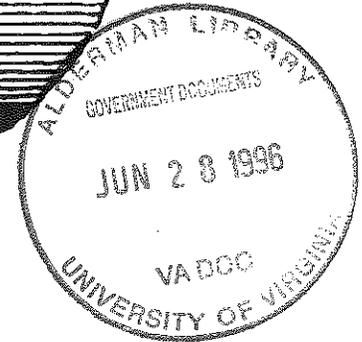
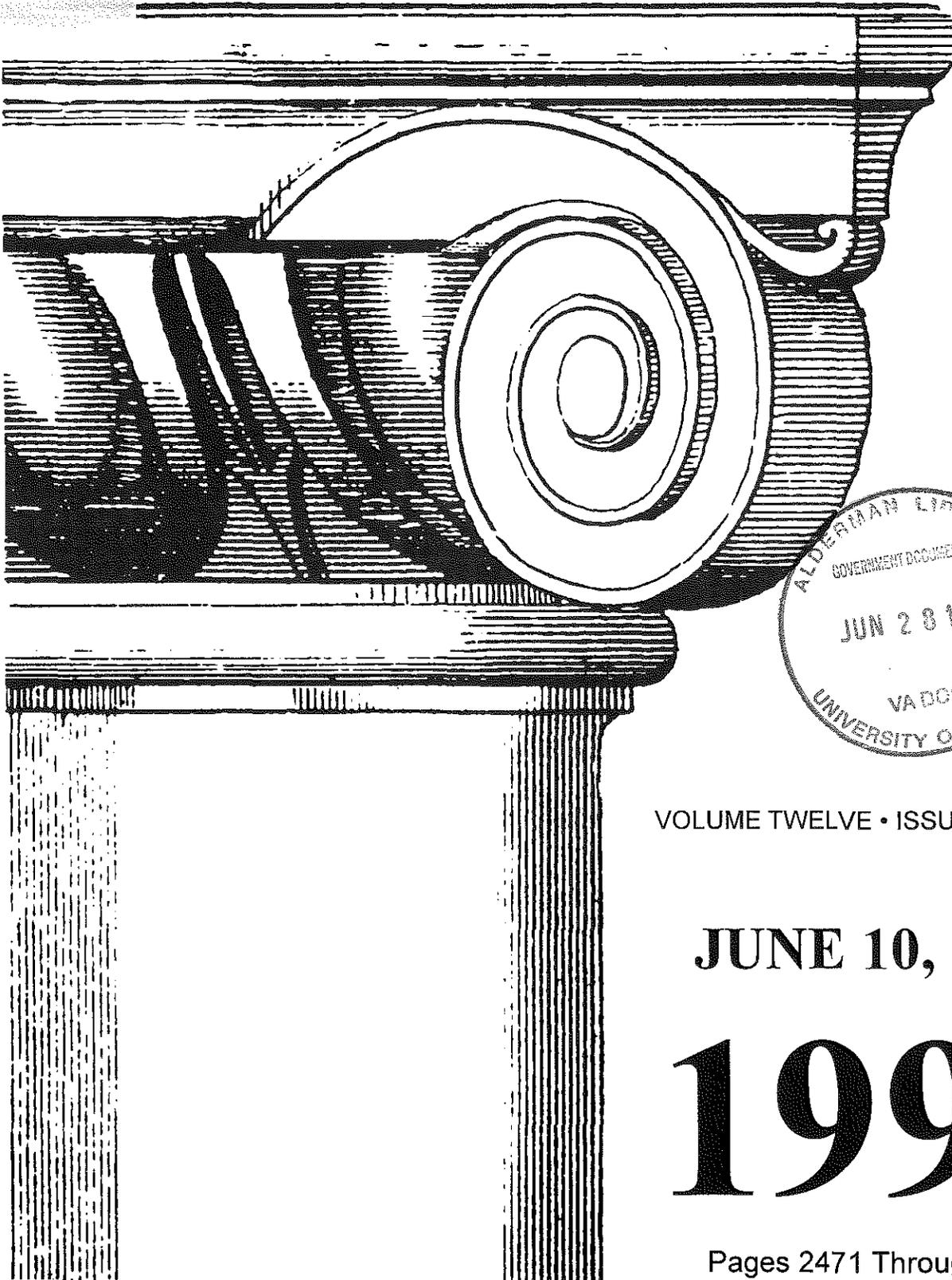


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# THE VIRGINIA REGISTER

OF REGULATIONS

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VOLUME TWELVE • ISSUE NINETEEN

JUNE 10, 1996

# 1996

Pages 2471 Through 2570

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in *The Virginia Register of Regulations*. In addition, the *Virginia Register* is a source of other information about state government, including all emergency regulations and executive orders issued by the Governor, the *Virginia Tax Bulletin* issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

#### **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative committee, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate standing committees and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration

of the 21-day extension period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

#### **EMERGENCY REGULATIONS**

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) deliver the Notice of Intended Regulatory Action to the Registrar in time to be published within 60 days of the effective date of the emergency regulation; and (ii) deliver the proposed regulation to the Registrar in time to be published within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

#### **STATEMENT**

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of the Code of Virginia be examined carefully.

#### **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **12:8 VA.R. 1096-1106 January 8, 1996**, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

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Members of the Virginia Code Commission: **Joseph V. Gartlan, Jr.**, Chairman; **W. Tayloe Murphy, Jr.**, Vice Chairman; **Robert L. Calhoun;** **Russell M. Carneal;** **Bernard S. Cohen;** **Jay W. DeBoer;** **Frank S. Ferguson;** **E. M. Miller, Jr.;** **Jackson E. Reasor, Jr.;** **James B. Wilkinson.**

Staff of the Virginia Register: **E. M. Miller, Jr.**, Acting Registrar of Regulations; **Jane D. Chaffin**, Deputy Registrar of Regulations.

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# PUBLICATION DEADLINES AND SCHEDULES

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## June 1996 through March 1997

**Material Submitted  
By Noon Wednesday**

**Will Be Published On**

**Volume 12**

May 22, 1996

June 10, 1996

June 5, 1996

June 24, 1996

**INDEX 3 - Volume 12**

**July 1996**

June 19, 1996

July 8, 1996

July 3, 1996

July 22, 1996

July 17, 1996

August 5, 1996

July 31, 1996

August 19, 1996

August 14, 1996

September 2, 1996

August 28, 1996

September 16, 1996

**FINAL INDEX - Volume 12**

**October 1996**

**Volume 13**

September 11, 1996

September 30, 1996

September 25, 1996

October 14, 1996

October 9, 1996

October 28, 1996

October 23, 1996

November 11, 1996

November 6, 1996

November 25, 1996

November 19, 1996 (Tuesday)

December 9, 1996

December 4, 1996

December 23, 1996

**INDEX 1 - Volume 13**

**January 1997**

December 17, 1996 (Tuesday)

January 6, 1997

December 31, 1996 (Tuesday)

January 20, 1997

January 15, 1997

February 3, 1997

January 29, 1997

February 17, 1997

February 12, 1997

March 3, 1997

February 26, 1997

March 17, 1997

March 12, 1997

March 31, 1997

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**April 1997**

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

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

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### VIRGINIA BOARD FOR ASBESTOS LICENSING AND LEAD CERTIFICATION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Board for Asbestos Licensing and Lead Certification intends to consider promulgating regulations entitled: **18 VAC 15-30-10 et seq. Virginia Lead-based Paint Activities Regulations**. The purpose of the proposed action is to promulgate regulations governing lead-based paint activities to replace the emergency regulations, which were effective October 1, 1995, to implement an act of the 1995 session of the General Assembly. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public comments may be submitted until June 27, 1996.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

VA.R. Doc. No. R96-368; Filed May 8, 1996, 11:57 a.m.

### CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Chesapeake Bay Local Assistance Board intends to consider amending regulations entitled: **9 VAC 10-20-10 et seq. Chesapeake Bay Preservation Area Designation and Management Regulations**. The purpose of the proposed action is to amend these regulations to accomplish the following:

1. Achieve greater clarity in all regulatory language to minimize confusion and misinterpretation.
2. Eliminate any conflicts and unnecessary redundancies between the requirements in the regulations and those in other related state and federal laws and regulations, while still providing for maximum water quality protection. Specific issues under consideration where conflicts or redundancies are perceived to exist are as follows:
  - a. Stormwater management criteria;
  - b. Erosion and sediment control criteria;
  - c. Septic system criteria;
  - d. Agricultural criteria;

e. Silvicultural criteria; and

f. Criteria regarding revision of Comprehensive Plans and Zoning Ordinances.

3. Improve vegetative buffer area criteria to provide greater flexibility and consistency with riparian forest buffer policies being developed by the Executive Council of the regional Chesapeake Bay Program.

4. Improve agricultural conservation criteria to correct the inability to meet the conservation plan approval deadline, reduce administrative overhead and result in more water quality protection practices on the land.

5. Add criteria regarding a board/department process to review local program implementation for consistency with the regulations.

**Need:** The Chesapeake Bay Preservation Act was passed by the Virginia General Assembly in 1988 and final regulations for its implementation were adopted in November 1990. The Chesapeake Bay Local Assistance Board, established to implement the Act in partnership with Tidewater Virginia local governments, anticipated from the outset that this kind of complex new state-local partnership program would require review and adjustment at some point to maximize its effectiveness. This amendment process is proposed to address recommendations resulting from two stakeholder evaluations of the regulations (1992 and 1994), a legislative study of state stormwater management programs (1993-94), and two separate agency reviews (1995) mandated by the General Assembly and the Governor.

**Subject Matter and Intent:** The list of general issues above is the result of the several studies mentioned in the previous paragraph. The board desires to accomplish a comprehensive amendment of the regulations to clarify the meaning of various provisions, provide greater implementation flexibility, and reduce costs for both local governments and members of the public who must comply with the state/local requirements.

**Estimated Impacts:** Tidewater Virginia local governments will experience the most immediate impact of an amendment of these regulations, because each of these local governments has adopted a local program, including adoption or amendment of various ordinances, to implement the provisions of these regulations. Amendments to the regulations will result in each of the 84 Tidewater localities having to enact at least some amendments of its local ordinance(s) and program. However, a number of the changes under consideration have been recommended by the local governments themselves. The intention of the amendments is to make the process of complying with these state-mandated local programs more reasonable and cost-efficient to implement and follow without sacrificing water quality protection. Apart from this program, such local ordinance amendments are enacted routinely by local governing bodies for similar reasons.

# Notices of Intended Regulatory Action

Many of the specific changes under consideration should result in clearer, simpler, more flexible, nonconflicting program requirements. These changes are intended and expected to make local programs easier and more cost efficient to implement. The board expects that, generally, net costs to the private sector complying with these requirements will, at worst, remain at current levels and, at best, diminish somewhat. However, the proposals under consideration at this time are not specific enough to allow for refined estimates of economic impact.

**Alternatives:** The board could leave the current regulation in place without change. However, this would result in continued confusion regarding certain definitions and requirements and continued conflict or unnecessary redundancies with some provisions of certain related state and federal laws and regulations.

**Comments:** The board requests written comments from interested persons regarding its purpose as stated above. Comments are requested regarding the costs and benefits of the intended proposals as well as the stated alternatives or other alternatives. Comments also are invited regarding additional regulatory issues the public believes the board should consider. The board intends to hold two public information meetings during this comment period, as follows:

1. Classroom 127, Marshall-Wythe School of Law, College of William and Mary, Williamsburg, Virginia, 7 p.m., Wednesday, June 19, 1996
2. Theatre, City Public Library, Fredericksburg, Virginia, 7 p.m., Thursday, June 27, 1996

As well, the board intends to hold three public hearings on the proposed regulation after amendment language is published for public comment. Dates, times and locations of those public hearings will be specified in the Notice of Public Comment.

**Statutory Authority:** §§ 10.1-2103 and 10.1-2107 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on Friday, June 28, 1996.

**Contact:** Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Suite 701, Richmond, Virginia 23219-1924, telephone (804) 225-3440, FAX (804) 225-3447, or toll free 1-800-243-7229/TDD



VA.R. Doc. No. R96-358; Filed May 8, 1996, 10:29 a.m.

## CHILD DAY-CARE COUNCIL

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Child Day-Care Council intends to consider amending regulations entitled: **22 VAC 15-30-10 et seq. Minimum Standards for Licensed Child Day Centers Serving Children of Preschool Age or Younger.** The purpose of the proposed action is to revise the regulation to ensure it is conducive to the health, safety and welfare of

children in the least burdensome and intrusive manner. This review will be comprehensive and include all standards. Areas already identified in need of revision include staff qualifications, record keeping, playground requirements and programming. Standards for centers serving school age children (22 VAC 15-40-10 et seq.) will also be incorporated into the regulation. The agency intends to hold a public hearing on the proposed regulation after publication.

**Statutory Authority:** § 63.1-202 of the Code of Virginia.

Public comments may be submitted until June 13, 1996, to Sharon Jones, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

**Contact:** Arlene Kasper, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1791 or FAX (804) 692-2370.

VA.R. Doc. No. R96-310; Filed April 23, 1996, 9:25 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Child Day-Care Council intends to consider repealing regulations entitled: **22 VAC 15-40-10 et seq. Minimum Standards for Licensed Child Day Centers Serving School Age Children.** The purpose of the proposed action is to repeal the regulation. The standards in this regulation will be incorporated into the regulation currently entitled Minimum Standards for Licensed Child Day Centers Serving Children of Preschool Age or Younger (22 VAC 15-30-10 et seq.) The agency does not intend to hold a public hearing on the proposed repeal of this regulation after publication.

**Statutory Authority:** § 63.1-202 of the Code of Virginia.

Public comments may be submitted until June 13, 1996, to Sharon Jones, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

**Contact:** Arlene Kasper, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1791 or FAX (804) 692-2370.

VA.R. Doc. No. R96-311; Filed April 23, 1996, 9:26 a.m.

## BOARD FOR CONTRACTORS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Contractors intends to consider promulgating regulations entitled: **18 VAC 50-30-10 et seq. Tradesman Certification Program Regulations.** The purpose of the proposed action is to replace emergency regulations governing the certification of plumbers, electricians, and HVAC workers. The agency intends to hold a public hearing on the proposed regulation after publication.

**Statutory Authority:** §§ 54.1-201, 54.1-1102, and 54.1-1128 through 54.1-1135 of the Code of Virginia.

# Notices of Intended Regulatory Action

Public comments may be submitted until June 13, 1996.

**Contact:** Elizabeth Kirksey, Tradesman Certification Program Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-6166 or FAX (804) 367-2474.

VA.R. Doc. No. R96-321; Filed April 24, 1996, 3:04 p.m.

## DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Deaf and Hard-of-Hearing intends to consider amending regulations entitled: **22 VAC 20-30-10 et seq. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.** The purpose of the proposed action is to (i) improve clarity and reduce redundancy through general language changes; (ii) add provisions for the establishment of a Virginia Quality Assurance Screening Equivalency for nationally certified interpreters; (iii) add provisions for maintenance of Virginia Quality Assurance Screening Levels; (iv) add provisions for a consumer input and grievance procedure; and (v) revise the Virginia Quality Assurance Screening Process, Awarding of Screening Levels. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.1-85.4 and 63.1-85.4:1 of the Code of Virginia.

Public comments may be submitted until June 30, 1996.

**Contact:** Leslie G. Hutcheson, Special Projects Manager, Washington Bldg., 1100 Bank St., 11th Floor, Richmond, VA 23219, telephone (804) 371-7885, FAX (804) 371-7882, toll-free 1-800-552-7917, or (804) 371-7885/TDD ☎

VA.R. Doc. No. R96-356; Filed May 8, 1996, 9:01 a.m.

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-130-700.1 et seq. Virginia Coal Surface Mining Reclamation Regulations.** The purpose of the proposed action is to provide blow-out protection where underground mine workings end near the surface outcrop of the coal seam. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Public comments may be submitted until June 26, 1996.

**Contact:** Danny Brown, Division Director, Department of Mines, Minerals and Energy, Division of Mined Land

Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8152, FAX (804) 523-8163, or toll-free 1-800-828-1120 (VA Relay Center).

VA.R. Doc. No. R96-369; Filed May 8, 1996, 1:06 p.m.

## Board of Coal Mining Examiners

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Coal Mining Examiners intends to consider amending regulations entitled: **4 VAC 25-20-10 et seq. Board of Coal Mining Examiners Certification Regulations.** The purpose of the proposed action is to establish a separate regulation setting requirements for the certification of coal miners. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 45.1-161.28 of the Code of Virginia.

Public comments may be submitted until June 26, 1996.

**Contact:** Frank A. Linkous, Mine Division Chief, Department Mines, Minerals and Energy, U.S. Route 23 South, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8100, FAX (804) 523-8239, or toll-free 1-800-828-1129 (VA Relay Center).

VA.R. Doc. No. R96-330; Filed May 3, 1996, 3:06 p.m.

## Virginia Gas and Oil Board

### Notice of Intended Regulation Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Gas and Oil Board intends to consider amending regulations entitled: **4 VAC 25-160-10 et seq. Virginia Gas and Oil Board Regulations.** The purpose of the proposed action is to amend the Virginia Gas and Oil Board Regulations governing protection of gas and oil resources. The board's regulations establish requirements for applications and hearings to (i) define pools of gas or oil; (ii) establish drilling units within pools; (iii) establish a mechanism where all gas and oil owners in a drilling unit will equitably share the costs and proceeds from the drilling unit's production; (iv) establish escrow accounts for coalbed methane well proceeds until there are conflicting claims to ownership of the gas are settled; and (v) hear appeals of Department of Mines, Minerals and Energy decisions.

The amendments to be considered would implement the recommendations identified during the Department of Mines, Minerals and Energy's regulation review under Executive Order 15(94). The recommendations will streamline the regulatory process, eliminate unnecessary regulatory requirements, clarify language, and implement changes based on the board's, gas and oil operators', and citizens' experience with the regulation since it was promulgated in 1991. Copies of the regulatory review report are available at the Department of Mines, Minerals and Energy's Division of

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## Notices of Intended Regulatory Action

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Gas and Oil office in Abingdon and at the department's office in Richmond. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 45.1-361.15 of the Code of Virginia.

Public comments may be submitted until June 26, 1996.

**Contact:** B. Thomas Fulmer, Division Director, Department of Mines, Minerals and Energy, Division of Gas and Oil, P.O. Box 1416, Abingdon, VA 24212, telephone (540) 676-5423, FAX (804) 676-5459, or toll-free 1-800-828-1120 (VA Relay Center)

VA.R. Doc. No. R96-328; Filed May 2, 1996, 3:19 p.m.

### MOTOR VEHICLE DEALER BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Motor Vehicle Dealer Board intends to consider promulgating regulations entitled: **24 VAC 22-20-10 et seq. Motor Vehicle Dealer Fees.** The purpose of the proposed action is to establish fees. The Motor Vehicle Dealer Board (MVDB) was established by the 1995 General Assembly as a self-sustaining entity. All expenses for the MVDB must be paid through fees assessed by the board. Towards this end, the General Assembly granted the MVDB authority to set fees within specific limits. At the current fee level, the board will not be able to meet its expenses. It is projected that the board will have a negative cash balance by April 1997 if fees are not adjusted. The continued function of the MVDB will be impacted if fees are not adjusted to meet the expenses of the board. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 46.2-1506, 46.2-1519, and 46.2-1546 of the Code of Virginia.

Public comments may be submitted until June 13, 1996, to Bruce Gould, Motor Vehicle Dealer Board, P.O. Box 27412, Room 724, Richmond, VA 23269-0001.

**Contact:** Daniel B. Wilkins, Executive Director, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23230, telephone (804) 367-0300, FAX (804) 367-1053, or (804) 272-9278/TDD ☎

VA.R. Doc. No. R96-316; Filed April 24, 1996, 11:26 a.m.

### DEPARTMENT OF MOTOR VEHICLES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to consider repealing regulations entitled: **24 VAC 20-20-10 et seq. Privacy Protection Act.** The purpose of the proposed action is to repeal the regulation in accordance with changes adopted by the 1994 session of the General Assembly. Sections 46.2-208 through 46.2-210 of the Code of Virginia have made the regulation obsolete. It appears

that the regulation is neither applicable nor necessary. The agency does not intend to hold a public hearing on the proposed repeal of the regulation after publication.

Statutory Authority: §§ 46.2-203 and 46.2-208 of the Code of Virginia.

Public comments may be submitted until July 1, 1996, to Bruce Gould, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23369-0001.

**Contact:** Karen Chappell, Administrator, Department of Motor Vehicles, P.O. Box 27412, Room 311, Richmond, VA 23269-0001, telephone (804) 367-0146, FAX (804) 367-8891, or toll-free 1-800-272-9278/TDD ☎

VA.R. Doc. No. R96-334; Filed May 6, 1996, 11:56 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to consider repealing regulations entitled: **24 VAC 20-30-10 et seq. Virginia Driver Improvement Act Rules and Regulations.** The purpose of the proposed action is to repeal the existing regulation which was originally promulgated in 1975 and last amended in 1978. As such, the regulation has no substantive relationship to either the current statute or program. The agency does not intend to hold a public hearing on the proposed repeal of the regulation after publication.

Statutory Authority: §§ 46.2-203 and 46.2-489 of the Code of Virginia.

Public comments may be submitted until July 1, 1996.

**Contact:** Marc Copeland, Legislative Analyst, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23269-0001, telephone (804) 367-1875, FAX (804) 367-6631, or toll-free 1-800-272-9278/TDD ☎

VA.R. Doc. No. R96-333; Filed May 6, 1996, 11:55 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to consider amending regulations entitled: **24 VAC 20-120-10 et seq. Commercial Driver Training School Regulations.** The purpose of the proposed action is to delete unnecessary language and reflect changes in the law. The amendments also bring about technical changes or clarify requirements. The most substantial revision allows students who are enrolled in public or nonpublic/private education schools and who are completing driver education through a commercial driver training school to receive four periods of instruction on weekends and holidays. The revision also allows students who are not enrolled in public or nonpublic/private education schools and who are completing driver education through a commercial driver training school to receive four periods of instruction on weekdays, weekends, and holidays. Details of the amendments will be provided upon request. The agency does not intend to hold a public hearing on the proposed regulation after publication.

# Notices of Intended Regulatory Action

Statutory Authority: §§ 46.2-203 and 46.2-1703 of the Code of Virginia.

Public comments may be submitted until July 1, 1996, to P.A. Bowling, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23369-0001.

**Contact:** Frank C. Yancey, Office Manager, Motorist Licensing Administrator, Department of Motor Vehicles, P.O. Box 27412, Room 417, Richmond, VA 23269-0001, telephone (804) 367-9156, FAX (804) 367-6683, or toll-free 1-800-272-9278/TDD ☎

VA.R. Doc. No. R96-331; Filed May 6, 1996, 11:55 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to consider repealing regulations entitled: **24 VAC 20-130-10 et seq. International Registration Plan-Virginia Rules and Regulations.** The purpose of the proposed action is to repeal the regulations. This regulation was first published in 1975 when Virginia and 13 other jurisdictions were members of the International Registration Plan (Plan). The regulation was used by Virginia primarily as a tool to educate the motor carrier industry to the workings of the plan. Today, there are 49 jurisdictions that are members of the International Registration Plan. The plan has been changed many times in the intervening years, making the regulation published in 1975 obsolete. The current plan, along with various other related national policies and procedures, provides the necessary guidance to the member jurisdictions and the motor carrier industry alike. The agency does not intend to hold a public hearing on the proposed repeal of the regulation after publication.

Statutory Authority: §§ 46.2-203 and 46.2-703 of the Code of Virginia.

Public comments may be submitted until July 1, 1996, to Marc Copeland, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23369-0001.

**Contact:** Jerry Fern, Manager, IRP and Tax Licensing, Department of Motor Vehicles, P.O. Box 27412, Room 607, Richmond, VA 23269-0001, telephone (804) 367-8487, FAX (804) 367-1578, or toll-free 1-800-272-9278/TDD ☎

VA.R. Doc. No. R96-332; Filed May 6, 1996, 11:55 a.m.

## BOARD OF NURSING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled: **18 VAC 90-20-10 et seq. Board of Nursing Regulations.** The purpose of the proposed action is to establish a modest increase in fees in order to maintain revenues consistent with expenditures. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113, 54.1-2400 and 54.1-3000 of the Code of Virginia.

Public comments may be submitted until June 26, 1996.

**Contact:** Nancy Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-329; Filed May 3, 1996, 1:38 p.m.

## REAL ESTATE BOARD

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to consider amending regulations entitled: **18 VAC 135-20-10 et seq. Virginia Real Estate Board Licensing Regulations.** The purpose of the proposed action is to promulgate permanent regulations to replace the emergency regulations governing the duties of real estate brokers and salespersons. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2105 of the Code of Virginia.

Public comments may be submitted until July 10, 1996.

**Contact:** Karen O'Neal, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

VA.R. Doc. No. R96-373; Filed May 17, 1996, 11:52 a.m.

# PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



## PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

Effective July 1, 1995, publication of notices of public comment periods in a newspaper of general circulation in the state capital is no longer required by the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). Chapter 717 of the 1995 Acts of Assembly eliminated the newspaper publication requirement from the Administrative Process Act. In *The Virginia Register of Regulations*, the Registrar of Regulations has developed this section entitled "Public Comment Periods - Proposed Regulations" to give notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

### STATE AIR POLLUTION CONTROL BOARD

**July 23, 1996 - 10 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
First Floor, Training Room, Richmond, Virginia.

**August 9, 1996** -- Public comments may be submitted until  
4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-20-10 et seq., General Provisions and 9 VAC 5-80-10 et seq., Permits for New and Modified Sources.** The amendments concern provisions covering prevention of significant deterioration and include: (i) revision of the maximum allowable increases for particulate matter from being based on total suspended particulate to being based on particulate with an aerodynamic diameter of less than or equal to 10 micrometers; (ii) revision of the "Guideline on Air Quality Models"; (iii) exclusion of certain pollutants when determining whether an emissions increase is considered significant; and (iv) updating the notification process to comply with the Code of Virginia and changing the regulation's internal numbering system to reflect requirements of the Registrar of Regulations.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Department's Office of Air Program Development (Eighth Floor), 629 East Main

Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
Executive Office Park, Suite D  
5338 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 561-7000

Lynchburg Satellite Office  
Department of Environmental Quality  
7701-03 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
116 North Main Street  
Bridgewater, Virginia 22812  
Ph: (540) 828-2595

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Innsbrook Corporate Center  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
Old Greenbrier Village, Suite A  
2010 Old Greenbrier Road

# Public Comment Periods - Proposed Regulations

Chesapeake, Virginia  
Ph: (804) 424-6707

Springfield Satellite Office  
Department of Environmental Quality  
Springfield Corporate Center, Suite 310  
6225 Brandon Avenue  
Springfield, Virginia  
Ph: (703) 644-0311

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. August 9, 1996 to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Karen Sabastanski, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**August 9, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-95 through 12 VAC 30-80-310. Amount, Duration and Scope of Services, and 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates--Other Types of Care.** The purpose of this proposal is to promulgate regulations which would allow DMAS to require the use of prescription orders for certain over-the-counter (OTC) therapeutic products as a first approach to drug therapy where these products may be used in place of a more expensive legend-only drug. Payment for the more expensive legend drug would be denied, except in a few specified conditions, unless initial treatment was initiated using these less costly OTC drugs and the results of the OTC therapy were found to be unsatisfactory.

DMAS must implement cost-saving measures in its covered pharmacy services. Among these, enhancements to the Point-of-Service (POS) automated system related to the Prospective Drug Utilization Review (ProDUR) program have been identified as a priority. Additionally, DMAS must develop a Prior Authorization (PA) program. The two initiatives, in tandem, are well suited to implementation in the interest of economy and patient safety. This OTC program will enable the partial fulfillment of the required budget reduction.

Historically, the Joint Legislative Audit and Review Commission recommended, in 1993, that Medicaid cover OTC drugs. Also, in 1994, the American Medical Association adopted a policy which recommended to physicians that they adopt the practice of prescribing OTC medications to their patients.

As a result of the increased movement of drug products from prescription only (legend) to OTC status during recent years,

a large number of effective drug products are available to the public in dosage forms/strengths previously obtainable only on prescription. These have been reviewed extensively by expert panels at the U.S. Food and Drug Administration (FDA) and deemed safe and effective. The increased efficacy and cost savings of using these products justifies the initiation of a program to enhance the pharmacy services by providing certain OTC drugs as therapeutic alternatives to costly legend products.

DMAS expects this proposed policy to have a positive impact on families because it recommends the expansion of covered pharmacy services to include certain OTC drugs which, at least for the noninstitutionalized population, have heretofore not been covered. This will alleviate some of this financial burden which has been borne by families.

These savings are a part of the savings which are required in Chapter 853, Item (E)(8), the 1995 Appropriations Act. This initiative should produce cost saving in individual patient care in the proposed categories. The extent will vary with the product category. Overall, the initiative should result in cost savings. While individual patient costs may decrease, the population served is composed of those having high utilization problems, such as ulcer patients and patients suffering with inflammatory diseases such as arthritis. Therefore, early intervention with these products in a larger population may result in a smaller decrease in expenditures than might otherwise be anticipated. However, cost savings in the program as a whole may be significant if this early intervention results in fewer serious complications and hospitalizations.

The numbers of prescribers and pharmacy providers should not be affected. The program will be implemented statewide and no negative impact is anticipated to providers. Recipients who may have been taking OTC products in the past with good success, will be allowed under this initiative to obtain those products by doctor's orders. This will result in a savings to the patient, who will now pay only the co-pay instead of full OTC price. Patient compliance should improve as a result, thereby decreasing the potential for additional, more costly therapies. The overall effect is expected to be cost savings to the public in the Medicaid program.

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

Public comments may be submitted until August 9, 1996, to David Shepherd, Pharmacy Services, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

## BOARD OF VETERINARY MEDICINE

**June 11, 1996 - 8:30 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 4, Richmond, Virginia.

**August 10, 1996** -- Public comments may be submitted until this date.

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## Public Comment Periods - Proposed Regulations

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Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Veterinary Medicine intends to amend regulations entitled: **18 VAC 150-20-10 et seq. Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed amendments is to establish approved providers of continuing education requirements for retention of documents and conditions for waivers. This action will replace emergency regulations which became effective February 6, 1996.

Statutory Authority: §§ 54.1-2400 and 54.1-3805.2 of the Code of Virginia.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7691, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see Information Page.

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## Symbol Key

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

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## STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: 9 VAC 5-20-10 et seq. General Provisions (amending 9 VAC 5-20-21).

9 VAC 5-80-10 et seq. Permits for New and Modified Sources (adding Article 8 consisting of 9 VAC 5-80-1700 through 9 VAC 5-80-1960; and repealing 9 VAC 5-80-20).

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public Hearing Date: July 23, 1996 - 10 a.m.

Public comments may be submitted until August 9, 1996.  
(See Calendar of Events section for additional information)

Basis: The legal basis for the proposed regulation amendments is the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia), specifically § 10.1-1308 which authorizes the board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Purpose: The purpose of the regulation is (i) to require the owner of a proposed new or expanded facility to provide such 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 and (ii) to provide the basis for the board's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The proposed amendments are being made to make the regulation conform to the federal requirements for prevention of significant deterioration new source review programs.

Substance: The major provisions of the proposal are summarized below:

1. The maximum allowable increases (increments) for particulate matter have been revised, from being based on total suspended particulate (TSP) to being based on particulate with an aerodynamic diameter of less than or equal to 10 micrometers (PM<sub>10</sub>).
2. The "Guideline on Air Quality Models (Revised)," which sets forth air quality models and guidance for estimating ambient air concentrations for PSD purposes has also been revised.
3. Certain pollutants will no longer be included when determining whether an emissions increase is considered significant.
4. A number of administrative changes and clarifications have been incorporated. These changes include updating the notification process to comply with the Code of Virginia, and changing the regulation's internal numbering system to reflect new format and organizational requirements of the Registrar of Regulations.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are discussed below.

1. Public: The regulations will be an advantage to the community because they will reduce air pollution, a source of significant damage to property and health. Further, a state-run PSD program is better able to process permits more quickly and accurately than a federally-run program, saving time and money for prospective sources.

2. Department: Advantages to the department stemming from the regulation include better determination of compliance and monitoring, as well as a better knowledge of emissions in an affected area. Because the PSD program is run by the state rather than the federal government, permits will be processed more quickly and accurately, saving the department staff time and resources.

There are no disadvantages to the public or the department related to this regulation.

Localities Affected: There is no locality which will bear any identified disproportionate material impact due to the proposed regulation which would not be experienced by other localities.

### Impact:

1. Entities Affected. This regulation applies to any owner who wishes to construct a new commercial or industrial facility or expand an existing one in a prevention of significant deterioration area.

Because this regulation affects sources yet to be constructed, it is difficult to determine the exact number of potentially affected facilities. Further, the number of permit applications received by the department varies significantly from one year to the next. However, it is estimated that between 10 and 30 facilities will be required to meet the regulation's requirements within two years of its promulgation.

2. Fiscal Impact.

a. Costs to Affected Entities. Because the changes to the regulation are primarily procedural in nature, no additional costs to sources are anticipated. EPA is required to determine if the economic costs of a proposed regulation will be considered "major," that is, if the control costs will be significant, or if a large number of sources will be affected; it has determined that the regulation will not have a major financial impact. Additionally, the state-guided approach to PSD will result in more efficient, accurate, and environmentally sound permit processing, and will enable Virginians to have more direct control over the management of its air quality resources.

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## Proposed Regulations

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b. **Costs to Agency.** It is not expected that the regulation amendments will result in any cost to the Department of Environmental Quality beyond that currently experienced under the delegated program. It is expected that the department will experience some cost reductions due to the reduced interaction and coordination with EPA associated with the delegated program.

c. **Source of Agency Funds.** The sources of department funds to carry out this regulation are the general fund and the grant money provided by the U.S. Environmental Protection Agency under § 105 of the federal Clean Air Act.

d. **Benefits.** The regulation will benefit the Commonwealth by helping to prevent air pollution, the source of damage to health, welfare, and property.

Implementation of PSD revisions will also ensure continued state control, rather than federal control, of Virginia's air quality resources.

Finally, revising the regulation to meet federal requirements ensures that the program will meet the most current and up-to-date technical practices available.

e. **Small Business Impact.** PSD programs are designed to control emissions from major sources, therefore, there will be no impact upon facilities that meet the definition of small business provided in § 9-199 of the Code of Virginia.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

**Summary of the proposed regulation.** This regulation is intended to modify the existing regulations to keep them consistent with Environmental Protection Agency (EPA) revised rules on prevention of significant deterioration (PSD) to air quality. The EPA has changed the basis for calculating the maximum allowable increases (increments) for particulate matter. It also excludes certain temporary sources of particulates from being included as part of PSD increments. Some changes are made in the technical standards for measuring and modeling ambient concentrations of regulated pollutants. Finally, the regulation also makes some other minor administrative modifications.

**Estimated Economic Impact.** The EPA revised the maximum allowable increases (increments) for particulate matter (PM) under the requirements for the prevention of significant deterioration (PSD) of air quality. The revised increments are based on particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM<sub>10</sub>) rather than on the original units based on total suspended particulates (TSP). This brings the PSD increment in line with the National Ambient Air Quality Standards (NAAQS) which already measures particulates by the PM<sub>10</sub> standard. The PM<sub>10</sub> standard concentrates on those particulates known to have the greatest affect on environmental quality. Measuring PSD increments in terms of TSP rather than the PM<sub>10</sub> particles that actually have the greatest environmental impact would result a regulation that would probably require over-control of TSP in order to achieve the desired level of control on PM<sub>10</sub>. Such a regulation would cost more than is necessary to achieve the desired end.

The only sources affected by this change will be sources in compliance with TSP requirements but exceeding the standards for PM<sub>10</sub>. The number of firms for which this will be true is unknown but certainly very small. For those firms, EPA estimates that control equipment costs will rise by 15-20 percent. This amount is expected to be very small and will be more than offset by gains from the move to PM<sub>10</sub> from TSP. The net effect of rationalizing the particulate standard in the PSD program is small but probably positive.

The exemption of certain temporary sources of particulates from PSD requirements will have little effect. Temporary sources are regulated, to some extent, under other provisions of Virginia law and have little impact on overall air quality in PSD areas.

The changes in modeling and measurement guidelines are intended to keep the methods used by air regulators consistent with the best new science. Improvements in the performance of air quality measurement and modeling can be expected to have net economic benefits.

The other small administrative changes in the regulation will not have any measurable economic impact.

**Businesses and entities affected.** Only a very few businesses, if any, will see any effects from these changes. Any businesses that are affected will have only small increases or decreases in their costs.

