.

Public comments may be submitted until September 22, 2006, to 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.

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.

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† **August 11, 2006 - 8:15 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 2, Richmond, Virginia. 📍

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 85-130, Regulations Governing the Practice of Licensed Midwives**. The purpose of the proposed action is to replace emergency regulations for the licensure of and practice of licensed midwives.

Statutory Authority: §§ 54.1-2400, 54.1-2957.8, and 54.1-2957.9 of the Code of Virginia.

Public comments may be submitted until September 22, 2006, to 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.

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.

September 22, 2006 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room, Richmond, Virginia. 📍

A meeting of the Legislative Committee to consider regulatory matters as 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, 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.

† **September 22, 2006 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 2, Richmond, Virginia. 📍

A meeting of the Ad Hoc Committee on Continuing Competency to discuss the available data on this topic and consider directions for the board in the future. Public comment will be received on agenda items at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 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.

† **October 19, 2006 - 8 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 2, Richmond, Virginia. 📍

A meeting to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 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

October 4, 2006 - 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 regulations of acupuncture. 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 Athletic Training


October 5, 2006 - 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 regulations of athletic training. 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.

Calendar of Events


Advisory Board on Midwifery

October 6, 2006 - 10 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 regulations of midwifery. 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 Occupational Therapy

October 3, 2006 - 10 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 regulations of occupational therapy. 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 Physician Assistants

October 5, 2006 - 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 regulations of physician assistants. 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 Radiologic Technology

October 4, 2006 - 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 regulations of radiologic technologists and radiologic technologist-limited. 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 Respiratory Care

October 3, 2006 - 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 regulations of respiratory care. 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.


DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† August 22, 2006 - 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 Virginia Community Mental Health Services Performance Partnership Block Grant Application for federal fiscal year 2007. Copies of the application are available for review at the Office of Mental Health Services, Jefferson Building, 10th floor and at each community services board office. Comments may be made at the hearing or in writing by no later than August 22, 2006, 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 William T. Ferris, LCSW. Copies of the oral presentations should be filed at the time of the hearing.

Contact: William T. Ferris, LCSW, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Mental Health, P.O. Box 1797, Richmond, VA 23218., telephone (804) 786-4837, FAX (804) 371-0091, (804) 371-8977/TTY 


STATE MILK COMMISSION

September 13, 2006 - 10:45 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Room 2054, 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 Edward C. Wilson 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, 102 Governor St., Room 205, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail edward.wilson@vdacs.virginia.gov.

DEPARTMENT OF MINES, MINERALS AND ENERGY

† **August 3, 2006 - 9 a.m.** -- Open Meeting
Oxbow Center, 16620 East Riverside Drive, St. Paul, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Division of Mined Land Reclamation Permit Enhancement Workgroup to discuss potential enhancement to the DMLR permitting process. The regulatory work group will discuss draft language to amend the DMLR regulations. Public comments will be received as the last item of the meeting. Special accommodations for the disabled will be made available at the public meeting on request. Anyone needing special accommodations should contact the DMLR at least seven days prior to the meeting.


Contact: Leslie S. Vincent, Customer Services Manager, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, 3405 Mountain Empire Rd., Big Stone Gap, VA 24219, telephone (276) 523-8156, FAX (276) 523-8163, (800) 828-1120/TTY , e-mail les.vincent@dmmme.virginia.gov.

DEPARTMENT OF MOTOR VEHICLES


Motorcycle Advisory Council

† **August 8, 2006 - 10 a.m.** -- Open Meeting
Location to be announced.


A meeting to continue the development and implementation of the council and to follow up on initiatives.


Contact: Audrey Odum, Management Analyst, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-8140, FAX (804) 367-6631, (800) 272-9268/TTY , e-mail audrey.odum@dmv.virginia.gov.

BOARD OF NURSING


September 18, 2006 - 9 a.m. -- Open Meeting
September 20, 2006 - 9 a.m. -- Open Meeting
September 21, 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.

September 19, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 


A meeting to conduct general business including receipt of committee reports and consideration of regulatory action and discipline case decisions as presented on the agenda. Public comment will be received at 11 a.m.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail jay.douglas@dhp.virginia.gov.


JOINT BOARDS OF NURSING AND MEDICINE

August 23, 2006 - 9 a.m. -- Open Meeting
† **October 18, 2006 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 


A regular meeting.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail jay.douglas@dhp.virginia.gov.