**Localities particularly affected.** No localities will be particularly affected by these changes.

**Projected impact on employment.** There will be no impact on employment.

**Effects on the use and value of private property.** There will be no significant impact on the use and value of private property.

**Summary of analysis.** These revisions of the PSD rules are very minor and are not expected to have any significant economic impact.

### Agency's Response to Department of Planning and Budget's Economic Impact Analysis:

The Department of Environmental Quality takes no issue with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The regulation amendments concern provisions covering prevention of significant deterioration and include (i) revision of the maximum allowable increases for particulate matter from being based on total suspended particulate to being based on particulate with an aerodynamic diameter of less than or equal to 10 micrometers; (ii) revision of the "Guideline on Air Quality Models"; (iii) exclusion of certain pollutants when determining whether an emissions increase is considered significant; and (iv) updating the notification process to comply with the Code of Virginia and changing the regulation's internal numbering system to reflect requirements of the Registrar of Regulations.*

**APPENDIX M.  
DOCUMENTS INCORPORATED BY REFERENCE.**

**9 VAC 5-20-21. Documents incorporated by reference.**

**I.—General.**

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and non-statutory documents incorporated by reference and their availability may be found in ~~Section II subsection E~~ of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(1994)~~ (1995) in effect July 1, 1994 1995. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this appendix section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this appendix section may be examined by the public at the headquarters office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

~~II.—Specific documents.~~ *E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.*

**A. 1. Code of Federal Regulations.**

1. a. The provisions specified below from the Code of Federal Regulations (CFR) in effect as of July 1, 1994 1995, are incorporated herein by reference.

a. (1) 40 CFR Part 40 - National Primary and Secondary Ambient Air Quality Standards.

(1) (a) Appendix A - Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(2) (b) Appendix B - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(3) (c) Appendix C - Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(4) (d) Appendix D - Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(5) (e) Appendix E - Reference Method for Determination of Hydrocarbons Corrected for Methane.

(6) (f) Appendix F - Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(7) (g) Appendix G - Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(8) (h) Appendix H - Interpretation of the National Ambient Air Quality Standards for Ozone.

(9) (i) Appendix I - Reserved.

(10) (j) Appendix J - Reference Method for the Determination of Particulate Matter as PM<sub>10</sub> in the Atmosphere.

(11) (k) Appendix K - Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(2) 40 CFR Part 51 - Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Appendix W - Guideline on Air Quality Models (Revised).

b. (2) (3) 40 CFR Part 58 - Ambient Air Quality Surveillance.

Appendix B - Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

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# Proposed Regulations

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~~e. (3) (4)~~ 40 CFR Part 60 - Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in ~~Part V Article 5 (9 VAC 5-50-400 et seq.) of Part II of Chapter 50, Rule 5-5, Environmental Protection Agency Standards of Performance for New Stationary Sources.~~

~~d. (4) (5)~~ 40 CFR Part 61 - National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in ~~Part VI Article 1 (9 VAC 5-60-60 et seq.) of Part II of Chapter 60, Rule 6-1, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants.~~

~~e. (5) (6)~~ 40 CFR Part 63 - National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in ~~Part VI Article 2 (9 VAC 5-60-90 et seq.) of Part II of Chapter 60, Rule 6-2, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories.~~

~~2. b.~~ Copies may be obtained from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; phone (202) 783-3238.

## ~~B. 2. U.S. Environmental Protection Agency.~~

~~4. a.~~ The documents specified below following document from the U.S. Environmental Protection Agency are is incorporated herein by reference.:

~~a. (1) Guideline on Air Quality Models (revised), EPA 450/2-78-027R, OAQPS No. 1-2-080, July 1986, as amended by Supplement A, PB88150958, July 1987.~~

~~b. (2) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.~~

~~2. b.~~ Copies may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone (703) 487-4650.

## ~~G. 3. U.S. government.~~

~~4. a.~~ The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

~~2. b.~~ Copies may be obtained from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; phone (202) 783-3238 512-1800.

## ~~D. 4. American Society for Testing and Materials (ASTM).~~

~~4. a.~~ The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

~~a. (1) D323-82, "Test Method for Vapor Pressure of Petroleum Products (Reid Method)" from Section 5, Volume 05.01 of the 1985 Annual Book of ASTM Standards.~~

~~b. (2) D97-87, "Test Method for Pour Point of Petroleum Oils" from Section 5, Volume 05.01 of the 1989 Annual Book of ASTM Standards.~~

~~2. b.~~ Copies may be obtained from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; phone (215) 299-5400 (610) 832-9585.

## ~~E. 5. American Petroleum Institute (API).~~

~~4. a.~~ The following document from the American Petroleum Institute is incorporated herein by reference: API Publication 2517, Evaporation Loss from External Floating Roof Tanks, Third Edition, 1989.

~~2. b.~~ Copies may be obtained from: American Petroleum Institute, 2101 L Street, Northwest, Washington, D.C. 20037; phone (202) 682-8000.

## ~~F. 6. American Conference of Governmental Industrial Hygienists (ACGIH).~~

~~4. a.~~ The following document from the ACGIH is incorporated herein by reference: Threshold Limit Values for Chemical Substances 1991-1992 and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

~~2. b.~~ Copies may be obtained from: ACGIH, 6500 Glenway Avenue, Building D-7, Cincinnati, Ohio 45211-4438; phone (513) 661-7881 742-2020.

## ~~G. 7. National Fire Prevention Association (NFPA).~~

~~4. a.~~ The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

~~a. (1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 1985 Edition.~~

~~b. (2) NFPA 30, Flammable and Combustible Liquids Code, 1987 Edition.~~

~~e. (3) NFPA 30A, Automotive and Marine Service Station Code, 1987 Edition.~~

~~2. b.~~ Copies may be obtained from the National Fire Prevention Association, Batterymarch Park, Quincy, Massachusetts 02269; phone (617) 770-3000.

PART VIII

Article 8.

Permits for Major Stationary Sources and Major Modifications  
Locating in Prevention of Significant Deterioration Areas.

~~9 VAC 5-80-20. Permits major stationary sources and major modifications locating in prevention of significant deterioration areas.~~

A. 9 VAC 5-80-1700. Applicability.

1. A. The provisions of this section article apply to the construction of any major stationary source or major modification.

2. B. The provisions of this section article apply in prevention of significant deterioration areas designated in ~~9 VAC 5-10-20, Appendix L, 9 VAC 5-20-205.~~

3. C. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this section 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 section 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.

4. D. Unless specified otherwise, the provisions of this section article are applicable to various sources as follows:

a. 1. Provisions referring to "sources," "new or modified sources" or "stationary sources" are applicable to the construction of all major stationary sources and major modifications.

b. 2. Any emissions units not subject to the provisions of this section article may be subject to the provisions of 9 VAC 5-80-10 or 9 VAC 5-80-30.

E. For the purposes of this article, pollutants subject to regulation under the federal Clean Air Act shall not include any pollutant listed under § 112(b) of the federal Clean Air Act or any additions made to the list pursuant to regulations promulgated by the U.S. Environmental Protection Agency.

5. F. Unless otherwise approved by the board or prescribed in these regulations, when this section article is amended, the previous provisions of this section article shall remain in effect for all applications that are deemed complete under the provisions of subdivision R 1 of this section subsection A of 9 VAC 5-80-1870 prior to the effective date of the amended section article. Any permit applications that have not been determined to be complete as of the effective date of the amendments shall be subject to the new provisions.

B. 9 VAC 5-80-1710. Definitions.

1. A. As used in this section article, all words or terms not defined here herein shall have the meaning given them in 9 VAC 5-10-10 et seq., unless otherwise required by context.

2. B. For the purpose of this section article, 9 VAC 5-50-280 and any related use, the words or terms shall have the meaning given them in ~~subdivision B-3 subsection C~~ of this section:

3. C. Terms defined.

"Actual emissions":

(1) a. Means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subdivisions ~~3 a (2) through 3 a (4)~~ of this subsection b through d of this definition.

(2) b. 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 which precedes the particular date and which is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(3) c. The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) d. 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.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination must 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 which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) a. The applicable standards as set forth in 40 CFR Parts 60 and 61;

(2) b. The applicable State implementation plan emissions limitation including those with a future compliance date; or

(3) c. The emissions rate specified as a federally or state enforceable permit condition, including those with a future compliance date.

"Baseline area":

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(4) a. Means any intrastate area (and every part of that) 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  $1 \mu\text{g}/\text{m}^3$  (annual average) of the pollutant for which the minor source baseline date is established.

(2) 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 which:

(a) (1) Establishes a minor source baseline date; or

(b) (2) Is subject to this section 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  $\text{PM}_{10}$  increments, except that such baseline 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":

(4) a. Means that ambient concentration level which 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:

(a) (1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision (2) b of this definition;

(b) (2) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2) b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increases:

(a) (1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) (2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date":

(4) a. "Major source baseline date" means:

(a) (1) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) (2) In the case of nitrogen dioxide, February 8, 1988.

(2) 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 section article submits a complete application under this section article. The trigger date is:

(a) (1) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) (2) In the case of nitrogen dioxide, February 8, 1988.

(3) c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) (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 section article or 40 CFR 52.21; and

(b) (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  $\text{PM}_{10}$  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  $\text{PM}_{10}$  emissions.

"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 pollutant subject to regulation under the federal Clean Air Act which would be emitted from any proposed major stationary source or major modification 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 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 which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. 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 of them, 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 which 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 first two-digit code) as described in the Standard Industrial Classification Manual, as amended by the supplement (see 9 VAC 5-10-20, Appendix M 9 VAC 5-20-21).

*"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:

- (1) 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
- (2) 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"* means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.

*"Construction"* means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

*"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.

*"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, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the ~~State Implementation Plan implementation plan~~, and any permit requirements established pursuant to 40 CFR 52.21 or 9 VAC 5-80-10 et seq. *this chapter*, including operating permits issued under an EPA-approved program that is incorporated

into the ~~State Implementation Plan implementation plan~~ and expressly requires adherence to any permit issued under such program.

*"Fugitive emissions"* means those emissions which 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.

*"Locality particularly affected"* means any locality which bears any identified disproportionate material air quality impact which would not be experienced by other localities.

*"Low terrain"* means any area other than high terrain.

*"Major modification"* means:

(1) a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the federal Clean Air Act.

(2) b. Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

(3) c. A physical change or change in the method of operation shall not include:

(a) (1) Routine maintenance, repair and replacement;

(b) (2) Use of an alternative fuel or raw material by a stationary source which:

1. (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 which was established after January 6, 1975, pursuant to 40 CFR 52.21 or 9 VAC 5-80-10 et seq. *this chapter*; or

2. (b) The source is approved to use under any permit issued under 40 CFR 52.21 or 9 VAC 5-80-10 et seq. *this chapter*;

(c) (3) 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 January 6, 1975,

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pursuant to 40 CFR 52.21 or ~~9-VAC 5-80-10 et seq.~~  
*this chapter.*

"Major stationary source":

~~(1)~~ a. Means:

~~(a)~~ (1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit 100 tons per year or more of any pollutant subject to regulation under the federal Clean Air Act:

- ~~1.~~ (a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- ~~2.~~ (b) Coal cleaning plants (with thermal dryers).
- ~~3.~~ (c) Kraft pulp mills.
- ~~4.~~ (d) Portland cement plants.
- ~~5.~~ (e) Primary zinc smelters.
- ~~6.~~ (f) Iron and steel mill plants.
- ~~7.~~ (g) Primary aluminum ore reduction plants.
- ~~8.~~ (h) Primary copper smelters.
- ~~9.~~ (i) Municipal incinerators capable of charging more than 250 tons of refuse per day.
- ~~10.~~ (j) Hydrofluoric acid plants.
- ~~11.~~ (k) Sulfuric acid plants.
- ~~12.~~ (l) Nitric acid plants.
- ~~13.~~ (m) Petroleum refineries.
- ~~14.~~ (n) Lime plants.
- ~~15.~~ (o) Phosphate rock processing plants.
- ~~16.~~ (p) Coke oven batteries.
- ~~17.~~ (q) Sulfur recovery plants.
- ~~18.~~ (r) Carbon black plants (furnace process).
- ~~19.~~ (s) Primary lead smelters.
- ~~20.~~ (t) Fuel conversion plants.
- ~~21.~~ (u) Sintering plants.
- ~~22.~~ (v) Secondary metal production plants.
- ~~23.~~ (w) Chemical process plants.
- ~~24.~~ (x) Fossil fuel boilers (or combinations of them) totaling more than 250 million British thermal units per hour heat input.
- ~~25.~~ (y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- ~~26.~~ (z) Taconite ore processing plants.
- ~~27.~~ (aa) Glass fiber processing plants.
- ~~28.~~ (bb) Charcoal production plants.

~~(b)~~ (2) Notwithstanding the stationary source size specified in subdivision ~~(1)(a)~~ a (1) of this definition, stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the federal Clean Air Act; or

~~(c)~~ (3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision ~~(1)(a)~~ a (1) or ~~(1)(b)~~ a (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

~~(2)~~ b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

~~(3)~~ c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this ~~section~~ article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

~~(a)~~ (1) Coal cleaning plants (with thermal dryers).

~~(b)~~ (2) Kraft pulp mills.

~~(c)~~ (3) Portland cement plants.

~~(d)~~ (4) Primary zinc smelters.

~~(e)~~ (5) Iron and steel mills.

~~(f)~~ (6) Primary aluminum ore reduction plants.

~~(g)~~ (7) Primary copper smelters.

~~(h)~~ (8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

~~(i)~~ (9) Hydrofluoric, sulfuric, or nitric acid plants.

~~(j)~~ (10) Petroleum refineries.

~~(k)~~ (11) Lime plants.

~~(l)~~ (12) Phosphate rock processing plants.

~~(m)~~ (13) Coke oven batteries.

~~(n)~~ (14) Sulfur recovery plants.

~~(o)~~ (15) Carbon black plants (furnace process).

~~(p)~~ (16) Primary lead smelters.

~~(q)~~ (17) Fuel conversion plants.

~~(r)~~ (18) Sintering plants.

~~(s)~~ (19) Secondary metal production plants.

~~(t)~~ (20) Chemical process plants.

~~(u)~~ (21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

~~(v)~~ (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

~~(w)~~ (23) Taconite ore processing plants.

~~(x)~~ (24) Glass fiber processing plants.

- (y) (25) Charcoal production plants.
- (z) (26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- (aa) (27) Any other stationary source category which, as of August 7, 1980, is being regulated under Section § 111 or § 112 of the federal Clean Air Act.

"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 applicable State Implementation Plan implementation plan.

"Net emissions increase" means:

(4) a. Means the amount by which the sum of the following exceeds zero:

- (a) (1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and
- (b) (2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(2) b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

- (a) (1) The date five years before construction on the particular change commences; and
- (b) (2) The date that the increase from the particular change occurs.

(3) c. An increase or decrease in actual emissions is creditable only if the board has not relied on it in issuing a permit for the source under this section 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.

(4) d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which 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. *With respect to particulate matter, only PM<sub>10</sub> emissions can be used to evaluate the net emissions increase for PM<sub>10</sub>.*

(5) e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) f. A decrease in actual emissions is creditable only to the extent that:

- (a) (1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) (2) It is federally and state enforceable at and after the time that actual construction on the particular change begins; and

(c) (3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) 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.

"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.

"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 section article, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite 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":

(4) a. 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:

Pollutant	Emissions Rate
Carbon Dioxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM <sub>10</sub>	15 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Asbestos	0.007 tpy

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Beryllium	0.0004 tpy
Mercury	0.1 tpy
Vinyl Chloride	1 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H <sub>2</sub> S)	10 tpy
Total Reduced Sulfur (including H <sub>2</sub> S)	10 tpy
Reduced Sulfur Compounds (including H <sub>2</sub> S)	10 tpy
Municipal waste combustor Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 <sup>-6</sup> tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO <sub>2</sub> and HC <sub>1</sub> )	40 tpy

(2) *b.* Means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the federal Clean Air Act that subdivision (4) *a* of this definition does not list, any emissions rate.

(3) *c.* Notwithstanding subdivision (4) *a* of this definition, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup> (24-hour average).

"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.

## G. 9 VAC 5-80-1720. General.

1. *A.* No owner or other person shall begin actual construction of any major stationary source or major modification without first obtaining from the board a permit to construct and operate such source.

2. *B.* No owner or other person shall relocate any emissions unit subject to the provisions of 9 VAC 5-20-160 without first obtaining a permit from the board to relocate the unit.

3. *C.* 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 subsection R of this section 9 VAC 5-80-1870.

4. *D.* The board may combine the requirements of and the permits for emissions units within a stationary source subject to 9 VAC 5-80-10, 9 VAC 5-80-20, and 9 VAC 5-80-30, and this article into one permit. Likewise the board may require

that applications for permits for emissions units within a stationary source required by 9 VAC 5-80-10, 9 VAC 5-80-20, and 9 VAC 5-80-30, and this article be combined into one application.

## D. 9 VAC 5-80-1730. 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:

TSP, annual geometric mean	5
TSP, 24 hour maximum	10
PM <sub>10</sub> , annual arithmetic mean	4
PM <sub>10</sub> , 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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#### Class II

Particulate matter:

TSP, annual geometric mean	19
TSP, 24 hour maximum	37
PM <sub>10</sub> , annual arithmetic mean	17
PM <sub>10</sub> , 24-hour maximum	30

Sulfur dioxide:

Annual arithmetic mean	20
24-hour maximum	91
Three-hour maximum	512

Nitrogen dioxide:

Annual arithmetic mean	25
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#### Class III

Particulate matter:

TSP, annual geometric mean	37
TSP, 24 hour maximum	75
PM <sub>10</sub> , annual geometric mean	34
PM <sub>10</sub> , 24-hour maximum	60

Sulfur dioxide:

Annual arithmetic mean	40
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24-hour maximum ----- 182

Three-hour maximum ----- 700

Nitrogen dioxide:

Annual arithmetic mean ----- 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.

**E. 9 VAC 5-80-1740. Ambient air ceilings.**

No concentration of a pollutant shall exceed:

1. The concentration permitted under the national secondary ambient air quality standard, or
2. The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

**F. 9 VAC 5-80-1750. Applications.**

4. A. A single application is required identifying at a minimum each emissions point within the emissions unit subject to this section article. The application shall be submitted according to procedures approved by 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.

2. B. For projects with phased development, a single application may be submitted covering the entire project.

3. C. Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. A responsible official is defined as follows:

a. 1. For a business entity, such as a corporation, association or cooperative, a responsible official is either:

(1) a. The president, secretary, treasurer, or a vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the business entity; or

(2) b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity.

b. 2. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

e. 3. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

4. D. Any person signing a document under ~~subdivision F 3 above~~ subsection C of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Subsection D of this section shall be interpreted to mean that the signer must have some form of direction or supervision over the persons gathering the data and preparing the document (the preparers), although the signer need not personally nor directly supervise these activities. The signer need not be in the same corporate line of authority as the preparers, nor do the persons gathering the data and preparing the form need to be company employees (e.g., outside contractors can be used). It is sufficient that the signer has authority to assure that the necessary actions are taken to prepare a complete and accurate document.

5. As required F. Unless waived under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

**G. 9 VAC 5-80-1760. Compliance with local zoning requirements.**

The owner shall 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 5-20-140 of these regulations and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

**H. 9 VAC 5-80-1770. Compliance determination and verification by performance testing.**

4. A. For stationary sources other than those specified in ~~subdivision H 2~~ subsection B of this section, compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by

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performance tests in accordance with the provisions of 9 VAC 5-50-30.

2. *B.* For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9 VAC 5-60-20 and shall be verified by emission tests in accordance with the provisions of 9 VAC 5-60-30.

3. *C.* Testing required by ~~subdivisions H 1 and 2~~ *subsections A and B* of 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.

4. *D.* For sources subject to the provisions of Rule 5-5 (9 VAC 5-50-400 *et seq.*) or 6-1 (9 VAC 5-60-60 *et seq.*), the requirements of ~~subdivisions H 1 through 3~~ *subsections A through C* of this section shall be met in all cases.

5. *E.* For sources other than those specified in ~~subdivision H 4~~ *subsection D* of this section, the requirements of ~~subdivisions H 1 through 3~~ *subsections A through C* of this section shall be met unless the board:

- a. 1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
- b. 2. Approves the use of an equivalent method;
- c. 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;
- d. 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
- e. 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.

6. *F.* The provisions for the granting of waivers under ~~subdivision H 5~~ *subsection E* of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

## I. 9 VAC 5-80-1780. Stack heights.

The provisions of 9 VAC 5-50-20 H apply.

## J. 9 VAC 5-80-1790. Review of major stationary sources and major modifications source applicability and exemptions.

4. *A.* No stationary source or modification to which the requirements of ~~subsections K through S~~ of this section 9 VAC 5-80-1800 through 9 VAC 5-80-1880 apply shall begin

actual construction without a permit which states that the stationary source or modification would meet those requirements. The board has authority to issue any such permit.

2. *B.* The requirements of ~~subsections K through S~~ of this section 9 VAC 5-80-1800 through 9 VAC 5-80-1880 shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the federal Clean Air Act that it would emit, except as this ~~section~~ *article* otherwise provides.

3. *C.* The requirements of ~~subsections K through S~~ of this section 9 VAC 5-80-1800 through 9 VAC 5-80-1880 apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under § 107 (d) (1) (C) of the federal Clean Air Act.

4. *D.* The requirements of ~~subsections K through S~~ of this section 9 VAC 5-80-1800 through 9 VAC 5-80-1880 shall not apply to a particular major stationary source or major modification if:

- a. 1. The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution; or
- b. 2. 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:
  - (1) a. Coal cleaning plants (with thermal dryers).
  - (2) b. Kraft pulp mills.
  - (3) c. Portland cement plants.
  - (4) d. Primary zinc smelters.
  - (5) e. Iron and steel mills.
  - (6) f. Primary aluminum ore reduction plants.
  - (7) g. Primary copper smelters.
  - (8) h. Municipal incinerators capable of charging more than 250 tons of refuse per day.
  - (9) i. Hydrofluoric acid plants.
  - (10) j. Sulfuric acid plants.
  - (11) k. Nitric acid plants.
  - (12) l. Petroleum refineries.
  - (13) m. Lime plants.
  - (14) n. Phosphate rock processing plants.
  - (15) o. Coke oven batteries.
  - (16) p. Sulfur recovery plants.
  - (17) q. Carbon black plants (furnace process).
  - (18) r. Primary lead smelters.

- (19) s. Fuel conversion plants.
- (20) t. Sintering plants.
- (21) u. Secondary metal production plants.
- (22) v. Chemical process plants.
- (23) w. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.
- (24) x. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (25) y. Taconite ore processing plants.
- (26) z. Glass fiber processing plants.
- (27) aa. Charcoal production plants.
- (28) bb. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- (29) cc. Any other stationary source category which, as of August 7, 1980, is being regulated under Section § 111 or § 112 of the federal Clean Air Act; or

e. 3. The source or modification is a portable stationary source which has previously received a permit under this section article:

- (1) a. The owner proposes to relocate the source and emissions of the source at the new location would be temporary;
- (2) b. The emissions from the source would not exceed its allowable emissions;
- (3) c. The emissions from the source would impact no class I area and no area where an applicable increment is known to be violated; and
- (4) 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.

5. E. The requirements of subsections K through S of this section 9 VAC 5-80-1800 through 9 VAC 5-80-1880 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 under Section § 107 of the federal Clean Air Act.

6. F. The requirements of subsections L, N and P of this section 9 VAC 5-80-1810, 9 VAC 5-80-1830, and 9 VAC 5-80-1850 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:

- a. 1. Would impact no class I area and no area where an applicable increment is known to be violated, and

- b. 2. Would be temporary.

7. G. The requirements of subsections L, N and P of this section 9 VAC 5-80-1810, 9 VAC 5-80-1830, and 9 VAC 5-80-1850 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 pollutant subject to regulation under the federal Clean Air Act from the modification after the application of best available control technology would be less than 50 tons per year.

8. H. The board may exempt a stationary source or modification from the requirements of subsection N of this section 9 VAC 5-80-1830 with respect to monitoring for a particular pollutant if:

- a. 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

~~Total suspended particulate - 10  $\mu\text{g}/\text{m}^3$ , 24-hour average~~

~~PM<sub>10</sub> - 10  $\mu\text{g}/\text{m}^3$ , 24-hour average~~

Particulate matter - 13  $\mu\text{g}/\text{m}^3$  of PM<sub>10</sub>, 24-hour average

Sulfur dioxide - 13  $\mu\text{g}/\text{m}^3$ , 24-hour average

Ozone<sup>1</sup>

Lead - 0.1  $\mu\text{g}/\text{m}^3$ , 3-month average

~~Mercury - 0.25  $\mu\text{g}/\text{m}^3$ , 24-hour average~~

~~Beryllium - 0.001  $\mu\text{g}/\text{m}^3$ , 24-hour average~~

Fluorides - 0.25  $\mu\text{g}/\text{m}^3$ , 24-hour average

~~Vinyl chloride - 15  $\mu\text{g}/\text{m}^3$ , 24-hour average~~

Total reduced sulfur - 10  $\mu\text{g}/\text{m}^3$ , 1-hour average

Hydrogen sulfide - 0.2  $\mu\text{g}/\text{m}^3$ , 1-hour average

Reduced sulfur compounds - 10  $\mu\text{g}/\text{m}^3$ , 1-hour average; or

- b. 2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision J-8-a 1 of this section subsection, or the pollutant is not listed in subdivision J-8-a 1 of this section subsection.

1. The permitting requirements equivalent to those contained in subsection B of 9 VAC 5-80-1810 shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM<sub>10</sub> if:

<sup>1</sup> 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 section article would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

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1. The owner of the source or modification submitted an application for a permit under 9 VAC 5-80-10, 9 VAC 5-80-30, or this article before (the effective date of this article), and

2. The board subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements equivalent to subsection B of 9 VAC 5-80-1810 shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

## ~~K.~~ 9 VAC 5-80-1800. Control technology review.

1. A. A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan implementation plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60 and 61.

2. B. A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the federal Clean Air Act that it would have the potential to emit in significant amounts.

3. C. A major modification shall apply best available control technology for each 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 a physical change or change in the method of operation in the unit.

4. 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.

## L. 9 VAC 5-80-1810. Source impact analysis.

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 national ambient air quality standard in any air quality control region; or
2. Any applicable maximum allowable increase over the baseline concentration in any area.

## M. 9 VAC 5-80-1820. Air quality models.

1. A. All estimates of ambient concentrations required under applications of air quality modeling involved in this section article shall be based on the applicable air quality models, data bases, and other requirements specified in the U.S. Environmental Protection Agency Guideline, EPA-450/2-

78-027R, ~~Guideline on Air Quality Models (see 9 VAC 5-10-20, Appendix M) Appendix W to 40 CFR Part 51.~~

2. B. Where an air quality impact model specified in the ~~Guideline on Air Quality Models 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 must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with ~~subsection R of this section 9 VAC 5-80-1870.~~

## N. 9 VAC 5-80-1830. Air quality analysis.

### 1. A. Preapplication analysis.

a. 1. Any application for a permit under this section 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:

(1) a. For the source, each pollutant that it would have the potential to emit in a significant amount;

(2) b. For the modification, each pollutant for which it would result in a significant net emissions increase.

b. 2. With respect to any such pollutant for which no national 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.

c. 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.

d. 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.

e. 5. The owner of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of Section 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 ~~subdivision N-1 subsection A~~ of this section.

2. 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.

3. 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 ~~subsection N~~ of this section.

**Q. 9 VAC 5-80-1840. 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 ~~section~~ article.

1. With respect to a source or modification to which ~~subsections K, L, N and P of this section~~ 9 VAC 5-80-1800, 9 VAC 5-80-1810, 9 VAC 5-80-1830, and 9 VAC 5-80-1850 apply, such information shall include:

- a. 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;
- b. A detailed schedule for construction of the source or modification;
- c. 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.

2. Upon request of the board, the owner shall also provide information on:

- a. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and
- b. The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since the baseline date in the area the source or modification would affect.

**R. 9 VAC 5-80-1850. Additional impact analyses.**

1. 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.

2. 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.

3. 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.

**Q. 9 VAC 5-80-1860. Sources impacting federal class I areas - additional requirements.**

1. 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:

- a. 1. Notification of the permit application status as provided in ~~subdivision R-1 of this section~~ *subsection A of 9 VAC 5-80-1870.*
- b. 2. Notification of the public comment period on the application as provided in ~~subdivision R-6-e of this section~~ *subdivision F 5 of 9 VAC 5-80-1870.*
- e. 3. Notification of the final determination on the application and issuance of the permit as provided in ~~subdivision R-6-i of this section~~ *subdivision F 9 of 9 VAC 5-80-1870.*
- d. 4. Notification of any other action deemed appropriate by the board.

2. 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 R of this section~~ 9 VAC 5-80-1870, 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.

3. 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.

4. D. Visibility analysis. The board shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by ~~subdivision Q-2~~ *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 must, in the notice of public hearing on the permit

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application, either explain this decision or give notice as to where the explanation can be obtained.

5. 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 which 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.

6. 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 which 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 section *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:

TSP, annual geometric mean	19
TSP, 24-hour maximum	37
PM <sub>10</sub> , annual geometric mean	17
PM <sub>10</sub> , 24-hour maximum	30

Sulfur dioxide:

Annual arithmetic mean	20
24-hour maximum	91
Three-hour maximum	325

Nitrogen dioxide:

Annual arithmetic mean	25
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7. G. Sulfur dioxide variance by governor with federal land manager's concurrence. The owner of a proposed source or modification which cannot be approved under ~~subdivision Q-6 subsection F~~ of this section may demonstrate to the governor that the source 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 ~~subdivision Q-9 subsection I of this section~~, provided that the applicable requirements of this section *article* are otherwise met.

8. 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 ~~subdivision Q-9 subsection I~~ of this section, provided that the applicable requirements of this section *article* are otherwise met.

9. I. Emission limitations for presidential or gubernatorial variance. In the case of a permit issued pursuant to ~~subdivision Q-7 or 8 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 which 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:

MAXIMUM ALLOWABLE INCREASE  
(micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

**R. 9 VAC 5-80-1870. Public participation.**

4. A. Within 30 days after receipt of an application the board shall 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 ~~9-VAC-5-80-10 et seq.~~ *this chapter* 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 notify the applicant of any deficiencies in such information. The date of receipt of a complete application shall be, for the purpose of this section *article*, the date on which the board received all required information.

2. *B.* No later than 30 days after receiving the initial determination notification required under ~~subdivision R-1 subsection A~~ of this section, the applicant shall notify the public about the proposed source as required in ~~subdivision R-3 subsection C~~ of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in ~~subdivision R-4 subsection D~~ of this section.

3. *C.* The public notice required under ~~subdivision R-2 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 information briefing.

4. *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 shall attend and provide information and answer questions on the permit application review process.

5. *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 ~~subdivision R-3 subsection C~~ of this section and for providing the informational briefing as required in ~~subdivision R-4 subsection D~~ of this section.

6. *F.* Within one year after receipt of a complete application, the board shall make a final determination on the application. This involves performing the following actions in a timely manner:

a. 1. Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

b. 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, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

c. 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 shall 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 shall be published at least 30 days prior to the day of the briefing.

d. 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 shall contain a statement of the estimated local impact of the proposed source or modification, which at a minimum shall provide information regarding specific pollutants and the total quantity of each which may be emitted, and shall list the type and quantity of any fuels to be used.* The notification shall be published at least 30 days prior to the day of the hearing. *Written comments shall be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period.*

e. 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 ~~executive~~ *elected official and chief administrative officer* of the city and county where the source or modification would be located *and any other locality particularly affected, any comprehensive regional land use planning agency 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.

f. 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.

g. 7. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearings 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 shall consider the applicant's response in making a final decision. The board shall 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.

h. 8. Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this ~~section~~ *article*.

i. 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.

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## S. 9 VAC 5-80-1880. Source obligation.

4. A. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this ~~section 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 ~~section article~~ who commences construction or operation after the effective date of these regulations without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in ~~subsection Z of this section~~ 9 VAC 5-80-1950.

2. B. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The board may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

3. C. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the ~~State Implementation Plan implementation plan~~ and any other requirements under local, state or federal law.

4. 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 ~~subsections K through S of this section~~ 9 VAC 5-80-1800 through 9 VAC 5-80-1880 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

## T. 9 VAC 5-80-1890. Environmental impact statements.

Whenever any proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 USC § 4321), review conducted pursuant to this ~~section article~~ shall be coordinated by the administrator with the broad environmental reviews under that Act and under ~~Section~~ § 309 of the federal Clean Air Act to the maximum extent feasible and reasonable.

## U. 9 VAC 5-80-1900. Disputed permits.

If a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any state which 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 ~~State Implementation Plan implementation plan~~ and shall be enforceable as part of such plan.

## V. 9 VAC 5-80-1910. Interstate pollution abatement.

4. 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 which may be affected by such source at least 60 days prior to the date of commencement of construction.

2. 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 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 ~~State Implementation Plan 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.

3. C. Notwithstanding any permit granted pursuant to this ~~section 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 ~~subdivision V-2 subsection B~~ of this section.

## W. 9 VAC 5-80-1920. Innovative control technology.

4. A. Prior to the close of the public comment period under ~~subsection R~~ 9 VAC 5-80-1870, 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.

2. B. The board, with the consent of the governors of affected states, shall determine that the source or modification may employ a system of innovative control technology, if:

a. 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;

b. 2. The owner agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under ~~subdivision K-2 of this section~~ 9 VAC 5-80-1800 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;

c. 3. The source or modification would meet the requirements of ~~subsections K and L of this section~~ 9 VAC 5-80-1800 and 9 VAC 5-80-1810 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;

d. 4. The source or modification would not, before the date specified by the board:

- (1) (a) Cause or contribute to a violation of an applicable national ambient air quality standard; or
- (2) (b) Impact any area where an applicable increment is known to be violated;

e. 5. All other applicable requirements including those for public participation have been met; and

f. 6. The provisions of ~~subsection Q of this section 9 VAC 5-80-1860~~ (relating to class I areas) have been satisfied with respect to all periods during the life of the source or modification.

3. C. The board shall withdraw any approval to employ a system of innovative control technology made under this section *article*, if:

- a. 1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or
- b. 2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
- c. 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.

4. 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 ~~subdivision W 3 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.

**X. 9 VAC 5-80-1930. Reactivation and permanent shutdown.**

1. A. The reactivation of a stationary source is not subject to provisions of this section *article* unless a decision concerning shutdown has been made pursuant to the provisions of ~~subdivisions X 2 through X 4 subsections B through D~~ of this section or 9 VAC 5-80-40 P 5.

2. B. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of ~~9 VAC 5-80-10 et seq this chapter~~.

3. C. The final decision shall be rendered as follows:

- a. 1. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the

notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.

b. 2. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall (i) hold a formal hearing on the issue, if one is requested; or (ii) render a final decision to consider the shutdown permanent, if no hearing is requested.

4. D. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shut down permanently prior to any final decision rendered under ~~subdivision X 3 subsection C~~ of this section.

**Y. 9 VAC 5-80-1940. Transfer of permits.**

1. A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

2. 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.

3. 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.

4. D. The provisions of this ~~subsection section~~ concerning the transfer of a permit from one location to another should not apply to the relocation of portable facilities that are exempt from the provisions of ~~subsections K through S of this section 9 VAC 5-80-1800 through 9 VAC 5-80-1880~~ by ~~subdivision J 4 e of this section 9 VAC 5-80-1790 D 3~~.

**Z. 9 VAC 5-80-1950. Permit invalidation, revocation, and enforcement.**

1. A. Permits issued under this section *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.

2. B. The board may revoke any permit if the permittee:

- a. 1. Knowingly makes material misstatements in the permit application or any amendments to it;
- b. 2. Fails to comply with the terms or conditions of the permit;
- c. 3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

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d. 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 emission limitations, in the State Implementation Plan implementation plan in effect at the time that an application is submitted; or

e. 5. Fails to comply with the applicable provisions of this section article.

3. C. 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 subdivision Z 2 subsection B of this section or for any other violations of these regulations.

4. D. Violation of these regulations shall be grounds for revocation of permits issued under this section article and are subject to the civil charges, penalties and all other relief contained in 9 VAC 5-20-10 et seq. and the Virginia Air Pollution Control Law.

5. E. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

## AA. 9 VAC 5-80-1960. Circumvention.

Regardless of the exemptions provided in this section 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.

VA.R. Doc. No. R96-385; Filed May 22, 1996, 11:55 a.m.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

**NOTICE:** The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

**Title of Regulation:** 13 VAC 10-10-10 et seq. Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority (amending 13 VAC 10-10-80).

**Statutory Authority:** § 36-55.30:3 of the Code of Virginia.

### Summary:

*The proposed amendments will, in accordance with legislation enacted in the 1996 Session of the General Assembly, delete or modify certain requirements in the case of the purchase by the authority of mortgage loans held, insured or assisted by the federal government or any agency or instrumentality thereof.*

### 13 VAC 10-10-80. Purchase of mortgage loans.

A. The authority may from time to time, pursuant and subject to its rules and regulations, purchase mortgage loans

from mortgage lenders. In furtherance thereof, the executive director may request mortgage lenders to submit offers to sell mortgage loans to the authority in such manner, within such time period and subject to such terms and conditions as he shall specify in such request. The executive director may take such action as he shall deem necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to mortgage lenders, advertising in newspapers or other publications and any other methods of public announcement which he may select as appropriate under the circumstances. The executive director may also consider and accept offers for sale of individual mortgage loans submitted from time to time to the authority without any solicitation therefor by the authority.

B. The authority shall require as a condition of the purchase of any mortgage loans from a mortgage lender pursuant to this section that such mortgage lender within 180 days from the receipt of proceeds of such purchase shall enter into written commitments to make, and shall thereafter proceed as promptly as practical to make and disburse from such proceeds, residential mortgage loans in the Commonwealth of Virginia having a stated maturity of not less than 20 years from the date thereof in an aggregate principal amount equal to the amount of such proceeds. *The foregoing requirement in this subsection B shall not apply to the purchase by the authority of a mortgage loan held, insured or assisted by the federal government or any agency or instrumentality thereof.*

C. At or before the purchase of any mortgage loan pursuant to this section, the mortgage lender shall certify to the authority that the mortgage loan would in all respects be a prudent investment and that the proceeds of the purchase of the mortgage loan shall be invested as provided in subsection B of this section or invested in short-term obligations pending such investment; *provided, however, that such certification shall not be required in the case of the purchase by the authority of a mortgage loan held, insured or assisted by the federal government or any agency or instrumentality thereof.*

D. The purchase price for any mortgage loan to be purchased by the authority pursuant to this section shall be established or determined in accordance with subdivision (2) subsection B of § 36-55.35 of the Code of Virginia.

VA.R. Doc. No. R96-380; Filed May 22, 1996, 9:32 a.m.

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**Title of Regulation:** 13 VAC 10-160-10 et seq. Rules and Regulations for Administration of Elderly and Disabled Low-Income Housing Tax Credits (amending 13 VAC 10-160-10, 13 VAC 10-160-20, 13 VAC 10-160-30, 13 VAC 10-160-60 through 13 VAC 10-160-90; adding 13 VAC 10-160-120; and repealing 13 VAC 10-160-40 and 13 VAC 10-160-50).

**Statutory Authority:** § 36-55.30:3 of the Code of Virginia.

### Summary:

*The proposed amendments will, in accordance with legislation enacted in the 1996 Session of the General*

*Assembly, delete or modify certain provisions to allow for the phasing out of this program subsequent to June 30, 1996. The proposed amendments will also authorize the executive director to increase allocations of tax credits as necessary to enable the owner to comply with the statutory requirement that the rent be at least 15% less than the market rent.*

CHAPTER 160.  
RULES AND REGULATIONS FOR ALLOCATION  
ADMINISTRATION OF ELDERLY AND DISABLED LOW-  
INCOME HOUSING TAX CREDITS.

**13 VAC 10-160-10. Definitions.**

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

"*Authority*" means the Virginia Housing Development Authority.

"*Board*" means the Board of Commissioners of the authority.

"*Disability*" means (i) a physical or mental impairment which substantially limits one or more of the major life activities of such individual and includes any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities (the term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus (HIV) infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance, and alcoholism) or (ii) a record of such an impairment; or being regarded as having such an impairment which includes a history of or being misclassified as having a mental or physical impairment that substantially limits one or more major life activities; or a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation; or a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or none of the impairments defined above but the individual is treated by another person as having such an impairment; provided, however, that any physical or mental impairment described in (i) or (ii) shall be expected to result in death or shall have lasted continuously during the immediately preceding 12-month period or shall be expected to last continuously during the next succeeding 12-month period.

"*Elderly person*" means a person who exceeds, by any period of time, 62 years of age.

"*Elderly tenant*" means (i) an elderly person or (ii) a household in which any member is an elderly person.

"*Eligible owner*" means any person meeting the criteria for an eligible owner as set forth in the state code and these rules and regulations.

"*Eligible tenant*" means an elderly tenant or tenant with a disability whose income does not exceed the limit described in these rules and regulations.

"*Executive director*" means the executive director of the authority or any other officer or employee of the authority who is authorized to act on his behalf or on behalf of the authority pursuant to a resolution of the board.

"*HUD fair market rent*" means the rent published by the U.S. Department of Housing and Urban Development for the Section 8 Rental Certificate Program.

"*Income*" means gross income (including but not limited to all salary, wages, bonuses, commissions, income from self-employment, interest, dividends, alimony, rental income, pensions, business income, annuities, social security payments, cash public assistance, support payments, retirement income and any other sources of cash income) which is being received by the elderly tenant or tenant with a disability or is regularly paid to or on behalf of such tenant by a third party as of the application date. The income of any person who is living with an elderly person or person with a disability for the primary purpose of providing care to such person shall be excluded. All such income, provided it is not temporary, shall be computed on an annual basis to determine income for the purpose of program eligibility.

"*Market rent*" means the amount of rent, as determined by the authority pursuant to these rules and regulations, charged to other tenants for comparable units (other than tax credit units) in the same property or, if there are no such comparable units in the same property, for comparable units in the same market area.

"*Owner*" means an applicant for tax credits under these rules and regulations and, upon and subsequent to an allocation of such credits, means the owner of the tax credit unit to whom the tax credits are allocated.

"*Person with a disability*" means a person having a disability as defined in these rules and regulations.

"*Program*" means the elderly and disabled low-income housing tax credit program described in these rules and regulations.

"*State code*" means Article 3 (§ 58.1-331 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia.

"*Tax credit rent*" means the reduced amount of rent charged for the tax credit unit to the eligible tenant. As provided in 13 VAC 10-160-30, the tax credit rent shall be at least 15% less than the market rent.

"*Tax credits*" means the tax credits as described in § 58.1-339 of the Code of Virginia;

"*Tax credit unit*" means a unit occupied or to be occupied by eligible tenants at reduced rents in order for the owner to be entitled to receive tax credits hereunder.

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"Tenant" means a person or household who is applying for occupancy of, or is occupying, a tax credit unit.

"Tenant with a disability" means (i) a person with a disability or (ii) a household in which any member is a person with a disability.

### 13 VAC 10-160-20. Purpose and applicability.

The following rules and regulations will govern the allocation by the authority ~~administration~~ of tax credits by the authority pursuant to the state code.

Notwithstanding anything to the contrary herein, acting at the request or with the consent of the owner, the executive director is authorized to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the state code.

The rules and regulations set forth herein are intended to provide a general description of the authority's ~~processing~~ *administration* requirements and are not intended to include all actions involved or required in the ~~processing and~~ administration of the tax credits. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time.

Notwithstanding anything to the contrary herein, all procedures and requirements in the state code must be complied with and satisfied.

### 13 VAC 10-160-30. General description.

The state code ~~has been~~ *was* amended by adding a section numbered 58.1-339 relating to a tax credit for owners providing rent reduction for eligible tenants.

~~Beginning For taxable years beginning on or after January 1, 1991, through December 31, 1993~~ *1999*, any individual or corporation receiving an allocation of tax credits pursuant to ~~43 VAC 10-160-70 § 58.1-339 of the Code of Virginia~~ shall, subject to the provisions of the state code and these rules and regulations, be entitled to a credit against the tax levied pursuant to § 58.1-320 or § 58.1-400 of the Code of Virginia, provided that the following requirements are satisfied:

1. The individual or corporation is engaged in the business of the rental of dwelling units (as hereinafter specified) and is subject to the Virginia Residential Landlord and Tenant Act, § 55-248.2 et seq. of the Code of Virginia, either by virtue of the provisions thereof or by virtue of the owner's providing for the applicability thereof pursuant to § 55-248.5 B of the Code of Virginia;
2. The owner provides a reduced rent to eligible tenants; and
3. The rent charged to the eligible tenants is at least 15% less than the market rent; and
4. *To claim a credit for reduction of rents charged to a tenant on or after July 1, 1996, a credit for rental reductions must have been validly claimed on the tax credit unit for all or part of the month of June 1996 and such tenant must have been an occupant of such tax credit unit on June 30, 1996.*

The allowable tax credit amount shall be 50% of the total rent reductions allowed during the taxable year to the eligible tenants occupying the tax credit units. The amount of the rent reduction shall be equal to the market rent minus the tax credit rent. For this purpose, the tax credit rent shall include any rental subsidy payable on behalf of the eligible tenant under any governmental or private program.

If there are comparable units (other than tax credit units) in the same property, the market rent shall be determined by the authority to be the rent charged to other tenants for such comparable units. For the purpose of determining the amount of rent charged to other tenants for comparable units in the same property, the authority shall assume that the other tenants commenced and, if applicable, renewed their leases as of the same date or dates, and for the same term or terms as the eligible tenants and at the rents in effect on such date or dates.

If there are no other such comparable units in the same property, then the market rent shall be determined by the authority to be the rent charged for comparable units in the same market area. Such rent shall be (i) the rent most recently charged for the tax credit unit to a person (who may be the eligible tenant to be assisted) unrelated to the owner within the one-year period prior to the date of filing of the application, plus a rental increase in an amount determined by the authority to reflect increases in rents in the market area of such tax credit unit since the date such rent was last charged, or (ii) if no rental history as described in (i) exists, the HUD fair market rent allowed for a comparable unit in the same market area (as reduced, to the extent determined by the authority, for any utilities which are not to be included in the tax credit rent under the terms of the lease); provided, however, that the owner may demonstrate to the authority that the rent for a comparable unit in the same market area is higher than (i) or (ii) above, as applicable, and to the extent so demonstrated to the satisfaction of the authority, such higher rent shall be used.

Notwithstanding anything to the contrary herein, the market rent shall in no event exceed 150% of the HUD fair market rent allowed for comparable units in the same market area (as reduced, to the extent determined by the authority, for any utilities which are not to be included in the tax credit rent under the terms of the lease).

If the tax credit unit is subsidized or assisted under any governmental or private program, the comparable units in the same property or market area, as applicable, shall include only those units similarly subsidized or assisted.

Because the intent of the state code is to provide tax credits for the rental of dwelling units only, tax credits ~~may not be allocated by the authority~~ *shall not be claimed* for the leasing of land only, including without limitation mobile home lots. Tax credits may be ~~allocated~~ *claimed* for the leasing of both a mobile home lot and the mobile home located thereon.

To be eligible for the program, a dwelling unit must contain separate and complete facilities for living, sleeping, eating, cooking and sanitation. Such accommodations may be served by centrally located equipment such as air conditioning or heating. Thus, for example, an apartment containing a living area, a sleeping area, bathing and

sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink, all of which are separate and distinct from other apartments, would constitute a unit.

In order to satisfy the requirement in § 58.1-339 of the state code that the owner be an individual or corporation engaged in the business of the rental of dwelling units; the owner must intend *have intended* at the time of application and *must intend* at all times thereafter to report, for federal income tax purposes, all rental and other income and any related expenses of the tax credit unit with respect to each tax year for which the tax credits are to be claimed for such tax credit unit.

The amount of credit for each individual or corporation for each taxable year shall not exceed \$10,000 or the total amount of tax imposed by Chapter 3 (§ 58.1-300 *et seq.*) of Title 58.1 of the Code of Virginia, whichever is less. If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount which exceeds the tax liability may be carried over for credit against income taxes of such individual or corporation in the next five taxable years until the total amount of the tax credit has been taken.

Credits granted to a partnership or an electing small business corporation (S corporation) shall be passed through to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S corporation.

The total amount of tax credits which may be approved by the authority in any fiscal year prior to fiscal year 1996-1997 shall not exceed \$1,000,000. *Commencing in fiscal year 1996-1997, the total amount of tax credits which may be approved by the authority in any fiscal year shall not exceed \$250,000. In the case of tax credits to be claimed for any period after June 30, 1996, no tax credits will be approved for a unit unless a tax credit was validly claimed for such unit for all or part of the month of June 1996. No tax credits may be claimed for taxable years after December 31, 1999.*

The authority may charge to each owner fees in such amount as the executive director shall determine to be necessary to cover the administrative costs to the authority. Such fees shall be payable at such time or times as the executive director shall require.

**13 VAC 10-160-40. Solicitations of applications. (Repealed.)**

~~The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for tax credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications and the selection thereof as he shall consider necessary or appropriate.~~

**13 VAC 10-160-50. Application. (Repealed.)**

~~Application for an allocation of tax credits shall be commenced by filing with the authority an application on such form or forms as the executive director may from time to time~~

~~prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with the state code and to make the allocation of the tax credits in accordance with these rules and regulations.~~

~~The executive director may establish criteria and assumptions to be used by the owner in the calculation of amounts in the application, and any such criteria and assumptions shall be indicated on the application form or instructions.~~

~~The executive director may prescribe such deadlines for submission of applications for allocation of tax credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such allocations.~~

~~The tax credit unit for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such tax credit unit is to be financed by the authority, the application for such financing shall be submitted to and reviewed by the authority in accordance with its applicable rules and regulations.~~

~~The authority may consider and approve, in accordance herewith, the allocation of tax credits for tax credit units which the authority may own or may intend to acquire, construct or rehabilitate.~~

**13 VAC 10-160-60. Eligibility of tenants and verification.**

The occupancy of units entitled to tax credits is limited to elderly tenants or tenants with disabilities whose incomes, as of initial occupancy of the tax credit unit by such tenants (or, if any such tax credit unit is was occupied by such a tenant on January 1 of the first calendar year for which the tax credits are to be ~~were~~ claimed for such tax credit unit, as of such January 1), ~~de did~~ not exceed 80% of the median income for the area. Preference in occupancy of tax credit units ~~will be~~ *must have been* given to eligible tenants whose incomes ~~are were~~ less than or equal to 50% of the median income for the area. The United States Department of Housing and Urban Development income limits for subsidized programs, as adjusted by family size, ~~will be~~ *must have been* used in determining such 80% and 50% of median income for the area.

*In the case of tax credits to be claimed for any period after June 30, 1996, in order to be eligible the tenant must have been an occupant of the tax credit unit on June 30, 1996.*

Owners shall be required to obtain ~~must have obtained~~ written income verification for eligible tenants who occupy or are expected to occupy a tax credit unit. The verification of income must be ~~have been~~ sent by the owner to each employer or the agency providing benefits along with a stamped, self-addressed return envelope. Such verification should ~~must have~~ then be retained by the owner and a copy submitted to the authority (together with an executed confirmation of resident eligibility form and the verification of age or disability) at the time that the eligible tenant is was determined by the owner to be income eligible. Verification of income must be ~~have been~~ current as of a date no earlier than 90 days prior to the date set forth in the preceding paragraph (*see first paragraph in this section*) as of which the

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income of the eligible tenant is was determined for eligibility purposes.

With respect to tax credits claimed for rental of tax credit units to tenants with disabilities, owners ~~shall be required to obtain~~ *must have obtained* a written verification of disability. Verification of said disability ~~may be~~ *must have been* obtained from a physician, diagnostic or vocational rehabilitation service center or the Social Security Administration.

With respect to tax credits claimed for rental of tax credit units to elderly tenants, owners must ~~verify have verified~~ the age of all persons claiming to exceed 62 years of age. Verification of Social Security benefits paid on the person's behalf ~~will be~~ *is* acceptable if a birth certificate ~~cannot be could not have been~~ obtained; provided, however, that any person receiving survivor Social Security benefits who ~~does did~~ not exceed 62 years of age or ~~does did~~ not have a disability is not eligible for occupancy of a tax credit unit.

The initial lease term for all eligible tenants occupying a tax credit unit ~~may not be~~ *must not have been* less than a 12-month period.

## **13 VAC 10-160-70. ~~Review and selection of application; Administration of allocation of tax credits.~~**

~~Pursuant to the state code, the state is divided into the following low income housing tax credit allocation areas, each of which shall be allocated the percent share of tax credits set forth below and in the state code:~~

### ~~Allocation Area 1~~

~~Percent Share of Tax Credits: 10.70~~

~~Planning District: LENOWISCO~~

~~Jurisdictions: Norton City, Lee County, Scott County, Wise County~~

~~Planning District: Cumberland Plateau~~

~~Jurisdictions: Buchanan County, Dickenson County, Russell County, Tazewell County~~

~~Planning District: Mount Rogers~~

~~Jurisdictions: Bristol City, Galax City, Bland County, Carroll County, Grayson County, Smyth County, Washington County, Wythe County~~

~~Planning District: New River Valley~~

~~Jurisdictions: Radford City, Floyd County, Giles County, Montgomery County, Pulaski County~~

### ~~Allocation Area 2~~

~~Percent Share of Tax Credits: 12.09~~

~~Planning District: Fifth~~

~~Jurisdictions: Clifton Forge City, Covington City, Roanoke City, Salem City, Alleghany County, Botetourt County, Craig County, Roanoke County~~

~~Planning District: Central Virginia~~

~~Jurisdictions: Bedford City, Lynchburg City, Amherst County, Appomattox County, Bedford County, Campbell County~~

~~Planning District: West Piedmont~~

~~Jurisdictions: Danville City, Martinsville City, Franklin County, Henry County, Patrick County, Pittsylvania County~~

### ~~Allocation Area 3~~

~~Percent Share of Tax Credits: 6.70~~

~~Planning District: Central Shenandoah~~

~~Jurisdictions: Buena Vista City, Harrisonburg City, Lexington City, Staunton City, Waynesboro City, Augusta County, Bath County, Highland County, Rockbridge County, Rockingham County~~

~~Planning District: Lord Fairfax~~

~~Jurisdictions: Winchester City, Clarke County, Frederick County, Page County, Shenandoah County, Warren County~~

### ~~Allocation Area 4~~

~~Percent Share of Tax Credits: 20.98~~

~~Planning District: Northern Virginia~~

~~Jurisdictions: Alexandria City, Fairfax City, Falls Church City, Manassas City, Manassas Park City, Arlington County, Fairfax County, Loudoun County, Prince William County~~

### ~~Allocation Area 5~~

~~Percent Share of Tax Credits: 4.70~~

~~Planning District: Rappahannock-Rapidan~~

~~Jurisdictions: Culpeper County, Fauquier County, Madison County, Orange County, Rappahannock County~~

~~Planning District: Thomas Jefferson~~

~~Jurisdictions: Charlottesville City, Albemarle County, Fluvanna County, Greene County, Louisa County, Nelson County~~

### ~~Allocation Area 6~~

~~Percent Share of Tax Credits: 5.22~~

~~Planning District: Southside~~

~~Jurisdictions: South Boston City, Brunswick County, Halifax County, Mecklenburg County~~

~~Planning District: Piedmont~~

~~Jurisdictions: Amelia County, Buckingham County, Charlotte County, Cumberland County, Lunenburg County, Nottoway County, Prince Edward County~~

~~Planning District: Crater~~

~~Jurisdictions: Colonial Heights City, Emporia City, Hopewell City, Petersburg City, Dinwiddie County, Greensville County, Prince George County, Surry County, Sussex County~~

### ~~Allocation Area 7~~

~~Percent Share of Tax Credits: 12.68~~

~~Planning District: Richmond-Regional~~

Jurisdictions: ~~Richmond City, Charles City County, Chesterfield County, Goochland County, Hanover County, Henrico County, New Kent County, Powhatan County~~

~~Allocation Area 8~~

~~Percent Share of Tax Credits: 5.15~~

~~Planning District: RADCO~~

~~Jurisdictions: Fredericksburg City, Caroline County, King George County, Spotsylvania County, Stafford County~~

~~Planning District: Northern Neck~~

~~Jurisdictions: Lancaster County, Northumberland County, Richmond County, Westmoreland County~~

~~Planning District: Middle Peninsula (not including Gloucester)~~

~~Jurisdictions: Essex County, King and Queen County, King William County, Mathews County, Middlesex County~~

~~Planning District: Accomack-Northampton~~

~~Jurisdictions: Accomack County, Northampton County~~

~~Allocation Area 9~~

~~Percent Share of Tax Credits: 21.69~~

~~Planning District: Southeastern Virginia~~

~~Jurisdictions: Chesapeake City, Franklin City, Norfolk City, Portsmouth City, Suffolk City, Virginia Beach City, Isle of Wight County, Southampton County~~

~~Planning District: Peninsula~~

~~Jurisdictions: Hampton City, Newport News City, Poquoson City, Williamsburg City, James City County, York County~~

~~Planning District: Middle Peninsula~~

~~Jurisdictions: Gloucester County~~

~~The executive director may further suballocate these allocation areas into allocation subpools based upon one or more of the following factors: geographical areas; types or characteristics of housing, construction, financing, owners, or occupants; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.~~

~~Tax credits shall be allocated to eligible owners on a "first-come, first-served" basis. In the event that the amount of tax credits available within an allocation area or subpool is sufficient for some but not all of eligible applications received by the authority on the same day, then the authority shall select one or more of such applications by lot.~~

~~The executive director may exclude and disregard any application which he determines is not submitted in good faith.~~

~~The amount of tax credits which may be allocated for tax credit units in any single development shall not exceed \$10,000; provided, however, that the executive director may from time to time terminate or suspend such \$10,000 limit for such allocation area or areas and for such period of time as he shall deem appropriate to assure full utilization and proper distribution of the tax credits. For the purpose of compliance with such \$10,000 limit, the executive director may determine~~

~~that developments in one or more applications constitute a single development based upon such factors as he may deem relevant, including without limitation the ownership, proximity, age, management, financing and physical characteristics of the developments.~~

~~The executive director shall allocate tax credits, in the manner described above, to eligible owners within each allocation area or subpool, if applicable, until either all tax credits therein are allocated or all eligible owners therein have received allocations. The amount allocated to each such eligible owner shall be equal to the lesser of (i) the amount requested in the application or (ii) the amount, determined by the executive director, to which the eligible owner is entitled under the state code and these rules and regulations as of the date of application; provided, however, that in no event shall the amount of tax credits so allocated exceed the amount of tax credits available in the allocation area or subpool from which such tax credits are to be allocated.~~

~~Amounts in any allocation area not allocated to any eligible owners may not be reallocated to any other allocation areas. Any amounts in any allocation subpools not allocated to eligible owners shall be reallocated among the other subpools (within the same allocation area) in which eligible owners shall not have received allocations in the full amount permissible under these rules and regulations. Such reallocation shall be made pro-rata based on the amount originally allocated to all such subpools with excess applications divided by the total amount originally allocated to all such subpools with excess applications. Such reallocations shall continue to be made until either all of the tax credits within the allocation area are allocated to eligible owners in the manner described above or all applications in the allocation area have received allocations.~~

~~The executive director determines whether the owner and the tax credit units are entitled to tax credits under the state code and these rules and regulations. If the executive director determines that the owner or the tax credit units are not so entitled to tax credits, the owner shall be so informed and his application shall be terminated. If the authority determines that the owner and the tax credit units are so entitled to tax credits, then the executive director shall issue to the owner, on behalf of the authority, a commitment for allocation of tax credits with respect to the applicable tax credit units. The allocation shall be subject to the approval or ratification thereof by the authority's board as described below.~~

~~The board shall review and consider the analysis and recommendation of the executive director for the allocation of tax credits, and, if it concurs with such recommendation, it shall by resolution approve or ratify the allocation by the executive director of the tax credits to the eligible owner, subject to such terms and conditions as the board or the executive director shall deem necessary or appropriate to assure compliance with the state code and these rules and regulations. If the board determines not to approve or ratify an allocation of tax credits, the executive director shall so notify the owner.~~

~~Upon compliance with the state code and these rules and regulations, the owner to whom an allocation is made~~

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~~hereunder shall be entitled to tax credits annually, in such amount as is determined by the authority pursuant to these rules and regulations, for each year beginning in the year for which such allocation is made and ending December 31, 1993, unless terminated or reduced pursuant to these rules and regulations.~~

*Except as provided in 13 VAC 10-160-120, tax credits shall not be allocated by the authority after June 30, 1996. Allocations of tax credits made by the authority prior to June 30, 1996, shall remain in effect, subject to the provisions of these rules and regulations.*

*The amount of tax credits claimed by an owner in any taxable year for tax credit units shall not exceed the amount of tax credits allocated to such owner for such tax credit units. The executive director may require that owners to whom tax credits have been allocated shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the each tax credit unit and its compliance with the application and these rules and regulations. If on the basis of such written confirmation and documentation and other available information the executive director determines that the any tax credit unit does not or will not qualify or will not continue to qualify for such tax credits, then the executive director may terminate or reduce the allocation of such tax credits. ~~Without limiting the foregoing, the owner shall lease the tax credit units to eligible tenants at reduced rents such that the aggregate of such rent reductions shall be no less than the aggregate of the rent reductions set forth in the application. In the event that the owner shall fail to so lease the tax credit units, the authority may, upon its determination that the owner is unable or unwilling to utilize fully its allocation of the tax credits, terminate or reduce such allocation, as it shall deem appropriate.~~*

The authority shall have the right to inspect the tax credit units and related property and improvements from time to time, and the tax credit units and related property and improvements shall be in a state of repair and condition satisfactory to the authority. The authority may require the owner to make necessary repairs or improvements, in a manner acceptable to the authority, as a condition for receiving or qualifying for an allocation of tax credits or for certification to the Department of Taxation as described hereinbelow.

~~The executive director may establish such deadlines for the owner to qualify for the tax credits and to comply with the application and these rules and regulations as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the owner's allocation, to allocate such tax credits to other eligible owners.~~

Any material changes to the condition, use or occupancy of the tax credit unit or in any other representations, facts or information, as contained or proposed in the application, occurring subsequent to the submission of the application for the tax credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with these rules and regulations and the state code, reduce the amount of tax credits allocated or impose additional terms

and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the allocation of such tax credits or impose additional terms and conditions with respect thereto.

~~In the event that any allocation of tax credits is terminated or reduced by the executive director under this section, he may allocate such tax credits (in the amount of such termination or reduction) to eligible owners (other than the owners whose tax credit allocation was so terminated or reduced) in the first come first served manner described above or in such other manner as he shall determine consistent with the requirements of the state code.~~

If subsequent to receipt of an allocation of tax credits an owner shall transfer any of the tax credit units to a transferee which is eligible for such tax credits under the state code and these rules and regulations, such transferee shall thereupon be entitled to the allocation of tax credits for such tax credit units and shall, for the purposes of these rules and regulations, be thereafter deemed the owner for such tax credits.

### 13 VAC 10-160-80. Tax credit period.

Each period for which an owner may claim tax credits for any tax credit unit shall commence upon the date that the tax credit unit is occupied by an eligible tenant pursuant to a lease providing for a 12-month term and for the payment of rent in the amount of the tax credit rent. Such period shall not commence prior to the allocation of the tax credits by the authority to the owner, except that if the tax credit unit is so occupied from the first day of the month in which the allocation of tax credits is made, such period shall commence on such first day of the month. Such period shall continue until termination of occupancy as described in 13 VAC 10-160-90 or until December 31, 1999, whichever occurs first. However, in no event shall any such period commence and continue unless the tax credit unit is and remains in a state of repair and condition satisfactory to the authority, all documentation required by 13 VAC 10-160-60 has been and is submitted to the authority in accordance herewith, and all other applicable requirements of the state code and these rules and regulations have been and are satisfied. If the owner shall be entitled to claim tax credits on any tax credit unit for a portion of a month during such period, the rent reduction shall be calculated pro rata based upon the number of days in such month that the owner is so entitled to claim tax credits or, with respect to the termination of occupancy, shall be calculated as provided in 13 VAC 10-160-90.

### 13 VAC 10-160-90. Maintenance of records; submission requirements; termination of occupancy.

Owners shall be responsible for obtaining and maintaining all documentation required by the authority to evidence that the tax credit units qualify for tax credits under the program. Owners will be responsible for providing this documentation to the authority for review within 30 days following the end of each calendar year; provided, however, that the documents listed in subdivisions 2 a, b, c and g of this section *shall be must have been* submitted at the time required by 13 VAC 10-160-60. The tax credit unit will not qualify for tax credits if all required documents, in the form required by the authority,

are not so provided. Required documentation to be submitted to the authority includes, but is not limited to, the following:

1. A listing (including dates of occupancy) of all tenants ~~currently occupying or who previously occupied~~, who *occupied* a tax credit unit entitled to a tax credit for that year.
2. A complete certification package for each eligible tenant receiving the reduced rent. The certification must include:
  - a. A completed and executed confirmation of resident eligibility form.
  - b. Verification of income.
  - c. Verification of age or disability.
  - d. A certification from the tenant verifying:
    - (1) What unit type/size was occupied,
    - (2) Number of months said unit was occupied,
    - (3) The amount of rent paid, and
    - (4) How many months that amount of rent was paid, and
    - (5) *In the case of the tax credits claimed for any period after June 30, 1996, occupancy of the tax credit unit by the tenant on June 30, 1996.*
  - e. A certification of the owner that *prior to July 1, 1996*, preference in occupancy of the tax credit units was given to eligible tenants whose incomes ~~are~~ *were* less than or equal to 50% of the median income for the area (the waiting list for tax credit units during the calendar year identifying the persons applying for such units and their incomes shall be maintained by the owner and shall be available for inspection by the authority).
  - f. Rent rolls for the comparable units in the same property as the tax credit units setting forth the rents charged to other tenants, if rents for such comparable units are to be used to determine the amount of the rent reduction pursuant to 13 VAC 10-160-30.
  - g. Copies of leases for each tax credit unit.
  - h. *In the case of the tax credits claimed for any period after June 30, 1996, a certification of the owner that a tax credit for rental reductions was validly claimed on the tax credit unit for all or part of the month of June 1996, and that the tenant receiving such rental reductions was an occupant of such tax credit unit on June 30, 1996.*

In the event of termination of occupancy, the rent reduction shall be calculated pro rata based upon the number of days determined in the following manner. In the event of death of the only elderly person or person with a disability occupying a tax credit unit, the owner must obtain a copy of the death certificate or must provide other acceptable documentation of death; and the number of days for which an owner is entitled to tax credits on such deceased person's tax credit unit shall

be determined by the date of death. If the eligible tenant abandons the tax credit unit, the earliest of the date the owner discovers the tax credit unit is vacant, the date any utility company terminates service on the tax credit unit, or the date 30 days after abandonment will be used to determine the number of days for which the tax credit unit is entitled to the tax credit. If the tax credit unit shall not be so abandoned but the eligible tenant shall not occupy the tax credit unit for a period of 30 days (or such longer period of time as the executive director may approve), the end of such period shall be used to determine the number of days for which the tax credit unit is entitled to the tax credit. If the lease is terminated for any reason other than those set forth above in this paragraph, the effective date of termination shall be used to determine the number of days for which the tax credit unit is entitled to the tax credit.

**13 VAC 10-160-120. Authority to increase allocation of credits.**

*Notwithstanding anything to the contrary herein, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of credits allocated to a tax credit unit for the purpose of allowing the owner to continue to comply with the requirement in the state code and these rules and regulations that the rent charged to the eligible tenant be at least 15% less than the market rent. Any request for such increase shall include such information, opinions, certifications and documentation as the executive director may require.*

VA.R. Doc. No. R96-383; Filed May 22, 1996, 10:46 a.m.

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

Title of Regulation: 12 VAC 30-50-95 through 12 VAC 30-50-310. **Narrative for the Amount, Duration and Scope of Services (amending 12 VAC 30-50-160 and 12 VAC 30-50-210).**

12 VAC 30-80-10 et seq. **Methods and Standards for Establishing Payment Rates--Other Types of Care (amending 12 VAC 30-80-40).**

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

Public Hearing Date: N/A -- Public comments may be submitted until August 9, 1996.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. Sections 9-6.14:7.1 and 9-6.14:9.1 of the Administrative Process Act (APA) provide for this agency's promulgation of proposed regulations subject to the Governor's review. The Secretary of Health and Human Resources approved on October 31, 1995, the filing of the agency's Notice of Intended Regulatory Action for Virginia Register publication and comment period. The Notice of Intended Regulatory Action for this regulation

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was published in the Virginia Register on November 27, 1995, for comment period until December 27, 1995.

In Item 396 E 8 of the 1995 Appropriations Act, the General Assembly and Governor directed DMAS to "participate in the voluntary Virginia Health Outcomes Partnership project, and ... implement enhancements to the automated prospective drug utilization system." This provision is interpreted to require the department to save \$4.5 million in general funds. Public Law 103-66 § 13602 (OBRA '93) permitted the adoption of prior authorization requirements for Medicaid covered pharmacy services.

The referenced "automated ...system" is a computerized system which provides verification of prior authorization requirements before Medicaid will pay for certain high cost and highly utilized prescription (legend) drugs. These drugs often have less expensive, therapeutic alternatives available in the market. Currently, many of the less expensive alternative products are available without prescription or over the counter (OTC). Since DMAS currently has no mechanism to pay for such over-the-counter drugs (with a few exceptions), this regulatory change will enable the department to reduce the burden on the system. Such over-the-counter products will be paid for when ordered by prescription and used as preliminary, less expensive alternatives to the more costly legend-only products. An example of a less costly substitution of an over-the-counter product is prescribing an antacid like Maalox or Mylanta or the OTC strength of Tagamet instead of the more costly prescription-only strength of Zantac.

Purpose: The purpose of this proposal is to promulgate regulations which would allow DMAS to require the use of prescription orders for certain OTC therapeutic products as a first approach to drug therapy where these products may be used in place of a more expensive legend-only drug. Payment for the more expensive legend drug would be denied, except in a few specified conditions, unless initial treatment was initiated using these less costly OTC drugs and the results of the OTC therapy were found to be unsatisfactory.

Summary and Analysis: The sections of the State Plan affected by this action are Narrative for the Amount, Duration, and Scope of Services (Supplement 1 to Attachment 3.1 A and B) and Methods and Standards for Establishing Payment Rates -- Other Types of Care (Attachment 4.19-B).

DMAS must implement cost-saving measures in its covered pharmacy services. Among these, enhancements to the Point-of-Service (POS) automated system related to the Prospective Drug Utilization Review (ProDUR) program have been identified as a priority. Additionally, DMAS must develop a Prior Authorization (PA) program. The two initiatives, in tandem, are well suited to implementation in the interest of economy and patient safety. This OTC program will enable the partial fulfillment of the required budget reduction.

Historically, the Joint Legislative Audit and Review Commission recommended, in 1993, that Medicaid cover OTC drugs. Also, in 1994, the American Medical Association adopted a policy which recommended to physicians that they

adopt the practice of prescribing OTC medications to their patients.

As a result of the increased movement of drug products from prescription only (legend) to OTC status during recent years, a large number of effective drug products are available to the public in dosage forms/strengths previously obtainable only on prescription. These have been reviewed extensively by expert panels at the U.S. Food and Drug Administration (FDA) and deemed safe and effective.

This initiative on behalf of the FDA has resulted in mass production of drugs for the OTC market and the volume of such products, combined with the competitive marketing and pricing, has provided cost savings as an economy of scale. Heretofore, DMAS has not had a procedure allowing payment for OTC drugs in the outpatient Medicaid population. The increased efficacy and cost savings of using these products justifies the initiation of a program to enhance the pharmacy services by providing certain OTC drugs as therapeutic alternatives to costly legend products.

DMAS expects this proposed policy to have a positive impact on families because it recommends the expansion of covered pharmacy services to include certain OTC drugs which, at least for the noninstitutionalized population, have heretofore not been covered. This will alleviate some of this financial burden which has been borne by families.

Issues: The public will be served because economical, safe, and effective OTC products may be prescribed as therapeutic interventions in diseases or conditions having symptoms suitable to treatment with the dose/strength product available OTC. Historically, some patients, Virginia citizens in general as well as Medicaid recipients, have been "over treated" with legend-only products by physicians who prescribed expensive therapies simply because the patient could not afford to purchase the OTC product in the outpatient setting. Such treatment was not only costly but, due to higher strengths of prescription drugs, capable of creating other side effects or symptoms in certain patients. Access to therapeutic but weaker products provides better and more timely patient care. Through the prior authorization process, the more costly and stronger products will still be available when needed. By enabling more judicious prescribing, it is possible that a larger patient population may be served more effectively. The only disadvantage for Medicaid providers will be that they will now be required to write a prescription order for certain over-the-counter drugs whereas before this was not possible, therefore, not necessary. Pharmacists filling these prescriptions will now be required to keep track of additional prescription orders. The agency expects that the advantages of implementing this OTC coverage will far outweigh any minor inconveniences which providers or recipients may experience.