BOARD FOR OPTICIANS

August 18, 2006 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 


A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail opticians@dpor.virginia.gov.


BOARD OF OPTOMETRY

† **August 3, 2006 - 9 a.m.** -- Open Meeting
Alcoa Building, 6603 West Broad Street, 5th Floor, Room 3, Richmond, Virginia. 


A meeting of the Formulary Committee to review the annual TPA Formulary. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail elizabeth.carter@dhp.virginia.gov.

Calendar of Events

† **August 3, 2006 - 9:30 a.m.** -- Open Meeting
Alcoa Building, 6603 West Broad Street, 5th Floor, Room 3,
Richmond, Virginia. 

A general business meeting including committee reports and consideration of regulatory action as presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of 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.

VIRGINIA OUTDOORS FOUNDATION

September 20, 2006 - 1 p.m. -- Open Meeting
September 21, 2006 - 9 a.m. -- Open Meeting
Location to be announced; Charlottesville, Virginia area.

A meeting for policy and easement consideration. Public comment will be received.

Contact: Trisha Cleary, Administrative Assistant, Department of Conservation and Recreation, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2147, FAX (804) 371-4810, e-mail tcleary@vofonline.org.


BOARD OF PHARMACY

August 25, 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 Pharmacy intends to amend regulations entitled **18 VAC 110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action will eliminate the requirement of an alarm system for alternative sites for delivery of dispensed prescriptions provided the prescriptions are held in a locked room or device with access limited to the practitioner or responsible party listed on an application for controlled substance registration or his designee.

Statutory Authority: Chapters 33 and 34 of Title 54.1 of the Code of Virginia.


Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313 or e-mail elizabeth.russell@dhp.virginia.gov.

September 27, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 


A meeting to consider such regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.


Contact: Elizabeth Scott Russell, 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.

BOARD OF PHYSICAL THERAPY


† **July 28, 2006 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 

A meeting of the Legislative/Regulatory Committee to discuss laws and regulations pertaining to the practice of physical therapy.


Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

† **August 18, 2006 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 


A regular meeting to discuss general business matters as it relates to the practice of physical therapy.

Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

POLYGRAPH EXAMINERS ADVISORY BOARD

September 21, 2006 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, 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. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Kevin Hoeft, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-0674, (804) 367-9753/TTY , e-mail kevin.hoeft@dpor.virginia.gov.

BOARD OF PSYCHOLOGY


† **August 1, 2006 - 11 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

An informal conference.


Contact: Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.virginia.gov.

October 10, 2006 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 


A meeting to include reports from standing committees and any regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.virginia.gov.


VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

September 28, 2006 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100,
Richmond, Virginia. 


A quarterly 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


August 29, 2006 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4 West Conference Room,
Richmond, Virginia. 

A meeting to discuss board business.


Contact: 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

July 26, 2006 - 10 a.m. -- Open Meeting
NOTE: CHANGE IN MEETING TIME


August 4, 2006 - 1:30 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 (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , e-mail reboard@dpor.virginia.gov.


September 13, 2006 - 3 p.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia. 


A meeting of the Education Committee.

Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , e-mail reboard@dpor.virginia.gov.


September 14, 2006 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Fair Housing Committee.

Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , e-mail reboard@dpor.virginia.gov.


September 14, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. 

A meeting to discuss board business.


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.

DEPARTMENT OF REHABILITATIVE SERVICES

Statewide Rehabilitation Council

August 14, 2006 - 11:30 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms
Dr., Richmond, Virginia. 

A quarterly meeting. Public comment will be received at approximately 11:45 a.m.

Contact: Barbara Tyson, Staff Support, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 662-7010, FAX (804) 662-7644, toll-free (800) 552-5019, (800) 464-9950/TTY , e-mail barbara.tyson@drs.virginia.gov.

VIRGINIA RESEARCH AND TECHNOLOGY ADVISORY COMMISSION

September 19, 2006 - 1 p.m. -- Open Meeting
University of Virginia Research Park, Charlottesville, Virginia.

A quarterly meeting.

Contact: Nancy Vorona, VP Research Investment, Virginia Research and Technology Advisory Commission, 2214 Rock Hill Rd., Suite 600, Herndon, VA 20170, telephone (703) 689-3043, FAX (703) 464-1720, e-mail nvorona@cit.org.