Fiscal/Budget Impact: These savings are a part of the savings which are required in Chapter 853, Item E 8, the 1995 Appropriations Act. This initiative should produce cost saving in individual patient care in the proposed categories. The extent will vary with the product category. Overall, the initiative should result in cost savings. While individual patient costs may decrease, the population served is composed of those having high utilization problems, such as ulcer patients and patients suffering with inflammatory

diseases such as arthritis. Therefore, early intervention with these products in a larger population may result in a smaller decrease in expenditures than might otherwise be anticipated. However, cost savings in the program as a whole may be significant if this early intervention results in fewer serious complications and hospitalizations.

The numbers of prescribers and pharmacy providers should not be affected. The program will be implemented statewide and no negative impact is anticipated to providers. Recipients who may have been taking OTC products in the past with good success, will be allowed under this initiative to obtain those products by doctor's orders. This will result in a savings to the patient, who will now pay only the co-pay instead of full OTC price. Patient compliance should improve as a result, thereby decreasing the potential for additional, more costly therapies. The overall effect is expected to be cost savings to the public in the Medicaid program.

Nebraska Medicaid allows the payment of OTC products when written as a prescription. The coverage includes insulin, which accounts for approximately 25% to 35% of that state's claims. Virginia currently pays for insulin for all patient populations. Nebraska data, from the fourth quarter of 1995 (October through December), shows that the mean percentage of total pharmacy claims represented by OTC drugs was 16.5%. These same claims represented only 4.1% of expended Medicaid prescription dollars. The mean OTC dollars spent per eligible person was \$1.54, as compared to the mean legend drug expenditure of \$36.42 per eligible person. Depending on categories of products selected in the Virginia program, a parallel experience may be expected in Virginia. In 1993, approximately 425,000 clients used Virginia Medicaid prescribed drugs and the numbers increase annually. The prescribed drugs portion of the Commonwealth's budget accounts for annual expenditures in excess of \$162,000,000. If Virginia experiences only a small diversion of drug usage away from legend drugs to OTCs, then the potential is very real for savings in the pharmacy services area.

One category of OTCs which may be addressed by this proposed policy is the anti-ulcer drugs. Studies done through the DUR process have shown that educational interventions can successfully raise the awareness of prescribers to the costs of inappropriate therapy for these gastrointestinal (GI) diagnoses. The availability of inexpensive first-step therapy could produce cost savings. The expensive GI drugs (Histamine-2 antagonists) currently utilized account for \$16 to \$20 million in expenditures per annum. If this initiative were to reduce the use of legend ulcer drugs by even 10% through the use of OTCs alone or in conjunction with other therapies, the cost savings would justify the change. The average cost of a month's supply of these anti-ulcer legend products is \$70 to \$80 per recipient. The average cost of a month's supply of anti-ulcer OTC products ranges, depending on the amount of OTC products used, between \$14 and \$25.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1

G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

**Summary of the proposed regulation.** The purpose of the proposed regulation is to allow DMAS to require the use of prescription orders for certain over-the-counter (OTC) drugs as a first approach to drug therapy. The OTC drug will be used whenever it is an effective therapeutic alternative to the prescription-only (legend-only) drug. Payment for the more expensive legend drug would be denied where an effective and less costly OTC alternative is available.

**Estimated Economic Impact.** DMAS does not currently allow payment for the use of drugs that are available over-the-counter, even if the attending physician considers the OTC drug to be the best treatment for the patient's condition. This has a number of important effects on Medicaid expenditures.

The first effect of the noncoverage of OTC drugs is that it holds indigent patients responsible for the cost of some medically necessary medications solely on the basis of whether the medication is available over the counter rather than by prescription. OTC drugs are not necessarily cheap, just cheaper than the legend equivalents or alternatives. There does not appear to be any obvious policy justification for limiting pharmaceutical coverage according to the drug's status as legend or over the counter. In fact, such a distinction may lead to significant "horizontal inequities" and probably increases the total costs of Medicaid coverage.

Horizontal inequity arises when people in very similar circumstances are treated very differently by the program. For example, two people with substantially the same diagnosis may face very different financial consequences depending on which physician they see. One physician may choose a more expensive legend drug, in which case, the patient is only responsible for the copay. The other physician may prescribe an OTC drug leaving the patient with the responsibility of paying the entire cost of the medication.

Even if it is much cheaper to prescribe an OTC equivalent, a physician may decide to prescribe the legend drug so that the indigent patient will have the drug paid for by Medicaid. This may happen even if the dosage in the OTC drug is more appropriate than its legend equivalent. Thus, the absence of coverage for OTC products may result in prescriptions that are not only more expensive but also inappropriate for the diagnosis. This may even put some patients at an unnecessary risk of increased side-effects from the prescription dosage.

In addition, many indigent patients may choose not to pay for the OTC drug. This choice may result in much higher costs for Medicaid at some future time. Many OTC drugs are effective in treating conditions in early stages or less virulent forms. Delaying treatment will often mean that the condition will be much more expensive to treat at a later time and will

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require the more expensive legend drugs for effective treatment.

One well known case of this effect is for ulcers. In the early stages, ulcers may be treated effectively by very inexpensive OTC therapies such as Maalox or Mylanta. However, untreated, these same ulcers could result in emergency room visits, hospitalization and treatment with much more expensive histamine-2 antagonist drugs. It would take many hundreds of bottles of Maalox to make up for just one extra hospitalization due to untreated ulcers. Many other conditions are subject to greatly increased costs if early treatment is postponed due to the lack of coverage of OTC products.

These regulations do not affect OTC drugs provided to nursing home residents. DMAS already covers OTC drugs provided by nursing homes. Nor will the regulations change pharmacy costs for those individuals with HMO coverage under Medallion II. The regulations also do not change coverage for OTC insulin, since this expense is already covered. Finally, OTC family planning expenditures are also covered under current regulations and this will not change.

Calculating the costs and benefits. We will trace the economic impact of the new regulation by examining the impact of three conceptually distinct changes in streams of payments.

- Replacement use of OTC drugs: the use of OTC drugs as a replacement for legend drugs already used,
- New use of OTC drugs: increased use by patients who have deferred (or skipped) use due to the high cost, and
- Costs saved from less treatment deferred: savings due to more severe illness prevented due to the increased timely use of OTC drugs. These savings are due to the "new use" of OTC drugs but show up in various DMAS fee-for-service categories.

To calculate the net economic impact of this regulation, we need to calculate the gains and losses to the various parties affected by the change: DMAS, Medicaid clients, pharmacies, and pharmaceutical firms.

Replacement use of OTC drugs. Much of the savings anticipated from this regulation is from a reduction in DMAS costs for prescriptions<sup>1</sup> since many Medicaid clients are being treated with legend drugs when an effective OTC alternative is available. OTC alternatives are of three forms. First, there are cases where there are identical versions of the same drug available both by prescription and OTC. For example, hydrocortisone 1% topical ointment is available for \$0.073 per gram in prescription form and \$0.032 per gram OTC; a 56 percent saving.

While all of these savings to DMAS may be counted as savings of taxpayer dollars, they may not all be counted as net improvements in aggregate social well-being. Since the market for OTC drugs is fairly competitive, we can reasonably take the market price of these drugs to approximate the full

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<sup>1</sup> As noted elsewhere, OTC drugs are already covered for nursing facility patients, for insulin use by diabetics, and for certain family planning items. No savings are anticipated in these areas.

social marginal cost of drug manufacture.<sup>2</sup> Since the price of legend drugs is higher, then the increased price must be due to either increased costs of manufacture of the prescription versions of the drugs or increased profits of manufacturers. Any increased costs of manufacturing (and marketing) prescription drugs over their OTC counterparts are true economic costs. Thus, the elimination of these costs is a clear net saving to the people of Virginia.

Accounting for any change in the profits of manufacturers is somewhat more complicated.<sup>3</sup> Generally speaking, a transfer of profits from one group to another does not generate a significant change in economic well-being; wealth is not created or lost, just moved around. The matter is further complicated by our lack of knowledge about the relative profitability of various classes of drugs. Thus, we cannot say what portion (if any) of the higher legend costs are due to higher profits and what portion is due to higher costs.

What we can say is that some (probably large) portion of the change in profits would affect shareholders outside of Virginia. For cases where legend drug profits are higher than their OTC equivalents, the loss of profits paid to Virginia shareholders would be more than offset by the savings to DMAS.<sup>4</sup> So although the net economic gain would be less than the budgetary gain it would probably remain positive. If an OTC drug has a higher profit than its legend counterpart, then any portion of the gain to Virginians would have to be added to the total DMAS cost savings to calculate net economic benefit.

We can assume, then, that the reduced costs to DMAS due to shifting from legend drugs to OTC drugs will result in a net economic benefit. We do not know the share of reduced costs that is due to actual costs and the share due to shifts in profits. Nor do we know what share of profits would have been paid to shareholders outside of the Commonwealth. Thus, we cannot fairly estimate the magnitude of the savings although we can state with some confidence that the savings are positive and will, in some cases, be quite significant.

Second, often there are lower-dose versions of a legend drug that are available over-the-counter. So, two doses of the OTC drug would be identical to one dose of the legend drug. Since price competition is more intense for OTC drugs than for prescription drugs, substituting multiple doses of the OTC drug will often be much cheaper than one dose of the legend drug. Miconazole nitrate is available in 200 mg form by prescription for \$7.64 per dose. OTC the same drug is available at \$3.34 for two 100 mg doses; again, a 56 percent saving. As already discussed, not all of this difference is net

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<sup>2</sup> This necessarily includes a normal rate of return on capital investments required for development and manufacture of the drugs.

<sup>3</sup> It is possible that the higher price for prescription drugs is all due to increased costs of manufacture and that profits on OTC drugs are higher than those on legend drugs.

<sup>4</sup> This profit shifting is further complicated by federal cost-sharing of Medicaid expenditures. Since DMAS expenditures reflect only 50 percent of Medicaid costs, then a dollar change in DMAS expenditures reflects a two dollar change in total expenditures. So, whatever effect a reduction of a dollar in total Medicaid spending has on profits, a dollar change in DMAS spending has twice the effect on shareholders.

savings for the Virginia economy, but a substantial portion can almost certainly be counted as a net gain.

A third, and more subtle, effect is due to "over prescription." Because indigent patients may have difficulty affording OTC drugs, a physician may prescribe a legend drug where an OTC alternative might provide more appropriate therapy. This could be due to the physician's desire to relieve the patient of the expense of paying for the OTC drug; or, in some cases, there may be reason to believe that the patient would not purchase the OTC drug due to its high cost and might suffer greater adverse consequences as a result. In either of these cases, the patient may be receiving a higher dose than is necessary or may receive an alternative drug that is inappropriately strong for the diagnosis.

For example, in the early stages, ulcers may be treated effectively with antacids such as Maalox or Mylanta at about \$6.00 per prescription. These products are not available as prescription drugs. The legend drug alternative are the histamine-2 antagonists which cost \$79 per prescription. Where the H-2 antagonists are called for, lower doses may be appropriate. Anti-ulcer drugs are available over the counter in doses one-third the strength of the legend drug. If the lower dose OTC drug were used where appropriate as a substitute for the prescription strength version, the savings in DMAS costs would be 72 percent. Even for the more serious ulcer cases where the full strength is required, multiple doses of the lower strength OTC versions of anti-ulcer drugs are available at 22 percent lower cost for the same dose of the active ingredients.

Because of the lower manufacturing costs of the less aggressive types of therapies, savings from this type of change are likely to show a greater net economic gain for each dollar of expenditure reduced as compared to the other two sources of saving already mentioned.

"New use" of OTC drugs. This proposed regulation will cause an increase in indigent use of OTC drugs that, for the purposes of this study, we will call "new use." This refers to use of OTC drugs that is not a replacement for legend prescriptions but an actual increase in the number of prescriptions covered. Medicaid clients with a prescription for an OTC drug are responsible for the full OTC price. Some OTC drugs are quite expensive. And even for those that are relatively cheap, indigent patients may face even more pressing and immediate demands on their limited financial resources. It is believed that many clients have deferred or skipped their treatment due to the cost of the OTC drugs.

Paying for most of the cost of the OTC drugs will result in fewer Medicaid clients choosing to defer or skip treatment with OTC drugs. This will serve to increase DMAS pharmacy expenditures. The magnitude of this effect is unknown.

Calculating the net economic impact of this effect would be quite difficult even if we had reliable data on the magnitude of the change in prescription use. Since we are assuming that OTC drugs are priced in a reasonably competitive market, then DMAS expenditures measure the real social cost of providing the OTC drugs. The benefit is harder to quantify. For those Medicaid clients who decided not to buy the OTC drug, it is clear that the value of the drug to that recipient is

less than the value of the same money spent on other things that the person consumes.

It would not be correct, however, to conclude then that the social value of the OTC drug for that individual is less than the price. Medicaid recipients are receiving transfer payments from the government. This implies that a decision has been made that a dollar of transfer to the Medicaid recipient is worth more than a dollar to society. Thus, even though the Medicaid client chooses to purchase something other than the OTC drug with his or her money, since money in this person's hands is worth more than a dollar to society, the value of the OTC drug in the client's possession may be worth more to society than its market price.

All this is to say that we can infer very little about the social value of these OTC drugs to Medicaid recipients by observing that they do not spend their money for the drugs. Although there is no good evidence available on this point, it is likely that this substitution of other goods for OTC drugs is most pronounced among the poorest members of the population. It is also likely that this is a population for which the social value of a dollar of transfer is the highest. We would expect, then, that for a significant fraction of this population, the provision of OTC drugs would have a social value higher than its price. This does not yet include any of the savings we might expect in DMAS expenditures at a later time due to reduced acute illness; illness that would have been caused by not treating mild conditions with OTC drugs. That is the subject of the next section.

Cost savings from more timely treatment of mild conditions. There are many medical conditions for which the timely treatment at the outset with relatively inexpensive OTC therapies can prevent much more acute conditions later. Once the condition is acute, it may lead to hospitalization, repeat physician visits, and treatment with much more expensive legend drug therapy. Incipient ulcers will often respond to treatment with antacids. Infections of minor surface wounds can be treated with very inexpensive topical antibiotics. There are many other examples.

DMAS evidence suggests that a number of patients who could be successfully treated with OTC medications do not purchase the drugs due to their cost. The end result is that often the condition does evolve into an acute medical emergency, or at least a much more expensive problem to treat. These costs will show up at some later time on various DMAS expenditure lines. While these increased costs due to clients deferring their costs is known to occur, little is known about the magnitude of the effect.

For a given case, it is quite obvious that the early treatment would have been a good investment from a purely financial point of view. The difficulty is that it is not generally possible to know in advance which cases will turn serious without OTC medication.<sup>5</sup> Thus, we are left with the question of whether the general availability of OTC drugs for just the copay will prevent enough acute conditions to save money for the

<sup>5</sup> It is probably already true that if a patient is likely to leave a mild condition untreated and that the condition is likely to become acute, the attending physician will probably prescribe a legend drug rather than an OTC alternative. This will give rise to some savings from replacement use as already discussed.

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Commonwealth. While we do not have the data to answer this question, one may hazard a guess that, since the costs go up so dramatically once a condition becomes acute, it wouldn't take many acute conditions prevented to make up for the coverage of OTC drugs by Medicaid, and hence, there is a good chance that the general availability of OTC drugs will cause a net reduction of Medicaid costs.

This calculation does not take into account the obvious benefit to the Medicaid recipient of avoiding the acute condition. For reasons discussed earlier, placing a dollar value on this effect is particularly difficult. Suffice it to repeat that the benefits will likely accrue to the neediest families and will often involve children. It is likely that, for this group, a dollar of expenditure is worth something more to society than a dollar spent.

Numerical estimates of economic impact. During the preceding discussion, it has been repeatedly noted that there does not exist good data that we could use to estimate the dollar value of potential savings from this program. We do not know how much use will be made of OTC drugs. We do not know what proportion of that use will be replacement use or new use. Nor do we know if the move to substitute OTC drugs for legend drugs will put much downward pressure on the price of the legend drugs themselves.

We do have some very preliminary data from the State of Nebraska where OTC drugs are now available by prescription and are covered by Medicaid. In Nebraska, ten percent of the total number of prescriptions were for the OTC drugs covered by the DMAS regulation being examined here. While that fraction may vary here in Virginia, there is no immediate reason to expect that it would be very different from the Nebraska case.

Nebraska reports that on average OTC prescriptions cost about 25% as much as legend drug prescriptions. Note, this does not necessarily imply that OTC versions of legend drugs are one quarter the cost of their legend counterparts. The cheaper legend drugs may be the ones with OTC counterparts. For this and other reasons, we take a one to four ratio of OTC to legend costs as an upper bound on the savings expected per prescription. We believe a central estimate between 33% and 50% is more appropriate. At the end of 1995, the average cost per unit for non nursing home prescriptions under Medicaid was about \$28.75. So, the cost of OTC prescriptions at 25%, 33% and 50% are \$7.20, \$9.50, and \$14.40 respectively.

The next thing we need to know to calculate the impact of the regulation is the fraction of these OTC prescriptions that are "new use" and the fraction that are "replacement use." Each new use prescription is valued at the assumed OTC cost and is an addition to DMAS expenditures. Each replacement use prescription is valued as a budget savings of the difference between the legend cost and the OTC cost.

The following table shows the net budget impact of OTC coverage under various assumptions. The middle value for percent new use and for OTC costs (as a percent of legend costs) may be taken as our central estimate but our confidence that these are the actual values is low. None of the values in the table can be ruled out as possibilities. The range of annual savings is between \$1,869,000 and

\$11,212,000 with a central estimate of \$7,849,000. This amounts to anywhere from two percent to four percent of the annual Medicaid pharmacy budget.

Probable range of net savings on expenditures			
	% New Use		
	15%	25%	40%
<b>OTC costs</b>			
<b>Low (25%)</b>	\$11,212,000	\$9,344,000	\$6,541,000
<b>Med. (33%)</b>	\$9,717,000	\$7,849,000	\$5,046,000
<b>High (50%)</b>	\$6,541,000	\$4,672,000	\$1,869,000

As mentioned earlier, some of these budgetary figures represent changes in the distribution of wealth rather than actual net economic benefits. On the other hand, any net savings from preventing acute disease by early intervention with OTC drugs are not counted here and will appear as reductions in other DMAS expenditure lines. While these figures are very rough estimates, they do give us some confidence that this regulation will have a net economic benefit for Virginia.

There is another reason why these figures may represent a lower bound for annual savings. The U.S. Food and Drug Administration (FDA) has increased the rate at which OTC versions of prescription drugs are approved and has announced that it intends to continue and even accelerate this process. As more OTC alternatives become available, the level of savings should increase accordingly. If the FDA does follow through on this policy initiative, then the figures in the table will almost certainly be underestimates of the budget savings from this regulation.

Businesses and entities affected. This regulation will have a small affect on pharmacies and pharmaceutical firms. However, the impact is expected to be relatively small, and any increased costs or loss of sales in one part of these firms will be offset (maybe more than offset) by benefits arising from DMAS coverage of OTC prescriptions.

Localities particularly affected. No localities will be particularly affected by this regulation.

Projected impact on employment. This regulation will have no significant direct impact on employment in Virginia.

Affects on the use and value of private property. This regulation will not affect property values to any significant degree.

Summary of analysis. This regulation makes over-the-counter drugs available to Medicaid recipients. This change will induce a shift away from more expensive legend drugs to the less expensive OTC counterparts. While some increase in the number of prescriptions will occur, this will likely be more than offset by a reduction in acute health events due to deferred treatment of potentially serious conditions.

DPB expects that this regulation will save from two to four percent of Medicaid pharmaceutical expenses and that these savings are likely to increase annually as more effective treatments are available on an over-the-counter basis.

## Agency's Response to Department of Planning and Budget's Economic Impact Analysis:

The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Pharmacy Services: Coverage of Over-the-Counter Drugs as Less Expensive Therapeutic Alternatives.

### Summary:

The proposed amendments allow the Department of Medical Assistance Services (DMAS) to require the use of prescription orders for certain over-the-counter (OTC) therapeutic products as a first approach to drug therapy where these products may be used in place of a more expensive legend-only drug. Payment for the more expensive legend drug would be denied, except in a few specified conditions, unless initial treatment was initiated using these less costly OTC drugs and the results of the OTC therapy were found to be unsatisfactory.

DMAS must implement cost-saving measures in its covered pharmacy services. Among these, enhancements to the Point-of-Service (POS) automated system related to the Prospective Drug Utilization Review (ProDUR) program have been identified as a priority. Additionally, DMAS must develop a Prior Authorization (PA) program. The two initiatives, in tandem, are well suited to implementation in the interest of economy and patient safety. This OTC program will enable the partial fulfillment of the required budget reduction.

Historically, the Joint Legislative Audit and Review Commission recommended, in 1993, that Medicaid cover OTC drugs. Also, in 1994, the American Medical Association adopted a policy which recommended to physicians that they adopt the practice of prescribing OTC medications to their patients.

As a result of the increased movement of drug products from prescription only (legend) to OTC status during recent years, a large number of effective drug products are available to the public in dosage forms/strengths previously obtainable only on prescription. These have been reviewed extensively by expert panels at the U.S. Food and Drug Administration (FDA) and deemed safe and effective. The increased efficacy and cost savings of using these products justifies the initiation of a program to enhance the pharmacy services by providing certain OTC drugs as therapeutic alternatives to costly legend products.

DMAS expects this proposed policy to have a positive impact on families because it recommends the expansion of covered pharmacy services to include certain OTC drugs which, at least for the non-institutionalized population, have heretofore not been covered. This will alleviate some of this financial burden which has been borne by families.

These savings are a part of the savings which are required in Item 396 E 8 of Chapter 853 of the 1995 Acts of Assembly (1995 Appropriations Act). This initiative

should produce cost savings in individual patient care in the proposed categories. The extent will vary with the product category. Overall, the initiative should result in cost savings. While individual patient costs may decrease, the population served is composed of those having high utilization problems, such as ulcer patients and patients suffering with inflammatory diseases such as arthritis. Therefore, early intervention with these products in a larger population may result in a smaller decrease in expenditures than might otherwise be anticipated. However, cost savings in the program as a whole may be significant if this early intervention results in fewer serious complications and hospitalizations.

The numbers of prescribers and pharmacy providers should not be affected. The program will be implemented statewide and no negative impact is anticipated to providers. Recipients who may have been taking OTC products in the past with good success, will be allowed under this initiative to obtain those products by doctor's orders. This will result in a saving to the patient, who will now pay only the co-pay instead of full OTC price. Patient compliance should improve as a result, thereby decreasing the potential for additional, more costly therapies. The overall effect is expected to be cost savings to the public in the Medicaid program.

### **12 VAC 30-50-160. Home health services.**

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts. Home health services shall be provided in accordance with guidelines found in the Virginia Medicaid Home Health Manual.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to 32 visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services. Payment shall not be made for additional service unless authorized by DMAS.

C. Home health aide services provided by a home health agency.

1. Home health aides must function under the supervision of a registered nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

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D. Durable medical equipment (DME) and supplies suitable for use in the home.

1. General requirements and conditions.

a. All medically necessary supplies and equipment shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

b. DME providers shall adhere to all applicable DMAS policies, laws, and regulations for durable medical equipment and supplies. DME providers shall also comply with all other applicable Virginia laws and regulations requiring licensing, registration, or permitting. Failure to comply with such laws and regulations shall result in denial of coverage for durable medical equipment or supplies which are regulated by such licensing agency or agencies.

c. DME and supplies must be furnished pursuant to a Certificate of Medical Necessity (CMN) (DMAS-352).

d. A CMN shall contain a physician's diagnosis of a recipient's medical condition and an order for the durable medical equipment and supplies that are medically necessary to treat the diagnosed condition and the recipient's functional limitation. The order for DME or supplies must be justified in the written documentation either on the CMN or attached thereto. The CMN shall be valid for a maximum period of six months for Medicaid recipients 21 years of age and younger. The maximum valid time period for Medicaid recipients older than 21 years of age is 12 months. The validity of the CMN shall terminate when the recipient's medical need for the prescribed DME or supplies ends.

e. DME must be furnished exactly as ordered by the attending physician on the CMN. The CMN and any supporting verifiable documentation must be complete (signed and dated by the physician) and in the provider's possession within 30 days from the time the ordered DME and supplies are initially furnished by the DME provider. Each component of the DME must be specifically ordered on the CMN by the physician. For example, the order must specify IV pole, pump, and tubing. A general order for IV supplies shall not be acceptable.

f. The CMN shall not be changed, altered, or amended after the attending physician has signed it. If changes are necessary, as indicated by the recipient's condition, in the ordered DME or supplies, the DME provider must obtain a new CMN. New CMNs must be signed and dated by the attending physician within 30 days from the time the ordered supplies are furnished by the DME provider.

g. DMAS shall have the authority to determine a different (from those specified above) length of time a CMN may be valid based on medical documentation submitted on the CMN. The CMN may be completed

by the DME provider or other health care professionals, but it must be signed and dated by the attending physician. Supporting documentation may be attached to the CMN but the attending physician's entire order must be on the CMN.

h. The DME provider shall retain a copy of the CMN and all supporting verifiable documentation on file for DMAS' post payment audit review purposes. DME providers shall not create nor revise CMNs or supporting documentation for this service after the initiation of the post payment review audit process. Attending physicians shall not complete, nor sign and date, CMNs once the post payment audit review has begun.

2. Preauthorization is required for incontinence supplies provided in quantities greater than two cases per month.

3. Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners-;

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office-;

c. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales)-;

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface); mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (i.e., electric wheelchair plus a manual chair); cleansing wipes-;

e. Prosthesis, except for artificial arms, legs, and their supportive devices which must be preauthorized by the DMAS central office (effective July 1, 1989)-;

f. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, ~~over-the-counter drugs~~; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; ~~and~~ support stockings; ~~and~~ ~~nonlegend drugs~~)-;

g. Orthotics, including braces, splints, and supports-;

h. Home or vehicle modifications-;

i. Items not suitable for or not used primarily in the home setting (i.e., car seats, equipment to be used while at school, etc.); and

j. Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.).

4. For coverage of blood glucose meters for pregnant women, refer to 12 VAC 30-50-500.

5. Reserved.

6. The medical equipment and supply vendor must provide the equipment and supplies as prescribed by the physician on the certificate of medical necessity. Orders shall not be changed unless the vendor obtains a new certificate of medical necessity prior to ordering or providing the equipment or supplies to the patient.

7. Medicaid shall not provide reimbursement to the medical equipment and supply vendor for services provided prior to the date prescribed by the physician or prior to the date of the delivery or when services are not provided in accordance with published policies and procedures. If reimbursement is denied for one of these reasons, the medical equipment and supply vendor may not bill the Medicaid recipient for the service that was provided.

8. The following criteria must be satisfied through the submission of adequate and verifiable documentation satisfactory to the department. Medically necessary DME and supplies shall be:

a. Ordered by the physician on the CMN;

b. A reasonable and necessary part of the recipient's treatment plan;

c. Consistent with the recipient's diagnosis and medical condition particularly the functional limitations and symptoms exhibited by the recipient;

d. Not furnished solely for the convenience, safety, or restraint of the recipient, the family, attending physician, or other practitioner or supplier;

e. Consistent with generally accepted professional medical standards (i.e., not experimental or investigational); and

f. Furnished at a safe, effective, and cost effective level suitable for use in the recipient's home environment.

9. Coverage of enteral nutrition (EN) and total parenteral nutrition (TPN) which do not include a legend drug shall be limited to when the nutritional supplement is the sole source form of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary to treat a medical condition. Coverage of EN and TPN shall not include the provision of routine infant formulae. A nutritional assessment shall be required for all recipients receiving nutritional supplements.

E. Physical therapy, occupational therapy, or speech/language pathology services and audiology services

provided by a home health agency or physical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually without authorization. Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

F. The following services are not covered under the home health services program:

1. Medical social services;

2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;

3. Community food service delivery arrangements;

4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;

5. Custodial care which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and

6. Services related to cosmetic surgery.

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

A. Prescribed drugs.

1. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered ~~except for over the counter drugs when prescribed for nursing facility residents.~~

2. ~~The following prescribed, nonlegend drugs/drug devices shall be covered: (i) insulin, (ii) syringes, (iii) needles, (iv) diabetic test strips for clients under 21 years of age, (v) family planning supplies, and (vi) those prescribed to nursing home residents. Nonlegend drugs shall be covered by Medicaid in the following situations:~~

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

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

~~c. Family planning supplies;~~

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

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*e. Drugs designated in the Prior Authorization Program to be used as less expensive alternatives to legend drugs.*

3. Legend drugs are covered, with the exception of anorexiants prescribed for weight loss and the drugs for classes of drugs identified in 12 VAC 30-50-520.

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

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

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

7. Drug prior authorization.

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

"Board" means the Board for Medical Assistance Services.

"Committee" means the Medicaid Prior Authorization Advisory Committee.

"Department" means the Department of Medical Assistance Services.

"Director" means the Director of Medical Assistance Services.

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

b. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 10 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; and one shall be a Medicaid recipient.

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

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

(3) The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion Medical Society and the Virginia Pharmaceutical Association when making appointments to the committee.

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

c. Duties of the committee.

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

(2) In formulating its recommendations to the board, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 9-6.14:1 et seq.). The committee shall, however, conduct public hearings prior to making recommendations to the board. The committee shall give 30 days written notice by mail of the time and place of its hearings and meetings to any manufacturer whose product is being reviewed by the committee and to those manufacturers who request of the committee in writing that they be informed of such hearings and meetings. These persons shall be afforded a reasonable opportunity to be heard and present information. The committee shall give 30 days notice of such public hearings to the public by publishing its intention to conduct hearings and meetings in the Calendar of Events of The Virginia Register of Regulations and a newspaper of general circulation located in Richmond.

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

d. Prior authorization of prescription drug products, coverage.

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

(2) Coverage for any drug requiring prior authorization shall not be approved unless a prescribing physician obtains prior approval of the

use in accordance with regulations promulgated by the board and procedures established by the department.

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

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

(5) Confidential proprietary information identified as such by a manufacturer or supplier in writing in advance and furnished to the committee or the board according to this subsection shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia). The board shall establish by regulation the means by which such confidential proprietary information shall be protected.

e. Immunity. The members of the committee and the board and the staff of the department shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.

f. Annual report to joint commission. The committee shall report annually to the Joint Commission on Health Care regarding its recommendations for prior authorization of drug products.

B. Dentures. Dentures are provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

#### C. Prosthetic devices.

1. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

2. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

D. Eyeglasses. Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

#### 12 VAC 30-80-40. Fee-for-service providers: Pharmacy.

Payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is greater than the HCFA upper limit of VMAC cost) subject to the conditions, where applicable, set forth in items 6 and 7 below:

1. The upper limit established by the Health Care Financing Administration (HCFA) for multiple source drugs pursuant to 42 CFR §§ 447.331 and 447.332, as determined by the HCFA Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

2. The Virginia Maximum Allowable Cost (VMAC) established by the agency plus a dispensing fee, ~~if a legend drug~~, for multiple source drugs listed on the VVF.

3. The Estimated Acquisition Cost (EAC) which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the methodology set out in a through c below. (Pursuant to OBRA 90 § 4401, from January 1, 1991, through December 31, 1994, no changes in reimbursement limits or dispensing fees shall be made which reduce such limits or fees for covered outpatient drugs).

a. Percentage discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

c. The agency will conduct surveys at intervals deemed necessary by DMAS, but no less frequently than triennially.

4. ~~A mark-up allowance (150%) of the Estimated Acquisition Cost (EAC) for covered nonlegend drugs and oral contraceptives (Reserved).~~

5. The provider's usual and customary charge to the public, as identified by the claim charge.

6. Payment for pharmacy services will be as described above; however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. ~~However, oral contraceptives shall not be subject to the one month dispensing rule.~~ Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements.

7. The Program recognizes the 24-hour unit dose delivery system of dispensing drugs only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose add-on fee and an allowance for the cost of unit dose packaging established by the state agency. The

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# Proposed Regulations

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maximum allowed drug cost for specific multiple source drugs will be the lesser of: either the VMAC based on the 60th percentile cost level identified by the state agency or HCFA's upper limits. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency.

8. Determination of EAC was the result of an analysis of FY'89 paid claims data of ingredient cost used to develop a matrix of cost using 0 to 10% reductions from AWP as well as discussions with pharmacy providers. As a result of this analysis, AWP minus 9.0% was determined to represent prices currently paid by providers effective October 1, 1990.

The same methodology used to determine AWP minus 9.0% was utilized to determine a dispensing fee of \$4.40 per prescription as of October 1, 1990. A periodic review of dispensing fee using Employment Cost Index - wages and salaries, professional and technical workers will be done with changes made in dispensing fee when appropriate. As of July 1, 1995, the Estimated Acquisition Cost will be AWP minus 9.0% and dispensing fee will be \$4.25.

VA.R. Doc. No. R96-372; Filed May 17, 1996, 1:37 p.m.

## BOARD OF VETERINARY MEDICINE

**Title of Regulation:** 18 VAC 150-20-10 et seq. Regulations Governing the Practice of Veterinary Medicine (amending 18 VAC 150-20-70).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3805.2 of the Code of Virginia.

**Public Hearing Date:** June 11, 1996 - 8:30 a.m.

Public comments may be submitted until August 10, 1996.

(See Calendar of Events section for additional information)

**Basis:** Chapters 24 (§ 54.1-2400 et seq.) and 38 (§ 54.1-3800 et seq.) of Title 54.1 the Code of Virginia provide the basis for these regulations. Chapter 24 establishes the general powers and duties of health regulatory boards including the power to establish qualifications for licensure and responsibility to promulgate regulations. Chapter 38 establishes the requirements for licensure of veterinarians and veterinary technicians. Section 54.1-3805.2 provides the specific mandate for the number of hours of continuing education (CE) required for renewal of licensure by January 1, 1997.

**Purpose:** The purpose of the proposed regulations is to replace emergency regulations which are mandated by Chapter 99 of the 1995 Acts of the Assembly which provided:

*The Board shall adopt regulations which provide for continuing education requirements for relicensure and licensure by endorsement of veterinarians and veterinary technicians. After January 1, 1997, a veterinarian shall be required to complete a minimum of fifteen hours, and a veterinary technician shall be required to complete a minimum*

*of six hours of approved continuing education annually as a condition for renewal of a license.*

Proposed regulations are not exempt from the Administrative Process Act under the provisions subdivision C 4 of § 9-6.14:4.1 because there is agency discretion involved in the establishment of criteria for the approval of continuing education.

Emergency regulations were required because Chapter 99 also provided that the regulations must be in place within 280 days of the effective date of the Act. The board adopted emergency regulations which became effective on February 6, 1996. On February 14, 1996, the board acted to replace those regulations with permanent regulations on continuing education.

**Substance:** Amendments to 18 VAC 150-20-70 are proposed to add subsection B which provides:

1. The approved courses or programs related to the clinical practice of veterinary medicine or to the operation of a veterinary hospital.
2. Conditions for exemptions from or extensions for compliance with continuing education requirements.
3. Requirements for maintenance of documentation of CE records.
4. Requirements for completion of CE prior to reactivation of an inactive, suspended or revoked license.

**Issues:** The requirement for a veterinarian to complete a minimum of 15 hours and a veterinary technician to complete a minimum of six hours annually as a condition of renewal of a license is mandated in § 54.-3805.2 of the Code of Virginia. The board did have some discretion in the development of its proposed regulations and considered the following issues:

ISSUE 1: What courses or programs would be approved by the board for continuing education? The board determined that regulations established for course approval should be the least restrictive possible consistent with the intent of the statute and with the board's responsibility to assure public safety and practitioner competency.

Alternatives considered:

1. The board considered what type of courses should be approved. There was concern that, without general criteria, licensees would be unable to determine the appropriateness or acceptability of courses. The board determined that approved subject matter for CE should be broadly defined and inclusive but still generally related to the clinical practice of veterinary medicine or to the operation of a veterinary hospital.
2. The board further considered providing for board approval of individual CE courses and programs. From the experience of the Board of Optometry which must approve each CE course taken by its licensees, it was agreed that this alternative was burdensome for the providers who must submit course outlines, curricula vitae, and program objectives in advance; and costly and time consuming for the board to review.

3. The board determined that a broad listing in regulation of approved organizations, specialty societies, governmental agencies, and educational institutions offered licensees the least burdensome and costly means for acquiring CE hours. Board members who represent both professions and a broad range of specialties supplied information about providers which have offered approved CE programs or educational courses. In addition, the Virginia Veterinary Medical Association and the Virginia Association of Licensed Veterinary Technicians participated in the development of regulations and the listing of approved providers.

4. In the event the board discovered that there is another entity which should be allowed to offer approved courses, proposed regulations provide for board approval of a sponsor who submits satisfactory documentation at least 60 days prior to the course offering.

**Advantages and disadvantages:** The advantages of the alternatives chosen by the board are: (i) licensees have a very wide range of sponsors, schools, or organizations from which to choose; (ii) the board is relieved of the very burdensome task of collecting and reviewing all the pertinent data for approval of every course offered; and (iii) licensees have a recognizable listing of approved sponsors, do not have to wait for board approval, and are thereby able to plan for their CE compliance. Theoretically, there is an advantage to the public in requiring continuing education by assuring that licensees are current in the clinical practice of veterinary medicine and may therefore offer improved services to patients.

The disadvantages of the alternatives chosen are: (i) the offerings and sponsors are so broad that there may be some question about the validity of some of the CE obtained in assuring continuing competency and (ii) the criteria for approval of courses or credits is also very broad (clinical courses or related nonclinical courses), so that it may be difficult for the board to justify denial based on course content. However, the board has determined that CE regulations should be as inclusive and reasonable as possible; it will continue to review CE as it becomes effective in 1997 and will assess its effectiveness and continued reasonableness as it has some experience with licensee compliance and course approval. There are no disadvantages to the public of the alternatives proposed.

**ISSUE 2:** What exceptions, exemptions, or extensions should be permitted to licensees who are unable to comply with statutory and regulatory requirements? Section 54.1-3805.2 of the Code of Virginia states that the board may provide for the waiver of requirements upon conditions deemed appropriate by the board. Proposed regulations set out the conditions under which a waiver would be considered.

**Alternatives considered:** The board considered the exemptions or exceptions provided by other boards and adopted similar regulations. Based on their experience with the situations that have arisen, the board proposes regulations that provide for: (i) an automatic exemption for a newly licensed person on the first renewal date following initial licensure; (ii) an exemption for all or part of the CE hours for circumstances beyond the person's control (such as

military service or temporary disability); and (iii) an extension of time up to one year for good cause shown. In addition, the regulations provide that a person holding an inactive license is exempt unless he chooses to reactivate.

For a person to reactivate an inactive, suspended, or revoked license, the board considered whether it was necessary to require completion of all hours for the inactive period or to require no CE hours. Completion of all required hours during the inactive period as a prerequisite was unreasonable and overly burdensome. Completion of no hours was not considered to be consistent with the board's obligation to protect the public. Therefore, the board compromised between the two extremes and proposed that a person obtain up to two years of the required CE hours prior to reactivating his license.

**Advantages and disadvantages:** The advantages of the alternative proposed are: (i) allowance in the enforcement of CE requirements for circumstances which might prevent compliance; (ii) flexibility in providing for an extension of up to one year in the event a licensee was unable to fulfill CE requirements; and (iii) opportunity for inactive licensure for persons who do not actively practice in Virginia. Proposed regulations provide reasonable and appropriate means for the board to grant waivers or extensions.

The only disadvantage of the proposed regulation is the necessity of obtaining up to two years of CE hours for a person who wishes to reactivate his license. The board determined that the requirement was reasonable.

The advantages or disadvantages of this alternative are applicable only to licensees; it has no direct affect on the public.

**ISSUE 3:** What would be the requirements for documentation and maintenance of records of continuing education hours? The board considered the methods and requirements of several boards within the department and chose the least burdensome for the licensees and least costly for the board.

**Alternatives considered:** The board considered two methods of documenting and recording CE hours: (i) retaining the number of hours and original documents in the board office, as it is currently done by the Board of Optometry and (ii) requiring the licensee to be responsible for document retention and for verifying on his renewal form his completion of CE hours, as it is currently done by the Board of Pharmacy. The second method is more consistent with the agency's effort to control cost and growth.

**Advantages and disadvantages:** Advantages of the alternative selected are less cost for licensee who will not be required to provide to the board original documents or certificates for every CE course taken and for the board which will not be required to provide staff and storage for all such documentation. Requirements will be enforced through random audits which require less of the agency resources but which other boards have found to be effective.

The disadvantage to licensees is that it will be their responsibility to maintain CE certificates. Some would prefer to place that burden on the board. However, the result of

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## Proposed Regulations

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adopting that method would be the possibility of an increase in licensure fees in the future.

The advantages or disadvantages of this alternative are applicable only to licensees; it has no direct affect on the public.

### Estimated Fiscal Impact Prepared by the Agency:

Number of entities affected by this regulation: 3,234 veterinarians and veterinary technicians are currently licensed by the board. Of that number, approximately 1,000 have already requested or will request inactive status and will not be required to obtain continuing education unless they choose to reactivate their license.

Projected costs to the affected entities: The cost of compliance with continuing education requirements will depend on the type of course or program chosen. Costs for obtaining CE courses or programs for veterinarians may range from approximately \$300-\$350 for licensees who have no affiliation with an organization that is an approved provider to approximately \$200-\$250 (plus a membership fee) for individuals who obtain CE through their association or specialty group. If a licensee chose to obtain CE hours through attending meetings or conferences out of town, there would be additional costs for travel, lodging, etc.

Costs for obtaining six CE hours for veterinary technicians are estimated to be between \$50 and \$100 each year. The board has proposed the broadest possible list of approved providers in order to increase availability and reduce the potential financial burden. Continuing education may also be obtained through community colleges, veterinary schools, or governmental agencies.

Licensed facilities will incur some minor costs (less than \$25 per year) to provide space for the maintenance of records of completed CE for their veterinarians and veterinary technicians.

Projected cost to the agency: Since licensees will be required to attest to compliance on their renewal forms, the board will not incur costs associated with recordkeeping for CE. Licensees will be required to maintain original documents verifying the number of hours completed in a course from an approved provider. The board may conduct a random audit of original documentation for compliance of CE. Most will occur in conjunction with routine inspections of animal facilities; so there would be no additional cost to the agency.

If a licensee is found to be in noncompliance with the CE requirement, he is subject to disciplinary action by the board. Based on the experience of other boards with similar requirements, it is estimated that 10 to 15 licensees may be in noncompliance for an annual cost of approximately \$500 to \$2500 for conducting an investigation and sending consent orders or holding informal conferences.

The board will incur approximately \$1,000 for printing and mailing amended regulations to licensees and other interested parties.

All funds for operation of the board are derived from fees charged to licensees and permit holders. Costs for implementation of these regulations may be absorbed within

the existing budget, and no additional revenue will be required.

Effect on small business: Since the statutory mandate set the required number of hours of continuing education, the board has no discretion in requiring CE as a condition of renewal. Therefore, in the development of regulations, the board made every effort to include all known providers of continuing education for veterinary medicine in order to minimize the fiscal impact on licensees, many of whom operate as a small business. The board also adopted regulations allowing for exemptions and extensions of time for good cause shown.

Consequently, the board drafted regulations with a consideration for any fiscal impact on licensees, especially small businesses, and does not anticipate any significant impact on the entities affected by these regulations or on the public.

Localities affected: There are no localities affected by these regulations in the Commonwealth.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic affects.

Summary of the Proposed Regulation. In accordance with § 54.1-3805.2 of the Code of Virginia, as enacted by the 1995 General Assembly, the proposed amendments specify that, veterinarians must complete 15 hours, and veterinary technicians must complete six hours, of approved continuing education (CE) each year to qualify for license renewal by the Board of Veterinary Medicine. The proposed amendments further specify the general type of courses that qualify as CE, the approved sponsors of such courses, criteria for granting exemptions or extensions to the proposed CE requirements, criteria for recordkeeping, and the consequences of noncompliance.

Estimated Economic Impact. The proposed CE requirements are likely to have three primary economic affects: 1) enhance the quality of veterinary services available in Virginia by ensuring that veterinarians and veterinary technicians stay up to date on developments within their profession; 2) increase regulatory compliance costs; and 3) increase agency costs.

Maintenance of Professional Standards. There are obvious benefits to ensuring that providers of veterinary care in Virginia maintain their professional standards through CE. As evidenced by the fact that some specialty accreditation boards, such as the American Board of Veterinary

Practitioners, maintain CE standards that exceed those contained in the proposed amendments. It would be prohibitively expensive, however, for DPB to quantify the exact magnitude of the benefits derived from mandating CE for veterinarians and veterinary technicians.

**Increased Regulatory Compliance Costs.** Information provided by the Department of Health Professions (DHP) indicates the following.

The cost of the proposed CE course requirements for veterinarians is estimated to be between \$200 and \$350 annually, and there are approximately 1,745 veterinarians currently licensed by the Board of Veterinary Medicine who would be affected by this new requirement. These figures suggest that the increased compliance costs attributable to this portion of the proposed amendments would be between \$349,000 and \$610,750 per annum in the short-run, and would increase or decrease as the number of licensed veterinarians changed over time.

The cost of the proposed CE course requirements for veterinary technicians is estimated to be between \$50 and \$100 annually, and there are 420 veterinary technicians currently licensed by the Board of Veterinary Medicine who would likely be affected by this new requirement. These figures suggest that the increased compliance costs attributable to this portion of the proposed amendments would be between \$21,000 and \$42,000 per annum in the short-run, and would increase or decrease as the number of licensed veterinary technicians changed over time.

The proposed CE requirements will increase the recordkeeping costs incurred by licensed veterinary facilities by approximately \$25 annually, and there are approximately 670 of these facilities currently licensed by the board that would be affected by the new requirement. Taken together, these figures indicate that the increased compliance costs attributable to this portion of the proposed amendments would be approximately \$16,750 per annum in the short-run, and would increase or decrease as the number of licensed veterinary facilities changed over time.

These calculations suggest that the total regulatory compliance costs attributable to the proposed CE requirements would be between \$386,750 and \$669,500 annually.

**Increased Agency Costs.** DHP estimates that investigation and resolution of suspected incidents of noncompliance will generate additional agency costs of approximately \$1,750 to \$2,250 per annum.

**Businesses and Entities Particularly Affected.** The proposed amendments to the current regulation will particularly affect the 3,133 veterinarians and veterinary technicians currently licensed by the board and those members of the general public who purchase veterinary services.

**Localities Particularly Affected.** No localities are particularly affected by the proposed amendments to the current regulation.

**Projected Impact on Employment.** The proposed amendments to the current regulation are not anticipated to have a significant effect on employment.

**Effects on the Use and Value of Private Property.** The proposed amendments to the current regulation are not anticipated to have a significant effect on the use and value of private property.

**Summary of Analysis.** The proposed amendments to the current regulation introduce CE requirements for veterinarians and veterinary technicians licensed in Virginia. It is anticipated that the likely economic effects of these proposed CE requirements will be to: 1) enhance the quality of veterinary services available in Virginia; and 2) increase regulatory compliance and agency costs by between \$388,500 to \$671,750 per annum.

### Agency's Response to Department of Planning and Budget's Economic Impact Analysis:

The agency has reviewed the economic impact statement prepared by the Department of Planning and Budget and agrees with the analysis.

### Summary:

*The proposed amendments to 18 VAC 150-20-70 B will replace emergency regulations on requirements for continuing education which became effective on February 6, 1996.*

*Regulations are proposed to provide for (i) the approved courses or programs related to the clinical practice of veterinary medicine or to the operation of a veterinary hospital; (ii) conditions for exemptions from or extensions for compliance with continuing education (CE) requirements; (iii) requirements for maintenance of documentation of CE records; and (iv) requirements for completion of CE prior to reactivation of an inactive, suspended or revoked license.*

*The proposed amendments are identical to the emergency regulations with the exception of the following clarifications:*

- 1. The actual code cite for the statutory mandate which requires continuing education was added to subsection B.*
- 2. The word "only" was inserted in subdivision B 1 to clarify that the approval for courses would only be given to those related to the treatment and care of patients or the operation of a veterinary hospital.*
- 3. The phrase "In order to reactivate his license" in subdivision B 7 was added to clarify that it was only necessary for persons with inactive, lapsed, suspended, or revoked licenses to obtain CE hours when they wished to reactivate their licenses.*

### **18 VAC 150-20-70. Renewal requirements.**

A. Every person authorized by the board to practice veterinary medicine shall, before March 1 of every year, pay to the board a renewal fee as prescribed in 18 VAC 150-20-100 and every holder of a license of veterinary technology

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## Proposed Regulations

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shall, in a like manner, pay a renewal fee as prescribed in 18 VAC 150-20-100.

1. The board shall mail to each licensed person a notice to renew his license prior to the expiration of the license.
2. It shall be the responsibility of each person so licensed to return the renewal application with the prescribed fee so that it will be received by the board prior to the expiration date of his license. Failure to renew shall cause the license to lapse and become invalid.
3. A veterinarian's or veterinary technician's license may be renewed up to one year after the expiration date, provided a late fee as prescribed in 18 VAC 150-20-100 is paid in addition to the required renewal fee and further provided that the veterinarian or veterinary technician has not intentionally engaged in practice in Virginia after the expiration date of the license.
4. Reinstatement of licenses expired for one year or more shall be at the discretion of the board. The board shall require documentation of clinical competency and professional activities, and may require examination in addition to the prescribed reinstatement fee and the current renewal fee as conditions for reinstatement of a license.

*B. In accordance with § 54.1-3805.2 of the Code of Virginia, on and after March 1, 1997, veterinarians shall be required to have completed a minimum of 15 hours, and veterinary technicians shall be required to have completed a minimum of six hours, of approved continuing education for each annual renewal of licensure. Continuing education credits or hours may not be transferred or credited to another year.*

1. *Approved continuing education credit shall only be given for courses or programs related to the treatment and care of patients or the operation of a veterinary hospital and shall be either clinical courses in veterinary medicine or veterinary technology or related nonclinical courses.*
2. *An approved continuing education course or program shall be sponsored by one of the following:*
  - a. *American Veterinary Medical Association (AVMA) or its constituent and component/branch associations, specialty organizations, and board certified specialists in good standing within their specialty board;*
  - b. *Colleges of veterinary medicine approved by the AVMA Council on Education;*
  - c. *National or regional conferences of veterinary medicine;*
  - d. *Academies or species specific interest groups of veterinary medicine;*
  - e. *National Association of Licensed Veterinary Technicians (NALVT) or its constituent and component/branch associations;*
  - f. *North American Veterinary Technicians Association;*

- g. *Community colleges with an approved program in veterinary technology;*
- h. *State or federal government agencies;*
- i. *Veterinary Hospital Managers Association or its constituent and component/branch associations;*
- j. *American Animal Hospital Association (AAHA) or its constituent and component/branch associations;*
- k. *The Compendium on Continuing Education for the Practice of Veterinary Medicine or the Compendium on Continuing Education for the Practice of Veterinary Technology; or*
- l. *A sponsor approved by the Virginia Board of Veterinary Medicine provided the sponsor has submitted satisfactory documentation on forms provided by the board at least 60 days prior to the program offering.*

3. *A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following his initial licensure.*
4. *The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.*
5. *The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such an extension shall not relieve the licensee of the continuing education requirement.*
6. *Licensees are required to attest to compliance with continuing education requirements on their annual license renewal and are required to maintain original documents verifying the date and subject of the program or course, the number of continuing education hours or credits, and certification from an approved sponsor. Original documents must be maintained at the location where the original license is posted for a period of two years following renewal.*
7. *In order to reactivate his license, a licensee who has requested that his license be placed on inactive status, has allowed his license to lapse, or has had his license suspended or revoked shall submit evidence of completion of continuing education hours equal to the requirements for the number of years in which his license has not been active, but not to exceed two years.*
8. *Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.*
9. *Failure to comply with the requirements of this subsection shall constitute unprofessional conduct.*

*B- C. A new facility shall apply for registration with the board at least 60 days prior to opening for practice and pay to the board a registration fee as prescribed in 18 VAC 150-20-100 at the time of application.*

1. Every such animal facility so registered shall be required to renew the registration permit annually and pay to the board a registration fee as prescribed in 18 VAC 150-20-100.
2. Failure to renew the facility permit by March 1 of each year shall cause the permit to expire and become invalid. The permit may be reinstated without reinspection, within 60 days of expiration, provided the board receives a properly executed renewal application and a late fee as prescribed in 18 VAC 150-20-100 in addition to the required renewal fee. Reinstatement of an expired permit after 60 days shall be at the discretion of the board and contingent upon a reinspection and payment of the late fee, the reinspection fee, the renewal fee and the facility reinstatement fee.
3. Every new animal facility or an animal facility which changes location shall be inspected, approved and registered by the board prior to opening for the practice of veterinary medicine. Applications are to be made at least 60 days prior to the proposed opening date of the animal facility. If more than one inspection is required for approval, the reinspection fee shall be imposed for each additional inspection.



COMMONWEALTH of VIRGINIA

Department of Health Professions
Board of Veterinary Medicine
Board of Optometry

Elizabeth A. Carter, Ph.D.
Executive Director for the Board

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THE VIRGINIA BOARD OF VETERINARY MEDICINE
CONTINUING EDUCATION PROGRAM

Virginia law requires a veterinarian to complete 15 hours and a
veterinary technician to complete 6 hours of continuing education
credit as a condition of license renewal. Courses must be
sponsored by an approved provider according to Section B of
Regulation 18 VAC 150-20-70 or receive Board approval before any
credits can be granted.

Applications for approval of continuing education courses will be
reviewed by the Continuing Education Committee and returned within
4 weeks of receipt. Upon request, a disapproval may be reviewed by
the full Board.

Courses will be approved upon meeting the following criteria:

- 1. Application must be completed IN FULL. If thorough
information about course content and instructions is lacking,
the application will not be reviewed until the information is
received.
2. Courses should pertain to a recognized veterinary subject or
other subject matter which integrally relates to the practice
of veterinary medicine and must increase the licensee's
professional competence, skills, and ability to deliver
quality veterinary services to the public.
3. Courses may not offer instruction on augmenting income.
4. Courses may not be designed to promote the sale of specific
instruments or products.
5. Courses must have a sponsor or co-sponsor who will ensure that
no part of the educational session is devoted to the promotion
of specific instruments, products or marketing philosophies.
6. Course enrollment must be open to any veterinarian or
veterinary technician.
7. Self-study correspondence courses are now accepted. Please
advise the date your application was submitted to the sponsor in
the letter of application.
8. COURSES MUST CONTAIN A COMPLETE COURSE OUTLINE AND CURRICULUM
VITAE ON EACH INSTRUCTOR.

Dear Sponsor:

This letter acknowledges receipt of your request for approval of
the following continuing education course:
The checklist below
indicates what materials must be submitted for review and approval:

- Title of the course
Sponsoring organization(s)
Name of the lecturer(s)
Curriculum Vitae of the lecturer(s)
Outline of the course's content
Length of the course in clock hours
Method of certification of attendance or completion
if offered as a correspondence course
Number of credit hours requested

No course shall be forwarded to the review committee until all the
required information has been received by the Board office.

If you have questions or need further clarification, please do not
hesitate to contact the Board office (804) 662-9915.

Cordially,

Terri H. Behr
Administrative Assistant

Department of Health Professions  
COMMONWEALTH OF VIRGINIA  
**RENEWAL NOTICE  
AND APPLICATION**

Board of

Telephone

TYPE OF RENEWAL

- INSTRUCTIONS**
1. Complete items 1 and 2 to right, if renewing.
  2. Complete item 3 if you desire inactive status or do not wish to renew.
  3. Make any address changes on this application when renewing.
  4. Make any name changes on this application and enclose a copy of your marriage license or court order.
  5. Note name and license number on all enclosures.
  6. Return this application in the enclosed envelope.

CURRENT EXPIRATION	RENEWAL PERIOD FROM _____ TO _____	
ACTIVE LICENSE FEE \$ _____	LATE PAYMENT PAY ONLY IF AFTER _____	

NUMBER:

**MAKE CHECKS PAYABLE TO THE "TREASURER OF VIRGINIA"**

**STATEMENTS**

1. I certify that I have met all continuing education requirements to renew this license.  yes  no  
If "no," enclose an explanation concerning your failure to comply or complete item 3 below.

2. I swear that I have not made any misrepresentation on this renewal application and understand that furnishing false information constitutes cause for loss of license to practice.  
\_\_\_\_\_  
Signature

3. Check the appropriate box and sign below.  
 I wish to take inactive status and enclose the inactive fee of:  
 \$ \_\_\_\_\_  
 I do not wish to renew.  
 \_\_\_\_\_  
 Signature

C 24822

# 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 substantial change from the proposed text of the regulation.

## STATE WATER CONTROL BOARD

## CHAPTER 110 VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM.

Title of Regulation: 9 VAC 25-110-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day (amending 9 VAC 25-110-10 through 9 VAC 25-110-80).

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

Effective Date: August 1, 1996.

### Summary:

The State Water Control Board has adopted a regulation for the reissuance of a General Pollutant Discharge Elimination System (VPDES) Permit for small domestic sewage discharges. This regulatory action is taken in order to continue to offer a general permit for this category of discharges after the current permit expires on August 1, 1996. This general permit regulates discharges of domestic sewage only. The general permit consists of limitations and monitoring requirements on discharges to surface waters for the following parameters: flow,  $\leq 1,000$  gpd; pH, 6.0 min, 9.0 max; biochemical oxygen demand, 30 mg/l max; total suspended solids, 30 mg/l max; total residual chlorine, 1.0 mg/l min, 2.0 mg/l or nondetectable max; fecal coliform bacteria, 200/100 ml max; and dissolved oxygen, 5.0 mg/l min. Effluent limitations and monitoring requirements are established for two subcategories depending upon the amount of dilution provided by the waters into which the treated effluent is discharged. The regulation also sets forth the minimum information requirements for all requests for coverage under the general permit. No discharge may be covered by the general permit unless the Department of Health certifies that there are no onsite sewage disposal options available to the lot owner.

Two changes were made to the regulation after it was published for public comment. In 9 VAC 25-110-80, Part II C, the words "or the State Department of Health" were added so that the Department of Health can have access to the permittees' discharge monitoring results, and in Part III P and Q "hearing" was changed to "public hearing."

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4079.

### 9 VAC 25-110-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law and 9 VAC 25-30-10 et seq. (Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Department" means the Department of Environmental Quality.

"Domestic sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places.

### 9 VAC 25-110-20. Purpose.

This general permit regulation governs domestic sewage discharges to surface waters from treatment works that discharge with a design discharge flow of less than or equal to 1,000 gallons per day on a yearly monthly average.

### 9 VAC 25-110-30. Authority for regulation. (*Repealed.*)

The authority for this regulation is pursuant to the State Water Control Law §§ 62.1-44.15 (7), (8), (9), (10), (14); 62.1-44.18 through 62.1-44.21 of the Code of Virginia and 33 USC 4251 et seq. and 9 VAC 25-30-320 of the Permit Regulation (9 VAC 25-30-10 et seq.).

### 9 VAC 25-110-40. Delegation of authority.

The executive director ~~Director of the Department of Environmental Quality~~, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

### 9 VAC 25-110-50. Effective date of the permit.

This VPDES general permit regulation supersedes and modifies the emergency regulation 9 VAC 25-110-10 et seq., which was effective July 12, 1991 July 1, 1992, and which expired on August 1, 1996. Those permits issued under the emergency regulation 9 VAC 25-110-10 et seq. are hereby recognized as modified, valid and covered by this regulation. This general permit will become effective on July 1, 1992 August 1, 1996, and it expires on August 1, 1996 2001. This general permit is effective as to any covered owner upon compliance with all the provisions of 9 VAC 25-110-60 and the receipt of this VPDES general permit.

### 9 VAC 25-110-60. Authorization to discharge.

Any owner of a treatment works governed by this general permit is hereby authorized to discharge treated domestic sewage to surface waters of the Commonwealth of Virginia provided that the owner files the registration statement of 9 VAC 25-110-70, complies with the effluent limitations and

other requirements of 9 VAC 25-110-80, and provided that the owner has complied with all the following conditions:

A. Individual permit. The owner shall not have been required to obtain an individual VPDES permit as may be required in the Permit Regulation, 9 VAC 25-30-320 B.

B. Prohibited discharge locations. The owner shall not be authorized by this general permit to discharge to surface waters where specifically named in other board regulations or policies which prohibit such discharges.

C. Central sewage facilities. The owner shall not be authorized by this general permit to discharge to surface waters where there are central sewage facilities reasonably available, as determined by the board Department of Environmental Quality.

~~D. Local government notification. The owner of any proposed treatment works or any treatment works which has not previously been issued a valid VPDES permit shall obtain notification from the governing body of the county, city or town in which the discharge is to take place that the location and operation of the discharging facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.~~

E. D. Onsite sewage disposal system. The owner of any proposed treatment works or any treatment works which has not previously been issued a valid VPDES permit shall have applied to the Department of Health for an onsite sewage disposal system permit and the Department of Health must have determined that there is no technology available to serve that parcel of land with an onsite system.

Receipt of this VPDES general permit does not relieve any owner of the responsibility to comply with any other statute or regulation, including applicable regulations of the Department of Health adopted pursuant to §§ 32.1-163 and 32.1-164 of the Code of Virginia.

## 9 VAC 25-110-70. Registration statement.

The owner shall file a complete VPDES General Permit Registration Statement for domestic sewage discharges of less than or equal to 1,000 gallons per day. Any owner proposing a new discharge shall file the registration statement at least 60 days prior to the date planned for commencing construction or operation of the treatment works. Any owner of an existing treatment works covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. The required registration statement shall be in the following form contain the following information:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION  
SYSTEM GENERAL PERMIT REGISTRATION STATEMENT  
FOR DOMESTIC SEWAGE DISCHARGES LESS THAN OR  
EQUAL TO 1,000 GALLONS PER DAY

1. Name of Facility/Residence

~~2. Location of Facility (City or County)~~

2. Address of Facility

Street..... City..... State..... Zip.....

3. Facility Owner(s)

Last Name..... First Name..... M.I. ....

Last Name..... First Name..... M.I. ....

4. Address of Owner

Street..... City..... State..... Zip.....

5. Phone

Home..... Work.....

~~6. Location of Discharge (stream into which discharge occurs) Name of stream into which discharge occurs~~

~~Attach a topographic or other map which indicates discharge point, property boundaries, wells, downstream houses, etc., for 1/2 mile downstream.~~

~~Is the discharge point on a stream that usually flows during dry weather? Yes ... No ... If no, approximate distance from the discharge to the point where a stream flows during dry weather. .... ft.~~

7. Amount of Discharge (gallons per day)

8. Are any pollutants other than domestic sewage to be discharged?

Yes ... No ... If yes, please indicate what:

~~9. Attach a diagram of the existing or proposed sewage treatment system, including the location of the facility/residence and the individual sewage treatment units.~~

~~10. The owner of any proposed treatment works or any treatment works which has not previously been issued a valid VPDES permit must attach to this registration statement notification from the governing body of the county, city or town in which the discharge is to take place that the location and operation of the discharging facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.~~

~~11. The owner of any proposed treatment works or any treatment works which has not previously been issued a valid VPDES permit must attach a notification from the Department of Health that an onsite sewage disposal system permit has been applied for and that the Department of Health has determined that there is no technology available to serve that parcel of land with an onsite system.~~

12. 9. Are central sewage facilities available to this facility?

Yes ... No ... If yes, please explain:

13. 10. Does this facility currently have a VPDES permit?

Yes ... No ... If yes, please provide Permit Number:

11. The owner of any proposed treatment works or any treatment works which has not previously been issued a valid VPDES permit must submit the following attachments with this registration statement:

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a. A topographic or other map which indicates discharge point, property boundaries, wells, downstream houses, etc. for 1/2 mile downstream;

b. A diagram of the existing or proposed sewage treatment system, including the location of the facility/residence and the individual sewage treatment units; and

c. A notification from the Department of Health that an onsite sewage disposal system permit has been applied for and that the Department of Health has determined that there is no technology available to serve that parcel of land with an onsite system.

..... Check here if these items have been submitted previously and are still accurate/applicable.

**Certification:**

I hereby grant to duly authorized agents of the State Water Control Board Department of Environmental Quality, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the general permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

Signature(s): ..... Date: .....

For Water Control Board Department of Environmental Quality use only:

Accepted/Not Accepted by: ..... Date: .....

Basin Stream Class Section

Special Standards

**9 VAC 25-110-80. General Permit.**

Any owner whose registration statement is accepted by the executive director or his designee board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the Permit Regulation, 9 VAC 25-30-320.

General Permit No.: VAG000004 VAG40

Effective Date: .....

Modification Date: .....

Expiration Date: .....

**GENERAL PERMIT FOR DOMESTIC SEWAGE DISCHARGES LESS THAN OR EQUAL TO 1,000 GALLONS PER DAY**

**AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW**

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of domestic sewage discharges with a design flow of less than or equal to 1,000 gallons per day on a monthly average are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those where specifically named in board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Monitoring and Reporting Requirements, and Part III - Management Requirements, as set forth herein.

**Part I.**

**Effluent Limitations and Monitoring Requirements.**

**A. Effluent limitations and monitoring requirements.**

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number 001 to receiving waters where either: a) the 7Q10 flow is zero and the discharge travels less than 500 feet before it reaches receiving waters with 7Q10 flow greater than zero; or b) the 7Q10 flow is greater than zero and less than 0.2 MGD.

Such discharge shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)*	NA	NL	1/year	Estimate
BOD <sub>5</sub>	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Fecal Coliform Bacteria**	NA	200/100 ml	1/year	Grab
Total Residual Chlorine	NA	Nondetectable	1/year	Grab
<i>Total Residual Chlorine**</i>				
After contact tank	1.0 mg/l	NA	1/year	Grab
Final Effluent	NA	Nondetectable	1/year	Grab
Fecal Coliform Bacteria***	NA	200/100 ml	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab

Dissolved Oxygen    5 mg/l       NA       1/year    Grab

NL = No Limitation, monitoring required

NA = Not Applicable

\* The design flow of this treatment facility is less than or equal to 1,000 gallons per day.

\*\* Continuous disinfection capability shall be provided in order to maintain this effluent limit.

\*\* Applies only when chlorine is used for disinfection.

\*\*\* Applies only when methods other than chlorine are used for disinfection. Continuous disinfection capability shall be provided in order to maintain this effluent limit.

~~B. There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

A. Effluent limitations and monitoring requirements.

2. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number 001 to receiving waters where either: a) the 7Q10 flow is zero and the discharge must travel at least 500 feet to reach receiving waters with 7Q10 flow greater than zero; or b) the 7Q10 flow is equal to or greater than 0.2 MGD.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)*	NA	NL	1/year	Estimate
BOD <sub>5</sub>	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Total Residual Chlorine**				
Final Effluent	1.0 mg/l	2.0 mg/l	1/year	Grab
Fecal Coliform Bacteria***	NA	200/100 ml	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

\* The design flow of this treatment facility is less than or equal to 1,000 gallons per day.

\*\* Applies only when chlorine is used for disinfection.

\*\*\* Applies only when methods other than chlorine are used for disinfection. Continuous disinfection capability shall be provided in order to maintain this effluent limit.

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. Schedule of compliance. This compliance schedule shall be allowed only for treatment works that were existing on the effective date of this general permit. Treatment works constructed after the permit effective date are expected to comply with the limitations and conditions of the general permit from the date of coverage. The permittee shall install equipment or unit processes or make other physical modifications to the treatment works that are necessary to achieve compliance with the limitations and conditions of this permit within 180 days of the date of coverage under the permit. The modifications shall not be initiated until written authorization is first provided by the Department of Health or the Department of Environmental Quality. The permittee shall submit to the Department of Environmental Quality Regional Office a written notice certifying completion of any necessary modifications on or before the 180-day compliance deadline. If the permittee is unable to meet the deadline, a written notice shall be submitted which shall include the cause of the delay, any remedial actions taken, and the projected date for compliance.

Part II.

Monitoring and Reporting.

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.
2. Unless otherwise specified in the permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR 136).
3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.
4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Recording of results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;
2. The persons who performed the sampling or measurements;
3. The dates analyses were performed;
4. The persons who performed each analysis;
5. The analytical techniques or methods used; and

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6. The results of such analyses and measurements.

C. Monitoring records. All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for five years from the date of the sample, measurement, report or application. Such records shall be made available to the *board department [ or the state Department of Health ]* upon request.

D. Reporting requirements. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide the following information regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours:

1. A description and cause of noncompliance;
2. The period of noncompliance, including exact dates and times or the anticipated time when the noncompliance will cease, or both; and
3. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

E. Signatory requirements. Any registration statement, report, or certification required by this permit shall be signed as follows:

1. Registration statement.
  - a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)
  - c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.
2. Reports. All reports required by permits and other information requested by the board shall be signed by:

- a. One of the persons described in subparagraph 1, a, b, or c of this section; or
- b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subparagraph 1 a, b, or c of this section; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the board prior to or together with any separate information, or registration statement to be signed by an authorized representative.

3. Certification. Any person signing a document under paragraph 1 or 2 of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

## Part III.

### Management Requirements.

A. Change in discharge or management of pollutants.

1. Any permittee proposing a new discharge or the management of additional pollutants shall submit a new registration statement at least 60 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities or processes at any facility. There shall be no commencement of treatment or management of pollutants activities until a permit is received.

2. All discharges or pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit a new registration statement 60 days prior to all expansions, production increases, or process modifications, that will result in new or increased pollutants. The discharge or management of any

pollutant more frequently than, or at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

## B. Treatment works operation and quality control.

1. Design and operation of facilities or treatment works and disposal of all wastes shall be in accordance with the registration statement. If facility deficiencies, design or operational, or both, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, ~~management of pollutant activities~~ and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities and ~~pollutant management activities~~ shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters.

b. Maintenance of treatment facilities or ~~pollutant management activities~~ works shall be carried out in such a manner that the monitoring or limitation requirements, or both, are not violated.

c. Collected sludges shall be stored in such a manner as to prevent entry of those wastes (or run-off from the wastes) into state waters.

C. Adverse impact. The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitations or conditions, or both, specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitations or conditions, or both.

## D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability. The structural stability of any of the units or parts of the ~~facilities~~ treatment works herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing. Any bypass ("Bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works here permitted is prohibited.

G. Compliance with state and federal law. Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act. Nothing in this permit shall be construed to preclude the

institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act.

H. Property rights. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

I. Severability. The provisions of this permit are severable.

J. Duty to reregister. If the permittee wishes to be eligible to discharge under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 60 days prior to the expiration date of this permit.

K. Right of entry. The permittee shall allow authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, ~~pollutant management activities~~, or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, discharge, process stream, raw material or by-product; and

5. To inspect at reasonable times any collection, treatment, ~~pollutant management activities~~ or discharge facilities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or ~~involved in managing pollutants~~. Nothing contained here shall make an inspection time unreasonable during an emergency.

L. Transferability of permits. This permit may be transferred to another person by a permittee if:

1. The current owner notifies the ~~board~~ Department of Environmental Quality Regional Office 30 days in advance of the proposed transfer of the title to the ~~facility~~ treatment works or property;

2. The notice includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The ~~board~~ department does not within the 30-day time period notify the existing owner and the proposed owner of ~~its~~ the State Water Control Board's intent to modify or revoke and reissue the permit.

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Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

M. Continuation of expired general permits. An expired general permit continues in force and effect until a new general permit is issued. Only those ~~facilities~~ *treatment works* authorized to discharge under the expiring general permit are covered by the continued permit.

N. Public access to information. All information pertaining to permit processing or in reference to any source of discharge of any pollutant, shall be available to the public.

O. Permit modification. The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;
2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of § 307(a) of the Clean Water Act; or
3. When the level of discharge of ~~or management of~~ a pollutant not limited in the permit exceeds applicable Water Quality Standards or Water Quality Criteria, or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.

P. Permit termination. After public notice and opportunity for a [ *public* ] hearing, the general permit may be terminated for cause.

Q. When an individual permit may be required. The ~~board~~ *department* may require any owner authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharger(s) is a significant contributor of pollution.
2. Conditions at the operating facility change altering the constituents or characteristics, or both, of the discharge such that the discharge no longer qualifies for a general permit.
3. The discharge violates the terms or conditions of this permit.
4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.
5. Effluent limitation guidelines are promulgated for the point sources covered by this permit.
6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual owner for any of the reasons set forth above after appropriate notice and an opportunity for a [ *public* ] hearing.

R. When an individual permit may be requested. Any owner operating under this permit may request to be

excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to an owner the applicability of this general permit to the individual owner is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an owner already covered by an individual permit, such owner may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.

S. Civil and criminal liability. Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

T. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

## FORMS

~~Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Domestic Sewage Discharges Less Than or Equal to 1000 Gallons per Day.~~

~~DEQ Water Division Permit Application Fee.~~

~~Local Government Ordinance Form (Revised 8/93).~~

VA.R. Doc. No. R96-384; Filed May 22, 1996, 11:53 a.m.