Calendar of Events

VIRGINIA RESOURCES AUTHORITY


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August 8, 2006 - 9 a.m. -- Open Meeting
Virginia Resources Authority, 707 East Main Street, 2nd Floor,
Conference Room, Richmond, Virginia.


A meeting to conduct business of the Board of Directors. The meeting is open to the public; however, a portion of the board's business may be conducted in a closed meeting. A period for public comment will be held prior to adjournment of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the authority at least 10 days prior to the meeting so that suitable arrangements can be made. The authority fully complies with the Americans with Disabilities Act.


Contact: Amy Boratyn, Executive Assistant, Virginia Resources Authority, 707 E. Main St., Suite 1350, Richmond, VA, telephone (804) 644-3100, FAX (804) 644-3109, e-mail aboratyn@virginiaresources.org.

STATE BOARD OF SOCIAL SERVICES


† **August 16, 2006 - 9 a.m.** -- Open Meeting
Alexandria Department of Social Services, 2525 Mount
Vernon Avenue, Alexandria, Virginia. 

A regular meeting and also a meeting of the Poverty Committee following recess of the regular board 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.

† **August 17, 2006 - 9 a.m.** -- Open Meeting
Alexandria Department of Social Services, 2525 Mount
Vernon Avenue, Alexandria, 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.

DEPARTMENT OF SOCIAL SERVICES

† **August 16, 2006 - 9 a.m.** -- Open Meeting
Alexandria Department of Social Services, 2525 Mount
Vernon Avenue, Alexandria, Virginia. 

A regular meeting and also a meeting of the Poverty Committee meeting following recess of the regular board 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.

September 8, 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 Board of Social Services intends to repeal regulations entitled **22 VAC 40-330, Collection of Overpayments in the Refugee Other Assistance Program**. The purpose of the proposed action is to repeal the regulation as the regulation applies to a program that no longer exists under federal law.

Statutory Authority: § 63.2-217 of the Code of Virginia.

Contact: Penelope Boyd, Policy Coordinator, Virginia Refugee Resettlement Program, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7933, FAX (804) 726-7127 or e-mail penny.boyd@dss.virginia.gov.

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September 8, 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 Board of Social Services intends to repeal regulations entitled **22 VAC 40-340, Protective Payments in the Refugee Other Assistance Program**. The purpose of the proposed action is to repeal the regulation as the regulation applies to a program that no longer exists under federal law.


Statutory Authority: § 63.2-217 of the Code of Virginia.

Contact: Penelope Boyd, Policy Coordinator, Virginia Refugee Resettlement Program, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7933, FAX (804) 726-7127 or e-mail penny.boyd@dss.virginia.gov.

Virginia Commission for National and Community Service

July 27, 2006 - 10 a.m. -- Open Meeting
7 North Eighth Street, Richmond, Virginia. 

A regular business meeting.

Contact: Susan Patton, Executive Assistant, Department of Social Services, 7 N. 8th St., Richmond, VA 23225, telephone (804) 726-7065, FAX (804) 726-7024, toll-free (800) 552-3431, (800) 828-1120/TTY , e-mail susan.c.patton@dss.virginia.gov.

BOARD OF SOCIAL WORK

† **October 13, 2006 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
Fifth Floor, Richmond, Virginia. 

A regular business 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) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

July 31, 2006 - 9 a.m. -- Open Meeting
† October 11, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Soil Scientists and Wetland Delineators Board to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: 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.

DEPARTMENT OF TAXATION

State Land Evaluation Advisory Council

August 1, 2006 - 11 a.m. -- Open Meeting
September 11, 2006 - 11 a.m. -- Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond,
Virginia. ♿

A meeting to adopt suggested ranges of value for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager, Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020, e-mail keith.mawyer@tax.virginia.gov.

TREASURY BOARD

August 16, 2006 - 9 a.m. -- Open Meeting
September 20, 2006 - 9 a.m. -- Open Meeting
† October 18, 2006 - 9 a.m. -- Open Meeting
101 North 14th Street, 3rd Floor, Richmond, Virginia. ♿

A regular meeting.

Contact: J. Braxton Powell, Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23218, telephone (225) 225-2142, FAX (225) 225-3187, e-mail braxton.powell@trs.virginia.gov.

DEPARTMENT OF VETERANS SERVICES

Veterans Services Foundation

July 26, 2006 - 11 a.m. -- Open Meeting
American Legion Department of Virginia, 1708
Commonwealth Avenue, Richmond, Virginia. ♿

A regular meeting. Public comment will be heard at the conclusion of the meeting.