## BOARD OF DENTISTRY

**REGISTRAR'S NOTICE:** The Board of Dentistry has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Board of Dentistry will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18 VAC 60-20-10 et seq. Virginia Board of Dentistry Regulations (amending 18 VAC 60-20-30, 18 VAC 60-20-70, and 18 VAC 60-20-80).

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

**Effective Date:** July 10, 1996.

## Summary:

The amendments to the regulations delete the requirements and fee for licensure of dentists by endorsement. The final regulations are submitted for publication in the Virginia Register of Regulations under an exemption from the Administrative Process Act pursuant to § 9-6.14:4.1 C 4 a of the Code of Virginia as necessary to conform to changes in Virginia statutory law, specifically the amendments to § 54.1-2710 of the Code of Virginia enacted by the 1995 Acts of the Assembly which prohibited the board from licensing dentists by endorsement.

**Agency Contact:** Copies of the regulation may be obtained from Marcia J. Miller, Board of Dentistry, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

### 18 VAC 60-20-30. Other fees.

A. Dental licensure application fees. The application for a dental license shall be accompanied by a check or money order for \$220, which includes a \$155 application fee and a \$65 initial licensure fee.

B. Dental hygiene licensure application fees. The application for a dental hygiene license shall be accompanied by a check or money order for \$155, which includes a \$130 application fee and a \$25 initial licensure fee.

C. Duplicate wall certificate. Licensees desiring a duplicate wall certificate shall submit a request in writing stating the necessity for such duplicate wall certificate, accompanied by a fee of \$15. A duplicate certificate may be issued for any of the following reasons: replacing certificate that has been lost, stolen, misplaced, destroyed, or is otherwise irretrievable; recording the new name of a registrant whose name has been changed by court order or by marriage; or for multiple offices.

D. Duplicate license. Licensees desiring duplicate license shall submit a request in writing stating the necessity for such duplicate license, accompanied by a fee of \$10. A duplicate license may be issued for any of the following reasons: maintaining more than one office (notarized photocopy may be used); replacing license that has been lost, stolen, misplaced, destroyed, or is otherwise irretrievable; and recording the new name of a licensee whose name has been changed by court order or by marriage.

E. Licensure certification. Licensees requesting endorsement or certification by this board shall pay a fee of \$25 for each endorsement or certification.

F. Restricted license. Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of \$100.

G. Teacher's license. License to teach dentistry and dental hygiene issued in accordance with §§ 54.1-2713 and 54.1-2725 of the Code of Virginia shall be at a fee of \$220 and \$155, respectively. The renewal fee shall be \$65 and \$25, respectively.

H. Temporary permit. Temporary permit for dentists and dental hygienists issued in accordance with §§ 54.1-2715

and 54.1-2726 of the Code of Virginia shall be at a fee of \$220 and \$155, respectively. The renewal fee shall be \$65 and \$25, respectively.

I. Radiology safety examination. Each examination administered in accordance with subdivision 11 of 18 VAC 60-20-190 shall be at a fee of \$25.

J. Jurisprudence examination. Each examination administered by the board outside the scheduled clinical examination site in accordance with 18 VAC 60-20-70 shall be at a fee of \$25.

K. Full-time faculty license. Full-time faculty license for dentists issued in accordance with § 54.1-2714.1 of the Code of Virginia, shall be at a fee of \$220. The renewal fee shall be \$65.

L. Endorsement license. License by endorsement issued in accordance with 18 VAC 60-20-80 for dental hygienists shall be at a fee of \$200 (\$175 application and \$25 initial licensure fee). The renewal fee shall be \$25. ~~License by endorsement issued in accordance with 18 VAC 60-20-80 for dentists shall be at a fee of \$565 (\$500 application fee and \$65 initial licensure fee).~~

M. Schedule VI topical medicinal agents certification. Certifications issued in accordance with subdivision 1 of 18 VAC 60-20-230 shall be at a fee of \$15.

### 18 VAC 60-20-70. Licensure examinations.

#### A. Dental examinations.

1. All applicants shall have successfully completed Part I and Part II of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board.

2. For the purpose of § 54.1-2709 of the Code of Virginia, all persons desiring to practice dentistry in the Commonwealth of Virginia will be required to satisfactorily pass the complete board-approved examinations in dentistry as a precondition for licensure, ~~except those persons eligible for licensure pursuant to § 54.1-103 of the Code of Virginia and subsection A of 18 VAC 60-20-80.~~ Applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake the examinations unless they demonstrate that they have maintained continuous clinical, ethical and legal practice since passing the board-approved examinations.

#### B. Dental hygiene examinations.

1. All applicants are required to successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board for licensure.

2. For the purpose of § 54.1-2722 of the Code of Virginia, all persons desiring to practice dental hygiene in the Commonwealth of Virginia shall be required to successfully complete the board-approved examinations in dental hygiene as a precondition for licensure, except those persons eligible for licensure pursuant to § 54.1-103 of the Code of Virginia and ~~subsection B of 18 VAC~~

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# Final Regulations

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60-20-80. Applicants who successfully complete the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake the board-approved examinations unless they demonstrate that they have maintained continuous clinical, ethical, and legal practice since passing the board-approved examinations.

C. All applicants for dental or dental hygiene licensure by examination shall be required to pass an examination on the Virginia dental hygiene laws and the regulations of this board.

## 18 VAC 60-20-80. Licensure by endorsement for dentists and dental hygienists.

A. An applicant for dental licensure by endorsement shall:

- ~~1. Be a graduate and holder of a diploma from an accredited or approved dental school recognized by the Commission on Dental Accreditation of the American Dental Association;~~
- ~~2. Have successfully completed a clinical licensing examination substantially equivalent to that required by Virginia;~~
- ~~3. Hold a current, unrestricted license to practice dentistry in another state, territory, District of Columbia, or possession of the United States and has continuous clinical, ethical, and legal practice for five out of the past six years immediately preceding application for licensure. Active patient care in armed forces dental corps, state or federal agency, and intern or residency programs may substitute for required clinical practice;~~
- ~~4. Be certified to be in good standing from each state in which he is currently licensed or has ever held a license;~~
- ~~5. Have not failed any clinical examination accepted by the board, pursuant to § 54.1-2709 of the Code of Virginia, within the last five years;~~
- ~~6. Be of good moral character;~~
- ~~7. Have successfully completed Part I and Part II of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board;~~
- ~~8. Pass an examination on the laws and the regulations governing the practice of dentistry in Virginia; and~~
- ~~9. Have not committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia and is not the respondent in any pending or unresolved board action or malpractice claim.~~

B. Dental hygiene endorsement.

An applicant for dental hygiene endorsement licensure shall:

1. Be a graduate or be issued a certificate from an accredited dental hygiene school/program of dental hygiene recognized by the Commission on Dental Accreditation of the American Dental Association;
2. Be currently licensed to practice dental hygiene in another state, territory, District of Columbia, or

possession of the U.S. *United States*, and have continuous clinical, ethical, and legal practice for two out of the past four years immediately preceding application for licensure. Active patient care in armed forces dental corps, state or federal agency, and intern or residency programs, may substitute for required clinical practice;

3. Be certified to be in good standing from each state in which he is currently licensed or has ever held a license;
4. Have successfully completed a clinical licensing examination substantially equivalent to that required by Virginia;
5. Not have failed the clinical examination accepted by the board, pursuant to § 54.1-2722 of the Code of Virginia, within the last five years;
6. Be of good moral character;
7. Provide proof of not having committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia;
8. Successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board; and
9. Pass an examination on the laws and the regulations governing the practice of dentistry in Virginia.

VA.R. Doc. No. R96-379; Filed May 21, 1996; 2:50 p.m.

# STATE CORPORATION COMMISSION

## STATE CORPORATION COMMISSION

### Bureau of Financial Institutions

Title of Regulation: 10 VAC 5-120-10 et seq. Security Required of Money Order Sellers and Money Transmitters (amending 10 VAC 5-120-20; adding 10 VAC 5-120-30 and 10 VAC 5-120-40).

Statutory Authority: §§ 6.1-378.1 and 12.1-13 of the Code of Virginia.

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 20, 1996

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. BFI960068

Ex Parte: In the matter of proposed amendment of a regulation relating to surety bonds of money order sellers and money transmitters

### ORDER DIRECTING NOTICE AND SETTING A HEARING

Section 6.1-378.1 of the Code of Virginia authorizes the State Corporation Commission to promulgate rules and regulations to effect the purposes of Chapter 12 of Title 6.1 of the Code of Virginia. The Commission has promulgated a regulation designated as Chapter 120 (10 VAC 5-120-10, et seq.) of Title 10 of the Virginia Administrative Code (formerly VR 225-01-1201), entitled "Surety Bond Required of Money Order Sellers and Money Transmitters".<sup>1</sup> The Bureau of Financial Institutions now proposes that the Commission amend the regulation in order to implement provisions of Chapter 274 of the 1996 Acts of Assembly, which permits Chapter 12 licensees to provide security by a means other than a surety bond.

It appears to the Commission that persons currently licensed to sell money orders and others should be afforded notice of the proposed amendment and an opportunity to be heard in this matter. Accordingly,

### IT IS ORDERED THAT:

(1) This matter be assigned Case No. BFI960068, and associated papers be filed therein.

(2) On or before June 19, 1996, any person may file written comments in support of, or in opposition to, the Commission's adoption of the proposed amendment with the Clerk, State Corporation Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

(3) On or before June 19, 1996, any person who desires to be heard on the proposed amendments shall file with the Clerk, at the above address, a written request for a hearing.

<sup>1</sup> The proposed regulation is organized, numbered and arranged for printing according to a system introduced for the January, 1996 publication of the Virginia Administrative Code.

(4) A hearing is set for June 27, 1996 at 2:00 p.m. in the Commission's Courtroom, Tyler Building, Second Floor, 1300 East Main Street, Richmond, Virginia, at which place and time all persons who have filed written requests for a hearing may appear and be heard.

(5) The Bureau of Financial Institutions shall publish the following notice once in the Virginia Register and mail a copy of said notice to each person licensed as a money order seller or money transmitter:

### NOTICE OF PROPOSED REGULATION

Pursuant to Virginia Code § 6.1-378.1, the State Corporation Commission proposes to amend Chapter 120 (10 VAC 5-120-10, et seq.) of Title 10 of the Virginia Administrative Code, "Surety Bond Required of Money Order Sellers and Money Transmitters". The proposed amendment would permit licensees, in lieu of filing a surety bond with the Commission, in whole or in part, to deposit cash or certain securities with a depository institution under an agreement prescribed by the Commissioner of Financial Institutions. The text of the proposed amendment can be either examined at or obtained from the Commission's Clerk, Document Control Center, 1st Floor, Tyler Building, 1300 East Main Street, P.O. Box 2118, Richmond, Virginia 23218. The Document Control Center may be contacted by telephone at (804) 371-9033.

Every person who desires to comment in favor of, or in opposition to, the proposed amendment should send written comments to the Clerk at the above address on or before June 19, 1996. Every person who desires to be heard before the Commission at 2:00 p.m. on June 27, 1996 on the proposed amendment must file a written request for a hearing with the Clerk at the above address on or before June 19, 1996. Written comments and requests for a hearing must contain a reference to Case No. BFI960068.

AN ATTESTED COPY of this Order shall be sent by the Clerk of the Commission to the Commissioner of Financial Institutions.

### CHAPTER 120.

### ~~SURETY BOND SECURITY~~ REQUIRED OF MONEY ORDER SELLERS AND MONEY TRANSMITTERS.

### 10 VAC 5-120-20. Surety bond standards.

A. Every licensee shall be bonded in a principal amount determined by the Commissioner of Financial Institutions. The bond amount shall be equal to the licensee's Virginia average monthly money order sales during the preceding two reporting periods, or its Virginia average monthly money transmission volume during such periods, or both, as applicable, rounded to the next highest multiple of \$10,000, but not exceeding \$500,000. The commissioner, however, may increase the amount of bond required to a maximum of \$1 million upon the basis of the impaired financial condition of a licensee, as evidenced by net worth reduction, financial losses, or other relevant criteria.

~~B. Licensees licensed for less than three years shall file reports with the commissioner within 45 days after the end of each calendar quarter. Licensees licensed for three years or longer shall file reports with the commissioner within 45 days~~

# State Corporation Commission

~~after the end of each semiannual reporting period. Licensees affiliated by common ownership with another licensee licensed for three years or longer, and licensees which acquire all or part of the money order sales business or money transmission business of another licensee licensed for three years or longer, shall file reports with the commissioner within 45 days after the end of each semiannual reporting period. The reports shall contain such information as the commissioner may require. The commissioner may require such additional reports as he deems necessary.~~

C. B. The amount of bond required of a new licensee shall be based upon the applicant's financial condition, capitalization, projected Virginia monthly money order sales and money transmission volume, experience, and other factors deemed pertinent.

D. C. The minimum bond required shall be \$25,000.

E. D. The form of the bond will be prescribed and provided by the commissioner. The required bond shall be submitted prior to the issuance of a license, and shall be maintained continuously thereafter as long as the licensee or former licensee has money orders outstanding or unfulfilled money transmission agreements.

## 10 VAC 5-120-30. Alternative to surety bond.

A. As an alternative to the surety bond required under 10 VAC 5-120-20, in whole or in part, a licensee may be permitted to substitute the deposit of certain property with a bank, trust company or savings institution authorized to conduct business in Virginia. Such deposited property, other than cash, shall be valued at the lower of face or market value for the purposes of this regulation.

B. The deposited property may consist only of cash, or securities issued or guaranteed by the United States or any agency or instrumentality thereof, or securities issued by the Commonwealth of Virginia or any political subdivision thereof. The commissioner shall determine the amount of property deposit to be required of a licensee in accordance with the factors and limitations set forth in 10 VAC 5-120-20.

C. The property deposit shall be made upon the commissioner's authorization, and pursuant to a written agreement using a form prescribed by the commissioner. The agreement shall provide, among other things, that the commissioner shall have the authority to permit or require the substitution or liquidation of property held under the agreement, and that interest and dividends attributable to the property will be paid to the licensee making the deposit.

D. If a licensee ceases money order sales and money transmission in the Commonwealth of Virginia and surrenders its license, the commissioner shall have authority to permit reduction or elimination of the property deposit to the extent that the former licensee's obligations arising from its licensed business are reduced or eliminated, and shall have authority to permit the substitution of other means of security for the property deposit.

## 10 VAC 5-120-40. Reporting requirements.

Licensees licensed for less than three years shall file reports with the commissioner within 45 days after the end of

each calendar quarter. Licensees licensed for three years or longer shall file reports with the commissioner within 45 days after the end of each semiannual reporting period. Licensees affiliated by common ownership with another licensee licensed for three years or longer, and licensees which acquire all or part of the money order sales business or money transmission business of another licensee licensed for three years or longer, shall file reports with the commissioner within 45 days after the end of each semiannual reporting period. The reports shall contain such information as the commissioner may require. The commissioner may require such additional reports as he deems necessary.

VA.R. Doc. No. R96-382; Filed May 22, 1996, 9:33 a.m.

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## Division of Communications

Title of Regulation: 20 VAC 5-400-190. Virginia State Corporation Commission Procedural Rules for Implementing §§ 251 and 252 of the Telecommunications Act of 1996, Public Law No. 104-104.

Statutory Authority: §§ 12.1-13, 12.1-28 and 56-265.4:4 of the Code of Virginia.

AT RICHMOND, MAY 21, 1996

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In the matter of CASE NO. PUC960059  
investigating and adopting  
procedural rules for implementing  
the Telecommunications Act of 1996

## ORDER PRESCRIBING NOTICE AND INVITING COMMENTS

On February 8, 1996, the Telecommunications Act of 1996 ("the Act") was enacted. Section 251 of the Act provides standards for interconnection and duties for incumbent local exchange carriers ("LECs") as well as new entrants to the local exchange telephone markets. Section 252 of the Act provides for methods for obtaining agreements for interconnection, services, or network elements between incumbent LECs and new entrants. The agreements can be arrived at through negotiation by the parties, mediation, compulsory arbitration by the State Corporation Commission, or the filing of a statement of generally available terms and conditions for Bell operating companies.

Section 252 of the Act contemplates various forms of Commission action in relation to these agreements, and prescribes abbreviated timeframes for Commission decision. Due to the brief time periods, it is vital that all documents filed with the Commission under the Act are complete and include any and all supporting documentation. The purpose of the supporting documentation is to reduce the need for discovery, and to expedite the process.

In order to carry out the mandates of §§ 251 and 252 of the Act, the Commission directed its Staff to draft a set of

proposed procedural rules for reviewing negotiated agreements, conducting arbitrations, and reviewing a statement of generally available terms and conditions. The draft procedural rules are attached hereto as Attachment A. The Commission invites interested parties to file written comments concerning the draft procedural rules and to propose any additions or modifications which may be desired. Interested parties may request a hearing before the Commission. Accordingly,

IT IS THEREFORE ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUC960059.

(2) On or before June 10, 1996, the Division of Communications shall complete publication of the following notice to be published as a classified advertisement in major newspapers of general circulation throughout the Commonwealth:

**NOTICE OF CONSIDERATION BY THE  
VIRGINIA STATE CORPORATION COMMISSION  
OF PROPOSED PROCEDURAL RULES UNDER THE  
TELECOMMUNICATIONS ACT OF 1996 - CASE NO.  
PUC960059**

The State Corporation Commission ("Commission") is considering adopting procedural rules pursuant to §§ 251 and 252 of the Telecommunications Act of 1996. These procedures will govern reviewing negotiated agreements, arbitrating unresolved issues between incumbents and new local exchange telecommunications companies, and reviewing any statement of generally available terms and conditions submitted by Bell Atlantic-Virginia, Inc.

The Commission issued an Order Prescribing Notice and Inviting Comments and the proposed procedural rules are attached to that order as Attachment A.

The Commission's Order together with the proposed rules may be reviewed by the public at the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, Monday through Friday, 8:15 a.m. to 5:00 p.m. Copies may be requested by writing the Division of Communications at P.O. Box 1197, Richmond, Virginia 23218, or by calling (804) 371-9420.

Interested persons shall submit an original and five (5) copies of written comments or any requests for hearing concerning the proposed procedural rules on or before June 24, 1996. All comments and requests shall be filed with William J. Bridge, Clerk of the Commission, c/o Document Control Center, P.O. Box 2116, Richmond, Virginia 23218, and shall refer to Case No. PUC960059. Interested persons may contact the Division of Communications at (804) 371-9420 to obtain more information about the proposed procedural rules.

If no requests for hearing on the proposed procedural rules are received, the Commission may act upon them, together with any filed comments, without a hearing. Interested persons are advised that after considering any comments filed herein and after any

other proceeding as the Commission may direct, the Commission may adopt, reject, or alter the proposed rules in whole or in part.

**VIRGINIA STATE CORPORATION COMMISSION**

(3) On or before May 24, 1996, a copy of this Order and Attachment shall be made available for public inspection in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. to 5:00 p.m., Monday through Friday. Interested parties may also request a copy by writing the Division of Communications, P.O. Box 1197, Richmond, Virginia 23218, or by calling (804) 371-9420.

(4) On or before June 24, 1996, any interested person shall file an original and five (5) copies of written comments concerning the draft procedural rules set out in Attachment A to this Order. All written comments shall be filed with William J. Bridge, Clerk, State Corporation Commission, P.O. Box 2116, Richmond, Virginia 23218, and shall refer to Case No. PUC960059.

(5) If no request for hearing is received, the Commission may consider the procedural rules, together with any filed comments, without convening a hearing.

(6) This Order and Attachment A shall be sent forthwith to the Registrar of Regulations for appropriate publication in the Virginia Register.

(7) On or before June 24, 1996, the Division of Communications shall file with the Clerk of the Commission proof of publication of the notice prescribed herein.

AN ATTESTED COPY of this Order including the appendix shall be sent by the Clerk of the Commission to: All Certificated Local Exchange Telephone Companies as set out in Appendix A; all Virginia Certificated Interexchange Carriers as set out in Appendix B; Edward L. Petrini, Esquire, Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Louis R. Monacell, Esquire, and Alexander F. Skirpan, Esquire, Christian, Barton, Epps, Brent & Chappell, 1200 Mutual Building, 909 East Main Street, Richmond, Virginia 23219-3095; Mark Argenbright, Manager, Regulatory Analysis, LDDS Worldcom, 515 East Amite Street, Jackson, Mississippi 39201-2702; Jean Ann Fox, President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; James C. Roberts, Esquire, and Donald G. Owens, Esquire, Virginia Cable Television Association, P.O. Box 1122, Richmond, Virginia 23208; Ronald B. Mallard, Fairfax County Consumer Affairs, 12000 Government Center Parkway, Suite 433, Fairfax, Virginia 22035; Claude W. Reeson, Surry County Chamber of Commerce, 8263 Colonial Trail West, Spring Grove, Virginia 23881; Nelson Thibodeaux, Preferred Carrier Services, 1425 Greenway Drive, #210, Irving, Texas 75038; Michael Beresik, AARP, 601 East Street, N.W., Washington, D.C. 20049; James R. Hobson, Esquire, National Emergency Number Association, 1100 New York Avenue, N.W., #750, Washington, D.C. 20005-3934; Cecil O. Simpson, United States Department of Defense, 901 North Stuart Street, Arlington, Virginia 22203-1837; Richard M. Tetelbaum, Citizens Telecommunications, 1400 16th Street, N.W., #500, Washington, D.C. 20036;

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# State Corporation Commission

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Naomi C. Klaus, Esquire, Metropolitan Washington Airport Authority, 44 Canal Center Plaza, #218, Alexandria, Virginia 22314; Jodie Donovan-May, Esquire, Teleport Communications Group, 1133 21st Street, N.W., Washington, D.C. 20036; Andrew O. Isar, Telecommunications Resellers, 4312 92nd Avenue, N.W., Gig Harbor, Washington 98335; Andrew D. Lipman, Esquire, MFS Intelenet of Virginia, Inc., 3000 K Street, N.W., #300, Washington, D.C. 20007; David W. Clarke, Washington/Baltimore Cellular, P.O. Box 796, Richmond, Virginia 23206; James W. Wright, Esquire, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; Kenworth E. Lion, Jr., Esquire, Virginia Citizens Consumer Council, 2201 West Broad Street, #100, Richmond, Virginia 23220; Warner F. Brundage, Jr., Esquire, Bell Atlantic-Virginia, Inc., P.O. Box 27241, Richmond, Virginia 23261; Edward L. Flippen, Esquire, AT&T Communications of Virginia, P.O. Box 1122, Richmond, Virginia 23208-1122; Jack H. Derrick, Esquire, 1108 East Main Street, #1200, Richmond, Virginia 23219; and the Commission's Division of Communications and Office of General Counsel.

## Appendix A

### TELEPHONE COMPANIES IN VIRGINIA

Amelia Telephone Corporation  
Mr. Bruce H. Mottern, Director  
State Regulatory Affairs  
P.O. Box 22995  
Knoxville, Tennessee 37933-0995

Amelia Telephone Corporation  
Ms. Joy Brown, Manager  
P. O. Box 76  
Amelia, Virginia 23002

Buggs Island Telephone Cooperative  
Mr. M. Dale Tetterton, Jr., Manager  
P. O. Box 129  
Bracey, Virginia 23919

Burke's Garden Telephone Exchange  
Ms. Sue B. Moss, President  
P. O. Box 428  
Burke's Garden, Virginia 24608

Central Telephone Company of Virginia  
Mr. Martin H. Bocock  
Vice President and General Manager  
P. O. Box 6788  
Charlottesville, Virginia 22906

Bell Atlantic - Virginia  
Mr. Hugh R. Stallard, President and Chief Executive Officer  
600 East Main Street  
P.O. Box 27241  
Richmond, Virginia 23261

Citizens Telephone Cooperative  
Mr. James R. Newell, Manager  
Oxford Street  
P. O. Box 137  
Floyd, Virginia 24091

Clifton Forge-Waynesboro Telephone Company  
Mr. David R. Maccarelli, President

P. O. Box 1990  
Waynesboro, Virginia 22980-1990

GTE South, Inc.  
Stephen C. Spencer, Reg. Director  
External Affairs  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219

GTE  
Joe W. Foster, Esquire  
Law Department  
P.O. Box 110 - FLTC0007  
Tampa, Florida 33601-0110

Highland Telephone Cooperative  
Mr. Elmer E. Halterman, General Manager  
P.O. Box 340  
Monterey, Virginia 24465

MFS Intelenet of Virginia, Inc.  
Richard M. Rindler  
Swidler & Berlin  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116

MCImetro Access Transmission Services of Virginia, Inc.  
Howard W. Dobbins  
Williams, Mullen, Christian & Dobbins  
1021 East Cary Street  
P.O. Box 1320  
Richmond, Virginia 23210-1320

Mountain Grove-Williamsville Telephone Company  
Mr. L. Ronald Smith  
President/General Manager  
P. O. Box 105  
Williamsville, Virginia 24487

New Castle Telephone Company  
Mr. Bruce H. Mottern, Director  
State Regulatory Affairs  
P.O. Box 22995  
Knoxville, Tennessee 37933-0995

New Hope Telephone Company  
Mr. K. L. Chapman, Jr., President  
P. O. Box 38  
New Hope, Virginia 24469

North River Telephone Cooperative  
C. Douglas Wine, Manager  
P. O. Box 236  
Mt. Crawford, Virginia 22841-0236

Pembroke Telephone Cooperative  
Mr. Stanley G. Cumbee, General Manager  
P. O. Box 549  
Pembroke, Virginia 24136-0549

Peoples Mutual Telephone Company, Inc.  
Mr. E. B. Fitzgerald, Jr.  
President & General Manager  
P. O. Box 367  
Gretna, Virginia 24557

Roanoke & Botetourt Telephone Company

Mr. Allen Layman, President  
1000 Roanoke Road  
P.O. Box 174  
Daleville, Virginia 24083

Scott County Telephone Cooperative  
Mr. William J. Franklin, Jr.  
Executive Vice President  
P. O. Box 487  
Gate City, Virginia 24251

Shenandoah Telephone Company  
Mr. Christopher E. French  
President  
P. O. Box 459  
Edinburg, Virginia 22824

United Telephone-Southeast, Inc.  
Mr. H. John Brooks  
Vice President & General Manager  
112 Sixth Street, P. O. Box 699  
Bristol, Tennessee 37620

Virginia Telephone Company  
Mr. Bruce H. Mottern, Director  
State Regulatory Affairs  
P.O. Box 22995  
Knoxville, Tennessee 37933-0995

Hyperion Telecommunications of Virginia, Inc.  
Steven F. Morris  
Dow, Lohnes & Albertson  
1200 New Hampshire Avenue, Suite 800  
Washington, D.C. 20036

Institutional Communications Company - Virginia  
Ms. Anne LaLena  
8100 Boone Boulevard, Suite 500  
Vienna, Virginia 22182

MCI Telecommunications Corp. of Virginia, Inc.  
Prince I. Jenkins, Esquire  
1133 19th Street, N.W., 11th Floor  
Washington, D.C. 20036

MCImetro Access Transmission Services of Virginia, Inc.  
Sarah Finley, Esquire  
P.O. Box 1320  
Richmond, Virginia 23210

Metromedia Communications Corporation  
d/b/a LDDSMetromedia Communications  
Mr. Brian Sulmonetti  
Regulatory Affairs  
1515 South Federal Highway  
Boca Raton, Florida 33432

R&B Network, Inc.  
Mr. Allen Layman, Executive Vice President  
P. O. Box 174  
Daleville, Virginia 24083

Scott County Telephone Cooperative  
Mr. William J. Franklin, Executive VP & Manager  
P.O. Box 487  
Gate City, Virginia 24251

Shenandoah Telephone Company  
Mr. Christopher E. French  
President & General Manager  
P. O. Box 459  
Edinburg, Virginia 22824

SouthernNet of Va., Inc.  
Peter H. Reynolds, Director  
780 Douglas Road, Suite 800  
Atlanta, Georgia 30342

TDX Systems, Inc.  
d/b/a Cable and Wireless, Inc.  
Mr. Charles A. Tievsky  
Regulatory Attorney  
1919 Gallows Road  
Vienna, Virginia 22182

Sprint Communications of Virginia, Inc.  
Mr. Kenneth Prohoniak  
Staff Director, Regulatory Affairs  
1850 "M" Street, N.W. Suite 110  
Washington, DC 20036

Virginia MetroTel, Inc.  
Mr. Richard D. Gary  
Hunton & Williams  
Riverfront Plaza, East Tower  
951 East Byrd Street

Appendix B

INTER-EXCHANGE CARRIERS

AlterNet of Virginia  
Mr. Steven F. Morris, Counsel  
Dow, Lohnes & Albertson  
1200 New Hampshire Avenue, Suite 800  
Washington, D.C. 20036

AT&T Communications of Virginia  
Ms. Wilma R. McCarey, General Attorney  
3033 Chain Bridge Road, Third Floor  
Oakton, Virginia 22185-0001

CF-W Network Inc.  
Mr. James S. Quarforth  
Chairman and CEO  
P. O. Box 1990  
Waynesboro, Virginia 22980-1990

Central Telephone Company of Virginia  
Mr. James W. Spradlin, III  
Government & Industry Relations  
1108 East Main Street, Suite 1200  
Richmond, Virginia 23219-3535

Citizens Telephone Cooperative  
Mr. James R. Newell, Manager  
Oxford Street  
P.O. Box 137  
Floyd, Virginia 24091

GTE South, Inc.  
Mr. Stephen Spencer  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219

# State Corporation Commission

Richmond, Virginia 23219-4074

Virginia WorldCom, Inc.  
Brian K. Sulmonetti, Director  
Regulatory Affairs - Virginia  
1515 South Federal Highway, Suite 400  
Boca Raton, Florida 33432

## 20 VAC 5-400-190. Virginia State Corporation Commission Procedural Rules for Implementing §§ 251 and 252 of the Telecommunications Act of 1996, Public Law No. 104-104.

### A. Preliminary matters.

1. Any reference in these procedural rules to "interested parties" shall initially refer to the service list attached to the Order Prescribing Notice and Inviting Comments entered in this case, PUC960059. Any other person or entity who wishes to be included on this service list as an "interested party" under this section may file such a request with the Clerk of the State Corporation Commission ("commission"). A master list shall be kept by the Clerk of the Commission and shall be updated as necessary. Any reference in this section to service upon interested parties shall subsequently mean service on all parties included on this master service list as updated by the Clerk's Office.

2. An interconnection agreement which has issues resolved through negotiations, as well as one or more unresolved issue or issues which need to be decided by the commission through arbitration, will be handled as one proceeding through the arbitration procedure set out in subsection C of this section. The resolved portions of the agreement shall be reviewed under § 252(e)(2)(A) of the Telecommunications Act of 1996, Public Law No. 104-104 ("the Act"), and arbitrated portions of the agreement shall be reviewed under § 252(e)(2)(B) of the Act.

3. The commission may deviate from the provisions of this section as it deems necessary to fulfill its obligations under the Act.

4. The filing of an arbitration request shall not preclude the parties from continuing negotiations on unresolved issues. Those issues that are resolved after an arbitration request has been filed with the commission shall be considered negotiated provisions, subject to appropriate notice and comment deadlines under the proposed arbitration procedures.

5. Requests for mediation under § 252(a)(2) of the Act shall be treated as an informal proceeding under Practice and Procedure Rule 5:4 (5 VAC 5-10-300) of the State Corporation Commission Rules of Practice and Procedure (5 VAC 5-10-10 et seq.).

6. To the extent there is conflict between this section and the commission's Rules of Practice and Procedure (hereinafter referred to as "Practice and Procedure Rules"), this section shall control.

7. No provision of this section shall interfere with the commission's power to direct a hearing examiner to

consider any issue or issues which arise during these proceedings.

8. The provisions of this section which require the filing of supporting documentation or testimony shall require strict compliance. Failure to file supporting documentation or testimony as required by this section may result in denial of the relief sought by the party failing to comply, or in a decision adverse to that party's position on the merits.

B. Agreements arrived at through negotiation. The following procedure shall be followed when parties who have negotiated and entered into a binding agreement for interconnection, services, or network elements under § 252(a)(1) of the Act submit their voluntarily negotiated agreement for review by the commission under § 252(e) of the Act:

1. The parties shall file the agreement, along with all supporting documentation, with the Clerk of the Commission and on or before that same day, shall serve a notice of filing which describes the terms and conditions of the agreement or a copy of the negotiated agreement itself, on all interested parties and the commission staff, in accordance with Practice and Procedure Rule 5:13 (5 VAC 5-10-390). If an interested party specifically requests a copy of the negotiated agreement, the parties shall serve a copy of the agreement on the party making the request.

2. Within 21 days of the filing of the negotiated agreement, any interested party may submit comments regarding the agreement. Such comments shall include all supporting documentation. The comments shall be limited to the criteria for review under § 252(e)(2)(A) of the Act. Any request for hearing must be filed with the comments. Absent a showing of good cause for a hearing, the commission may review the negotiated agreement without a hearing. Any interested party filing comments or requests for hearing, or both, shall, on or before the date of filing of such comments or request, serve a copy on the parties to the negotiation and the commission staff in accordance with Practice and Procedure Rule 5:13 (5 VAC 5-10-390). Upon the request of any other interested party, an interested party shall promptly serve a copy of its comments or request for hearing, or both, on the interested party making the request.

3. After the deadline for comments or requests for hearing, the service list for the case shall be limited to the parties to the negotiations, the commission staff and any interested parties filing comments or requests for hearing, or both (hereinafter referred to as "modified service list").

4. Within 35 days of the filing of the negotiated agreement, the parties to the negotiated agreement may file a response to any comments filed. Such a response shall include all supporting documentation, and shall be served on the modified service list and the commission staff, on or before the filing date, in accordance with Practice and Procedure Rule 5:13 (5 VAC 5-10-390).

C. Agreements arrived at through compulsory arbitration. The following procedure shall be followed when a party petitions the commission to arbitrate any unresolved issues under § 252(b) of the Act:

1. Any party to a negotiation may petition ("petitioning party") the commission to arbitrate any unresolved issue in accordance with the deadlines set out in § 252(b)(1) of the Act. The arbitration request shall be filed as a petition including all supporting documentation and will conform with § 252(b)(2) of the Act. The petitioning party shall file any request for hearing along with its direct testimony, if a hearing is requested. In addition to its obligation to serve a copy of the petition on the other party or parties to the negotiation, the petitioning party shall serve a notice of filing which describes the contents of the arbitration petition or a copy of the petition itself on all interested parties and the commission staff, on or before the same day it is filed with the commission, in accordance with Practice and Procedure Rule 5:13 (5 VAC 5-10-390). If an interested party specifically requests a copy of the petition, the petitioning party shall serve a copy of the petition on the party making the request.

2. Within 25 days after the petition requesting arbitration is filed with the commission, the nonpetitioning party to the negotiation ("responding party") may file a response and any additional information as provided under § 252(b)(3) of the Act. In addition, if a request for hearing was filed by the petitioning party, the responding party shall file its prefiled direct testimony with its response. If no request for hearing was filed by the petitioning party, the responding party may file a request for hearing along with any prefiled direct testimony with its response. The responding party shall file any supporting documentation and shall serve the response on the petitioning party and commission staff, and shall serve a notice of filing which describes the contents of the response or a copy of the response itself on all interested parties, on or before the date the response is filed with the commission, in accordance with Practice and Procedure Rule 5:13 (5 VAC 5-10-390). If an interested party specifically requests a copy of the response, the responding party shall serve a copy of the response on the party making the request.

3. Comments on the petition and response may be filed no more than 21 days after the response is filed with the commission. Comments relating to unresolved issues in the petition shall be limited to the standards for reviewing arbitrated agreements under §§ 252(c) and 252(e)(2)(B) of the Act. Comments relating to the issues resolved in the negotiation which is the subject of the arbitration petition shall be limited to the standards for reviewing negotiated agreements under § 252(e)(2)(A) of the Act. Comments shall include all supporting documentation. If no hearing request has been filed, an interested party may request a hearing in its comments. The commission will grant the hearing request of an interested party only if good cause is shown. Any interested party filing comments shall, on or before the day of the filing, serve a copy of the comments on the petitioning and

responding parties and the commission staff in accordance with Practice and Procedure Rule 5:13 (5 VAC 5-10-390). Upon the request of any other interested party, an interested party filing comments or a request for hearing, or both, shall promptly serve a copy of the comments or request on the interested party making the request. If a hearing request has been filed by either the petitioning or responding party, any interested party wishing to participate in the hearing shall file its prefiled direct testimony with its comments. In addition, if the responding party filed a hearing request, the petitioning party's prefiled direct testimony shall be due simultaneously with the deadline for comments of interested parties. If no timely request for hearing is received, the commission may arbitrate the unresolved issues and review the resolved issues without a hearing.

4. After the deadline for comments or requests for hearing, the service list for the case shall be the modified service list, limited to the parties to the arbitration petition, the commission staff and any interested parties filing comments or requests for hearing, or both.

5. If neither the petitioning nor responding party has requested a hearing, but an interested party requests a hearing, the commission shall determine the schedule of prefiled direct testimony by commission order.

6. On or before the ninth month after the interconnection request was received by the incumbent local exchange company, the commission shall issue its decision resolving the unresolved issues. In its order, the commission shall provide a deadline for the parties to the negotiation to provide the commission with a formalized agreement.

7. The parties shall submit the formalized agreement as an agreement adopted by arbitration for commission review under § 252(e) of the Act, in compliance with the deadlines set by the commission. On or before submission of the formalized agreement, the parties will serve a copy of the agreement on the parties on the modified service list, and the commission staff, in accordance with Practice and Procedure Rule 5:13 (5 VAC 5-10-390).

8. Within 10 days after the formalized agreement is filed with the commission, any interested party may file comments on the agreement. Such comments shall be limited to the grounds for rejection as listed in § 252(e)(2) of the Act and shall include all supporting documentation. Simultaneously with their filing, comments shall be served on the parties to the agreement, the commission staff, and the parties on the modified service list, in accordance with Practice and Procedure Rule 5:13 (5 VAC 5-10-390).

D. Statement of generally available terms. The following procedure shall be followed when a Bell Operating Company ("BOC") files a statement of generally available terms and conditions:

1. The BOC shall on or before the day the statement is filed with the Clerk of the Commission, serve a notice of filing which generally describes the terms and conditions

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## State Corporation Commission

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of the statement or a copy of the statement itself on all interested parties in accordance with Practice and Procedure Rule 5:13 (5 VAC 5-10-390). If an interested party specifically requests a copy of the statement, the BOC shall serve a copy of the statement on the party making the request. The BOC shall, on or before the date of filing, serve a copy of the statement on the commission staff in accordance with Practice and Procedure Rule 5:13 (5 VAC 5-10-390). The filing shall include a detailed explanation of how the statement complies with § 251 and its implementing regulations, and § 252(d) of the Act, and shall include all supporting documentation.

2. Comments may be filed within 21 days of the filing of the statement. Comments shall be limited to whether the statement complies with § 251 and its implementing regulations, and § 252(d) of the Act, and shall include all supporting documentation. Any request for hearing shall be filed with the comments. The commission will grant a hearing request only if good cause is shown. Comments or requests for hearing, or both, shall, on or before the date of filing, be served upon the BOC and the commission staff in accordance with Practice and Procedure Rule 5:13 (5 VAC 5-10-390). Upon the request of any other interested party, an interested party shall serve a copy of its comments or request for hearing, or both, on the interested party making the request.

3. After the deadline for comments or requests for hearing has passed, the service list for the case shall be the modified service list, limited to the BOC, the commission staff, and any interested parties filing comments or requests for hearing, or both.

VA.R. Doc. No. R96-381; Filed May 22, 1996, 9:33 a.m.

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# GOVERNOR

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## GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

### STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Title of Regulation: 8 VAC 40-30-10 et seq. Regulations  
Governing the Approval of Certain Institutions to Confer  
Degrees, Diplomas, and Certificates.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen

Governor

Date: May 7, 1996

VA.R. Doc. No. R96-371; Filed May 17, 1996, 9:40 a.m.

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# GENERAL NOTICES/ERRATA

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## Symbol Key

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

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### DEPARTMENT OF CRIMINAL JUSTICE SERVICES

#### † Notice of Application for Grant Funds: Prerelease and Post Incarceration Services for Adult Offenders

The Department of Criminal Justice Services is accepting applications for grant funds for prerelease and post incarceration services for adult offenders (generally known as Papis Funds). The deadline for application is 3 p.m., Wednesday, July 10, 1996. Program guides and applications may be obtained by contacting David Vest, Program Analyst, Department of Criminal Justice Services, telephone (804) 786-1138, or FAX (804) 786-9656. Any public or nonprofit private Papis Program provider is invited to make application.

### DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSERVATION AND RECREATION

#### † Total Maximum Daily Load (TMDL) Priority List

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written comment from interested persons on Virginia's 1996 303(d) Total Maximum Daily Load (TMDL) Priority List. This report identifies rivers and streams that do not meet water quality standards, waters not expected to meet water quality standards after the implementation of technology-based controls, and tributaries to the Chesapeake Bay for which Virginia is developing nutrient reduction strategies. Pollutants responsible for the waters being on the list are identified and the waters have been given a priority ranking for the development of TMDLs.

DEQ monitored about 25,559 stream miles of Virginia's 49,220 perennial stream miles in 1993-95 to conduct this statewide assessment, which is required every two years by the federal Clean Water Act. Approximately 24,123 stream miles, or 95%, fully met all water quality standards. About 1,436 stream miles are identified as not meeting water quality standards because of point and nonpoint source pollutants.

Section 303(d) of the Clean Water Act and EPA's Water Quality Planning and Management Regulations (40 CFR Part 130) require the state to report and seek public comment on the waters on the list and to develop total maximum daily loads (TMDLs) for these waters. TMDLs establish allowable pollution loadings or other quantifiable parameters necessary to attain water quality standards. TMDLs will be developed in a separate process with public participation.

DEQ and DCR will hold three public meetings to answer questions about the list. They will be held on June 17, 1996, at the James City County Board of Supervisors Room at 1:30 p.m. for the Piedmont and Tidewater regions; June 20, 1996,

at the Prince William Board of Supervisors Meeting Room at 1:30 p.m. for the Northern Virginia region; and June 25, 1996, at the City of Salem's Civic Center in Meeting Room A at 2 p.m. for the Southwest, West Central, and Valley regions.

A copy of the 303(d) priority list report is available upon request. Questions or information requests should be addressed to Charles Martin, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4462 or FAX (804) 698-4136. The public comment period will end on July 10, 1996. Written comments should include the name, address, and telephone number of the person presenting comments and should be sent to Charles Martin at the above address.

### DEPARTMENT OF HEALTH (STATE BOARD OF)

#### Maternal and Child Health Block Grant Application Fiscal Year 1997

The Virginia Department of Health will transmit to the federal Secretary of Health and Human Services by July 15, 1996, the Maternal and Child Health Services Block Grant Application for the period October 1, 1996, through September 30, 1997, in order to be entitled to receive payments for the purpose of providing maternal and child health services on a statewide basis. These services include:

- Preventive and primary care services for pregnant women, mothers and infants up to age one
- Preventive and primary care services for children and adolescents
- Family-centered, community-based coordinated care and the development of community-based systems of services for children with special health care needs

The Maternal and Child Health Services Block Grant Application makes assurance to the Secretary of Health and Human Services that the Virginia Department of Health will adhere to all the requirements of § 505, Title V, Maternal and Child Health Services Block Grant of the Social Security Act, as amended. To facilitate public comment, this notice is to announce a period from May 20 through June 19, 1996, for review and public comment on the block grant application. Copies of the document will be available as of May 20, 1996, in the office of the director of each county and city health department. Individual copies of the document may be obtained by contacting Janice M. Hicks at the address below. Written comments must be received by June 19, 1996, at the following address: Virginia Department of Health, Office of Family Health Services, 1500 East Main Street, Room 104-B, Richmond, VA 23219-2448, telephone (804) 371-0478 or FAX (804) 692-0184.

**VIRGINIA CODE COMMISSION**

**Notice to State Agencies**

**Mailing Address:** Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

**Forms for Filing Material on Dates for Publication in  
*The Virginia Register of Regulations***

All agencies are required to use the appropriate forms when furnishing material and dates for publication in *The Virginia Register of Regulations*. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

**FORMS:**

NOTICE of INTENDED REGULATORY ACTION - RR01  
NOTICE of COMMENT PERIOD - RR02  
PROPOSED (Transmittal Sheet) - RR03  
FINAL (Transmittal Sheet) - RR04  
EMERGENCY (Transmittal Sheet) - RR05  
NOTICE of MEETING - RR06  
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS -  
RR08

**ERRATA**

**DEPARTMENT OF SOCIAL SERVICES**

Title of Regulation: 22 VAC 40-35-5 et seq. The Virginia Independence Program.

Publication: 12:15 VA.R. 2009-2019 April 15, 1996.

Correction to Final Regulation:

Page 2011, column 2, 22 VAC 40-35-20 A, line 4, change "45 CFR 233.40 through 233.43" to "45 CFR 232.40 through 232.43"

# CALENDAR OF EVENTS

## Symbol Key

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

♿ Location accessible to handicapped

☎ Telecommunications Device for Deaf (TDD)/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.

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) 786-6530.

VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD FOR ACCOUNTANCY

† July 22, 1996 - 10 a.m. -- Open Meeting

† July 23, 1996 - 8 a.m. -- Open Meeting

Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿  
(Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and other matters requiring board action. The meeting will include receipt of committee reports and discussion of disciplinary cases. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Virginia State Apple Board

June 12, 1996 - 9 a.m. -- Open Meeting

Holiday Inn, 301 Foxcroft Avenue, Martinsburg, West Virginia. ♿

The board will discuss routine business including budget, tax collections, and the use of funds for FY 96-97. 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 accommodations in order to participate at the meeting should contact Nancy Israel at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Nancy Israel, Program Director, Virginia State Apple Board, 1100 Bank St., Suite 1008, Richmond, VA 23219, telephone (804) 371-6104.

#### Virginia Egg Board

† June 21, 1996 - 9 a.m. -- Open Meeting

Virginia Beach Resort Hotel and Conference Center, 2800 Shore Drive, Virginia Beach, Virginia. ♿

A meeting to review the promotional and educational programs of the Virginia Egg Council and make recommendations for future programming for 1996-97. The board will review the financial status of the FY 1995-96 financial report. Other items for discussion include quarterly reporting for egg handlers, increasing revenues, investigation of new research projects, partnership programming, and meeting dates and places. 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 accommodations in order to participate at the meeting should contact Cecilia Glembocki at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Cecilia Glembocki, Executive Director, Virginia Egg Board, 911 Saddleback Court, McLean, VA 22102, telephone (703) 790-1984, FAX (703) 821-1748, or toll-free 1-800-779-7759.

#### Virginia Marine Products Board

† July 10, 1996 - 6 p.m. -- Open Meeting

Bill's Seafood House, Route 17 and Denbigh Boulevard, Grafton, Virginia. ♿

A meeting to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business. 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 accommodations in order to participate at the meeting should contact Shirley Estes at

least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Boulevard, Suite B, Newport News, VA 23608, telephone (804) 874-3474 or FAX (804) 886-0671.

## Virginia Small Grains Board

**July 17, 1996 - 8:30 a.m.** -- Open Meeting  
Airport Hilton, 5501 Eubank Road, Sandston, Virginia. ♿

The board will meet in regular session to discuss issues related to the small grains industry and to hear project reports and proposals. 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 accommodations in order to participate at the meeting should contact Phil Hickman at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Phil Hickman, Program Director, Virginia Small Grains Board, 1100 Bank St., Suite 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

## Virginia Soybean Board

**August 2, 1996 - Noon** -- Open Meeting  
4899 White Marsh Road, Wakefield, Virginia. ♿

The board will meet in regular session to discuss issues related to the soybean industry and the status of the 1996 crop and how it will reflect checkoff collections for 1996. 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 accommodations in order to participate at the meeting should contact Phil Hickman at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Phil Hickman, Program Director, Virginia Small Grains Board, 1100 Bank St., Suite 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

## Virginia Winegrowers Advisory Board

**July 25, 1996 - 10 a.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ♿

An annual meeting to induct new board members and elect officers for the upcoming year. 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 accommodations in order to participate at the meeting should contact Mary E. Davis-Barton at least 10 days before the meeting date so that suitable arrangements can be made.

**Contact:** Mary E. Davis-Barton, Secretary, Virginia Winegrowers Advisory Board, 1100 Bank St., Room 1010, Richmond, VA 23219, telephone (804) 786-0481.

## STATE AIR POLLUTION CONTROL BOARD

**June 14, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-80-50 et seq. Part II: Federal Operating Permits and Permit Program Fees for Stationary Sources (Rules 8-5 and 8-6.)**. The regulation amendments concern provisions covering federal operating permits for stationary sources and permit program fees for stationary sources and are summarized as follows: (1) source applicability has been cited directly to federal law; (2) a definition of "Title I modification" has been added; (3) the definition of state regulations considered federally enforceable has been clarified; (4) the fee calculation formula has been changed to specify a fee of \$25; and (5) certain provisions pertaining to insignificant activities have been modified.

**Request for Comments:** The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

**Localities Affected:** There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

**Location of Proposal:** The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
Executive Office Park, Suite D  
5338 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 561-7000

Lynchburg Satellite Office  
Department of Environmental Quality  
7701-03 Timberlake Road  
Lynchburg, Virginia

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## Calendar of Events

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Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
116 North Main Street  
Bridgewater, Virginia 22812  
Ph: (540) 828-2595

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Innsbrook Corporate Center  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
Old Greenbrier Village, Suite A  
2010 Old Greenbrier Road  
Chesapeake, Virginia  
Ph: (804) 424-6707

Springfield Satellite Office  
Department of Environmental Quality  
Springfield Corporate Center, Suite 310  
6225 Brandon Avenue  
Springfield, Virginia  
Ph: (703) 644-0311

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. June 14, 1996, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Dr. Kathleen Sands, Policy Analyst, Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413.

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**June 28, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-20-10 et seq. General Provisions; and 9 VAC 5-80-360 et seq. Article 3, Acid Rain Operating Permits (Rule 8-7)**. The proposed regulation establishes an acid rain operating permit program that has as its goal the issuance of comprehensive permits which will specify for the permit holder, the department and the public all applicable state and federal requirements for pertinent emissions units in the facility covered. The result should be a permit that clearly states the air program requirements for the permit holder and provides a mechanism for the department to use in enforcing the regulations.

**Request for Comments:** The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

**Localities Affected:** There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

**Location of Proposal:** The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Office of Air Program Development, Department of Environmental Quality (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
Executive Office Park, Suite D  
5338 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 561-7000

Lynchburg Satellite Office  
Department of Environmental Quality  
7701-03 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
116 North Main Street  
Bridgewater, Virginia 22812  
Ph: (540) 828-2595

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Innsbrook Corporate Center  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
Old Greenbrier Village, Suite A  
2010 Old Greenbrier Road  
Chesapeake, Virginia

Ph: (804) 424-6707

Springfield Satellite Office  
Department of Environmental Quality  
Springfield Corporate Center, Suite 310  
6225 Brandon Avenue  
Springfield, Virginia  
Ph: (703) 644-0311

Statutory Authority: § 10.1-1308 of the Code of Virginia.

**Contact:** Robert A. Mann, Office Director, Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4419.

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† **July 23, 1996 - 10 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
First Floor, Training Room, Richmond, Virginia.

**August 9, 1996** -- Public comments may be submitted until  
4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-20-10 et seq., General Provisions and 9 VAC 5-80-10 et seq., Permits for New and Modified Sources.** The amendments concern provisions covering prevention of significant deterioration and include: (i) revision of the maximum allowable increases for particulate matter from being based on total suspended particulate to being based on particulate with an aerodynamic diameter of less than or equal to 10 micrometers; (ii) revision of the "Guideline on Air Quality Models"; (iii) exclusion of certain pollutants when determining whether an emissions increase is considered significant; and (iv) updating the notification process to comply with the Code of Virginia and changing the regulation's internal numbering system to reflect requirements of the Registrar of Regulations.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Department's Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
Executive Office Park, Suite D  
5338 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 561-7000

Lynchburg Satellite Office  
Department of Environmental Quality  
7701-03 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
116 North Main Street  
Bridgewater, Virginia 22812  
Ph: (540) 828-2595

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Innsbrook Corporate Center  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
Old Greenbrier Village, Suite A  
2010 Old Greenbrier Road  
Chesapeake, Virginia  
Ph: (804) 424-6707

Springfield Satellite Office  
Department of Environmental Quality  
Springfield Corporate Center, Suite 310  
6225 Brandon Avenue  
Springfield, Virginia  
Ph: (703) 644-0311

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. August 9, 1996, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Karen Sabasteanski, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426.

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# Calendar of Events

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## ALCOHOLIC BEVERAGE CONTROL BOARD

**June 10, 1996 - 9:30 a.m.** -- Open Meeting  
**June 24, 1996 - 9:30 a.m.** -- Open Meeting  
**July 29, 1996 - 9:30 a.m.** -- Open Meeting  
**August 12, 1996 - 9:30 a.m.** -- Open Meeting  
**August 26, 1996 - 9:30 a.m.** -- Open Meeting  
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports from and activities of staff members. Other matters have not yet been determined.

**Contact:** W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0712 or FAX (804) 367-1802.

## BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

**June 21, 1996 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

## Board for Interior Designers

**June 14, 1996 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

## Board for Landscape Architects

**June 13, 1996 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

## VIRGINIA AVIATION BOARD

**June 18, 1996 - 3 p.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A workshop for the board. No formal actions will be taken. Individuals requiring special accommodations or interpreter services should contact Cindy Waddell 10 days prior to the meeting so that suitable arrangements can be made.

**Contact:** Cindy Waddell, Department of Aviation, 5702 Gulfstream Rd., Sandston, VA 23150, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

**June 19, 1996 - 9 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular bimonthly meeting of the board. Applications for state funding will be presented to the board and other matters of interest to the Virginia aviation community will be discussed. Individuals requiring special accommodations or interpreter services should contact Cindy Waddell 10 days prior to the meeting so that suitable arrangements can be made.

**Contact:** Cindy Waddell, Department of Aviation, 5702 Gulfstream Rd., Sandston, VA 23150, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **June 24, 1996 - 10 a.m.** -- Open Meeting  
KoKoamos, 2600 Marina Shores, Virginia Beach, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct general board business including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the

meeting. A tentative agenda will be available by June 7, 1996, from the Chesapeake Bay Local Assistance Department.

**Contact:** Florence E. J. Dickerson, Program Support Technician, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD ☎

## CHILD DAY-CARE COUNCIL

† **June 12, 1996 - 9:30 a.m.** -- Open Meeting  
Department of Social Services, Theater Row Building, 730 East Broad Street, 7th Floor Conference Room, Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

The Child Day-Care Council Committee B will meet to discuss issues and concerns that impact child day centers, camps, school-age programs, and preschool/nursery schools. Please call ahead of time for possible changes in meeting time.

**Contact:** Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-1775.

† **June 13, 1996 - 9:30 a.m.** -- Open Meeting

† **July 11, 1996 - 9:30 a.m.** -- Open Meeting

† **August 8, 1996 - 9:30 a.m.** -- Open Meeting  
Department of Social Services, Theater Row Building, 730 East Broad Street, Lower Level Conference Room, Room 1, Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

The council will meet to discuss issues and concerns that impact child day centers, camps, school-age programs, and preschool/nursery schools. Public comment period will be at noon. Please call ahead of time for possible changes in meeting time.

**Contact:** Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-1775.

## COUNCIL ON CHILD DAY CARE AND EARLY CHILDHOOD PROGRAMS

**June 10, 1996 - 10 a.m.** -- Public Hearing  
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia ☎

In accordance with 42 USC § 9858b, the council will conduct a public hearing to provide the public an opportunity to comment on the provision of child care services under the Child Care Development Block Grant proposed state plan for FY 1996. Copies of the proposed plan may be obtained by contacting the council.

**Contact:** Vaughn Murphy, Policy Analyst, Council on Child Day Care and Early Childhood Programs, 730 E. Broad St., 9th Floor, Richmond, VA 23219, telephone (804) 371-8603 or FAX (804) 371-6570.

## VIRGINIA STATE CHILD FATALITY REVIEW TEAM

**June 28, 1996 - 10 a.m.** -- Open Meeting  
State Corporation Commission Building, 1300 East Main Street, 3rd Floor Conference Room, Richmond, Virginia ☎

A meeting to (i) discuss the status of funding and recent legislative actions; (ii) update the status of educational endeavors; and (iii) receive preliminary data on one class of violent deaths of children that will be studied this year. The second part of this meeting will be closed for specific case discussion.

**Contact:** Marcella F. Fierro, M.D., Chief Medical Examiner, 9 N. 14th St., Richmond, VA 23219, telephone (804) 786-1033, FAX (804) 371-8595, or toll-free 1-800-447-1706.

## STATE BOARD FOR COMMUNITY COLLEGES

† **July 17, 1996 - 2:30 p.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

State board committee meetings.

**Contact:** Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, or (804) 371-8504/TDD ☎

† **July 18, 1996 - 8:30 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

A regularly scheduled board meeting.

**Contact:** Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, or (804) 371-8504/TDD ☎

## COMPREHENSIVE SERVICES ACT FOR AT RISK YOUTH AND THEIR FAMILIES

### State Management Team

† **July 11, 1996 - 10 a.m.** -- Open Meeting  
Galax, Virginia ☎

A meeting to discuss policy and procedure to be recommended and discussed with the State Executive Council. Please contact Pamela Fitzgerald Cooper or Gloria Jarrell to be added to the agenda and for meeting location.

**Contact:** Gloria Jarrell or Pamela Fitzgerald Cooper, Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 109 Governor St., Richmond, VA 23219, telephone (804) 371-2177 or FAX (804) 371-0091.

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# Calendar of Events

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## State Executive Council

† July 26, 1996 - 9 a.m. -- Open Meeting  
Department of Social Services, 730 East Broad Street, Lower Level, Room 2, Richmond, Virginia.

The council provides interagency programmatic and fiscal policies, oversees the administration of funds appropriated under the Comprehensive Services Act, and advises the Governor.

**Contact:** Alan G. Saunders, Director, State Executive Council, 730 E. Broad St., Richmond, VA 23219, telephone (804) 786-5382.

## DEPARTMENT OF CONSERVATION AND RECREATION

### Board on Conservation and Development of Public Beaches

June 10, 1996 - 10 a.m. -- Open Meeting  
Virginia Marine Resources Commission, 2600 Washington Avenue, Meeting Room, Newport News, Virginia. ☎

A meeting to discuss proposals from localities requesting matching grant funds from the board.

**Contact:** Carlton Lee Hill, Chief Shoreline Engineer, Department of Conservation and Recreation, Division of Soil and Water Conservation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3998.

### Board of Conservation and Recreation

† June 25, 1996 - 2:30 p.m. -- Open Meeting  
New River Trails State Park Office, New River Trail State Park, Wythe County, Virginia. ☎ (access by I-77 at Poplar Camp exit. Take Route 52 North and West to Route 608, turn north on Route 608 and follow to the Foster Falls Crossing of the New River Trail (as abandoned North and Western Railroad)).

A regular business meeting.

**Contact:** Leon E. App, Conservation and Development Programs, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141, or (804) 786-2121/TDD ☎

## BOARD FOR CONTRACTORS

### Recovery Fund Committee

June 11, 1996 - 9 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the

discussion may be conducted in Executive Session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Holly Erickson. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

**Contact:** Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-8561.

## BOARD OF CORRECTIONAL EDUCATION

June 21, 1996 - 10 a.m. -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia.

A monthly meeting to discuss general business.

**Contact:** Patty Ennis, Board Clerk, Board of Correctional Education, James Monroe Bldg., 101 N. 14th Street, Richmond, VA 23219, telephone (804) 225-3314.

## BOARD OF CORRECTIONS

† June 19, 1996 - 10 a.m. -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss matters which may be presented to the board.

**Contact:** Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

### Administration Committee

† June 19, 1996 - 8:30 a.m. -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss administration matters which may be presented to the full board.

**Contact:** Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

### Correctional Services Committee

† June 18, 1996 - 10 a.m. -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss correctional services matters which may be presented to the full board.

**Contact:** Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

## Liaison Committee

† **June 20, 1996 - 9:30 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room,  
Richmond, Virginia. ☎

A meeting to discuss criminal justice matters.

**Contact:** Barbara Fellows, Secretary to the Board,  
Department of Corrections, 6900 Atmore Dr., Richmond, VA  
23225, telephone (804) 674-3235 or FAX (804) 674-3130.

## BOARD OF DENTISTRY

**June 14, 1996 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf  
provided upon request)

The informal conference committee will hold informal  
conferences from 9 a.m. to 1 p.m. with a formal hearing  
to follow at 1 p.m. This is a public meeting; however, no  
public comment will be taken.

**Contact:** Marcia J. Miller, Executive Director, Board of  
Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA  
23230-1717, telephone (804) 662-9906 or (804) 662-  
7197/TDD ☎

† **June 20, 1996 - 11 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 1, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

A contract committee meeting to discuss the current  
examination contract due to expire December 30, 1996.  
This is a public meeting; however, no public comment  
will be taken.

**Contact:** Marcia J. Miller, Executive Director, Board of  
Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA  
23230-1717, telephone (804) 662-9906 or (804) 662-  
7197/TDD ☎

† **June 20, 1996 - 2 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 1, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

A meeting of the Advertising Committee to conduct  
informal conferences. This is a public meeting; however,  
no public comment will be taken.

**Contact:** Marcia J. Miller, Executive Director, Board of  
Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA  
23230-1717, telephone (804) 662-9906 or (804) 662-  
7197/TDD ☎

**June 21, 1996 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 4, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

The informal conference committee will hold informal  
conferences. This is a public meeting; however, no  
public comment will be taken.

**Contact:** Marcia J. Miller, Executive Director, Board of  
Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA  
23230-1717, telephone (804) 662-9906 or (804) 662-  
7197/TDD ☎

† **June 21, 1996 - 3 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 4, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

A meeting of the Continuing Education Committee to  
discuss approving courses, disciplinary action for  
licensees who have not met renewal requirements and  
CE audits. This is a public meeting; however, no public  
comment will be taken.

**Contact:** Marcia J. Miller, Executive Director, Board of  
Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA  
23230-1717, telephone (804) 662-9906 or (804) 662-  
7197/TDD ☎

## VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

### Board of Directors

**June 11, 1996 - 2 p.m.** -- Open Meeting  
Riverfront Plaza, West Tower, 901 East Byrd Street, 19th  
Floor Boardroom, Richmond, Virginia. ☎ (Interpreter for the  
deaf provided upon request)

A regular quarterly meeting to discuss the  
implementation of certain policies and procedures in  
preparation for the start up of the partnership as an  
agency on July 1, 1996.

**Contact:** Julie Gibbons, Executive Assistant, Virginia  
Economic Development Partnership, 901 E. Byrd St., 19th  
Floor, Richmond, VA 23219, telephone (804) 371-8100 or  
FAX (804) 371-8112.

## LOCAL EMERGENCY PLANNING COMMITTEE - ARLINGTON COUNTY/CITY OF FALLS CHURCH/WASHINGTON NATIONAL AIRPORT

**June 11, 1996 - 5:30 p.m.** -- Open Meeting  
Arlington County Fire Station #1, 500 South Glebe Road,  
Training Room, Arlington, Virginia. ☎ (Interpreter for the deaf  
provided upon request)

A regular meeting of the planning committee to take  
public comments on the Hazardous Materials Response  
Plan. For more information contact Captain Michael  
Kilby.

**Contact:** Captain Michael Kilby, Arlington County Hazardous  
Materials Coordinator, 1020 N. Hudson St., Arlington, VA  
22201, telephone (703) 358-4652 or (703) 358-4644, FAX  
(703) 358-4655, or (703) 662-5645/TDD ☎

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## Calendar of Events

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### LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF BRISTOL

† July 24, 1996 - 1 p.m. -- Open Meeting  
Main Fire Station, 211 Lee Street, Bristol, Virginia.

A meeting of local persons who have responsibilities under the emergency plan of the city. The meeting is open to other interested parties to exchange information about the needs of the city and to update the Emergency Operations Plan.

**Contact:** J. L. Myers, Lieutenant of Police, 415 Cumberland St., Bristol, VA 24201, telephone (804) 645-7407.

### LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF MONTGOMERY/TOWN OF BLACKSBURG

† June 20, 1996 - 3 p.m. -- Open Meeting  
Radford Army Ammunition Plant, Administration Building, Visitors Center, Radford, Virginia. ☒

A meeting to focus on updating the emergency plan document for Montgomery County and the town of Blacksburg.

**Contact:** Patrick Burton, New River Valley Planning District Commission, P.O. Box 3726, Radford, VA 24143, telephone (540) 639-9313.

### DEPARTMENT OF ENVIRONMENTAL QUALITY

June 13, 1996 - 9 a.m. -- Open Meeting  
J. Sargeant Reynolds Community College Corporate Center, 1630 East Parham Road, Auditorium, Richmond, Virginia.

A meeting of representatives of the Virginia Waste Management Board, State Air Pollution Control Board, and State Water Control Board. A public comment session will be held at 11 a.m. to receive comments from the public on the environment.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

### VIRGINIA FIRE SERVICES BOARD

† June 20, 1996 - 7 p.m. -- Public Hearing  
La Quinta Inn, 1014 Old Airport Road, I-81, Exit 7, Bristol, Virginia.

A public hearing to discuss fire training and policies. The meeting is open to the public for comments and input at the beginning of the session.

**Contact:** Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

† June 21, 1996 - 9 a.m. -- Open Meeting  
La Quinta Inn, 1014 Old Airport Road, I-81, Exit 7, Bristol, Virginia.

A business meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

**Contact:** Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

### Fire/EMS Education and Training Committee

† June 20, 1996 - 10:30 a.m. -- Open Meeting  
La Quinta Inn, 1014 Old Airport Road, I-81, Exit 7, Bristol, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

**Contact:** Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

### Fire Prevention and Control Committee

† June 20, 1996 - 8:30 a.m. -- Open Meeting  
La Quinta Inn, 1014 Old Airport Road, I-81, Exit 7, Bristol, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

**Contact:** Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

### Legislative/Liaison Committee

† June 20, 1996 - 2 p.m. -- Open Meeting  
La Quinta Inn, 1014 Old Airport Road, I-81, Exit 7, Bristol, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

**Contact:** Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

June 13, 1996 - 9 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☒

Informal conferences will be conducted. No public comment will be received.

**Contact:** Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th

Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

† July 1, 1996 - 9 a.m. -- Open Meeting  
Williamsburg Lodge, Room B, Williamsburg, Virginia. ☎

A general board meeting to discuss board business. Public comments will be received at the beginning of the meeting for 15 minutes. Formal hearings will follow the board meeting.

**Contact:** Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

## BOARD OF GAME AND INLAND FISHERIES

† July 18, 1996 - 9 a.m. -- Open Meeting  
† July 19, 1996 - 8 a.m. -- Open Meeting  
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board will meet and approve the department's 1996-1997 operating and capital budgets. The board will also adopt webless migratory game bird and September resident Canada goose seasons based on frameworks provided by the U.S. Fish and Wildlife Service. The board will also address amendments to regulations proposed at its April 25-26, 1996, board meeting pertaining to certain disabled hunters hunting with a crossbow during the special archery deer seasons on the private property of another with the written permission of the landowner, and will determine whether the proposed regulations will be adopted as final regulations. The board will solicit comments from the public during the public hearing portion of the meeting, at which time any interested citizen present shall be heard. The board reserves the right to expand or restrict the proposed regulation amendments, as necessary for the proper management of fish and wildlife resources. These changes may be more liberal than, or more stringent than, the regulations currently in effect, or the regulation amendments proposed at the April 25-26, 1996, meeting.

The board will also propose rule changes to expand the use of captive reared mallard ducks allowed on licensed shooting preserves.

In addition, general and administrative issues may be discussed by the board. The board may hold an executive session beginning at 9 a.m. on July 18, 1996, and chairmen of various board committees may request committee meetings in conjunction with this meeting or thereafter. If the board completes its entire agenda on July 18, it may not convene on July 19.

**Contact:** Phil Smith, Policy Analyst Senior, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

## DEPARTMENT OF HEALTH

### Biosolids Use Information Committee

June 12, 1996 - 1 p.m. -- Open Meeting  
UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. ☎

A meeting immediately following the 9 a.m. Regulations Advisory Committee meeting to discuss specific concerns relating to the land application and agricultural use of biosolids, including issues related to the final Biosolids Use Regulations recently adopted by the State Board of Health to regulate the land application, marketing, or distribution of biosolids.

**Contact:** C. M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

### Biosolids Use Regulations Advisory Committee

June 12, 1996 - 9 a.m. -- Open Meeting  
UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. ☎

A meeting to discuss issues concerning the implementation of the Biosolids Use Regulations involving land application, distribution, or marketing of biosolids.

**Contact:** C. M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 371-2891.

### Virginia HIV Prevention Community Planning Committee

July 19, 1996 - 8:30 a.m. -- Open Meeting  
Sheraton Inn-Richmond Airport, 4700 South Laburnum Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to continue HIV prevention community planning.

**Contact:** Elaine G. Martin, Coordinator, STD/AIDS Education, Information and Training, Bureau of STD/AIDS, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23218, telephone (804) 786-0877 or toll-free 1-800-536-4148.

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# Calendar of Events

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## BOARD OF HEALTH PROFESSIONS

### Compliance and Discipline Committee

**June 12, 1996 - 7:30 p.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 2, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

**June 13, 1996 - 7:30 p.m.** -- Public Hearing  
Hotel Roanoke, 110 Shenandoah Avenue, Pocahontas B  
Room, Roanoke, Virginia. ☎ (Interpreter for the deaf provided  
upon request)

A public hearing to receive comments regarding the  
issue of disclosure of disciplinary information against  
health care providers.

**Contact:** Carol Stamey, Administrative Assistant,  
Department of Health Professions, 6606 W. Broad St., 4th  
Floor, Richmond, VA 23230-1717, telephone (804) 662-9910  
or (804) 662-7197/TDD ☎

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

**June 28, 1996** -- Public comments may be submitted until  
this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of  
the Code of Virginia that the Virginia Health Services  
Cost Review Council intends to amend regulations  
entitled: **12 VAC 25-20-10 et seq. Rules and  
Regulations of the Virginia Health Services Cost  
Review Council.** The purpose of the proposed  
amendments is to eliminate requirements for nursing  
homes and hospitals to submit budget filings, for nursing  
homes to submit commercial diversification surveys, and  
for hospitals to submit quarterly filings to the Virginia  
Health Services Cost Review Council. A method for  
assessing fees, not related to budget filings, is provided.

Statutory Authority: §§ 9-158 and 9-160 of the Code of  
Virginia.

Public comments may be submitted until June 28, 1996, to  
Ann Y. McGee, Virginia Health Services Cost Review  
Council, 805 East Broad Street, Richmond, Virginia 23219.

**Contact:** Marsha Mucha, Executive Secretary Senior,  
Virginia Health Services Cost Review Council, 805 E. Broad  
St., 6th Floor, Richmond, VA 23219, telephone (804) 786-  
6371 or FAX (804) 371-0284.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

**July 15, 1996** -- Public comments may be submitted until this  
date.

Notice is hereby given in accordance with § 9-6.14:7.1 of  
the Code of Virginia that the State Council of Higher  
Education for Virginia intends to amend regulations  
entitled: **8 VAC 40-30-10 et seq. Regulations  
Governing the Approval of Certain Institutions to  
Confer Degrees, Diplomas and Certificates.** The  
purpose of the amendments is to address inefficiencies  
contained in current regulations, update regulations to  
reflect changing technologies, and address a gap in the  
state's quality assurance measures regarding the review  
and approval of certificate and diploma programs below  
the associate degree level. The proposed amendments  
will be beneficial to the public's welfare by reducing  
administrative burdens on institutions of higher education  
operating in Virginia while continuing to ensure that such  
institutions are offering quality degree programs.

Statutory Authority: § 23-268 of the Code of Virginia.

Public comments may be submitted until July 15, 1996, to M.  
Elizabeth Griffin, State Council of Higher Education for  
Virginia, James Monroe Building, 101 North 14th Street,  
Richmond, Virginia 23219.

**Contact:** Frances C. Bradford, Regulatory Coordinator,  
State Council of Higher Education for Virginia, James Monroe  
Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804)  
225-2137.

## VIRGINIA HIGHER EDUCATION TUITION TRUST FUND

**June 27, 1996 - 10 a.m.** -- Open Meeting

**July 25, 1996 - 10 a.m.** -- Open Meeting

**August 22, 1996 - 1 p.m.** -- Open Meeting

James Monroe Building, 101 North 14th Street, 3rd Floor,  
Richmond, Virginia. ☎

A regular meeting.

**Contact:** Diana F. Cantor, Executive Director, Virginia  
Higher Education Tuition Trust Fund, James Monroe  
Building, 101 N. 14th St., 3rd Floor, Richmond, VA 23219,  
telephone (804) 746-3634.