Contact: Roz J. Trent, Director of Communications, Department of Veterans Services, 900 E. Main St., Richmond, VA 23219, telephone (804) 786-0220, FAX (804) 786-0302, e-mail roz.trent@dvs.virginia.gov.

STATE WATER CONTROL BOARD

August 3, 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 established to assist in the development of regulations concerning wastewater reclamation and reuse.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4158, e-mail varourke@deq.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

September 13, 2006 - 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 conducted in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail waterwasteoper@dpor.virginia.gov.

Calendar of Events

INDEPENDENT


STATE LOTTERY BOARD

† **August 2, 2006 - 9:30 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


August 17, 2006 - 10 a.m. -- Open Meeting
Location to be determined.  (Interpreter for the deaf provided upon request)

A meeting of the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Advisory Council. Public comment is welcome and will be received at the beginning of the meeting. For those needing interpreter services or other accommodations, please contact Lisa Shehi no later than August 3, 2006.


Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail lisa.shehi@vopa.virginia.gov.

September 13, 2006 - 10 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 of the Disabilities Advisory Council. This meeting is open to the public. Public comment is welcomed by the council and will be received beginning at 10 a.m. Public comment will also be accepted by telephone. For more information on participating in this conference call or to provide public comment via telephone, or arrange for interpreter services or accommodations call or e-mail Lisa Shehi.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7413, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail lisa.shehi@vopa.virginia.gov.


Board for Protection and Advocacy

September 26, 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 meeting of the Governing Board. Public comment is welcomed by the board and will be received beginning at 9 a.m. on July 20, 2006. Public comment will also be accepted by telephone. If you wish to provide public comment via telephone, call Lisa Shehi at 1-800-552-3962 (Voice/TTY) or e-mail lisa.shehi@vopa.virginia.gov no later than July 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 July 6, 2006.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7413, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail lisa.shehi@vopa.virginia.gov.

VIRGINIA RETIREMENT SYSTEM

September 12, 2006 - 9 a.m. -- Open Meeting
Virginia Retirement System, 1200 East Main Street, Richmond, Virginia. 


A regular meeting of the Optional Retirement Plan for Higher Education Committee. No public comment will be received at the meeting.


Contact: Patty Atkins-Smith, Legislative Liaison and Policy Analyst, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3123, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail psmith@varetire.org.

September 13, 2006 - 1:30 p.m. -- Open Meeting
Virginia Retirement System, 1200 East Main Street, Richmond, Virginia.


Meetings of the following committees:


- 1:30 p.m. - Benefits and Actuarial
- 3 p.m. - Audit and Compliance

Contact: LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3124, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail lking@varetire.org.


September 14, 2006 - 9 a.m. -- Open Meeting
Virginia Retirement System, 1111 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. 


A regular meeting of the Investment Advisory Committee. No public comment will be received at the meeting.

Contact: Linda Ritchey, Executive Assistant, Virginia Retirement System, 1111 E. Main St., Richmond, VA 23219, telephone (804) 697-6673, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail lritchey@varetire.org.


September 14, 2006 - 1 p.m. -- Open Meeting
† **October 12, 2006 - 1 p.m.** -- Open Meeting
Virginia Retirement System, 1111 East Main Street, 3rd Floor
Conference Room, Richmond, Virginia. 

A regular meeting of the Board of Trustees. No public comment will be received at the meeting.

Contact: LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3124, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail lking@varetire.org.


† **October 11, 2006 - 1:30 p.m.** -- Open Meeting
Virginia Retirement System, 1200 East Main Street, Richmond, Virginia. 

A meeting of the Benefits and Actuarial Committee. No public comment will be received at the meeting.

Contact: LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3124, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail lking@varetire.org.

LEGISLATIVE


JOINT COMMISSION ON ADMINISTRATIVE RULES


† **August 9, 2006 - 10 a.m.** -- Open Meeting
† **October 4, 2006 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact 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: Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

VIRGINIA CODE COMMISSION


August 23, 2006 - 10 a.m. -- Open Meeting
† **October 18, 2006 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. 

September 20, 2006 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Senate Leadership Room, Richmond, Virginia. 

A regularly scheduled meeting.

Contact: Jane D. Chaffin, Registrar of Regulations, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0624, e-mail jchaffin@leg.state.va.us.


SENATE EDUCATION AND HEALTH SUBCOMMITTEE

† **August 3, 2006 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Jessica Eades or Ellen Weston, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations at (804) 698-7450, (804) 698-7419/TTY, or write to Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, at least seven days prior to the meeting.

Contact: Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.


JOINT SUBCOMMITTEE STUDYING SCIENCE, MATH AND TECHNOLOGY EDUCATION

† **August 1, 2006 - 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 Patrick Cushing, Division of Legislative Services, (804) 786-3591. If you are unable to attend the meeting or have questions regarding scheduling, please contact House Committee Operations.


Contact: Pam Burmham, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

July 26, 2006 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A meeting of the Committee on Nanotechnology (Manufacturing and Research and Development Subcommittees).


Contact: Patrick Cushing, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail pcushing@leg.state.va.us.

July 27, 2006 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Leadership Conference Room, 6th Floor, Richmond, Virginia. 

A meeting of the Advisory Committee on Cybercrimes.

Contact: Patrick Cushing, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail pcushing@leg.state.va.us.

Calendar of Events

August 3, 2006 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Leadership Conference Room, 6th Floor, Richmond, Virginia. 

A meeting of JCOTS Advisory Committee on Electronic Balloting.

Contact: Lisa Wallmeyer, Executive Director, Joint Commission on Technology and Science, General Assembly Building, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail lwallmeyer@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

July 25

Contractors, Board for
† Environmental Quality, Department of
† Longwood University
Marine Resources Commission

July 26

Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Compensation Board
† Conservation and Recreation, Board of
Conservation and Recreation, Department of
Education, Board of
† Environmental Quality, Department of
† Information Technologies Agency, Virginia
Innovative Technology Authority
Real Estate Board
Technology and Science, Joint Commission on
Veterans Services, Department of

July 27

Assistive Technology Loan Fund Authority
Branch Pilots, Board for
† Conservation and Recreation, Department of
† Contractors, Board for
† Environmental Quality, Department of
Manufactured Housing Board
Medicine, Board of
Social Services, Department of
- Virginia Commission for National and Community Service
Technology and Science, Joint Commission on

July 28

Agriculture and Consumer Services, Department of
- Virginia Pork Industry Board
Branch Pilots, Board for
† Medicine, Board of
† Physical Therapy, Board of

July 31

Professional Soil Scientists and Wetland Professionals, Board for

August 1

Housing Development Authority, Virginia
† Psychology, Board of
† Science, Math and Technology Education, Joint Subcommittee Studying

Taxation, Department of
- State Land Evaluation Advisory Council

August 2

Accountancy, Board of
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
† Deaf and Hard-of-Hearing, Department for the
† Environmental Quality, Department of
† Health, Department of
† Lottery Board, State

August 3

Agriculture and Consumer Services, Department of
- Virginia Cotton Board
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
† Education and Health Subcommittee, Senate
Governor's EMS Advisory Board
† Mines, Minerals and Energy, Department of
† Optometry, Board of
Technology and Science, Joint Commission on
Water Control Board, State

August 4

Art and Architectural Review Board
Child Abuse and Neglect, Governor's Advisory Board on
Real Estate Board

August 5

† Dentistry, Board of

August 7

Alcoholic Beverage Control Board
Barbers and Cosmetology, Board for

August 8

† Contractors, Board for
† Forensic Science, Department of
† Motor Vehicles, Department of
- Motorcycle Advisory Council
Resources Authority, Virginia

August 9

† Administrative Rules, Joint Commission on
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Conservation and Recreation, Department of
† Forensic Science Board
Health, Department of
- Sewage Handling and Disposal Appeal Review Board
Medicine, Board of

August 10

Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Conservation and Recreation, Department of
† Environmental Quality, Department of

August 11

† Agriculture and Consumer Services, Department of
Health, Department of
Medicine, Board of

August 14

Rehabilitative Services, Department of

August 15

Chesapeake Bay Local Assistance Board

† Indians, Virginia Council on
† Medicine, Board of

August 16

† Agriculture and Consumer Services, Department of
- Virginia Soybean Board
Asbestos, Lead, and Home Inspectors, Virginia Board for
Compensation Board
† Environmental Quality, Department of
Medical Assistance Services, Department of
† Social Services, State Board of
Treasury Board

August 17

† Audiology and Speech-Language Pathology, Board of
Design-Build/Construction Management Review Board
Medical Assistance Services, Department of
Protection and Advocacy, Virginia Office for
† Social Services, State Board of