## BOARD OF HISTORIC RESOURCES AND STATE REVIEW BOARD

**June 19, 1996 - 10 a.m.** -- Open Meeting

Rouss City Hall, 15 North Cameron Street, Winchester,  
Virginia. ☎ (Interpreter for the deaf provided upon request)

A joint meeting to consider the following properties for  
listing on the Virginia Landmarks Register and for  
nomination to the National Register of Historic Places:

1. Longmarsh Rural Historic District, Clarke County
2. Bermuda Hundred National Archaeological and Historic District, Chesterfield Co.
3. Church Hill North Historic District, City of Richmond
4. Travis Lake Historic District, Caroline County
5. Camp A. A. Humphrey's Pump Station and Filter Building, Fairfax Co.
6. Clermont, Loudoun County
7. Liberty Church, Caroline County
8. Rose Hill Farm, Frederick County
9. U. S. Army Package Power Reactor, Fairfax County
10. Walker-Grant School, Fredericksburg
11. Wood Park, Orange County
12. Archaeological Sites in the John H. Kerr Dam Area, Mecklenburg County
13. Sculptures in the City of Charlottesville:
  - Lewis and Clark Sculpture
  - Robert E. Lee Sculpture
  - George Rogers Clark Sculpture
  - Thomas J. Jackson Sculpture
14. Bill's Diner, Town of Chatham, Pittsylvania County
15. Burnett's Diner, Town of Chatham, Pittsylvania County
16. Jones Farm, Lunenburg County
17. Longwood, Albemarle County
18. Riverview, James City County
19. Clark Royster House, Mecklenburg County
20. Sunnyside, Mecklenburg County
21. Waverly, Franklin County
22. Jacobs House (boundary change), City of Richmond
23. York Village (boundary change), York County

**Contact:** Kathleen Kilpatrick, Deputy Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-6181, FAX (804) 225-4261, or (804) 786-1934/TDD ☎

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**July 2, 1996 - 9 a.m.** -- Open Meeting  
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on emergency preparedness as required by SARA Title III.

**Contact:** Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

### State Building Code Technical Review Board

† **June 21, 1996 - 10 a.m.** -- Open Meeting  
The Jackson Center, 501 North Second Street, 1st Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board hears administrative appeals concerning building and fire codes and other regulations of the department. The board also issues interpretations and formalizes recommendations to the Board of Housing and Community Development concerning future changes to the regulations.

**Contact:** Vernon W. Hodge, Building Code Supervisor, State Building Code Office, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170 or (804) 371-7089/TDD ☎

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **June 18, 1996 - 11 a.m.** -- Open Meeting  
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☎

A regular meeting of the Board of Commissioners to review and, if appropriate, (i) approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

## STATEWIDE INDEPENDENT LIVING COUNCIL

**June 12, 1996 - 1 p.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☎

A regular business meeting of the council.

**Contact:** Jim Rothrock, Statewide Independent Living Council Staff, 1802 Marroit Rd., Richmond, VA 23229, telephone (804) 673-0119, FAX (804) 662-9040 or 1-800-552-5019/TDD ☎

## VIRGINIA INTERAGENCY COORDINATING COUNCIL

**June 12, 1996 - 9:30 a.m.** -- Open Meeting  
Henrico Area Mental Health and Mental Retardation Services, 10299 Woodman Road, Glen Allen, Virginia. ☎ (Interpreter for the deaf provided upon request)

A quarterly meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency for Part H (of IDEA), Early Intervention for Infants and Toddlers with Disabilities and their families. Discussion focuses on

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issues related to Virginia's implementation of the Part H program.

**Contact:** Richard B. Corbett, Part H Program Support, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-3710 or FAX (804) 371-7959.

### ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

**June 10, 1996 - 1 p.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

A regular meeting to discuss such matters as may be presented.

**Contact:** Adele MacLean, Secretary, Advisory Commission on Intergovernmental Relations, Eighth Street Office Bldg., Room 702, Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999, or (804) 786-1860/TDD ☎

### DEPARTMENT OF LABOR AND INDUSTRY

#### Migrant and Seasonal Farmworkers Board

**June 12, 1996 - 10 a.m.** -- Open Meeting  
State Capitol, House Room 1, Richmond, Virginia. ♿  
(Interpreter for the deaf provided upon request)

A regular meeting of the board.

**Contact:** Patti C. Bell, Staff Coordinator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 225-3083, FAX (804) 371-6524 or (804) 786-2376/TDD ☎

#### Safety and Health Codes Board

**June 17, 1996 - 10 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ♿

The tentative agenda items for consideration by the board include:

1. Miscellaneous minor and technical amendments to 29 CFR Parts 1901, 1902, 1910, 1915, 1926, 1928, 1950 and 1951.
2. Grain Handling Facilities Standard, General Industry, § 1910.272, VR 425-02-37.
3. Regulatory review.

**Contact:** John J. Crisanti, Policy Analyst, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2384, FAX (804) 786-8418 or (804) 786-2376/TDD ☎

### LIBRARY BOARD

**June 17, 1996 - Time to be announced** -- Open Meeting

**June 18, 1996 - Time to be announced** -- Open Meeting  
Location to be announced.

A meeting to discuss administrative matters of the board.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

### State Networking Users Advisory Board

**June 26, 1996 - 10 a.m.** -- Open Meeting  
Jefferson-Madison Regional Library, 201 East Market Street, Madison Room, 3rd Floor Conference Room, Charlottesville, Virginia. ♿

A meeting to discuss administrative matters.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

### COMMISSION ON LOCAL GOVERNMENT

† **July 8, 1996 - 10 a.m.** -- Open Meeting  
Richmond area; site to be determined.

A regular meeting of the commission to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., 805 E. Broad St., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999, or (804) 786-1860/TDD ☎

### MARINE RESOURCES COMMISSION

† **June 25, 1996 - 9:30 am.** -- Open Meeting  
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ♿ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to

promulgate regulations in the areas of marine environmental management and marine fishery management.

**Contact:** Sandra S. Schmidt, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646 or (804) 247-2292/TDD

## BOARD OF MEDICAL ASSISTANCE SERVICES

**June 18, 1996 - 10 a.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300 (Board Room), Richmond, Virginia.

A meeting to discuss medical assistance service and to take action on issues pertinent to the board.

**Contact:** Cynthia Klisz, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**August 9, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-95 through 12 VAC 30-80-310. Amount, Duration and Scope of Services, and 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates--Other Types of Care.** The purpose of this proposal is to promulgate regulations which would allow DMAS to require the use of prescription orders for certain over-the-counter (OTC) therapeutic products as a first approach to drug therapy where these products may be used in place of a more expensive legend-only drug. Payment for the more expensive legend drug would be denied, except in a few specified conditions, unless initial treatment was initiated using these less costly OTC drugs and the results of the OTC therapy were found to be unsatisfactory.

DMAS must implement cost-saving measures in its covered pharmacy services. Among these, enhancements to the Point-of-Service (POS) automated system related to the Prospective Drug Utilization Review (ProDUR) program have been identified as a priority. Additionally, DMAS must develop a Prior Authorization (PA) program. The two initiatives, in tandem, are well suited to implementation in the interest of economy and patient safety. This OTC program will enable the partial fulfillment of the required budget reduction.

Historically, the Joint Legislative Audit and Review Commission recommended, in 1993, that Medicaid cover OTC drugs. Also, in 1994, the American Medical Association adopted a policy which recommended to physicians that they adopt the practice of prescribing OTC medications to their patients.

As a result of the increased movement of drug products from prescription only (legend) to OTC status during recent years, a large number of effective drug products are available to the public in dosage forms/strengths previously obtainable only on prescription. These have been reviewed extensively by expert panels at the U.S. Food and Drug Administration (FDA) and deemed safe and effective. The increased efficacy and cost savings of using these products justifies the initiation of a program to enhance the pharmacy services by providing certain OTC drugs as therapeutic alternatives to costly legend products.

DMAS expects this proposed policy to have a positive impact on families because it recommends the expansion of covered pharmacy services to include certain OTC drugs which, at least for the noninstitutionalized population, have heretofore not been covered. This will alleviate some of this financial burden which has been borne by families.

These savings are a part of the savings which are required in Chapter 853, Item (E)(8), the 1995 Appropriations Act. This initiative should produce cost saving in individual patient care in the proposed categories. The extent will vary with the product category. Overall, the initiative should result in cost savings. While individual patient costs may decrease, the population served is composed of those having high utilization problems, such as ulcer patients and patients suffering with inflammatory diseases such as arthritis. Therefore, early intervention with these products in a larger population may result in a smaller decrease in expenditures than might otherwise be anticipated. However, cost savings in the program as a whole may be significant if this early intervention results in fewer serious complications and hospitalizations.

The numbers of prescribers and pharmacy providers should not be affected. The program will be implemented statewide and no negative impact is anticipated to providers. Recipients who may have been taking OTC products in the past with good success, will be allowed under this initiative to obtain those products by doctor's orders. This will result in a savings to the patient, who will now pay only the co-pay instead of full OTC price. Patient compliance should improve as a result, thereby decreasing the potential for additional, more costly therapies. The overall effect is expected to be cost savings to the public in the Medicaid program.

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

Public comments may be submitted until August 9, 1996, to David Shepherd, Pharmacy Services, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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### BOARD OF MEDICINE

**June 17, 1996 - 1 p.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Board Room 2, Richmond, Virginia. ☎

Pursuant to House Joint Resolution No. 68, a meeting to study the need for requiring continuous medical education for physicians of medicine and osteopathy with special emphasis on medical ethics. Written comment may be sent to the board before June 10, 1996.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

† **June 20, 1996 - 9:30 a.m.** -- Open Meeting

† **June 21, 1996 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Richmond, Virginia. ☎

The Formal Hearing Committee will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

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**June 28, 1996** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic.** The proposed amendment to 18 VAC 85-20-90 B permits the use of Schedule III and IV drugs in the treatment of obesity under specified conditions and a treatment plan.

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

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7423, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

### Informal Conference Committee

**June 26, 1996 - 10 a.m.** -- Open Meeting  
Roanoke Airport Marriott Hotel, 2801 Hershberger Road,  
Roanoke Virginia.

The Informal Conference Committee, composed of three members of the board, will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

### DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

#### Secretary of Health and Human Resources System Reform Task Force

† **June 11, 1996 - 1:30 p.m.** -- Open Meeting  
Henrico Government Eastern Center, Richmond, Virginia.

The task force will edit and refine preliminary pilot project proposals generated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS)/Community Services Board Technical Work Group. Final proposals will be delivered to the joint subcommittee established by House Joint Resolution No. 240 to study the publicly funded mental health system.

**Contact:** Cheryl Crawford, Administrative Staff Assistant, Department of Mental Health, Mental Retardation and Substance Services, P.O. Box 1797, Richmond, VA 23236, telephone (804) 786-5682 or FAX (804) 371-0091.

#### Office of Early Intervention for Infants and Toddlers with Disabilities and Their Families

† **July 9, 1996 - 4 p.m.** -- Open Meeting  
Henrico Area Mental Health and Mental Retardation Services,  
10299 Woodman Road, Glen Allen, Virginia. ☎ (Interpreter for  
the deaf provided upon request)

The Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services announces public hearings and is accepting public comment on Virginia's Ninth Year Grant Application (3-year application) to the U. S. Department of Education, Office of Special Education, Part H Early Intervention for Infants and Toddlers with Disabilities Program. Call the department by June 28, 1996, if you wish to speak at the

Richmond public hearing. Interpreters for persons with hearing impairments will be provided based on calls received by June 28, 1996. Written testimony will be accepted until August 15, 1996. Please submit to the Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 10th Floor, P.O. Box 1797, Richmond, VA 23218-1797. Copies of the application will be located at community services boards for review.

**Contact:** Richard Corbett, Part H Program Support, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 10th Floor, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-3710 or FAX (804) 371-7959.

† **July 9, 1996 - 4 p.m.** -- Open Meeting  
New River Community College, Godbey Board Room, Dublin, Virginia. (Interpreter for the deaf provided upon request)

The Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services announces public hearings and is accepting public comment on Virginia's Ninth Year Grant Application (3-year application) to the U. S. Department of Education, Office of Special Education, Part H Early Intervention for Infants and Toddlers with Disabilities Program. Call Bev Crouse at (540) 231-6208 by June 28, 1996, if you wish to speak at the New River Valley public hearing. Interpreters for persons with hearing impairments will be provided based on calls received by June 28, 1996. Written testimony will be accepted until August 15, 1996. Please submit to the Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 10th Floor, P.O. Box 1797, Richmond, VA 23218-1797. Copies of the application will be located at community services boards for review.

**Contact:** Richard Corbett, Part H Program Support, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 10th Floor, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-3710 or FAX (804) 371-7959.

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

† **June 25, 1996 (time to be determined)** -- Open Meeting  
† **June 26, 1996 (time to be determined)** -- Open Meeting  
Wytheville, Virginia. (Location to be determined)

A regular meeting of the board to discuss business and promulgate policy and regulations. The agenda will include a public comment period at the beginning of the meeting. The agenda will be available one week in advance of the meeting.

**Contact:** Jane V. Helfrich, Board Administrator Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-7945 or toll-free 1-800-451-5544.

## VIRGINIA MUSEUM OF FINE ARTS

### Board of Trustees

**July 1, 1996 - 8 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Director's Office, Richmond, Virginia.

A meeting of the officers of the board to review with the director current and upcoming museum activities. Public comment will not be received at the meeting.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

**June 11, 1996 - 12:30 p.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia.

The first meeting of the newly established Communications and Marketing Committee. Public comment will not be received at the meeting.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

**June 20, 1996 - 11 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia.

A meeting of the Finance Committee to review the 1996-97 budget to present to the Executive Committee. Public comment will not be received at the meeting.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

**June 20, 1996 - Noon** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia.

A meeting of the Executive Committee to consider the 1996-97 budget presented by the Finance Committee. Public comment will not be received at the meeting.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

## BOARD OF NURSING

**June 10, 1996 - 9 a.m.** -- Open Meeting  
**June 13, 1996 - 9 a.m.** -- Open Meeting  
† **June 18, 1996 - 9 a.m.** -- Open Meeting  
† **June 19, 1996 - 9 a.m.** -- Open Meeting  
† **June 26, 1996 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A Special Conference Committee will conduct informal conferences with licensees and certificate holders to

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determine what, if any, action should be recommended to the Board of Nursing. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

### BOARD OF NURSING HOME ADMINISTRATORS

**June 20, 1996 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.☎

Informal conferences; however, no public comment will be received.

**Contact:** Lisa Russell Hahn, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

### VIRGINIA OUTDOORS FOUNDATION

#### Board of Trustees

† **June 27, 1996 - 10 a.m.** -- Open Meeting  
State Capitol, Capitol Square, Richmond, Virginia.☎  
(Interpreter for the deaf provided upon request)

A regular meeting of the Board of Trustees to discuss business and acceptance of conservation easements. A public comment period will begin at 2:30 p.m. to discuss (i) commercial activities referenced in the standard easement document and (ii) the informed consent provision of easement procedure.

**Contact:** Tamara A. Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Room 420, Richmond, VA 23219, telephone (804) 225-2147 or FAX (804) 371-4810.

### BOARD OF PHARMACY

† **June 13, 1996 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

A meeting to conduct formal hearings and to adopt final regulations and respond to public comments on proposed regulations. This is a public meeting. There will be a 15-minute public comment period beginning at 9:15 a.m.

**Contact:** Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

### POLYGRAPH EXAMINERS ADVISORY BOARD

**June 25, 1996 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.☎  
(Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action, and to administer the polygraph examiners licensing examination to eligible polygraph examiner interns and to consider other matters which may require board action. A public comment period will be scheduled at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

### BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

**June 17, 1996 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** Debra S. Vought, Agency Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8519, or (804) 367-9753/TDD ☎

**June 17, 1996 - 2 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.☎

The board will conduct a public hearing as part of a study on the regulation of backflow prevention device workers. This study is a result of Senate Bill 412 and House Bill 1019 which passed in the 1996 General Assembly.

**Contact:** Debra S. Vought, Agency Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8519, or (804) 367-9753/TDD ☎

### VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

† **June 13, 1996 - 10 a.m.** -- Open Meeting  
Department of Information Technology, Richmond Plaza Building, 110 South 7th Street, 1st Floor East, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A regular meeting. The agenda will include the Planning Committee report, approval of contracts and grants for FY 97, NTIA grant update, and other items of interest.

**Contact:** Suzanne J. Piland, Public Telecommunications Branch Manager, Department of Information Technology, 110 S. 7th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-5544.

## REAL ESTATE BOARD

† June 27, 1996 - 9 a.m. -- Open Meeting

† August 8, 1996 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct regulatory review. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

## VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

† June 19, 1996 - 3 p.m. -- Open Meeting

Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. ☎ (Interpreter for the deaf provided upon request)

A council work session. Call Paddy Katzen at (804) 698-4488 for details.

**Contact:** Paddy Katzen, Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488 or FAX (804) 698-4453.

† June 20, 1996 - 9 a.m. -- Open Meeting

Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to continue work on developing and monitoring a plan to strengthen Virginia's recycling infrastructure and markets; setting forth strategies primarily designed to improve the supply, quantity, and quality of recyclables; and providing strategies for increasing the demand for recycled products and expanding the capacity of collectors, processors, and manufacturers to handle and use specified recyclable materials. The meeting will be dependent on a quorum of 10. Subcommittee meetings may be held prior to or after the general council meeting. Call Paddy Katzen for details at (804) 698-4488 or e-mail pmkatzen@deq.state.va.us.

**Contact:** Paddy Katzen, Assistant to the Secretary of Natural Resources, Department of Environmental Quality,

629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488 or FAX (804) 698-4453.

## VIRGINIA RESOURCES AUTHORITY

June 11, 1996 - 9:30 a.m. -- Open Meeting

Ramada Oceanfront Tower and Conference Center, 58th and Atlantic, Virginia Beach, Virginia.

† July 9, 1996 - 9:30 a.m. -- Open Meeting

Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to approve minutes of the meeting of the prior month, to review the authority's operations for the prior months, and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Mutual Building, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

## RICHMOND HOSPITAL AUTHORITY

### Board of Commissioners

† June 27, 1996 - 5 p.m. -- Open Meeting

Richmond Nursing Home, 1900 Cool Lane, 2nd Floor, Classroom, Richmond, Virginia. ☎

A monthly board meeting to discuss nursing home operations and related matters.

**Contact:** Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, Richmond, VA 23204-0548, telephone (804) 782-1938.

## DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

### Protection and Advocacy for Individuals with Mental Illness Advisory Council

June 20, 1996 - 9 a.m. -- Open Meeting

Department of Health Professions, Southern States Building, 6606 West Broad Street, 5th Floor, Conference Rooms 2 and 3, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regularly scheduled bimonthly meeting with public comment at 11 a.m.

**Contact:** Jim Hobgood, Program Coordinator, Department for Rights of Virginians with Disabilities, 9th Street Office Bldg., 202 N. 9th St., 9th Floor, Richmond, VA 23219,

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## Calendar of Events

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telephone (804) 225-2042, FAX (804) 225-3221 or toll-free 1-800-552-3962 (Voice and TDD) ☎

### SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

June 12, 1996 - 10 a.m. -- Open Meeting  
June 13, 1996 - 10 a.m. -- Open Meeting  
July 17, 1996 - 10 a.m. -- Open Meeting  
July 18, 1996 - 10 a.m. -- Open Meeting  
General Assembly Building, House Room D, Capitol Square,  
Ninth and Broad Streets, Richmond, Virginia ☎

The board will hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia and VR 355-34-02.

**Contact:** Beth Bailey Dubis, Secretary to the Board, Sewage Handling and Disposal Appeals Review Board, 1500 E. Main St., Suite 117, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

### VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

#### Loan Committee

† June 25, 1996 - 10 a.m. -- Open Meeting  
Department of Economic Development, 901 East Byrd Street,  
19th Floor, Main Board Room, Richmond, Virginia ☎  
(Interpreter for the deaf provided upon request)

A meeting to review applications for loans submitted to the authority for approval.

**Contact:** Cathleen Surface, Executive Director, Virginia Small Business Financing Authority, 901 E. Byrd St., Suite 1800, Richmond, VA 23219, telephone (804) 371-8256, FAX (804) 225-3384, or (804) 371-0327/TDD ☎

### STATE BOARD OF SOCIAL SERVICES

June 14, 1996 -- Written comments may be submitted through this date.

Notice is hereby given in accordance with §§ 9-6.14:7.1 and 9-6.14:9.1 of the Code of Virginia that the State Board of Social Services has adopted as final the regulation entitled: **22 VAC 40-35-5 et seq. [VR 615-01-57]. Virginia Independence Program.** No substantial changes were made to the proposed regulation other than the addition of 22 VAC 40-35-20 A 6, which provides for the repeal of 22 VAC 40-35-20 A 5 upon receipt of appropriate federal authorization. The intent of 22 VAC 40-35-20 A 6 is to clarify the circumstances under which an Aid to Families with Dependent Children (AFDC) recipient is deemed to have cooperated in the establishment of paternity. Because the board believes that this change may be considered substantial, it will accept additional public comment. Accordingly,

additional written comment concerning 22 VAC 40-35-20 A 6 may be submitted until June 14, 1996, to Carolyn Ellis.

**Contact:** Carolyn Ellis, Department of Social Services, Division of Benefit Programs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1738.

† June 26, 1996 - 9 a.m. -- Open Meeting  
† June 27, 1996 - 9 a.m. (if necessary) -- Open Meeting  
Department of Social Services, Central Regional Office,  
Wythe Building, 1604 Santa Rosa Road, Richmond,  
Virginia ☎

A work session and formal business meeting of the board.

**Contact:** Phyllis Sisk, Special Assistant to the Commissioner, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1506, FAX (804) 692-1949, toll-free 1-800-552-3431 or 1-800-552-7096/TDD ☎

### VIRGINIA STUDENT ASSISTANCE AUTHORITIES

† June 21, 1996 - 10 a.m. -- Open Meeting  
411 East Franklin Street, 2nd Floor Board Room, Richmond,  
Virginia ☎

A meeting to discuss matters relating to legislation affecting the Virginia Education Loan Authority and the State Education Assistance Authority.

**Contact:** Leondra Brown Turner, Executive Assistant, 411 E. Franklin St., Suite 300, Richmond, VA 23219, telephone (804) 775-4648, FAX (804) 775-4679 or toll-free 1-800-792-5626.

### COMMONWEALTH TRANSPORTATION BOARD

June 19, 1996 - 2 p.m. -- Open Meeting  
Department of Transportation, 1401 East Broad Street,  
Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

**Contact:** Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

June 20, 1996 - 10 a.m. -- Open Meeting  
Department of Transportation, 1401 East Broad Street,  
Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another

forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

**Contact:** Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

## TREASURY BOARD

**June 20, 1996 - 9 a.m.** -- Open Meeting

**July 17, 1996 - 9 a.m.** -- Open Meeting

**August 21, 1996 - 9 a.m.** -- Open Meeting

James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ♿

A regular meeting.

**Contact:** Gloria Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

## BOARD OF VETERINARY MEDICINE

† **June 11, 1996 - 8:30 a.m.** -- Public Hearing

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

† **August 10, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Veterinary Medicine intends to amend regulations entitled: **18 VAC 150-20-10 et seq. Regulations Governing the Practice of Veterinary Medicine.** The purpose of the proposed amendments is to establish approved providers of continuing education requirements for retention of documents and conditions for waivers. This action will replace emergency regulations which became effective February 6, 1996.

Statutory Authority: §§ 54.1-2400 and 54.1-3805.2 of the Code of Virginia.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7691, FAX (804) 662-9943, or (804) 662-7197/TDD ♿

## VIRGINIA RACING COMMISSION

**June 14, 1996** -- Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to adopt regulations entitled: **11 VAC 10-180-10 et seq. Medication.** The purpose of the proposed

regulation is to establish procedures regarding the medication of racehorses. The Virginia Racing Commission authorizes the use of one medication in racehorses on race day and establishes quantitative levels on two other medications.

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

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

## BOARD FOR THE VISUALLY HANDICAPPED

**July 17, 1996 - 1:30 p.m.** -- Open Meeting

Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ♿

The Board for the Visually Handicapped is an advisory board responsible for advising the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly on the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budgets and requests for appropriations for the department. At this regular quarterly meeting, the board members will receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

**Contact:** Katherine C. Proffitt, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140/TDD ♿ or toll-free 1-800-622-2155.

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

### Advisory Committee on Services

**July 13, 1996 - 11 a.m.** -- Open Meeting

Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee meets quarterly to advise the Board for the Visually Handicapped on matters related to services for blind and visually handicapped citizens of the Commonwealth.

**Contact:** Barbara G. Tyson, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ♿

## VIRGINIA VOLUNTARY FORMULARY BOARD

**June 27, 1996 - 10:30 a.m.** -- Open Meeting

Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

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## Calendar of Events

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A meeting to review product data for products being considered for inclusion in the Virginia Voluntary Formulary.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary Board, James Monroe Bldg., 101 N. 14th St., S-45, Richmond, VA 23219, telephone (804) 786-4326.

### BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† July 11, 1996 - 10 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review, disciplinary cases, and other matters requiring board action. An examination workshop will begin at 1 p.m. and will be conducted in Executive Session. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

### THE COLLEGE OF WILLIAM AND MARY

#### Board of Visitors

† June 27, 1996 - 10 a.m. -- Open Meeting  
Blow Memorial Hall, Richmond Road, Williamsburg, Virginia.

A called meeting to act on resolutions concerning faculty appointments for the 1996-97 academic year for the College of William and Mary and Richard Bland College. An informational release will be available four days prior to the board meeting for those individuals and organizations who request it.

**Contact:** William T. Walker, Jr., Director, Office of University Relations, The College of William and Mary, 312 Jamestown Road, P.O. Box 8795, Williamsburg, VA 23187-8795, telephone (804) 221-2624.

### BOARD OF YOUTH AND FAMILY SERVICES

June 12 1996 - 9 a.m. -- Open Meeting  
Department of Youth and Family Services, 700 East Franklin Street, 4th Floor, Richmond, Virginia. ☎

Beginning at 9 a.m., committees will meet to review secure and nonsecure programs and facilities; at 10 a.m. the full board will meet to consider certification issues, regulatory reforms, and such other matters that may come before the board.

**Contact:** Donald R. Carignan, Policy Analyst, Department of Youth and Family Services, 700 Centre, 700 E. Franklin St., P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0743 or FAX (804) 371-0725.

## INDEPENDENT

### STATE LOTTERY BOARD

† June 26, 1996 - 9:30 a.m. -- Open Meeting  
Lottery Richmond Regional Office, 1610 Ownby Lane, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. A period for public comment is scheduled.

**Contact:** Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774.

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August 28, 1996 - 9:30 a.m. -- Public Hearing  
State Lottery Department, 900 East Main Street, Richmond, Virginia.

July 26, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **11 VAC 5-20-10 et seq. Administration Regulations.** The purpose of the proposed amendments is to clarify procurement exemptions and restrictions, clarify board meeting requirements, remove sections that are duplicative of Code of Virginia provisions when practical, and incorporate housekeeping changes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

**Contact:** Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774.

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August 28, 1996 - 9:30 a.m. -- Public Hearing  
State Lottery Department, 900 East Main Street, Richmond, Virginia.

July 26, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **11 VAC 5-30-10 et seq. Instant Game Regulations.** The purpose of the proposed amendments is to clarify revocation or suspension of a lottery retailer's license, authorize cashing at lottery headquarters, eliminate claim form requirements, delete sections that are unnecessary or duplicative, and make housekeeping changes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

**Contact:** Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774.

\*\*\*\*\*

**August 28, 1996 - 9:30 a.m.** -- Public Hearing  
State Lottery Department, 900 East Main Street, Richmond, Virginia.

**July 26, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **11 VAC 5-40-10 et seq. On-Line Game Regulations.** The purpose of the proposed amendments is to clarify revocation or suspension of a lottery retailer's license, authorize cashing at lottery headquarters, eliminate claim form requirements, revise subscription plan, and make housekeeping changes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

**Contact:** Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774.

## JUDICIAL

### VIRGINIA CRIMINAL SENTENCING COMMISSION

**June 24, 1996 - 10 a.m.** -- Open Meeting  
Supreme Court Building, 100 North 9th Street, 3rd Floor, Judicial Conference Room, Richmond, Virginia. ♿

A regular quarterly meeting of the commission to review sentencing guidelines, compliance rates, and the work of commission subcommittees.

**Contact:** Dr. Richard Kern, Director, Virginia Criminal Sentencing Commission, 100 N. 9th St., 5th Floor, Richmond, VA 23219, telephone (804) 225-4565 or (804) 225-4398, or FAX (804) 786-3934.

## LEGISLATIVE

### VIRGINIA CODE COMMISSION

**June 19, 1996 - 10 a.m.** -- Open Meeting  
**June 20, 1996 - 10 a.m.** -- Open Meeting  
**† July 10, 1996 - 10 a.m.** -- Open Meeting  
**† July 11, 1996 - 10 a.m.** -- Open Meeting  
General Assembly Building, House Redistricting Conference Room, 2nd Floor, 910 Capitol Square, Richmond, Virginia. ♿

A regularly scheduled meeting to continue the recodification of Title 15.1.

**Contact:** E. M. Miller, Director, or Jane Chaffin, Deputy Registrar of Regulations, Division of Legislative Services, General Assembly Bldg., 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

### JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

**June 10, 1996 - 9:30 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ♿

A meeting to discuss House Joint Resolution No. 143, Medicaid Forecast Review, and to review the Department of Social Services' ADAPT system.

**Contact:** Philip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Bldg., 910 Capitol Square, Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

**June 10**  
Alcoholic Beverage Control Board  
Conservation and Recreation, Department of  
- Board on Conservation and Development of Public Beaches  
Intergovernmental Relations, Advisory Commission on Legislative Audit and Review Commission, Joint Nursing, Board of

**June 11**  
Contractors, Board for  
- Recovery Fund Committee  
Economic Development Partnership, Virginia  
- Board of Directors  
Emergency Planning Committee, Local - Arlington County/City of Falls Church/Washington National Airport  
† Mental Health, Mental Retardation and Substance Abuse Services, Department of  
- Secretary of Health and Human Resources System Reform Task Force  
Museum of Fine Arts, Virginia

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## Calendar of Events

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- Board of Trustees  
Resources Authority, Virginia

### June 12

Agriculture and Consumer Services, Department of  
- Virginia State Apple Board  
† Child Day-Care Council  
Health, Department of  
- Biosolids Use Information Committee  
- Biosolids Use Regulations Advisory Committee  
Independent Living Council, Statewide  
Interagency Coordinating Council, Virginia  
Labor and Industry, Department of  
- Migrant and Seasonal Farmworkers Board  
Sewage Handling and Disposal Appeals Review Board  
Youth and Family Services, Board of

### June 13

Architects, Professional Engineers, Land Surveyors and  
Landscape Architects, Board for  
- Board for Landscape Architects  
† Child Day-Care Council  
Environmental Quality, Department of  
Funeral Directors and Embalmers, Board of  
Nursing, Board of  
† Pharmacy, Board of  
† Public Telecommunications Board, Virginia  
Sewage Handling and Disposal Appeals Review Board

### June 14

Architects, Professional Engineers, Land Surveyors and  
Landscape Architects, Board for  
- Board for Interior Designers  
Dentistry, Board of

### June 17

Labor and Industry, Department of  
- Safety and Health Codes Board  
Library Board  
Professional and Occupational Regulation, Board for

### June 18

Aviation Board, Virginia  
† Corrections, Board of  
- Correctional Services Committee  
† Housing Development Authority, Virginia  
Library Board  
Medical Assistance Services, Board of  
† Nursing, Board of

### June 19

Aviation Board, Virginia  
Code Commission, Virginia  
† Correction, Board of  
- Administration Committee  
Historic Resources, Board of and State Review Board  
† Nursing, Board of  
† Recycling Markets Development Council, Virginia  
Transportation Board, Commonwealth

### June 20

Code Commission, Virginia  
† Corrections, Board of  
- Liaison Committee  
† Dentistry, Board of

† Emergency Planning Committee, Local - County of  
Montgomery/Town of Blacksburg  
† Fire Services Board, Virginia  
- Fire/EMS Education and Training Committee  
- Fire Prevention and Control Committee  
- Legislative/Liaison Committee  
† Medicine, Board of  
Museum of Fine Arts, Virginia  
- Board of Trustees  
Nursing Home Administrators, Board of  
† Recycling Markets Development Council, Virginia  
Rights of Virginians with Disabilities, Department for  
- Protection and Advocacy for Individuals with Mental  
Illness Advisory Council  
Transportation Board, Commonwealth  
Treasury Board

### June 21

† Agriculture and Consumer Services, Department of  
- Virginia Egg Board  
Architects, Professional Engineers, Land Surveyors and  
Landscape Architects, Board for  
Correctional Education, Board of  
Dentistry, Board of  
† Fire Services Board, Virginia  
† Housing and Community Development, Department of  
- State Building Code Technical Review Board  
† Medicine, Board of  
† Student Assistance Authorities, Virginia

### June 24

Alcoholic Beverage Control Board  
† Chesapeake Bay Local Assistance Board  
Criminal Sentencing Commission, Virginia

### June 25

† Conservation and Recreation, Department of  
- Board of Conservation and Recreation  
† Marine Resources Commission  
† Mental Health, Mental Retardation and Substance  
Abuse Services Board, State  
Polygraph Examiners Advisory Board  
† Small Business Financing Authority, Virginia  
- Loan Committee

### June 26

Library of Virginia  
- State Networking Users Advisory Board  
† Lottery Board, State  
Medicine, Board of  
† Mental Health, Mental Retardation and Substance  
Abuse Services Board, State  
† Nursing, Board of  
† Social Services, State Board of

### June 27

Higher Education Tuition Trust Fund, Virginia  
† Outdoors Foundation, Virginia  
- Board of Trustees  
† Real Estate Board  
† Richmond Hospital Authority  
- Board of Commissioners  
† Social Services, State Board of  
Voluntary Formulary Board, Virginia

† William and Mary, College of  
- Board of Visitors

**June 28**

Child Fatality Review Team, Virginia State

**July 1**

† Funeral Directors and Embalmers, Board of  
Museum of Fine Arts, Virginia  
- Board of Trustees

**July 2**

Hopewell Industrial Safety Council

**July 8**

† Local Government, Commission on

**July 9**

† Mental Health, Mental Retardation and Substance  
Abuse Services, Department of  
- Office of Early Intervention for Infants and Toddlers  
with Disabilities and Their Families  
† Resources Authority, Virginia

**July 10**

† Agriculture and Consumer Services, Department of  
- Virginia Marine Products Board  
† Code Commission, Virginia

**July 11**

† Child Day-Care Council  
† Code Commission, Virginia  
† Comprehensive Services Act for At Risk Youth and  
Their Families  
- State Management Team  
† Waterworks and Wastewater Works Operators, Board  
for

**July 13**

Visually Handicapped, Department for the  
- Advisory Committee on Services

**July 17**

Agriculture and Consumer Services, Department of  
- Virginia Small Grains Board  
† Community Colleges, State Board for  
Sewage Handling and Disposal Appeals Review Board  
Treasury Board  
Visually Handicapped, Board for the

**July 18**

† Community Colleges, State Board for  
† Game and Inland Fisheries, Board of  
Sewage Handling and Disposal Appeals Review Board

**July 19**

† Game and Inland Fisheries, Board of  
HIV Community Planning Committee, Virginia

**July 22**

† Accountancy, Board for

**July 23**

† Accountancy, Board for

**July 24**

† Emergency Planning Committee, Local - City of Bristol

**July 25**

Agriculture and Consumer Services, Department of  
- Virginia Winegrowers Advisory Board  
Higher Education Tuition Trust Fund, Virginia

**July 26**

† Comprehensive Services Act for At Risk Youth and  
Their Families  
- State Executive Council

**July 29**

Alcoholic Beverage Control Board, Virginia

**August 2**

Agriculture and Consumer Services, Department of  
- Virginia Soybean Board

**August 8**

† Child Day-Care Council  
† Real Estate Board

**August 12**

Alcoholic Beverage Control Board

**August 21**

Treasury Board

**August 22**

Higher Education Tuition Trust Fund, Virginia

**August 26**

Alcoholic Beverage Control Board

**PUBLIC HEARINGS**

**June 10**

Child Day Care and Early Childhood Programs, Council  
on

**June 11**

† Veterinary Medicine, Board of

**June 12**

Health Professions, Board of  
- Compliance and Discipline Committee

**June 13**

Health Professions, Board of  
- Compliance and Discipline Committee

**June 17**

Medicine, Board of  
Professional and Occupational Regulation, Board for

**June 20**

† Fire Services Board, Virginia

**July 23**

† Air Pollution Control Board, State

**August 28**

Lottery Board, State

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