August 18

Dentistry, Board of
† Hearing Aid Specialists, Board for
Opticians, Board for
† Physical Therapy, Board of

August 21

Alcoholic Beverage Control Board

August 22

Contractors, Board for
Marine Resources Commission

August 23

Code Commission, Virginia
† Health, Department of
Nursing and Medicine, Joint Boards of

August 24

Agriculture and Consumer Services, Board of

August 29

Real Estate Appraiser Board

August 31

† Conservation and Recreation, Department of

September 1

Art and Architectural Review Board

September 5

Alcoholic Beverage Control Board

September 6

Jamestown-Yorktown Foundation

September 7

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

September 8

Dentistry, Board of
Health, Department of

September 9

Health, Department of

September 11

Taxation, Department of
- State Land Evaluation Advisory Council

September 12

Charitable Gaming Board
Child Fatality Review Team, State
Medical Assistance Services, Board of
Retirement System, Virginia

September 13

† Health, Department of

Information Technologies Agency, Virginia
- E911 Wireless Service Board

Juvenile Justice, State Board of
Milk Commission, State

Protection and Advocacy, Virginia Office for
- Disabilities Advisory Council

Real Estate Board

Retirement System, Virginia

Waterworks and Wastewater Works Operators, Board for

September 14

Conservation and Recreation, Department of
Dentistry, Board of

Health, Department of

Real Estate Board

Retirement System, Virginia

September 15

Contractors, Board for

Dentistry, Board of

September 18

Alcoholic Beverage Control Board

Library Board

Nursing, Board of

September 19

Corrections, Board of

Environmental Quality, Department of

Nursing, Board of

Research and Technology Advisory Commission, Virginia

September 20

Code Commission, Virginia

Corrections, Board of

Nursing, Board of

Outdoors Foundation, Virginia

Treasury Board

September 21

Conservation and Recreation, Department of

- Virginia Soil and Water Conservation Board

Design-Build/Construction Management Review Board

Human Resources, Virginia Council on

Labor and Industry, Department of

- Virginia Apprenticeship Council

Nursing, Board of

Outdoors Foundation, Virginia

Polygraph Examiners Advisory Board

September 22

Agriculture and Consumer Services, Department of

- Virginia Horse Industry Board

Health, Department of

† Medicine, Board of

September 26

Chesapeake Bay Local Assistance Board

Contractors, Board for

Marine Resources Commission

Protection and Advocacy, Virginia Office for

- Board for Protection and Advocacy

September 27

Education, Board of

Health, Department of

Pharmacy, Board of

September 28

Public Guardian and Conservator Advisory Board, Virginia

September 29

Dentistry, Board of

Calendar of Events

October 2

Alcoholic Beverage Control Board

October 3

Health, Department of
Medicine, Board of

- Advisory Board on Occupational Therapy
- Advisory Board on Respiratory Care

October 4

† Administrative Rules, Joint Commission on
Medicine, Board of

- Advisory Board on Acupuncture
- Advisory Board on Radiologic Technology

October 5

Auctioneers Board
Medicine, Board of

- Advisory Board on Athletic Training
- Advisory Board on Physician Assistants

October 6

Art and Architectural Review Board
Medicine, Board of

- Advisory Board on Midwifery

October 10

Long-Term Care Administrators, Board of
Psychology, Board of

October 11

† Retirement System, Virginia
† Soil Scientists and Wetland Professionals, Board for
Professional

October 12

† Conservation and Recreation, Department of
† Retirement System, Virginia

October 13

† Dentistry, Board of
† Social Work, Board of

October 16

† Alcoholic Beverage Control Board

October 17

† Cemetery Board

October 18

† Code Commission, Virginia
† Geology, Board for
† Medical Assistance Services, Department of
† Nursing, Board of
- Joint Boards of Nursing and Medicine
† Treasury Board

October 19

† Design-Build/Construction Management Review Board
† Jamestown-Yorktown Steering Committee
† Medicine, Board of

October 24

† Contractors, Board for

PUBLIC HEARINGS

August 1

Air Pollution Control Board, State

August 11

† Medicine, Board of

August 22

† Mental Health, Mental Retardation and Substance Abuse
Services, Department of

August 24

Air Pollution Control Board, State

August 29

Agriculture and Consumer Services, Board of

September 12

† Long-Term Care Administrators, Board of

September 13

Criminal Justice Services, Department of

September 27

Education, Board of